

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS**  
**Stella B. Werner Council Office Building**  
**Rockville, Maryland 20850**  
**(240) 777-6660**

**IN THE MATTER OF:**  
**JENNIFER NELSON**

Applicant

Jennifer Nelson

For the Application

\*

\*

\*

\*

\*

\*

\*

Case No. CU 18-02

\*\*\*\*\*

Before: Martin L. Grossman, Hearing Examiner  
Director, Office of Zoning and Administrative Hearings

**HEARING EXAMINER'S REPORT AND DECISION**

**TABLE OF CONTENTS**

I. STATEMENT OF THE CASE .....	2
II. FACTUAL BACKGROUND .....	3
A. The Subject Property .....	3
B. Surrounding Neighborhood .....	5
C. Proposed Use .....	6
1. Conditional Use Site, Landscaping & Lighting Plan .....	6
2. Proposed Operations .....	9
D. Environmental Issues .....	11
E. Community Response .....	11
III. FINDINGS OF FACT AND CONCLUSIONS OF LAW .....	11
A. Necessary Findings (Section 59.7.3.1.E.) .....	12
B. Development Standards of the Zone (Article 59-4) .....	22
C. Use Standards Specific to an Equestrian Facility (Section 59.3.2.4.) .....	24
D. General Development Standards (Article 59-6) .....	29
1. Site Access .....	29
2. Parking, Queuing and Loading .....	29
3. Site Landscaping and Screening .....	30
4. Outdoor Lighting and Signage .....	31
IV. Conclusion and Decision .....	32

## **I. STATEMENT OF THE CASE**

On October 13, 2017, the Applicant, Jennifer Nelson, filed an application, pursuant to Zoning Ordinance §59.3.2.4.B., seeking a Conditional Use to allow an Equestrian Facility for up to 2 horses on 3.91 acres of land in the RE-2 Residential Zone. The site is located at 12719 River Road in Potomac, Maryland, and is described as Parcel 2-A of Plat 4809, in the Frank Taylor Subdivision (N563 on Tax Map EQ 42). The Applicant lives on the property where the proposed conditional use will be located, and it is jointly owned with her husband, Kirk Nelson, as evidenced by the deed to the property (Exhibit 4) and Maryland's tax records (Exhibit 4(a)). Mr. Nelson has consented to the application. Exhibit 35(a).

On November 22, 2017, the Hearing Examiner noticed a public hearing on the application for January 5, 2018 (Exhibit 24). On November 24, 2017, the Applicant filed an amended Conditional Use Site Plan (Exhibit 30(b)) and explanatory narrative (Exhibit 30(a)). The Hearing Examiner issued a notice of the amended plans on November 28, 2017 (Exhibit 33), and no objections were received within the prescribed 10-day period.

Staff of the Montgomery County Planning Department (Technical Staff or Staff) issued its report on November 22, 2017 (Exhibit 32), which recommended approval of the conditional use, subject to 9 proposed conditions:

1. No more than three horses may be kept on the property.<sup>1</sup>
2. All uses on the site must conform to the Conditional Use Site Plan approved by the Hearing Examiner.
3. All horses on site must belong to the owner of the property.
4. The applicant must not rent out any of the horses in the equestrian facility.
5. No equestrian events may be held on the property.
6. No identification signs may be placed on the property.
7. This equestrian facility conditional use approval must be renewed every five years.
8. The owner of the property must satisfy the state requirements for nutrient management concerning animal waste.

---

<sup>1</sup> It is noteworthy that Staff recommended approval for one more horse than the Applicant initially requested.

9. The applicant 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.

In response to an inquiry from the Hearing Examiner, Staff indicated that the Planning Department elected not to submit this matter for review by the Planning Board (Exhibit 27).

The public hearing proceeded as scheduled on January 5, 2018, without opposition. In fact, no communications have been received from the community in opposition to, or support of, the proposed use. At the public hearing, the Applicant adopted the findings and conclusions of the Staff Report as her own testimony and agreed to abide by all recommended conditions of approval. Tr. 5-6. The record was held open to receive the transcript, and closed on January 9, 2018. For the reasons that follow, the Hearing Examiner approves the application, with the conditions included in Part IV of this Report and Decision.

## **II. FACTUAL BACKGROUND**

### **A. The Subject Property**

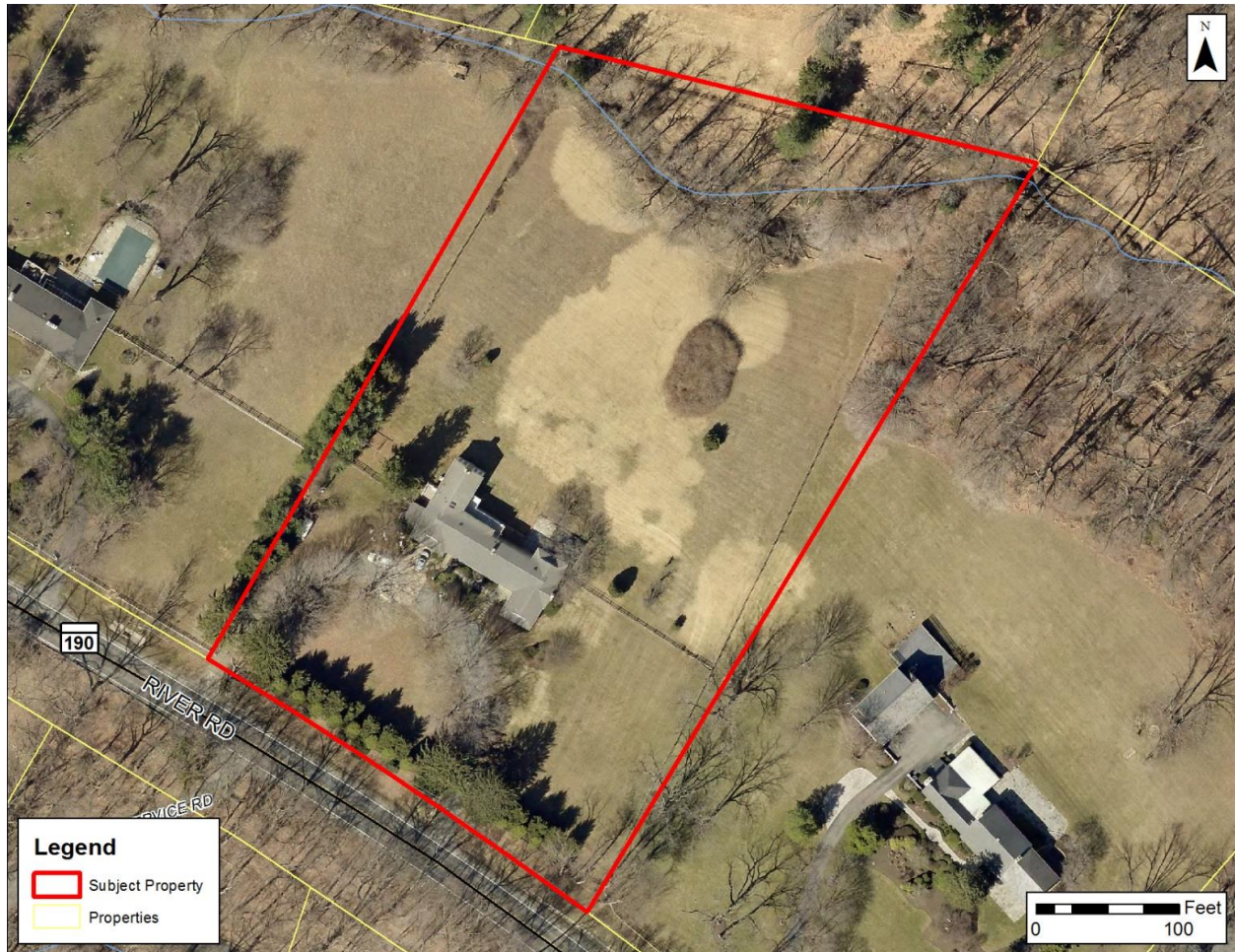
Technical Staff describes the subject site as follows (Exhibit 32, p. 3):

The Property is located at 12719 River Road in Potomac, 1400 feet west of Stoney Creek Road and 1200 feet east of Dalyn Drive (“Property”).<sup>2</sup> It is Parcel 2-A of Plat 4809, “Frank Taylor Subdivision.” The Property totals 3.91 acres and is improved with a 2,052 square-foot split-level house; there are no other structures on the Property. The front yard contains a gravel driveway, a grass lawn, several mature trees, and a hedgerow of Leyland Cypress. A perennial stream—an unnamed tributary of Sandy Branch—runs across the back of the lot. A wood paddock fence runs near each of the property boundaries and from the sides of the houses to the side boundaries. . . . The house sits on the high point and then the Property slopes moderately to steeply north to the base of the hill at the perennial stream, mostly on highly erodible soils. No trees will be cut down for this Conditional Use and there are no conservation easements on the Property.

---

<sup>2</sup> The Hearing Examiner notes that the site is between, and roughly equidistant from, Falls Road to the southeast and Seneca Road, to the northwest.

Staff provided an aerial photo of the property (Exhibit 32, p. 3), which is reproduced below:



Photos of the property were also provided by the Applicant (Exhibits 18(a) and (h)):



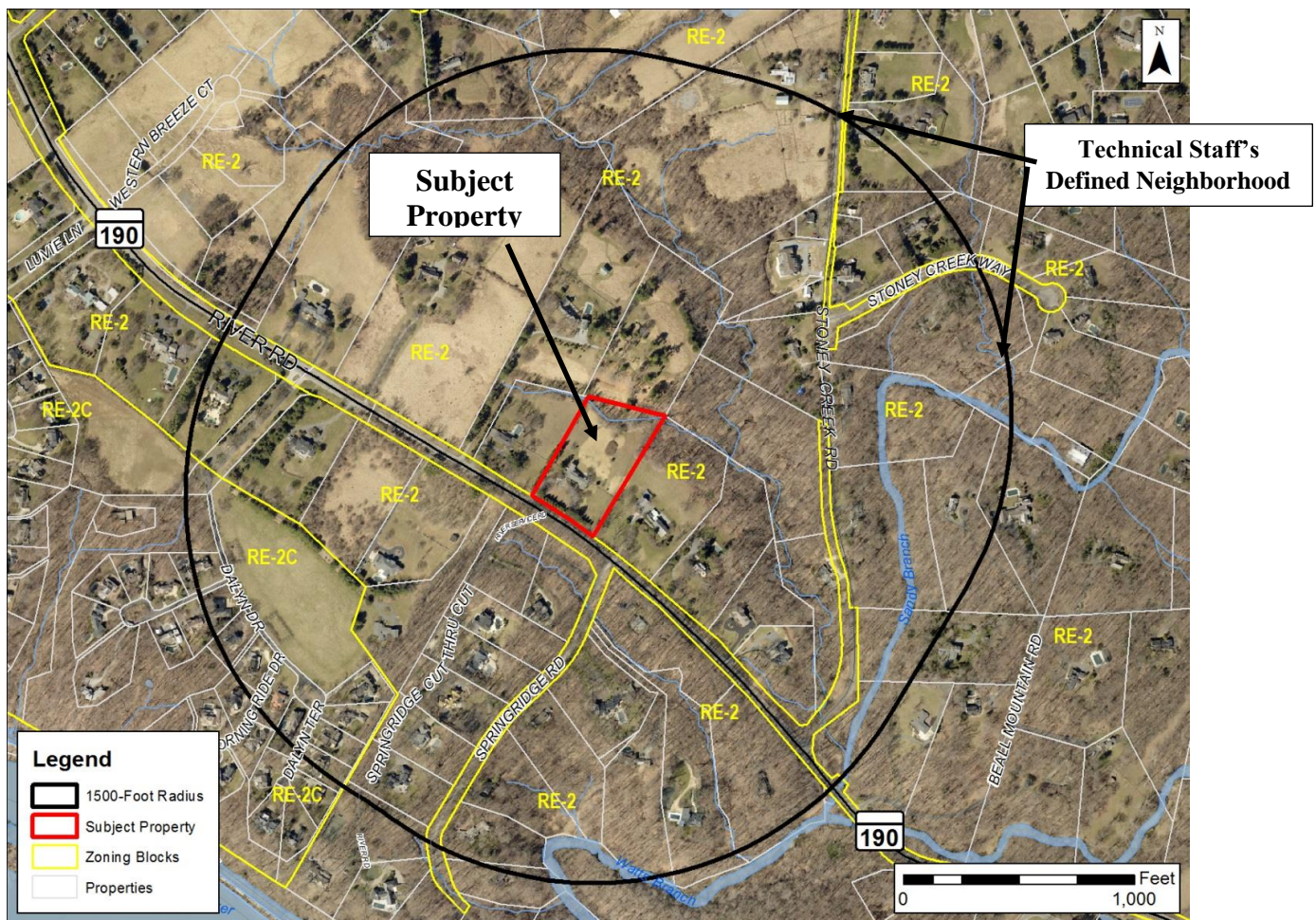
Front of House and Driveway



Rear of House and Existing Fenced Pasture

## B. Surrounding Neighborhood

For the purpose of determining the compatibility of the proposed use, it is necessary to delineate and characterize the “surrounding neighborhood” (*i.e.*, the area that will be most directly impacted by the proposed use). Staff proposed defining the boundaries of the surrounding neighborhood as “the area located within a 1500-foot radius of the Property . . .” The staff-defined neighborhood is demarcated in an aerial photograph contained in the Staff Report (Exhibit 32, p. 5), shown below:



Staff described the neighborhood as follows (Exhibit 32, p. 5):

The Neighborhood is composed of predominantly single-family residential detached houses, although some agricultural activity still occurs on some properties, giving the whole area a semi-rural feel. . . . The Property is in the RE-2

zone, as are all properties in the Neighborhood other than a few RE-2C-zoned properties to the southwest. Many wooded stream valleys cross through the Neighborhood, including the perennial stream that traverses the Property.

Staff reports that (Exhibit 32, p. 19), “No approved special exceptions/conditional uses were found within the Neighborhood.” The Applicant accepted Staff’s proposed definition of the neighborhood (Tr. 16), as does the Hearing Examiner, since it fairly includes those areas that will be most directly impacted by the proposed use.

### **C. Proposed Use**

#### **1. Conditional Use Site, Landscaping & Lighting Plan**

The Applicant seeks a conditional use to construct a barn to house two horses for her family’s personal use. The proposed use was described by Technical Staff (Exhibit 32, pp. 5-6):

The Applicant, Jennifer Nelson, seeks approval of a conditional use application to keep two horses on her 3.91-acre property . . . . Several new fences are proposed: one to protect the trees and stream valley at the rear of the Property, one to create a new pasture between the circular driveway and River Road, one to create a new pasture in the right side of the front yard between the driveway and the property to the east, and one to separate the rear yard from the main pasture. The additional pasture areas in the front/side yards will allow the Applicant to practice rotational grazing to keep the pastures well-managed and to support the health of the horses.

\*

\*

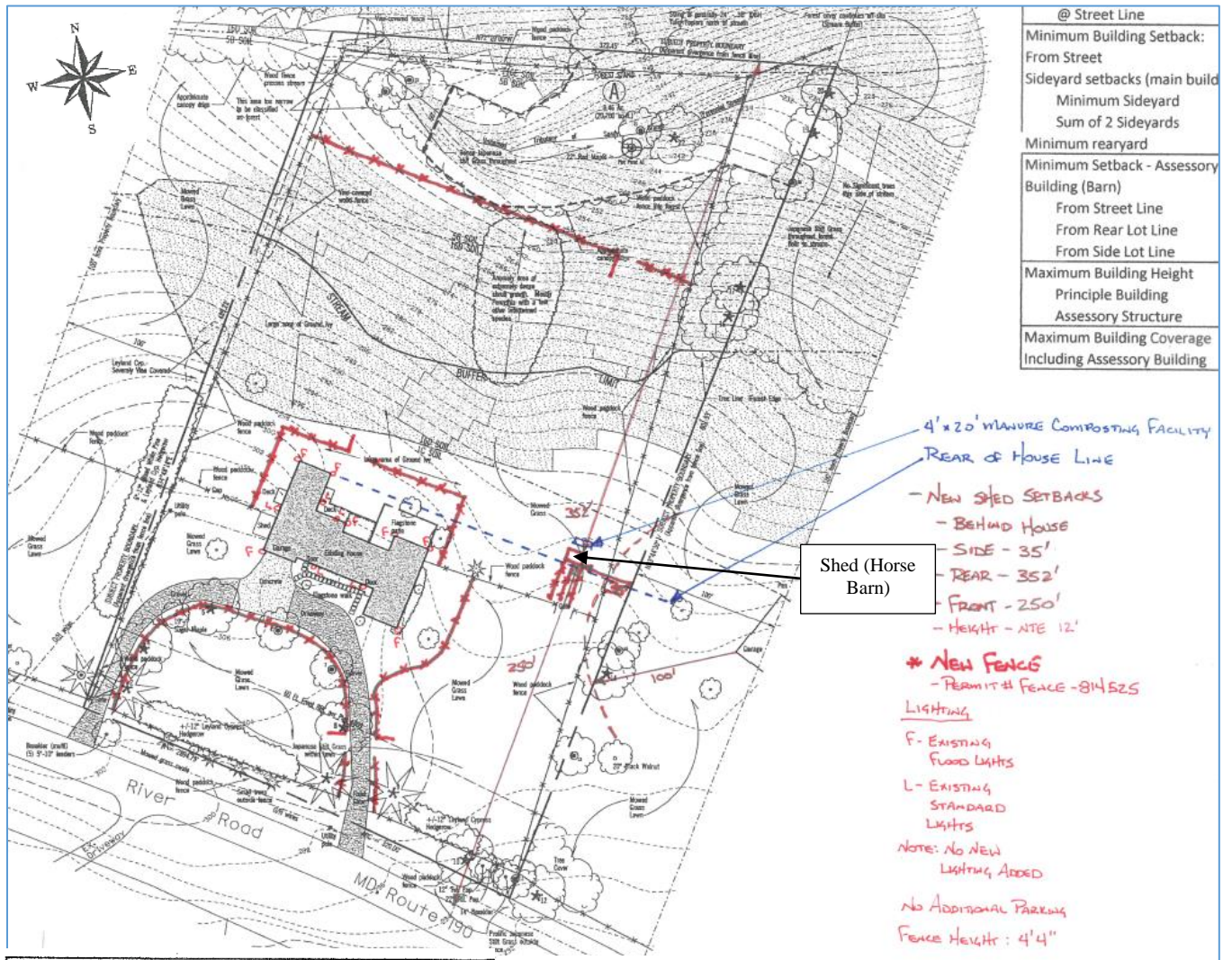
\*

The Applicant has purchased a 200 square-foot purpose-built shed as a barn for the horses . . . . The shed contains two 10x10 stalls and would be located to the rear of the house within the existing fenced pasture near the eastern property line . . . . A 20’ x 4’ manure composting facility will be located behind the barn shed.

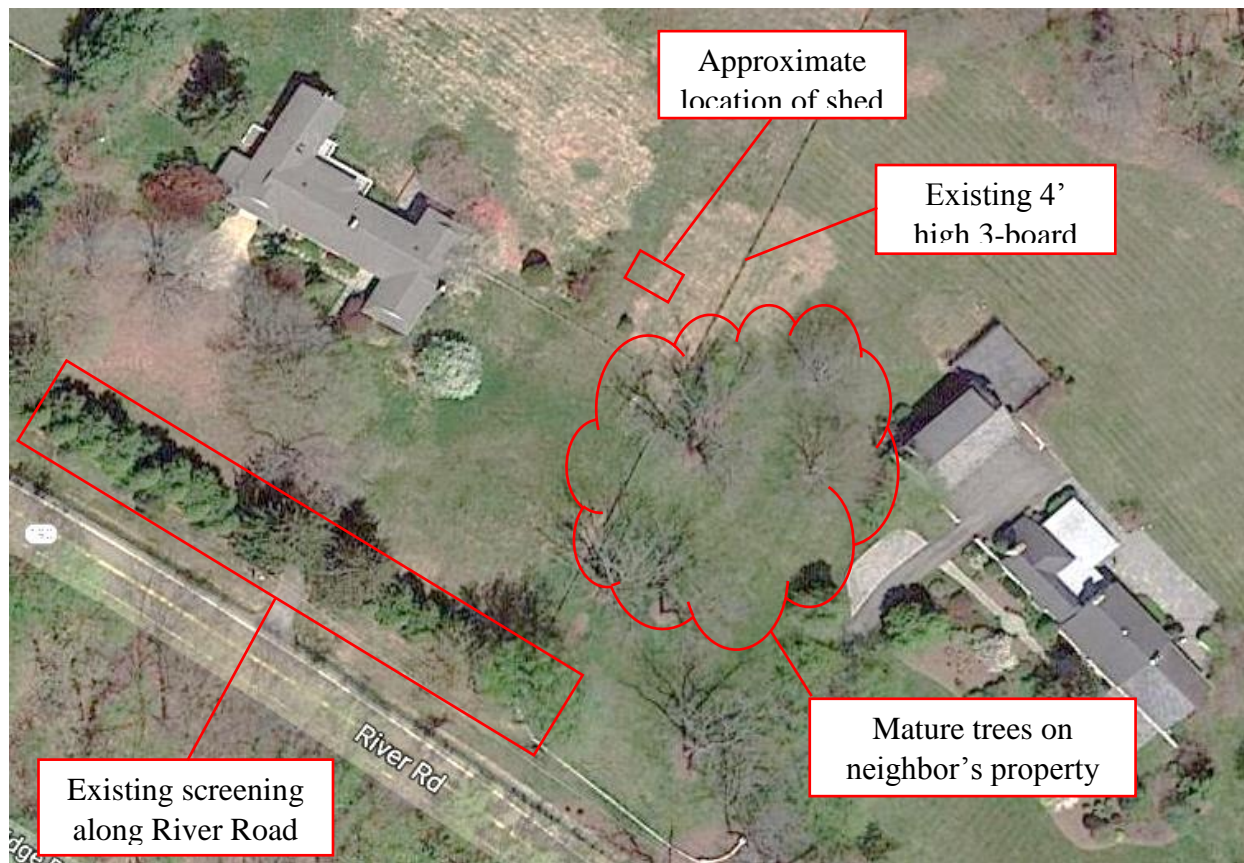
The proposed shed, listed as a “Sliding Horse Barn” on the Shawnee Structures invoice (Exhibit 13), is shown below in a photo provided by the Applicant (Exhibit 13(a)):



The Applicant has received building permits for the proposed barn and the new fences from the Department of Permitting Services (Exhibits 6 and 12). The amended and annotated Conditional Use Site, Landscaping & Lighting Plan (Exhibit 30(c)) is reproduced below:



As noted by Technical Staff, the Applicant has not proposed additional screening for the horse barn. However, Staff found that “The proposed shed is sufficiently screened from the front Property line by the existing hedge row of Leyland Cypress trees and several other mature trees. . . . Similarly, existing trees provide screening from the neighboring properties to the west of and behind the Property.” Exhibit 32, p. 12. The existing screening is illustrated by an aerial photo provided by Staff (Exhibit 32, p. 13):



Technical Staff concluded (Exhibit 32, pp. 12-13):

Given the semi-rural nature of the Neighborhood, the barnlike appearance of the proposed shed, the distance of the shed from the neighboring property to the east (over 100 feet from the house and essentially blocked from view by a detached garage), and the presence of a paddock fence along that property line, the proposed Conditional Use satisfies the intent of Division 6.5 without additional screening along the east property line by being inherently compatible with the Neighborhood. The alternative design, i.e. no additional screening, satisfies all the provisions for the Alternative Method of Compliance.

No new lighting is proposed for the subject site. Existing lighting includes floodlights on the corners of the residence and a few standard lights at other points along the house's exterior, as shown on the Conditional Use Site, Landscaping and Lighting Plan (Exhibit 30(c)). Staff notes that "The floodlights face downwards and will not intrude into the adjoining residential properties." Exhibit 32, p. 14. Staff also concluded that the existing lights provide sufficient light for the shed.

Technical Staff reports that there will be no signage identifying the proposed use on the Property. Exhibit 32, p. 14.

## **2. Proposed Operations**

The Applicant proposes to board horses for her family's personal use only and does not propose to hold any equestrian events or horse rentals. Exhibit 32, p. 17. The Applicant discussed the proposed operations for the conditional use, and the absence of impacts on the neighbors, in her Narrative Statement (Exhibit 30(a), pp. 1-2):

The shed (barn) would house two horses only for private use. The shed (barn) would be located in the rear of the house, within an existing fenced pasture. The land is relatively flat in the designated location so there will be no need for grading. No trees need to be taken down and there are no conservation easements on the property. There are no changes in traffic patterns since the two horses are solely for private riding (owner and daughter). There would be no harm to the neighbors since this is already horse country and the property has been previously used for horses; existing pastures (roughly 3 acres open space, 0.9 acres wooded) and board fencing for horses already exists. The shed (barn) is compatible with the character of the neighborhood and is a new, nicely painted structure that will enhance the look of our property and the agricultural nature of the area. Within a half mile of our house is Merry Go Round Farm that is a full equestrian community where at least 30-40 horses are boarded at any given time. Owner's horses are currently field boarded at Merry Go Round Farm. There are also many private residences located within 3-4 miles of the owner's property that house horses, chickens and cattle and have barns on their properties.

Owner's daughter is twelve and is a Seneca Pony Club member and both horses (1 is a 13.1H pony and the other is a 15.0H small horse are her club mounts). Both of our horses are barefoot and extremely easy keepers. She is also interested in using our small horse for a 4H project since she has raised her since she was a 2-day old orphan foal. Having our horses back at home with us will enable her to continue her

education and be successful in 4H and Pony Club. Both our pony and small horse are quiet, easy keepers.

There is no need for additional lighting for the shed (barn) due to its proximity to the house which already has existing outdoor lighting. Owner (wife) currently does not work outside of the home so all barn chores and horse care can be completed during daylight hours.

Regarding manure management, there are only 2 horses and most of the year the horses will spend most of their time out in pasture. Horses will only be stalled during inclement weather. When out on pasture, manure from two horses is left on the field to fertilize the pasture (open space is about 3 acres so there is more than enough acreage to support two horses and their waste). The field will be dragged weekly with a mower/tractor to spread the manure. Periodic dragging will help break up manure and minimize spotty growth and will improve the performance of the existing pasture. There is a small stream on the property at the bottom of the back pasture and a new fence line will be added in accordance with required setback to avoid environmental impact; there will be no risk of waste going directly into stream. Owners will abide by all Maryland's requirements for pasture maintenance plans and feeding plans per Section 59.3.2.4.B.2.c.i. Owner plans to establish a sacrifice lot in order to keep pastures from becoming stressed during periods of extended rain, drought or from becoming overgrazed. By adding the additional pasture areas to the existing pasture, owners will be able to practice rotational grazing in order to keep the pastures well managed and support optimal health of horses. Both of owner's horses are very easy keepers and tend to stay at optimal weights year round without much feeding of additional grain. Owner also plans to keep pasture grass mowed to an optimal height of roughly six inches to discourage weed growth and minimize spotty growth. Owner has extensive experience inspecting and managing pastures and caring for horses. Owner is aware of resources available for assistance through local Soil Conservation Districts and University of Maryland Extension Offices.

When stalls do need to be cleaned, manure will be composted via a sustainable continuous composting system located behind the shed (barn) and will be broadcasted back on the pasture and in owners 1,000+ sq. ft. vegetable/flower garden. By building the manure composting facility behind the shed (barn), it will be located at least 100 feet away from any existing dwelling on an abutting property as required by Montgomery County Zoning Ordinance. The manure composting facility will be built on high ground far away from any stream and will not be visible to the front of the property because it will be located behind the barn, which sits behind the house. The structure will have a solid base and a short wall on 3 sides to make rotating manure pile easy and optimal for incorporating air to "cook" the stockpile quickly and evenly so it can be finished compost for use as fertilizer. Owner plans to keep the pile covered to prevent rainwater from causing runoff. Owner recently received her Master's in Agriculture from Virginia Tech (2015) and focused her year-long capstone project required for graduation on creating a guide to composting horse manure on small horse farms so owner has extensive knowledge and dedication to Good Agricultural Practices. This guide is included with the application for review;

the project was completed at the owner's previous 15-farm with 4 horses. The same good agricultural practices will be utilized at the owner's new property on River Road to create a sustainable farming system with minimal environmental impact, regards to animal health, monetary considerations and food safety. Having only 2 horses at our new home will make it a smaller scale system than on the owner's previous property. Owner plans to maintain a kitchen garden and flower garden for personal use and having the finished compost will aid in soil quality and will create healthy and vivacious plants. In accordance with section 59.3.2.4.B.2.c.iii, owner will adhere to Maryland's requirements for nutrient management concerning animal waste.

Because of the large size of the property, Staff recommended a condition permitting the Applicant to have up to three horses (Exhibit 32, p. 1). Even though the Applicant initially sought permission for only two horses (Exhibit 30(a)), she indicated a preference at the hearing for a condition allowing up to three horses, to give her added flexibility. Tr. 7.

#### **D. Environmental Issues**

Forest Conservation Exemption 42018052E was confirmed for the Property on September 25, 2017 (Exhibit 11). It notes that the property is not within a special protection area and no forest stream buffer will be impacted. The Applicant will build a new fence to protect the stream valley and forest from the horses. According to Staff, there are no notable environmental issues associated with the proposed use. Exhibit 32, p. 2.

#### **E. Community Response**

No communication from the community, either in support or opposition, has been filed with the Planning Department or with the Hearing Examiner. Exhibit 32, p. 14.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A conditional use is a zoning device that authorizes certain uses, provided that they meet specified standards in the Zoning Ordinance. These pre-set standards are both specific to a particular type of use, (*i.e.*, those listed in Article 59-3 of the Zoning Ordinance) and general (*i.e.*, findings that must be made for almost all conditional uses), as set forth in Section 59.7.3.1.E of

the Zoning Ordinance. The specific standards applied in this case are those for an equestrian facility, set forth in Zoning Ordinance Section 59.3.2.4.B.

Weighing all the testimony and evidence of record under the “preponderance of the evidence” standard specified in *Zoning Ordinance* §59.7.1.1, the Hearing Examiner concludes that the conditional use proposed in this application, as governed by the conditions imposed in Part IV of this Report and Decision, would satisfy all of the specific and general requirements for the use.

#### **A. Necessary Findings (Section 59.7.3.1.E.)**

The general findings necessary to approve a conditional use are found in Section 59.7.3.1.E of the Zoning Ordinance. Standards pertinent to this review, and the Hearing Examiner’s conclusions for each finding, are set forth below:<sup>3</sup>

##### ***E. Necessary Findings***

##### ***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;***

Conclusion: Technical Staff reports (Exhibit 32, p. 18):

The Property was subdivided via plat 4809 on February 20, 1957. The record plat was approved by the Upper Montgomery County Planning Commission. There are no notes on the record plat indicating any restrictions on the Property beyond a 60-foot building restriction line along the Property’s frontage.

There is no previous conditional use approval associated with the Property.

Based on this undisputed information, the Hearing Examiner concludes that the proposed development satisfies the applicable previous approval on the subject site, without the need for it to be amended. Thus, the proposed use is compliant with this provision.

##### ***b. satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds***

---

<sup>3</sup> Although §59.7.3.1.E. contains six subsections (E.1. through E.6.), only subsections 59.7.3.1.E.1, E.2. and E.3. contain provisions that arguably apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

***necessary to ensure compatibility, meets applicable general requirements under Article 59-6;***

Conclusion: This subsection requires an analysis of the standards of the RE-2 Zone contained in Article 59-4; the use standards for an equestrian facility contained in Article 59-3; and the applicable development standards contained in Article 59-6. Each of these Articles is discussed below in separate sections of this Report and Decision (Parts III.B, C, and D, respectively). Based on the analysis contained in those discussions, the Hearing Examiner finds, as did Technical Staff (Exhibit 32, p. 21), that the application satisfies the requirements of Articles 59-3, 59-4 and 59-6.

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

This property lies within the Travilah planning area of the Potomac Subregion Master Plan, approved and adopted in April of 2002. The Master Plan confirmed the existing RE-2 zoning. The main focus of the *Potomac Subregion Master Plan* is the environment, as explained on Page 33:

This Master Plan is based on environmental principles. The Subregion embodies the “green wedge” concept, and is an integral component of the County’s “Wedges and Corridors” planning policy. Its significant and unique natural resources and its semi-rural character are supported by local neighborhood centers, trails and bikeways, and a two-lane road network. Accordingly, this Plan’s land use, transportation, and community facility recommendations are all made in consideration of environmental objectives. Environmental sustainability is recommended as the most critical policy determinant in a Subregion so defined by its natural resources.

The proposed use is consistent with the Master Plan’s overriding principle of protecting the environment, in that the use retains the open fields and greenery that already exist, and the Applicant will follow appropriate nutrient maintenance to protect the soil and watershed. As previously mentioned, the property is not within a special protection area and no forest stream buffer will be impacted. The Applicant will also build a new fence to protect the stream valley and forest from the horses. According to Staff, there are no notable environmental issues associated with the proposed use. Exhibit 32, p. 2.

The Master Plan also contains recommendations and guidelines for conditional uses – then called “special exceptions” (MP pp. 35-36):

*Recommendations*

- Limit the impacts of existing special exceptions in established neighborhoods. Increase the scrutiny in reviewing special exception applications for highly visible sites and properties adjacent to the Chesapeake & Ohio Canal National Historical Park.
- Avoid an excessive concentration of special exceptions along major transportation corridors.

\* \* \*

- Protect the Chesapeake & Ohio Canal National Historical Park, major transportation corridors and residential communities from incompatible design of special exception uses.

In the design and review of special exceptions uses, the following guidelines shall be followed, in addition to those stated for special exception uses in the Zoning Ordinance:

- a. Adhere to Zoning Ordinance requirements to examine compatibility with the architecture of the adjoining neighborhood. The Council is considering amendments to strengthen this section of the Zoning Ordinance.
- b. Parking should be located and landscaped to minimize commercial appearance. In situations where side or rear yard parking is not available, front yard parking should be allowed only if it can be adequately landscaped and screened.
- c. Efforts, should be made to enhance or augment screening and buffering as viewed from abutting residential areas and major roadways.

Technical Staff evaluated the subject application in light of these Master Plan recommendations, and found that the proposal would be compliant (Exhibit 32, p. 9):

The proposed Conditional Use will have minimal impact on an established neighborhood. The Property is already configured for horse pasturing and the proposed modest shed barn will be placed 250 feet from River Road and more than 100 feet from the closest house. The Property is not adjacent to the C&O Canal Park.

River Road is a major transportation corridor, but the closest special exception to the Property along River Road is about half a mile to the east (SE 696, approved in 1981 for a riding stable). No other special exceptions were found along River Road within a half-mile of the Property; therefore, an excessive concentration of special exceptions along the major transportation corridor has been avoided.

The only proposed additions to the Property are a modest shed and additional fencing. Similar fencing is quite common along this part of River Road, and the shed is well away from the road, hidden behind trees and slightly beyond a knoll. Neither of these presents a design that is incompatible with a major transportation corridor or residential community.

The Conditional Use adheres to the guidelines outlined in the Master Plan: the architecture is compatible with the adjoining neighborhood, no additional parking is proposed, and existing vegetation and topography already screen the shed barn from abutting residential areas and major roadways. The occasional sighting of a pair of horses in one of the front yard pastures would not be out of character in this semi-rural part of the County.

The Property is not on a Rustic Road.

Conclusion: Based on this record, the Hearing Examiner finds that the proposed conditional use does not violate any of the recommendations and guidelines of the Master Plan. It is certainly consistent with the character of the area, does not have a commercial appearance, will not adversely affect the surrounding neighborhood and will not negatively impact the environment. There will be little additional activity and no road improvements generated by the use because the Applicant does not propose to have equestrian events. This standard has been met.

***d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;***

Conclusion: For the same reasons that the Planning Staff found that the application conformed to the recommendations of the *Potomac Subregion Master Plan*, the Hearing Examiner concludes that it is harmonious with, and will not alter the character of, the surrounding area. As stated by Technical Staff (Exhibit 32, pp. 18-19):

The proposed use will be in harmony with the character of the surrounding neighborhood. 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. The design and scale of the proposed shed barn and the intensity and character of activity associated with the proposed use are compatible with the surrounding low density, semi-rural neighborhood. The Applicant has identified many properties in the general vicinity of the Property where horses are kept for

personal uses. The Property is also within half a mile of Merry-Go-Round farm, which currently houses 30-40 horses according to the Applicant; the Applicant is temporarily boarding her horses there.

The proposed use will be operated in such a manner that it will not interfere with the orderly use, development, and improvement of surrounding properties. Except for the proposed placement of the new shed, the proposed use does not require additional construction or modification of existing improvements. Pasturing of animals has apparently been done on the Property in the past.

Based on this evidence, the Hearing Examiner finds that this standard has been met.

***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;***

Conclusion: Technical Staff states (Exhibit 32, p. 19):

No approved special exceptions/conditional uses were found within the Neighborhood. The proposed use will not exacerbate the concentration of conditional uses or special exception uses in the area. A few approved special exceptions were found in the neighboring Residential Detached zones, but the closest are about a half-mile away from the Property. Three of these special exceptions were for small riding stables similar to the proposed use; the proposed use is a reasonable use within the Neighborhood. Given the limited nature of the proposal, the proposed use would not increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the prevailing semi-rural residential nature of the area, and in fact serves to enhance the character of the Neighborhood.

The Hearing Examiner concludes that the proposed use “*is harmonious with and will not alter the character of the surrounding neighborhood*” because even though the area is zoned residential, it is a low density, semi-rural neighborhood, and a riding stable for personal use is similar to three other such facilities within about a half mile of the subject site. Also, as noted above, it is consistent with the recommendations of the applicable Master Plan, and therefore does not alter the character of the neighborhood. The Hearing Examiner finds that the application meets this standard.

*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*

Conclusion: Staff reports that the use does not require a preliminary plan because the subject site “is already a platted lot.” Exhibit 32, p. 19. Thus, the Hearing Examiner must make the determination of whether there are adequate facilities to serve the use.

(a) Water and Sewer Service: The property is in Water Category W-4 and Sewer Category W-6. Technical Staff determined that “There are no known problems with the water and sewer systems on the Property . . . [and] No new water or sewer facilities are proposed. Exhibit 32, p. 20. Based on this evidence, the Hearing Examiner finds that water and sewer service is adequate for the use proposed.

(b) Transportation Facilities: Planning Staff advises that the application is exempt from Local Area Transportation Review (LATR) because personal use of the stables will not generate more than 50 peak-hour person trips. Exhibit 32, p. 20. Staff also notes that the equestrian facility is only for the personal use of the owner who resides on the property, and therefore, “it does not generate new traffic to or from the Property other than the vehicular use associated with the

existing residence.” Exhibit 32, p. 11. Based on this evidence, the Hearing Examiner finds that the proposed use will have no impact on transportation facilities.

(c) Other Public Facilities: Technical Staff reports (Exhibit 32, p. 20):

The Cabin John Fire Station is located at 9404 Falls road, approximately 4.6 miles (9 minutes) southeast of the Property. The closest police station, Montgomery County Police Department is located at 100 Edison Park Drive in Gaithersburg approximately 6.8 miles north (13 minutes) of the Property. The Conditional Use does not generate any school-aged children; a school facilities review is not necessary. The proposed use will have a minimal impact on public facilities.

Conclusion: Based on this record, the Hearing Examiner finds that public services and facilities will be adequate to serve the proposed use.

***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.***

Conclusion: This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use on nearby properties and the general neighborhood. 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*, §59-1.4.2. 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.*

As specified in §59.7.3.1.E.1.g., quoted above, inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use. However, non-inherent adverse effects in the listed

categories, alone or in conjunction with inherent effects in those categories, are a sufficient basis to deny a conditional use. Nevertheless, the existence of a non-inherent adverse effect does not mean that an application for a conditional use must be denied. Rather, it means that it can result in denial if the Hearing Examiner finds that such a non-inherent adverse effect, either alone or in combination with inherent adverse effects, creates “undue harm to the neighborhood” in any of the categories listed in Zoning Ordinance §59.7.3.1.E.1.g.

Analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an Equestrian Facility Conditional Use. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics identified *or* adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects then must be analyzed, in the context of the subject property and the surrounding neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Generally, there are seven measures used to evaluate whether the physical and operational characteristic of a use are inherent or non-inherent to the use. These are size, scale, scope, lighting, noise, traffic and the environment. Staff identified five inherent physical and operational characteristics associated with an equestrian facility in a residential zone (Exhibit 32, p. 20):

- (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.

Applying those standards to the subject case, Technical Staff concluded (Exhibit 32, p. 20):

Many of the characteristics of the proposed Conditional Use are inherent. The scale and design of the shed and the pastures have operational characteristics typically associated with a very small private equestrian facility in a residential neighborhood and would not be unusual in any respect.

The number of horses proposed is two, which is one fewer than allowed for the size of the Property according to the Zoning Ordinance. The Property is within a semi-rural community surrounded by other properties with large pastures and other open fields. Horses are kept in several of the properties in the surrounding area. The proposed application would blend well with the prevailing character of the immediate neighborhood.

Although Staff did not specifically state that there it found no non-inherent adverse effects in this case, the evidence it summarized leads the Hearing Examiner to that conclusion, and he so finds. The operational and site conditions proposed in this case appear typical of a small equestrian facility in a semi-rural residential area. Thus, the Hearing Examiner agrees with Staff's finding that (Exhibit 32, p. 21),

the size, scale, and scope of the proposed equestrian facility will not adversely affect the semi-rural/residential character of the community. There are no inherent or non-inherent adverse effects associated with this application sufficient to warrant a denial of the proposed Conditional Use.

Technical Staff also made the following findings (Exhibit 32, p. 21):

There are no notable traffic, circulation, parking, noise, odor, or environmental issues associated with the application, provided that the recommended conditions are satisfied. The Property as well as the proposed use are adequately screened and buffered by existing trees from the views of neighboring properties, with minimal lighting and no glare, and no traffic impact.

\*

\*

\*

The proposed use, provided all requirements of the use are satisfied, will have no adverse impacts on the health, safety, or welfare of neighboring residents, visitors, or employees.

The Hearing Examiner agrees with Staff's conclusions and finds that the proposed equestrian facility, as limited by the conditions imposed in Part IV of this Report and Decision, will not cause undue harm to the neighborhood as a result of adverse effects in any of the categories listed in §59.7.3.1.E.1.g.

***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.***

Conclusion: There is no plan to modify the existing dwelling on the subject site; however, the Applicant proposes to construct a horse barn with a prefabricated shed that is depicted on page 6 of this Report and Decision. Staff opined that the proposed barn “will blend with the character of the semi-rural community and enhance the Property’s aesthetic appearance.” Exhibit 32, p. 21. While the Hearing Examiner is not sure that the proposed pre-fab barn will “enhance the Property’s aesthetic appearance,” he does find that it will be compatible with the character of the neighborhood, which is the criterion embodied in Zoning Ordinance §59.7.3.1.E.2. This criterion is similar to the one imposed by Zoning Ordinance §59.7.3.1.E.1.d above, which asked whether the proposed use will be harmonious with the neighborhood or would alter its character. For the reasons stated in response to that section, the Hearing Examiner finds that this standard has been met.

***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.***

Conclusion: As discussed in Part III.C., below, the application satisfies all specific requirements for the conditional use, and for the reasons discussed above, the proposed use will be compatible with the neighborhood. The Hearing Examiner concludes that, with the conditions imposed in Part IV of this Report and Decision, the conditional use should be approved.

***4. In evaluating the compatibility of an agricultural conditional use with surrounding Agricultural or Rural Residential zoned land, the Hearing Examiner must consider that the impact does not necessarily need to be controlled as stringently as if it were abutting a Residential zone.***

Conclusion: The proposed use is in a residential zone, though semi-rural in nature, and compatibility has therefore been evaluated accordingly.

- 5. *The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood:***
- a. *Filling Station;***
  - b. *Light Vehicle Sales and Rental (Outdoor);***
  - c. *Swimming Pool (Community); and***
  - d. *the following Recreation and Entertainment Facility use: swimming pool, commercial.***

Conclusion: This provision is not applicable since the proposed conditional use is not a listed use.

- 6. *The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood:***
- a. *Funeral Home; Undertaker;***
  - b. *Hotel, Motel;***
  - c. *Shooting Range (Outdoor);***
  - d. *Drive-Thru***
  - e. *Landfill, Incinerator, or Transfer Station; and***
  - f. *a Public Use Helipad, Heliport or a Public Use Helistop.***

Conclusion: This provision is not applicable since the proposed conditional use is not a listed use.

## **B. Development Standards of the Zone (Article 59-4)**

In order to approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the zone where the use will be located – in this case, the RE-2 Zone. Development standards for the RE-2 Zone are contained §59.4.4.4. of the Zoning Ordinance, which begins with a statement of the Intent of the RE (Residential Estates)-2 Zone:

### **A. Intent Statement**

***The intent of the RE-2 zone is to provide designated areas of the County for large-lot residential uses. The predominant use is residential in a detached house.***

Conclusion: The Hearing Examiner finds that the predominant use on the subject site is residential, so the intent criterion is satisfied.

Section 59.4.4.4. also provides a Table of development standards for the RE-2 Zone. Staff compared the minimum development standards of the RE-2 Zone to those provided by the application in its own Table and narrative (Exhibit 32, pp. 9-11). The Table is reproduced below, and the additional criteria for accessory structures are also addressed.

***B. RE-2 Zone, Standard Method Development Standards***

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

<b>Development Category</b>	<b>Standard</b>	<b>Proposed</b>
Minimum lot area	2 acres	3.91 acres
Lot width at front building line	150 ft.	319 ft.
Lot width at front lot line	25 ft.	318 ft.
Maximum lot coverage	25%	~3%
Minimum building setback, principal building: <ul style="list-style-type: none"> <li>• Front</li> <li>• Side <ul style="list-style-type: none"> <li>○ One side</li> <li>○ Both sides</li> </ul> </li> <li>• Rear</li> </ul>	50 ft.  17 ft. 35 ft. 35 ft.	133 ft.  68.4 ft. 161.4 ft. ~350 ft.
Minimum setback, accessory structure: <ul style="list-style-type: none"> <li>• Front setback</li> <li>• Side setback</li> <li>• Rear setback</li> </ul>	80 ft. 15 ft. 10 ft.	250 ft. 35 ft. 352 ft.
Height: <ul style="list-style-type: none"> <li>• Principal building</li> <li>• Accessory structure</li> </ul>	50 ft. 50 ft.	~24 ft. 12 ft.

Section 59.4.4.4 also provides “*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.***

Conclusion: As observed by Technical Staff, the shed is 35 feet from the closest lot line; approximately 120 feet from the detached garage on the adjacent property to the east; and about 185 feet from the house on that property. It therefore meets the accessory setback criterion in subsection “a.”

- b. Any accessory structure on a lot or parcel abutting a national historical park must be set back a minimum of 200' from the national historical park unless the accessory structure is exempted under Section 6.5.3.C.3.*

Conclusion: This provision is not applicable since the site does not abut a national historic park.

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

Conclusion: Staff indicates that the front line of the shed (barn) will be on or behind the rear building line of the house, as required.

- 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.*

Conclusion: The footprint of the shed (barn) will be 200 square feet, as thus compliant with this provision. Based on this evidence, the Hearing Examiner finds that the application meets all the development standards of the RE-2 Zone, as set forth in Zoning Ordinance §59.4.4.4.

### **C. Use Standards Specific to an Equestrian Facility (Section 59.3.2.4.)**

The specific use standards for approval of an equestrian facility are set out in Section 59.3.2.4. of the Zoning Ordinance, which are discussed below.

#### **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.*

Conclusion: The Applicant's proposal for a two-horse barn and fenced pasture clearly meets the definition of an "Equestrian Facility" in this provision, and the Hearing Examiner so finds.

#### **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.*

Conclusion: The property consists of 3.91 acres. Staff recommended a condition limiting the number of horses to three, rather than the two initially requested by the Applicant, because of the size of the property would accommodate the additional horse. The Hearing Examiner finds that the application as proposed will meet the above acreage requirement for three horses.

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

Conclusion: The property is zoned RE-2. Thus, this standard is not applicable to this application.

- 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.*

Conclusion: The Applicant requested permission at the hearing (Tr. 7) to have up to three horses, as suggested by Technical Staff, and a condition of approval caps the total number of horses at three. Thus, the above standard does not apply to this application.

- 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.*

Conclusion: The conditional use site plan (Exhibit 30(c)) demonstrates that the barn, pastures, and the manure composting area will be located at least 150 feet from houses on abutting properties, as confirmed by Planning Staff (Exhibit 32, p. 15). The Hearing Examiner therefore finds that the application as proposed will meet this requirement.

*e.      **Amplified sound must satisfy Chapter 31B.***

Conclusion: The use as proposed will not generate any amplified sound. The Hearing Examiner therefore finds that the application as proposed will meet this requirement.`

**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.**

Conclusion: The Applicant is not proposing any new lighting fixtures, and there will be no arena lighting. Staff reports that “existing floodlights on the house face downwards and do not produce glare on nearby properties.” Exhibit 32, p. 16. The Hearing Examiner therefore finds that the application as proposed will meet this requirement.

**g.      Equestrian events are restricted as follows...**

Conclusion: This standard contains restrictions on the number of visitors, participants and the timing of equestrian events dependent on the size of the property. The Applicant does not propose to have equestrian events, and there is a condition of approval that would prohibit them. Therefore, these restrictions are not applicable to the use as proposed and conditioned.

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

Conclusion: This requirement is not applicable because the Applicant will have no equestrian events, as they are prohibited by a condition of approval.

**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 5 years. Before the conditional use is renewed the Hearing Examiner must evaluate the effectiveness of the terms and conditions of the original approval.**

Conclusion: As no equestrian events will be permitted, the Hearing Examiner need not place restrictions on these events. However, the Applicant must apply to renew the conditional use every five years, which is a condition of approval of this application. The Hearing Examiner therefore finds that the application as proposed will meet this requirement.

**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:**

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

Conclusion: The Hearing Examiner has required compliance with all the applicable limited use standards. Since the subject site does not abut property in the AR zone, the remainder of this provision is inapplicable.

- b. In the AR, R, RC, and RNC zones:**
- i. The Equestrian Facility must not adversely affect abutting land uses or the surrounding road network.**
  - ii. In evaluating the compatibility of an Equestrian Facility on the surrounding land uses, the Hearing Examiner must consider that the impact of an agricultural use on surrounding land uses in an Agricultural or Rural Residential zone does not necessarily need to be controlled as stringently as the impact in a Residential zone.**

Conclusion: These standards are not applicable because the subject property is zoned RE-2.

- c. In the RE-2, RE-2C, RE-1, and RE-2 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.**

Conclusion: The subject property is located in the RE-2 Zone and is 3.91 acres in size. Therefore, this requirement is applicable. The Applicant set forth her plans for maintenance of the equestrian

facility in her Narrative Statement in support of her application (Exhibit 30(a), pp. 1-2), and her statement is quoted at length on pages 10-11 of this Report and Decision. Technical Staff summarized Applicant's plans, as follows (Exhibit 32, pp. 16-17):

The Applicant will abide by all of Maryland's requirements for pasture maintenance and feeding. The Applicant will utilize a "sacrifice lot" as part of a rotational grazing practice and intends to mow the pastures on a regular basis to maintain pasture health and discourage weed growth. The Applicant states that she "has extensive experience inspecting and managing pastures and caring for horses" and is "aware of resources available for assistance through local Soil Conservation Districts and University of Maryland Extension Offices."

The Hearing Examiner has imposed the following condition in Part IV of this Report and Decision to ensure compliance with this provision:

The Applicant must establish a pasture maintenance and feeding plan and retain sufficient open pasture to ensure proper care of the horses and proper maintenance of the site. The Applicant must also satisfy all state requirements for nutrient management concerning animal waste.

Based on this record, the Hearing Examiner finds that there will be compliance with this provision.

**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 of operation of any equestrian event or activity.**

Conclusion: As previously mentioned, there will be no equestrian events nor rental of horses on the subject site, in that both of these activities are prohibited by conditions imposed in Part IV of this Report and Decision. There is no reason to further limit the number of horses to be kept on site, as Technical Staff reports that the subject property is large enough to board three horses, which is the number requested by the Applicant at the hearing. Tr. 7. Based on this record, the Hearing Examiner will not impose more stringent conditions in this case.

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

Conclusion: As mentioned by Technical Staff (Exhibit 32, p. 17),

The Applicant has provided a “Guide to Composting Horse Manure on a Small Horse Farm,” which was written by the Applicant for Virginia Tech’s College of Agriculture and Life Sciences.

The Applicant recently received her Master’s in Agriculture degree from Virginia Tech (2015) and focused her year-long capstone project on creating a guide to composting horse manure on small horse farms, so the Applicant has extensive knowledge and dedication to good agricultural practices.

In addition, The Hearing Examiner has imposed a condition in Part IV of this Report and Decision requiring the Applicant to satisfy all state requirements for nutrient management concerning animal waste. Therefore, this provision has been satisfied.

**D. General Development Standards (Article 59-6)**

Article 59-6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. The requirements of these sections need to be satisfied only “to the extent the Hearing Examiner finds necessary to ensure compatibility.” *Zoning Ordinance*, §59.7.3.1.E.1.b. The applicable requirements, and whether the use meets these requirements, are discussed below.

**1. Site Access**

***Section 6.1.2. Applicability***

*Division 6.1 applies to development in the Residential Multi-Unit, Commercial/Residential, Employment, Industrial, and Floating zones if:*

- A. an apartment, multi-use, or general building type is proposed; and*
- B. a site plan or conditional use approval is required.*

Conclusion: Zoning Ordinance Division 59-6.1 governs site access; however, it does not apply to development in single-family residential zones, such as the RE-2 Zone.

**2. Parking, Queuing and Loading**

Parking, queuing and loading standards are governed by Division 59-6.2 of the Zoning

Ordinance. Staff advises that “There is no parking requirement for the proposed use separate from the required parking for the residential use on the Property.” Exhibit 32, p. 11. Staff also notes that the garage and driveway can accommodate numerous vehicles. The Hearing Examiner finds that no new parking spaces are required since the conditional use, as proposed, will not generate any new traffic, nor demand for parking. The remaining standards in Division 59-6.2 (*i.e.*, vehicle parking design standards, loading standards, and screening standards) are not applicable to this application. Based on this record, the Hearing Examiner finds that the requirements of Division 59-6.2 are inapplicable to the proposed conditional use and that the existing parking is sufficient to accommodate the equestrian facility.

### **3. Site Landscaping and Screening**

Conclusion: The issues of site landscaping and screening for conditional uses associated with detached, single-family houses was significantly simplified by Zoning Text Amendment 16-13, which exempted them from the specific landscaping requirements of other conditional uses in Agricultural, Rural Residential, and Residential Detached zones, and substituted a general compatibility standard. Zoning Ordinance §59.6.5.2.B. now provides:

*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.*  
[Emphasis added.]

Although Technical Staff applied provisions of the Zoning Ordinance with very specific screening requirements (Exhibit 32, pp. 11-13), the review of site landscaping and screening for conditional uses in single-family, detached homes is now limited to a more general assessment of compatibility, as specified in Zoning Ordinance §59.6.5.2.B, quoted above. This language is reinforced by Section 59.7.3.1.E.1.b., under which the Hearing Examiner need only find that the proposed use

meets applicable general requirements under Article 59-6 “to the extent the Hearing Examiner finds necessary to ensure compatibility. . .”

Nevertheless, Technical Staff reached the conclusion that the existing screening would be sufficient to provide compatibility (Exhibit 32, pp. 12-13):

The Applicant has not proposed screening for the shed. The proposed shed is sufficiently screened from the front Property line by the existing hedge row of Leyland Cypress trees and several other mature trees . . . . Similarly, existing trees provide screening from the neighboring properties to the west of and behind the Property. Given the semi-rural nature of the Neighborhood, the barnlike appearance of the proposed shed, the distance of the shed from the neighboring property to the east (over 100 feet from the house and essentially blocked from view by a detached garage), and the presence of a paddock fence along that property line, the proposed Conditional Use satisfies the intent of Division 6.5 without additional screening along the east property line by being inherently compatible with the Neighborhood. The alternative design, i.e. no additional screening, satisfies all the provisions for the Alternative Method of Compliance.

Based on this record, the Hearing Examiner finds that the existing landscaping more than adequately screens the proposed use, and that additional landscaping is not needed to ensure compatibility with the surrounding area.

#### **4. Outdoor Lighting and Signage**

Division 59-6.4 of the Zoning Ordinance contains requirements for new outdoor lighting for conditional uses. These requirements include the following (§59.6.4.4.E):

*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.*

By its own terms (in §59.6.4.2), Division 6.4 does not apply to existing, unmodified lighting:

*Division 6.4 applies to landscaping required under this Chapter, the installation of any new outdoor lighting fixture, and the replacement of any existing outdoor fixture. Replacement of a fixture means to change the fixture type or to change the mounting height or location of the fixture. [Emphasis added.]*

Technical Staff reports that (Exhibit 32, p. 14):

Existing lighting includes floodlights on the corners of the residence and a few standard lights at other points along the house's exterior . . . . The floodlights face downwards . . . and will not intrude into the adjoining residential properties. No new lights will be added as the existing lights provide sufficient light for the shed.

Conclusion: Because no new lighting is planned for this conditional use, as confirmed by the Applicant (Tr. 17), the Hearing Examiner finds that the requirements of Division 6.4, regarding lighting, do not apply. Nevertheless, the Hearing Examiner accepts Technical Staff's finding that the existing lighting faces downwards and will not intrude into the adjoining residential properties. Thus, the Hearing Examiner finds that the site lighting is compatible with the neighborhood.

With respect to signage requirements in the Zoning Ordinance, Technical Staff reports that there will be no signs identifying the proposed use on the subject site. Exhibit 32, p. 14.

Conclusion: A condition in Part IV of this Report and Decision prohibits signage on the subject site identifying the conditional use. Based on this record, the Hearing Examiner finds that the conditional use will be in compliance with signage requirements of the Zoning Ordinance.

#### **IV. Conclusion and Decision**

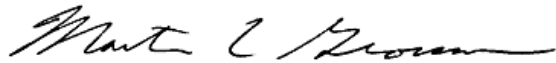
As set forth above, the application meets all the applicable standards for approval in Articles 59-3, 59-4, 59-6 and 59-7 of the Zoning Ordinance.

Based on the foregoing findings and conclusions, the application of Jennifer Nelson (CU 18-02) for a conditional use under Section 59-3.2.4.B. of the Zoning Ordinance to build and operate an equestrian facility at 12719 River Road, in Potomac, Maryland, is hereby **GRANTED**, subject to the following conditions:

1. No more than three horses may be kept on the property.
2. All uses on the site must conform to the Conditional Use Site, Landscaping & Lighting Plan (Exhibit 30(c)) approved by the Hearing Examiner.
3. All horses on site must belong to the owner of the property.
4. The Applicant must not rent out any of the horses in the equestrian facility.

5. No equestrian events may be held on the property.
6. No signs identifying the conditional use may be placed on the subject property.
7. This equestrian facility conditional use approval must be renewed every five years.
8. The Applicant must establish a pasture maintenance and feeding plan and retain sufficient open pasture to ensure proper care of the horses and proper maintenance of the site. The Applicant must also satisfy all state requirements for nutrient management concerning animal waste.
9. The Applicant 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 conditional use premises and operate the conditional use as granted herein. The Applicant 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 10<sup>th</sup> day of January, 2018.



---

Martin L. Grossman  
Hearing Examiner

#### NOTICE OF RIGHT TO REQUEST ORAL ARGUMENT

Any party of record may file a written request to present an appeal and oral argument before the Board of Appeals, within 10 days after the Office of Zoning and Administrative Hearings issues 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.

Contact information for the Board of Appeals is listed below, and additional procedures are specified in Zoning Ordinance §59.7.3.1.F.1.c.

The Board of Appeals may be contacted at:

Montgomery County Board of Appeals  
100 Maryland Avenue, Room 217

Rockville, MD 20850

(240) 777-6600

<http://www.montgomerycountymd.gov/boa/>

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/>.

Copies To:

Jennifer and Kirk Nelson  
Barbara Jay, Executive Director  
Montgomery County Board of Appeals  
Jamey Pratt, Planning Department  
All parties of record  
Ehsan Motazed, Department of Permitting Services  
Greg Nichols, Manager, SPES at DPS  
Alexandre A. Espinosa, Director, Finance Department  
Charles Frederick, Esquire, Associate County Attorney  
Gwen Wright, Director, Planning Department