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OZAH Case No. CU 22-03

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Before: Derek J. Baumgardner, Hearing Examiner

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE

On August 27, 2021, Estefania Puricelli and Andrew Conner (“Applicants”) filed an application seeking a conditional use to establish an Equestrian Facility under section 59.3.2.4 of the Zoning Ordinance. Exhibit 1. The application proposes to house, board, or otherwise care for two horses on the property located at 6001 Warm Springs Drive, Derwood, Maryland. The subject property is zoned RE-2.

On November 9, 2021, OZAH issued a Notice of Public Hearing scheduling this matter for a hearing on December 20, 2021. Exhibit 15.

On November 19, 2021, Planning Staff issued their report recommending approval of the application with conditions. Exhibit 17. The Planning Board subsequently approved the application by unanimous vote on December 2, 2021, issuing its report on December 9, 2021, revising only condition No. 4 as presented by Staff. Exhibit 16. The conditions recommended by Planning Staff and affirmed by the Board including the revised condition are as follows:

1. All uses on the site must conform to the Conditional Use Site Plan approved by the Hearing Examiner.
2. No more than two horses may be kept on the property at any one time.
3. The Applicants must not rent out any of the horses in the equestrian facility.
4. The Applicants are limited to providing at most two riding lessons per horse per day, not to exceed 14 lessons per week.
5. No equestrian events may be held on the property.

6. No identification signs related to the Conditional Use may be placed on the property.
7. Because the existing barn and the two pastures are all less than 100 feet from the nearest dwelling, the Applicants must obtain Variances from the requirements of Section 59.3.2.4.B.1.d and Section 59.4.4.4.b.2.a of the Zoning Ordinance.
8. The Applicants must provide a pasture maintenance plan, feeding plan, or any other documentation the Hearing Examiner requires to demonstrate that the site contains sufficient open pasture to ensure proper care of the horses and that the site will be property maintained.
9. The Applicants must satisfy the state requirements for nutrient management concerning animal waste.
10. All animal waste storage areas must be located at least 100 feet from the nearest dwelling and must be screened from the road and from neighboring properties.
11. The Applicants must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the premises and operate the conditional use as granted by the Hearing Examiner.
12. This equestrian facility conditional use approval must be renewed every five years.

The public hearing proceeded as scheduled on December 20, 2021. The Applicant, Ms. Puricelli, testified in support of the application. The Applicant noted some travel and posting issues. Being unable to confirm whether proper public notice and posting had occurred on the property, the Hearing Examiner issued an order for rehearing. Exhibit 22.

On January 4, 2022, OZAH issued a Notice of Public Hearing rescheduling this matter for a hearing on February 7, 2022.

The hearing proceeded as scheduled on February 7, 2022. The Applicants, Estefania Puricelli and Andrew Conner, testified in support of the application. The file also contains a letter of support from a neighboring and adjacent property owner. Exhibit 13. OZAH did receive an unsigned letter from purported community members in opposition to the application, but this letter

is not compliant with OZAH Rules of Procedure for the submission of evidence in a public hearing and therefore was excluded from the record and not included in the Hearing Examiner's consideration of this application. The record was left open for ten (10) days following the conclusion of the hearing, or until February 17, 2021. No further comments were received.

After a thorough review of the record, including all documents and testimony, the Hearing Examiner approves the conditional use with the conditions included in Part IV of this Report for the following reasons.

II. FACTUAL BACKGROUND

A. The Subject Property

The subject property is located at 6001 Warm Springs Drive, Derwood, Maryland and is currently improved by a single-family detached home with a previously approved but since abandoned special exception for riding stables.¹ Technical Staff ("Staff") provided the following description of the subject property:

The Property is located at 6001 Warm Springs Drive in Derwood, with corners on both Avery Road and Amelung Lane (see Figure 2). It is Lot 16, Block A of Plat 11471, "Avery Village" ("Property"). The Property is 2.0012 acres and is improved with a 2,384 square-foot house, a swimming pool, and an 874-square-foot barn. The front yard contains a paved driveway, a grass lawn, and several mature trees. The property gently slopes from southeast to northwest and is enclosed by fencing. Fencing also separates the two pastures and the front yard. No trees will be cut down for this Conditional Use and there are no conservation easements or streams on the Property. Photos of the Property are included in Figure 3 and Figure 4 below. Exhibit 17, p. 3.

An aerial view of the property, shown below and marked as Figure 2 in the staff report, shows the property's shape and size including the existing single-family home, stable, yard areas, fencing, and three surrounding public roads.

¹ Special Exception for a Private Riding Stable (Plan No. SE 87-1) on March 19, 1987 to keep two horses on the property for the personal use by the owner and his family (see Special Exception No. SE 87-1 and Board of Appeals Variance No. BAA-1848)



Figure 2: Aerial View of the Property

B. Surrounding Neighborhood

To determine the compatibility of the proposed use with the surrounding area, it is necessary to delineate the “surrounding neighborhood”, which is the area that will be most directly impacted by the proposed use. Once delineated, the Hearing Examiner must assess the character of the neighborhood and determine whether the impacts of the proposed conditional use will adversely affect that character.

Staff defines the surrounding neighborhood (“Neighborhood”) as the area located within a 1500-foot radius of the subject property. Exhibit 17, p. 4. Staff determined that the surrounding neighborhood is predominantly composed of single-family residential detached houses with some agricultural activity occurring “giving the area a semi-rural feel.” *Id.* Staff noted that the property located at 15715 Avery Road, less than 200 feet south of the Property, known as “Barnsley House,” contains an historic house and family cemetery and is still used for agricultural purposes. Exhibit 17, p. 5. Figure 5 below shows the staff defined neighborhood hatch-marked in yellow, with the subject property outlined in red:

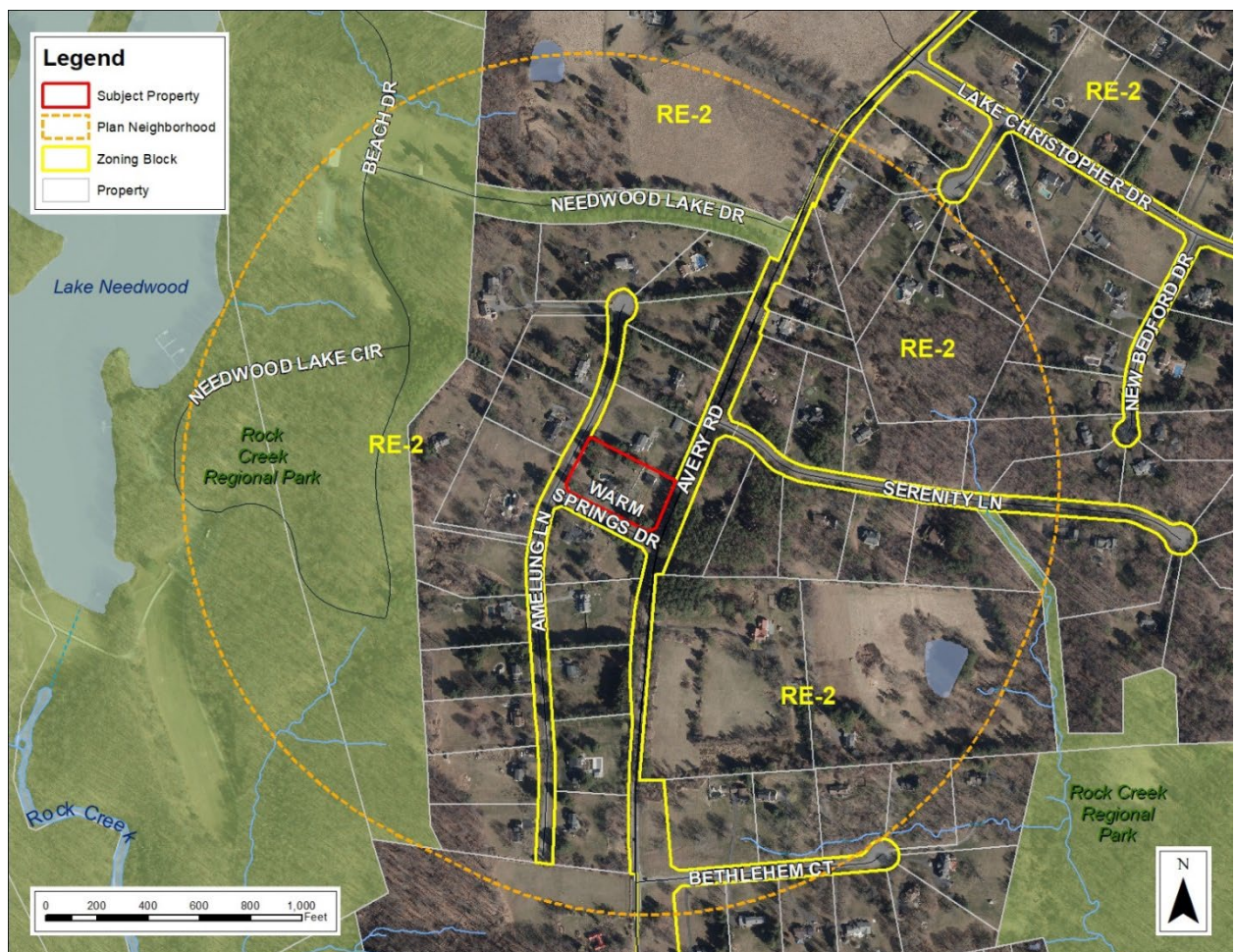


Figure 5: Staff-Defined Neighborhood

Conclusion: The Hearing Examiner concurs with Staff's delineation of the surrounding neighborhood and further finds that the neighborhood is large lot single-family residential and semi-rural in character.

C. Proposed Use

The Applicant proposes to house, board, or otherwise care for up to two horses on the subject property improved by a barn/stable and pasture areas from a previous but since abandoned special exception use, which constitutes an "equestrian facility" under 59.3.2.4 of the Zoning Ordinance. The property is improved by a 2,384 sq.ft. single-family home and a barn/stable constructed for up to two horses. Exhibit 3, p. 1. The Applicants state that "the majority of the property is fenced with the backyard separated into two pasture areas" and is therefore already configured for horse pasturing, "with a barn complete with stalls and fences surrounding and dividing the property." *Id.* at 2. The Applicants further state that they do not intend to hold public events on the property other than personal or family gatherings. *Id.* The Applicants do request the ability to provide horse riding lessons or horse boarding services, not to exceed the two horses requested under this application. *Id.*

1. Conditional Use Site Plan

The conditional use site plan shown below illustrates property dimensions, lot lines, existing primary and accessory structures, fencing, and the proposed composting bins associated with this use.

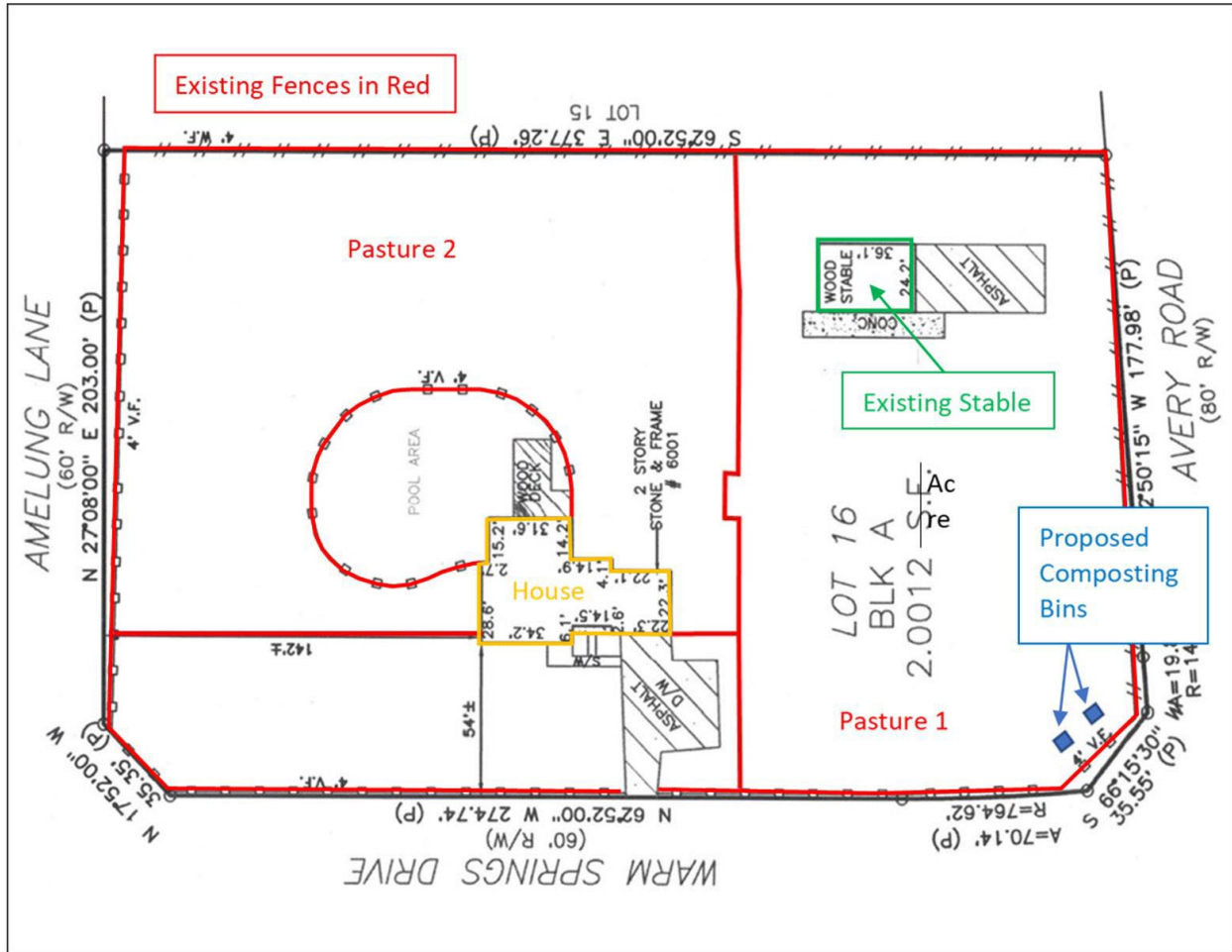


Exhibit 19: Conditional Use Plan

2. Operations

a. Personal Use

The applicants have personal and professional experience with caring for and training horses and request a conditional use to house, board, or otherwise care for up to two horses for personal use on their property, which also serves as their primary residence. *See generally* Exhibit 3. The horses are for personal and family use, and may occasionally be used for limited horseback riding lessons. T. 20-21. In addition to a single-family home, the property is improved by a barn/stable, pastures, and internal and perimeter fencing. *See* Exhibit 19. Photographs of the existing stable/barn and pastures are shown below. Exhibit 10, pp. 4-5.



b. Access, Roadways, and Equipment

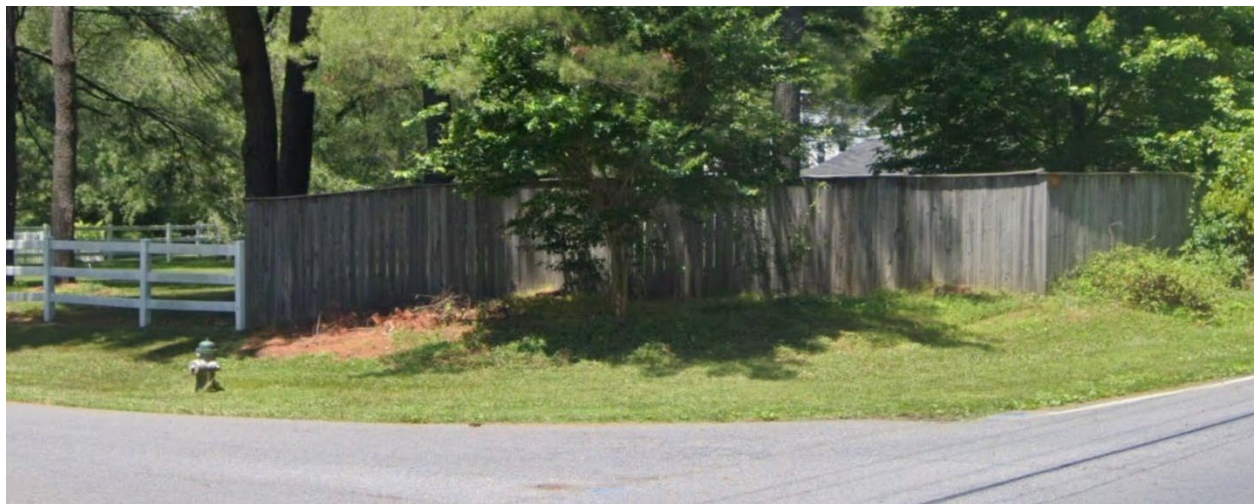
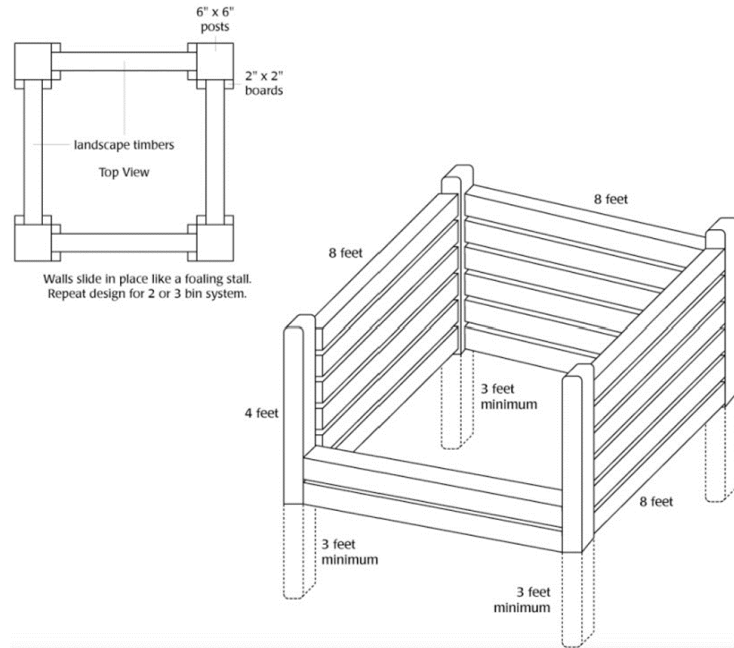
The proposed conditional use would generate additional traffic including occasional hay delivery, manure hauling, and veterinarian or farrier visits. Exhibit 17, p. 11; T. 22. All such activities would be infrequent and would occur during normal working hours. Exhibit 17, p. 11. Riding lesson students would also generate up to four vehicle trips per day but the Applicants are

not proposing daily lessons throughout the week. *Id.* If the Applicants choose to board other people's horses, the owner or owners of those horses would presumably also make occasional visits to the Property. Exhibit 17, p. 9.

Staff opined that the proposed use will have minimal impact on transportation/traffic as the traffic generated from the use is limited to occasional deliveries, veterinary service, and visitors, all of which would occur during normal daytime hours, in addition to the vehicular use associated with the existing residence. Exhibit 17, p. 11. No equestrian events are proposed under this application and would not be permitted. As the Conditional Use generates fewer than 50 peak hour person trips within either the morning or evening peak hour, no further analysis of the potential transportation impacts is required per the 2021 LATR and the 2021-2024 GIP. Exhibit 17, p. 11. There is no parking requirement for the proposed use separate from the required parking for the existing residential use. Exhibit 17, p. 11. Nonetheless, the garage and driveway can accommodate numerous vehicles including horse trailers. *Id.*

c. Waste Disposal

The Applicants propose installing two small composting bins for the horse manure. Exhibit 17, p. 17 (diagram shown below). Each bin is 8 feet x 8 feet x 4 feet, or 256 cubic feet, and they would be located in the southeast corner of the property as shown below:



The bins would be concealed from view by a wooden fence on the eastern side of the property along Avery Road, as shown above, with the closest neighboring dwelling across Avery Road at 5934 Serenity Lane, approximately 200 feet away from the bins. Exhibit 17, p. 7. According to the Applicants, the Maryland Department of Agriculture recommends 1000 cubic feet of manure storage capacity for a 2-3 horse operation. As the two bins proposed fail to meet that criteria, the Applicants are prepared to either add additional composting facilities or hire a service to haul away

any excess manure. *Id.*; T. 26. Ms. Puricelli also testified that she may offer manure and/or compost to neighbors. T. 26-27.

3. Landscaping, Lighting, and Signage

a. Landscape Plan

No specific additional landscaping or screening is proposed under this application. However, Planning Staff indicate that the Applicants are agreeable to providing additional screening along the rear lot line. Exhibit 17, p. 12. The Hearing Examiner makes specific findings with regard to alternative compliance with screening requirements below in section III.D.1.

b. Lighting

Staff notes that existing lighting includes floodlights near the top of the eaves on both ends of the barn and lighting under the overhang in the front of the barn (see Figure 11). Exhibit 17, p. 15. Staff further notes that “the lights face downwards and do not shine onto the adjoining residential property.” Photographs provided by the Applicant and reproduced in the Staff Report as Figure 11 at p. 15, are shown below. No additional lighting is proposed under this application. Exhibit 17, p. 15.



c. Signage

No signage is proposed under this application. *See* Exhibits 3, 7, 19; *See also* Exhibit 17, p. 15.

D. Environmental Issues

Staff advises that Forest Conservation Exemption 42022032E was confirmed for the property on July 28, 2021, and “no ground disturbing activities are proposed.” Exhibit 17, p. 16; *See* Exhibit 9.

E. Community Response

The Applicants submitted a letter of support from Gus Stathes, the owner of the only abutting property located at 15805 Amelung Lane. Exhibit 13. Mr. Stathes states that he is aware that his house is less than the required 100 feet from the horse barn and that a variance is required. *Id.* Staff advises that at the time of technical staff report publication, no other communication has been received from the community either in support of or in opposition to the proposed use. Exhibit 17, p. 16.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific to a use (in Article 59.3 of the Zoning Ordinance) and general (*i.e.*, applicable to all conditional uses, in Division 59.7.3 of the Zoning Ordinance). The specific standards applied in this case are those for an Equestrian Facility contained in *Montgomery County Zoning Ordinance*, §59.3.2.4. “The appropriate standard to be used in determining whether a requested [conditional use] would have an adverse effect and, therefore, should be denied, is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any

adverse effects above and beyond those inherently associated with such a [conditional use].”
Montgomery County v. Butler, 417 Md. 271, 275 (2010).

Weighing all the testimony and evidence of record under a preponderance of the evidence standard (*Zoning Ordinance*, §7.1.1), the Hearing Examiner concludes that the conditional use proposed in this application, with the conditions imposed in Part IV of this Report and Decision, satisfies all of the specific and general requirements for the use and does not present any adverse effects above and beyond those inherently associated with such a use.

A. Necessary Findings (Section 59.7.3.1.E)

The general findings necessary to approve all conditional uses are found in Section 59.7.3.1.E. of the Zoning Ordinance. Standards pertinent to this approval, and the Hearing Examiner's findings for each standard, are set forth below.

1. To approve a conditional use application, the Hearing Examiner must find that the proposed development:

a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;

The previous Special Exception for a Private Riding Stable (Plan No. SE 87-1) was approved on March 19, 1987 to keep two horses on the property for the personal use by the owner and his family (*see* Special Exception No. SE 87-1 and Board of Appeals Variance No. BAA-1848). That use has since been abandoned and the property remains and will continue to be used primarily as a single-family residence. No other previous approvals apply.

Conclusion: Based on the evidence in the record and having no evidence to the contrary, the Hearing Examiner finds that this standard has been met. There are no previous approvals on site that apply at this time.

b. satisfies the requirements of the zone, use standards under Article 59.3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59.6;

This subsection reviews the following: (1) development standards of the RE-2 Zone (Article 59.4); (2) the specific use standards for an Equestrian Facility (Article 59.3.2.4); and (3) the development standards for all uses (Article 59.6). The Hearing Examiner addresses these standards in Part III.C, D, and E of this Report.

c. substantially conforms with the recommendations of the applicable master plan;

The property is located within the 2004 *Upper Rock Creek Area Master Plan*. Exhibit 17, p. 9. According to Staff, the Master Plan does not make any specific recommendations for the subject property. *Id.* However, Staff states that the general goals from the Master Plan do apply to the proposed use as follows:

A primary goal of this Plan is to protect environmental resources and maintain stream quality by keeping streams, forests and wetlands in a natural state. ... Of equal importance is preserving residential character. (p. 7)

Protecting the water resources of the Upper Rock Creek watershed is critical. The entire area is considered the headwaters of the larger Rock Creek watershed that extends into the District of Columbia, and the northern portion of the Upper Rock Creek Planning Area contains the headwaters of two large tributaries, the Mainstem of Rock Creek and the North Branch of Rock Creek. The Planning Area contains exceptionally healthy aquatic ecosystems. In addition, most of the streams flow into Lakes Needwood and Frank in Rock Creek Regional Park. The water quality of these lakes is directly affected by the nutrients and sediments delivered by the streams. (p. 45)

Staff notes that the portion of Avery Road adjoining the lot “forms a ridge dividing the Upper Rock Creek Mainstem Watershed, which drains to Lake Needwood to the northwest of the Property, and the North Branch Watershed, which drains southeast to Lake Frank.” Exhibit 17, p. 9. The subject property is within a “Watershed Restoration Area” as indicated in the watershed management map from page 50 of the Master Plan, but is not located within the large Special

Protection Area (SPA) covering most of the northern part of the Master Plan area. *Id.* Staff notes that the Master Plan does not make any specific recommendations for the subject property. *Id.*

Staff opines that the proposed Conditional Use will have minimal impacts on the established neighborhood as the property is already improved by a stable, fencing, and horse pastures. Staff notes the most significant concerns relate to eliminating or mitigating any adverse impacts from animal waste into the Upper Rock Creek watershed and “whether residential character is preserved.” Exhibit 17, p. 9. Staff found the Applicants’ proposed waste control measures through a combination of composting, land application, and delivery/removal services adequate to protect water resources, and that the plans proposed maintain the appearance of the single-family residential lot and will not diminish the residential character of the Master Plan area. *Id.*

Conclusion: The Hearing Examiner agrees with Staff that the proposed use substantially conforms to the Plan. The 2004 Upper Rock Creek Area Master Plan does not prohibit or otherwise proscribe the use and the proposed conditional use maintains the residential character of both structure and use in compliance with the Plan and only imposes an ancillary use on the property in addition to the continuing primary use as a single-family residential home. The Hearing Examiner also finds that the animal waste control measures proposed are sufficient to mitigate any adverse impact to water quality and nutrient runoff into the Upper Rock Creek watershed. In sum, the proposed use does not change the character of the neighborhood and substantially conforms to the recommendations of the Plan.

d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the [master] plan.

Staff opines that the proposed Conditional Use will not result in any notable negative impact on the residential neighborhood in terms of increased traffic, noise, smells, or parking and “there will be little change to the appearance of the Property.” Exhibit 17, p. 20. Staff further note that the housing, boarding, or care of horses on the property will not interfere with the orderly use, development, and improvement of surrounding properties. *Id.* The only new construction proposed entails the construction of animal waste or composting boxes to control animal waste, which are small in scale and located away from neighboring homes. Staff concluded that “the proposed use will not alter the character of the neighborhood in a manner inconsistent with the Master Plan, which stresses maintaining the residential character and protecting the environment.” Exhibit 17, p. 20.

Conclusion: The Hearing Examiner finds that the proposed use as an Equestrian Facility as conditioned with two horses will not alter the character of the surrounding neighborhood in a manner inconsistent with the Plan. The property meets all relevant development standards with the exception of the variance required for the existing stable, and will have no discernable impact on the character of this residential neighborhood.

e. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;

Staff advised that several older special exceptions were approved within the Neighborhood in the early 1970s, none of which appear to remain active: S1813/S1813M0 (Bed & Breakfast at 15715 Avery Road); S102 (riding stable for up to 20 horses at 15800 Avery Road); S230/CBA2897 (private riding stable for two horses at 16001 Avery Road); S266 (private riding stable for 7 horses

at 16000 Avery Road); S309 (permit request for a private tennis club at 15514 but denied by the Board of Appeals on April 4, 1973).

Conclusion: The Hearing Examiner finds that approval of this conditional use will not increase the number, intensity, or scope of conditional uses in the neighborhood or impact the area adversely or alter the predominantly residential nature of the area. Moreover, the use substantially conforms with the recommendations of the Plan. Other special exceptions or conditional uses in the neighborhood do not appear to be active, or, in the alternative, are of a residential or semi-rural character compatible with the housing, boarding, or care of horses.

f. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:

i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or

ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and

As the lot is already platted, a Preliminary Plan of Subdivision is not required. Exhibit 17, p. 22. Staff advises that the property is shown as water category W-1 and sewer category S-6 with no known problems or proposed changes. *Id.* Vehicle trips to the property include infrequent hay delivery, manure hauling, and veterinarian visits, plus the possibility of student vehicle for limited

riding lessons. The Applicants “do[es] not anticipate any impact on the normal traffic patterns in the area.” Exhibit 6. Staff advises that the trip generation rate falls below the 50-person peak-hour Local Area Transportation Review (LATR) threshold and is therefore exempt from additional review. Exhibit 17, p. 22. Montgomery County Fire Station #3, located at 380 Hungerford Drive in Rockville, is approximately 3.4 miles southwest of the property, while Montgomery County Fire Station #28, at 7272 Muncaster Mill Road in Gaithersburg, is approximately 3.3 miles to the north of the property. *Id.* The Montgomery County Police Department’s 1st District Station at 100 Edison Park Drive in Gaithersburg is 8.7 miles from the property and the 4th District Station at 2300 Randolph Road in Glenmont is 7.6 miles from the property. *Id.* The proposed use does not impact stormwater runoff as no construction is proposed as part of this application, but nutrient management is addressed through manure boxes, composting, and pickup. Exhibit 8. Staff concluded that the proposed use will have a minimal impact on public facilities. Exhibit 17, p. 22.

Conclusion: The Hearing Examiner finds that the use as conditioned will be served by adequate public services and facilities with no detrimental impact to surrounding properties. No new construction is proposed and the property is served by adequate fire, police, fire, and public roads with no appreciable increased intensity of use or load with little to no impact from the addition of two horses.

g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:

- i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;***
- ii. traffic, noise, odors, dust, illumination, or a lack of parking; or***
- iii. the health, safety, or welfare of neighboring residents, visitors, or employees.***

This standard requires the Hearing Examiner to identify inherent and non-inherent adverse effects of the proposed use on nearby properties and the surrounding area. Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” *Zoning Ordinance*, §1.4.2. Inherent adverse effects, alone, are not enough to deny a conditional use. Non-inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* A conditional use may be denied if it will have non-inherent adverse effects, alone or in combination with inherent effects, that cause “undue” harm to the surrounding neighborhood.

Staff identified the following inherent physical and operational characteristics of an Equestrian Facility in a residential zone: (1) stabling; (2) a fenced paddock; (3) sight, odor, and sounds associated with horses; (4) a manure/compost area; and (5) a single-family dwelling in which the owners of the horses live. Exhibit 17, p. 22. The existing stable/barn, pastures, and fencing have the operational characteristics typically associated with keeping horses on a residential property in a residential neighborhood. No material changes are proposed under this application. Manure composting bins have been proposed and located away from existing and neighboring homes. The addition of horses to an area that has a history of horse care contributes to the semi-rural character of the area. According to Staff, “the Property is within a semi-rural community that has had several similar and larger equestrian facilities in the past, as well as other properties with large pastures and other open fields. The proposed application would blend well with the prevailing character of the immediate neighborhood.” Exhibit 17, p. 22. No non-inherent effects have been identified.

Conclusion: The Hearing Examiner finds that the proposed use will not cause undue harm to the character of the surrounding area due to any non-inherent adverse effects, alone or in combination with any inherent effects. This application and the testimony provided at the hearing did not provide any facts to cause the Hearing Examiner to conclude that the Equestrian Facility proposed, as conditioned, would have any material adverse impact on the property or neighboring properties. The conditions of approval stated at the conclusion of this report are intended to mitigate the inherent adverse impacts of this use in the community, particularly waste and nutrient control and management.

2. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.

The application does not propose any interior or exterior modifications to the existing single-family home or accessory buildings.

Conclusion: The Hearing Examiner finds the existing structures remain compatible with the character of this residential neighborhood and will support and maintain the residential nature and semi-rural character of the community.

3. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.

The Hearing Examiner finds that the proposed conditional use meets the standards outlined in Section 59.7.3.1.E independent of any presumption of compatibility and that the use is, in fact, compatible with surrounding properties.

B. Development Standards of the Zone (RE-2)

In order to approve a conditional use, the Hearing Examiner must find that the application

meets the development standards of the RE-2 Zone, contained in Article 59.4 of the Zoning Ordinance. Staff compiled data and produced Table 1, shown below, indicating that all development standards in the RE-2 zone have been satisfied by this application, except for setbacks for the existing accessory structure (stable/barn) which require variances. Exhibit 17, pp. 10-11.

Development Category	Standard	Proposed
Minimum lot area	2 acres	2.0012 acres
Lot width at front building line	150 ft.	~388 ft.
Lot width at front lot line	25 ft.	~388 ft.
Frontage on street or open space	Required	Provided
Density	1 unit per 2 acres	1 unit per 2 acres
Maximum lot coverage	25%	~3.7%
Principal building setbacks:		
• Front	50 ft.	54 ft.
• Side street setback (Avery Road)	20 ft.	177 ft.
• Side street setback (Amelung Lane)	50 ft.	142 ft.
• Side		
○ One side	17 ft.	142 ft./170 ft.
○ Both sides	35 ft.	312 ft.
• Rear	35 ft.	~118 ft.
Minimum setback, accessory structure:		
• Front setback	80 ft.	250 ft.
• Side street setback (Avery Road)	20 ft.	~74 ft.
• Side street setback (Amelung Lane)	50 ft.	~268 ft.
• Rear setback ¹	25 ft.	32 ft.
Height:		
• Principal building	50 ft.	~18 ft.
• Accessory structure	50 ft.	~15 ft.

¹ The typical rear setback for an accessory structure is 12 feet in the RE-2 zone, but is 25 feet in this case (see below).

Table 1. RE-2 Zone, Standard Method Development Standards

In addition, Staff notes the following standards with respect to accessory structures

Specifications for Accessory Structure Setbacks

- a. **Any accessory building or structure used for the housing, shelter, or sale of animals or fowl other than a household pet must be a minimum of 25' from a lot line and a minimum of 100' from a dwelling on another lot.**

Staff notes that the stable/barn is 32 feet from the closest lot line and approximately 90 feet from the house on the adjacent property to the north (15805 Amelung Lane). Exhibit 17, p. 24. The Hearing Examiner finds that a variance from this standard will be required and is applied as a condition of approval (*see conclusion*).

- b. Any accessory structure on a lot or parcel abutting a national historical park must be set back a of 200' from the national historical park unless the accessory structure is exempted under Section 6.4.3.C.3.**

The Hearing Examiner finds that this standard is not applicable to this application.

- c. In addition to the front setback minimum, any accessory structure must be located behind the rear building line of the principal building.**

The Hearing Examiner finds that this application satisfies this provision.

- d. The maximum footprint of an accessory building on a lot where the main building is a detached house is 50% of the footprint of the main building or 600 square feet, whichever is greater. Buildings for an agricultural use are exempt from this size restriction.**

According to Staff, the footprint of the barn is 874 square feet while the building footprint of the single-family home is approximately 2,344 square feet, resulting in an accessory building footprint of less than 50% of the footprint of the detached house. The Hearing Examiner finds that this application satisfies this provision.

Conclusion: The Hearing Examiner finds the development standards required in the RE-2 zone have been satisfied with the exception of the setback for the existing barn/stable which requires a variance of 10 feet.

C. Use Standards for an Equestrian Facility (Section 59.3.2.4)

The specific use standards for approval of an Equestrian Facility, generally, are set out in Section 59.3.2.4 of the Zoning Ordinance:

A. Defined

Equestrian Facility means any structure or land that is used primarily for the care, breeding, boarding, rental, riding, or training of horses or the teaching of equestrian

skills. Equestrian Facility includes events such as competitions, exhibitions, or other displays of equestrian skills.

The Applicants request approval of a conditional use to allow an equestrian facility in a residential zone to house, board, or otherwise care for two horses and to provide limited riding lessons. The Hearing Examiner finds that this application satisfies this definition of Equestrian Facility under the Zoning Ordinance.

B. Use Standards

1. Where an Equestrian Facility is allowed as a limited use, it must satisfy the following standards:

a. The minimum gross acreage per horse is as follows:

i. for 1-2 horses, 2 acres;

ii. for 3-10 horses, one acre per horse; and

iii. for more than 10 horses, 10 acres plus an additional one-half acre for each horse over 10.

This application requests a conditional use to house, board, or otherwise care for two horses on the property, which requires two acres. According to Staff, the property encompasses 2.0012 acres and therefore meets this requirement. The Hearing Examiner finds that this application satisfies this provision.

b. In the RNC zone, a maximum of 5 horses is allowed.

The property is not in the RNC zone and therefore this provision is not applicable

c. Any Equestrian Facility that keeps or boards more than 10 horses must meet all nutrient management, water quality, and soil conservation standards of the County and State. A nutrient management plan prepared by a qualified professional and a soil conservation and water quality plan prepared by the Montgomery Soil Conservation District Board must be submitted through a letter of certification by the landowner to DPS, or other relevant agency. Enforcement of the nutrient management, water quality, and soil conservation plans is the responsibility of the State of Maryland. The landowner must obtain all plans within one year after starting operations.

The applicant only requests two horses and therefore this provision is not applicable.

d. Each building, show ring, paddock, outdoor arena, and manure storage area must be located at least 100 feet from any existing dwelling on an abutting property.

Staff advises that “the stable/barn is approximately 90 feet, Pasture 2 is only 30 feet, and Pasture 1 is also less than 100 feet from the house on the abutting property, so the Applicants are required to obtain approval of variances from this provision.” Exhibit 17, p. 17. The Applicants have proposed two or more manure composting areas in the southeast corner of their property, at least 200 feet from the nearest house (across Avery Road) and over 260 feet from the house on the abutting property. The Applicants have submitted a letter of support from the owner of the house on the abutting property.

e. Amplified sound must satisfy Chapter 31B.

The application does not propose generating amplified sound and therefore this provision does not apply.

f. Any outdoor arena lighting must direct light downward using full cutoff fixtures; producing any glare or direct light onto nearby properties is prohibited. Illumination is prohibited after 10:00 p.m. on Friday or Saturday, and after 9:00 p.m. on Sunday through Thursday.

The application does not propose any new lighting fixtures and existing floodlights on the barn face downwards and do not produce glare on nearby properties. The Applicants are not proposing outdoor arena lighting and therefore this provision does not apply.

g. Equestrian events are restricted as follows...

This application does not propose equestrian events.

h. A permit must be obtained from DPS for each event involving between 151 and 300 participants and spectators...

This application does not propose equestrian events.

i. An Equestrian Facility conditional use application may be filed with the Hearing Examiner to deviate from any limited use standard regarding: number of participants and spectators; number of events each year; event acreage; or hours of operation. An Equestrian Facility conditional use approval must be renewed every five years. Before the conditional use is renewed the Hearing Examiner must evaluate the effectiveness of the terms and conditions of the original approval.

No deviation from the limited use standards are proposed as this application is a stand-alone conditional use which will be conditioned for renewal every 5 years in compliance with this provision.

2. Where an Equestrian Facility is allowed as a conditional use, it may be permitted by the Hearing Examiner under all applicable limited use standards, Section 7.3.1, Conditional Use, and the following standards:

The Hearing Examiner finds that this application satisfies this standard.

a. If the subject lot abuts property in the AR zone, screening under Division 6.5 is not required.

The Hearing Examiner finds that this application satisfies this standard.

b. In the AR, R, RC, and RNC zones:

The Hearing Examiner finds that this application satisfies this standard.

c. In the RE-2, RE-2C, RE-1, and R-200 zones:

i. Any Equestrian Facility on less than 5 acres must establish through a pasture maintenance plan, feeding plan, and any other documentation the Hearing Examiner requires, that the site contains sufficient open pasture to ensure proper care of the horses and proper maintenance of the site.

Approval of this application will be conditioned upon the Applicant abiding by all local and state requirements for pasture maintenance, feeding, and care for horses.

ii. The Hearing Examiner may limit or regulate more stringently than limited use standards the following:
(a) the number of horses that may be kept or boarded;

(b) the number of horses that may be rented out for recreational riding or instruction;

(c) the number and type of equestrian events that may be held in a one-year period; and

(d) the hours and operation of any equestrian event or activity.

The subject application requests only two horses and the Applicants state that they may offer limited riding lessons. No equestrian events are proposed. Based on this application, the Hearing Examiner does not find cause to further limit the number of horses, activity, or hours under this provision.

iii. The facility operator must satisfy the state requirements for nutrient management concerning animal waste.

Approval of this application will be conditioned upon the Applicant abiding by all local and state requirements for pasture maintenance, feeding, and care for horses.

D. General Development Standards (Article 59.6)

Article 59.6 sets the general requirements for site access, parking, screening, parking lot landscaping, lighting, and signs. The requirements of these sections need be satisfied only “to the extent the Hearing Examiner finds necessary to ensure compatibility.” *Zoning Ordinance*, §59.7.3.1.E.1.b.

1. Site Perimeter Landscaping, Screening, and Animal Fencing

Division 6.4 and 6.5 of the Zoning Ordinance set minimum standards for site landscaping, which are intended to “preserve property values, preserve and strengthen the character of communities, and improve water and air quality.” §59.6.4.1. Section 6.5.2. excludes single-family

detached homes from the technical screening requirements of the Zoning Ordinance, provided that the use is compatible with the neighborhood:

In the Agricultural, Rural Residential, and Residential Detached zones, a conditional use in any building type, except a single-family detached house, must provide screening under Section 6.5.3 if the subject lot abuts property in an Agricultural, Rural Residential, or Residential Detached zone that is vacant or improved with an agricultural or residential use. All conditional uses must have screening that ensures compatibility with the surrounding neighborhood.

Under Section 6.5.3.A. Location

- 1. Screening is required along a lot line shared with an abutting property that is vacant or improved with an agricultural or residential use.***
- 2. Screening may be placed within any required setback. If the required setback is less than the screening width required for the building type in Section 6.5.3, the property must satisfy the required screening width in Section 6.5.3.***
- 3. Screening must be placed between the lot line and the subject structure or use and extend along the lot line. The screening must extend along the full length of the subject structure or use plus an additional 50% in length in each direction or to the end of the shared lot line, whichever is less.***
- 4. Screening is not required between a lot line and the subject structure or use if the structure or use is separated from the lot line by a surface parking lot. Instead, landscaping must be provided under Section 6.2.9.***

The subject property is within the RE-2 Residential Detached Zone and abuts other properties within the same zone that are improved with residential uses. Staff states that the rear lot line of the property is shared with an abutting residential property and therefore requires screening for the 36.1 x 24.2-foot barn used to house the animals. Exhibit 17, p. 12. With the additional 50% on both ends of the screening, the total screening requirement is 72.2 feet. *Id.* Staff provided Figure 9, shown below, to indicate where screening is required:



Figure 9 – Exhibit 17, p. 12

However, Section 6.8.1. Alternative Method of Compliance, provides that:

The applicable deciding body may approve an alternative method of compliance with any requirement of Division 6.1 and Division 6.3 through Division 6.6 if it determines that there is a unique site, a use characteristic, or a development constraint, such as grade, visibility, an existing building or structure, an easement, or a utility line. The applicable deciding body must also determine that the unique site, use characteristic, or development constraint precludes safe or efficient development under the requirements of the applicable Division, and the alternative design will:

- A. satisfy the intent of the applicable Division;*
- B. modify the applicable functional results or performance standards the minimal amount necessary to accommodate the constraints;*
- C. provide necessary mitigation alleviating any adverse impacts; and*
- D. be in the public interest.*

Moreover, Section 6.5.1 states that “the intent of Division 6.5 is to ensure appropriate screening between different building types and uses.”

According to Staff, “the barn that requires screening has stood in the same location for over 30 years and has been plainly visible from the neighboring property for which screening is required the entire time.” Exhibit 17, p. 15. “Given the semi-rural nature of the Neighborhood, the appearance of the barn, the barnlike appearance of the shed on the neighboring property, the presence of a paddock fence along that property line, and the existing trees on both sides of the property line,” Staff do not find additional screening necessary to further screen the stable/barn from the adjoining lot and the use “is inherently compatible with the Neighborhood and satisfies the intent of Division 6.5 without the need for additional screening along the property line.” *Id.*

The Applicants testified that the pastures and stable/barn area are adequately fenced to protect the horses and to restrict access to the residence on the property and from public roads and neighboring lots. T.16-18.

Conclusion: The Hearing Examiner agrees with Staff and finds good cause to grant alternative compliance with the screening requirements under this provision and concludes that additional screening is not required along the rear lot line. Sufficient screening on the property and the adjacent lot exist to mitigate any visual impact of the stable/barn, coupled with the barn's design and longstanding presence on the property contributing to the community's semi-rural character. These measures satisfy the intent to provide suitable screening between uses, sufficiently apply these standards to the minimal amount necessary to accommodate existing landscaping and improvements, provide the necessary mitigation alleviating any adverse impacts, and are in the public interest.

2. Outdoor Lighting

While no additional lighting is proposed under this application, Zoning Ordinance 59.6.4.4.E. requires that:

Outdoor lighting for a conditional use must be directed, shielded, or screened to ensure that the illumination is 0.1 footcandles or less at any lot line that abuts a lot with a detached house building type, not located in a Commercial/Residential or Employment zone.

Staff notes that existing lighting includes floodlights near the top of the eaves on both ends of the barn and lighting under the overhang in the front of the barn (see Figure 11). Exhibit 17, p. 15. Staff further notes that “the lights face downwards and do not shine onto the adjoining residential property.” *Id.* No additional lighting is proposed under this application. Exhibit 17, p. 15.

Conclusion: From this evidence, the Hearing Examiner finds that the lighting on the property will be at residential levels compatible with the surrounding residential area and adjacent uses.

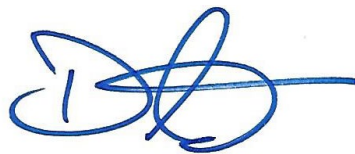
IV. Conclusion and Decision

As set forth above, the application meets all the standards for approval in Articles 59.3, 59.4, 59.6 and 59.7 of the Zoning Ordinance. Based on the foregoing findings and conclusions, the Hearing Examiner hereby **GRANTS** the Applicant's request for a conditional use under section 59.3.2.4 of the Zoning Ordinance for an Equestrian Facility at the property located at 6001 Warm Springs Drive, Derwood, Maryland, subject to the following conditions:

1. All uses on the site must conform to the Conditional Use Site Plan submitted with this application;
2. No more than two horses may be kept on the property at any one time;
3. The Applicants may not rent out any of the horses in the equestrian facility;
4. The Applicants are limited to providing at most two riding lessons per horse per day, not to exceed 14 lessons per week;
5. No equestrian events may be held on the property;
6. No identification signs related to the Conditional Use may be placed on the property;
7. Because the existing barn and the two pastures are all less than 100 feet from the

- nearest dwelling, the Applicants must obtain Variances from the requirements of Section 59.3.2.4.B.1.d and Section 59.4.4.4.b.2.a of the Zoning Ordinance;
8. The Applicants must provide a pasture maintenance plan, feeding plan, or any other documentation necessary to demonstrate that the site contains sufficient open pasture to ensure proper care of the horses and that the site will be properly maintained within thirty (30) days from the date horses are acquired and are located on the property to OZAH and DPS;
 9. The Applicants must satisfy all state requirements for nutrient management concerning animal waste;
 10. All animal waste storage areas must be located at least 100 feet from the nearest dwelling and must be screened from the road and from neighboring properties;
 11. The Applicants must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the premises and operate the conditional use as granted by the Hearing Examiner;
 12. The Applicant must renew this conditional use approval for an equestrian facility every five (5) years;
 13. Pursuant to Section 6.8.1, alternative compliance with screening requirements under Division 6.4 and 6.5 of the Zoning Ordinance is warranted and granted with no further landscaping or screening required;
 14. Horse pastures are to remain fenced and in good repair at all times; and
 15. The Applicant and any successors in interest must obtain and satisfy the requirements of all Federal, State, and County licenses, regulations, and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant and any successors in interest shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

Issued this 2nd day of March, 2022.



Derek J. Baumgardner
Hearing Examiner

RIGHT TO APPEAL

Any party of record may file a written request to appeal the Hearing Examiner's Decision by requesting oral argument before the Board of Appeals, within 10 days issuance of the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Additional procedures are specified in Zoning Ordinance §59.7.3.1.f.1. Contact information for the Board of Appeals is:

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600
<http://www.montgomerycountymd.gov/boa/>

PLEASE NOTE THE FOLLOWING BOARD OF APPEALS FILING REQUIREMENTS DURING THE COVID-19 PANDEMIC:

The Board of Appeals website sets forth these procedures for filing documents with the Board:

Because remote operations may not always allow us to promptly date-stamp incoming U.S. Mail, until further notice, all time-sensitive filings (administrative appeals, appeals of conditional use decisions/requests for oral argument, requests for public hearings on administrative modifications, requests for reconsideration, etc.) should be sent via email to BOA@montgomerycountymd.gov, and will be considered to have been filed on the date and time shown on your email. In addition, you also need to send a hard copy of your request, with any required filing fee, via U.S. Mail, to the Board's 100 Maryland Avenue address (above). Board staff will acknowledge receipt of your request, and will contact you regarding scheduling.

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If you have questions about how to file a request for oral argument, please contact Staff of the Board of Appeals.

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its website: <http://www.montgomerycountymd.gov/boa/>.

Notification of Decision sent to:

Estefania Puricelli
Andrew Conner
Jamey Pratt, Planning
Barbara Jay, Executive Director, Board of Appeals
James Babb, Treasury Division
Adjoining property owners