

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

IN THE MATTER OF:
JENNIFER FREEMAN

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OZAH Case No. CU 16-15

Before: Lynn Robeson Hannan, Hearing Examiner

ORDER ADMINISTRATIVELY APPROVING A MINOR AMENDMENT TO
CONDITIONAL USE CU 16-15

I. BACKGROUND

On September 23, 2016, the Hearing Examiner approved the above conditional use for an equestrian facility with up to four horses on property located at 14957 Sugarland Road, Poolesville, Maryland, in the R-200 Zone. The property consists of approximately 7.65 acres. The conditions of approval included the following:

1. The Applicant shall be bound by her testimony and the evidence identified in this Report and Decision.
2. Physical improvements for the equestrian facility are limited to those shown on the Conditional Use Site Plan filed on July 28, 2016 (Exhibit 18(a)).
3. No more than four horses may be kept on the property.
4. All horses on site must belong to the owner(s) of the property.
5. The Applicant must not rent out any of the horses in the equestrian facility.
6. No equestrian events may be held on the property.
7. No identification sign may be placed on the property.
8. The owner of the property must satisfy the state requirements for nutrient management concerning animal waste.
9. This Equestrian Facility Conditional Use approval must be renewed every five years.
10. 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.

II. The Amendment Request

On January 21, 2020, OZAH received a request from the Applicant, Ms. Jennifer Freeman, to amend the approved conditional use to accommodate a minor subdivision of the property into two lots. She described the modification as follows (Exhibit 28):

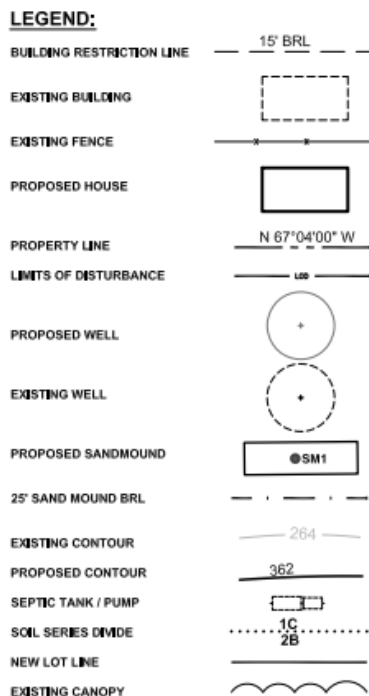
The reason for this minor amendment request is due to my plans for Administrative subdivision of the pot which is 7.65 acres into two lots (4.0 acres and 3.3 acres). I will keep ownership of both lots with no planned changes to either property for the foreseeable future.

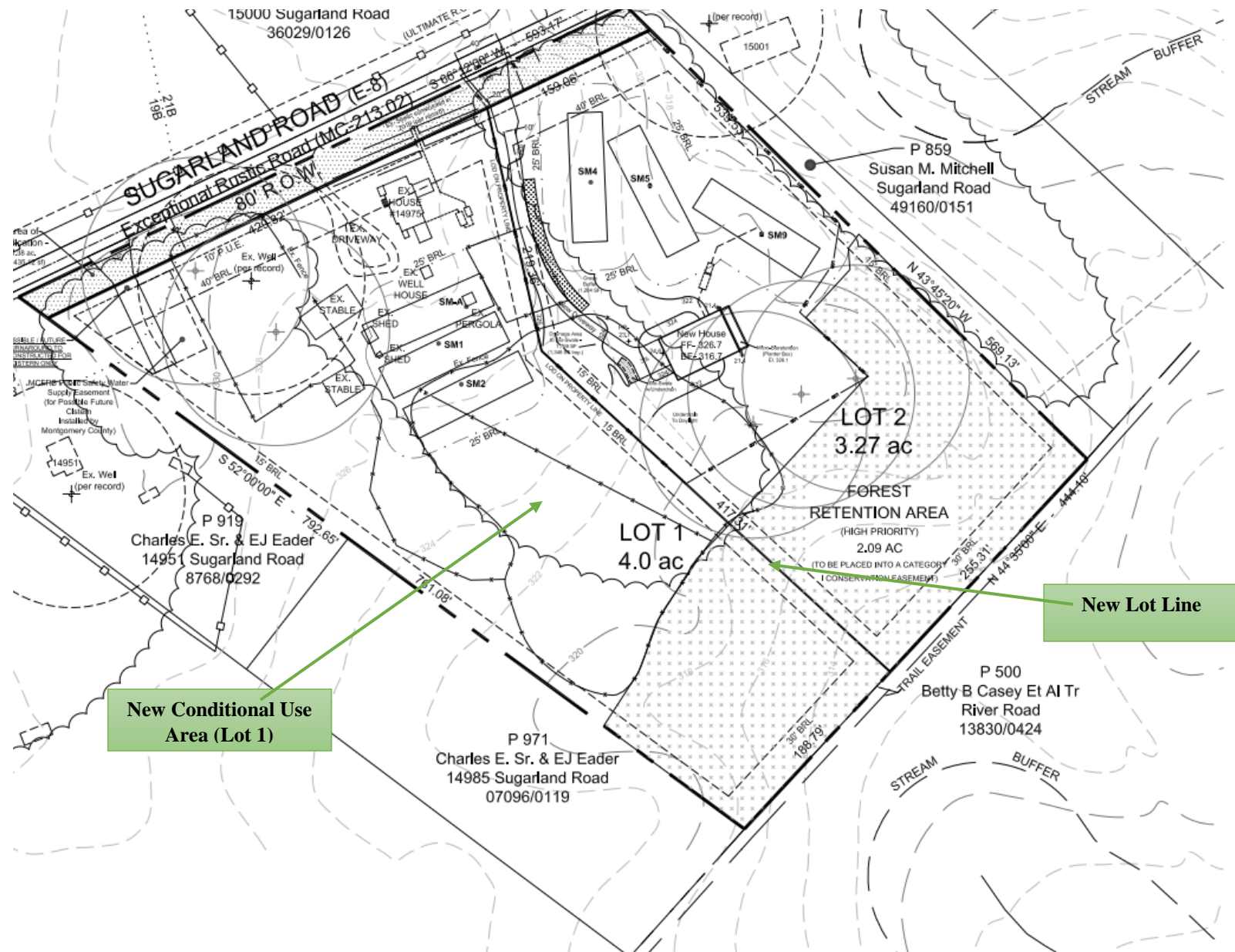
The current barn for the horses, the small manure/compost pile and approx. 85% of the pasture for the horses will remain on the 4 acre lot. This same 4 acre lot also includes my house, and other minor outbuildings which will continue in use as they have been.

The proposed new lot is to the east of the current lot where we live, therefore, the barn and the compost are far on the other side of the property, away from the proposed new building site.

I have no plans to make any changes to the use of the property from how it is currently being used today. The only change is that administratively/on paper, there would be about a 15% decrease in the open pasture area for the horses. However, I still plan to keep only two horses, and the remaining acreage of pasture and paddocks is more than enough to provide for the two horses I have.

The Applicant submitted a revised conditional use plan showing the administrative subdivision (Exhibit 29, on the following page). The legend for the plan is shown below (*Id*):





Amended Conditional Use Plan
(Exhibit 29)

The Hearing Examiner referred the minor amendment to Staff of the Planning Department for their review. Staff replied (Exhibit 31):

It's my professional opinion that the proposed modification falls within the definition of a minor amendment to the existing conditional use provided that Condition #3 of the Zoning Hearing Examiner's report of September 23, 2016, Page 27, is amended to read as follows:

3. No more than ~~four~~ three horses may be kept on the property.

Staff also recommends that Condition # 2 of the ZHE report shall be revised to reflect the changes shown on the proposed amended plan.

III. The Governing Law

Requests to amend a conditional use are governed by §59.7.3.1.K of the Zoning Ordinance, which distinguishes between “minor” and “major” amendments. A “minor” amendment is one that “does not change the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use.” *Zoning Ordinance*, §59.7.3.1.K.a.2. A “major” amendment is one that “changes the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected when considered in combination with the underlying conditional use.” Major amendments must follow the same procedures as the original conditional use while minor amendments may be approved administratively by the Hearing Examiner. *Id.*

IV. Opinion and Decision

The revised conditional use plan submitted by the Applicant does not change the existing operation of the conditional use. Instead, it merely reduces the its existing area from 7.65 acres to approximately 4 acres. Any new use on Lot 2 would need separate approval in the future. Aside from the reduction in land area, only possible change is that the maximum number of horses permitted will be three rather than 4. If anything, this reduces the potential impact on the neighborhood. As Ms. Freeman has and plans to have only two horses, this change doesn't affect the neighborhood either.

Given the nature of the proposed change and Planning Staff's evaluation of its likely impact, one would not reasonably expect substantial adverse effects on the surrounding neighborhood from the proposed amendment. There is also no evidence in the factual record to demonstrate that the proposed change would be a significant issue for the neighborhood.

Based on this record, the Hearing Examiner agrees with the Applicant and Planning Staff that the proposed amendment is minor because it does not change the nature, character, or intensity of the conditional use.

The amended conditional use requires a slight modification to the language of Condition Nos. 2 and 3 of the original approval, as noted by Staff. Revised Condition Nos. 2 and 3 are:

2. Physical improvements for the equestrian facility are limited to those shown on the Amended Conditional Use Site Plan (Exhibit 29).
3. No more than three horses may be kept on the property.

ORDER

Based on the foregoing, it is, this 13th day of April 2020:

ORDERED: That the request for a minor amendment to Conditional Use No. CU 16-15, allowing changes to the Conditional Use Plan, as depicted in the revised plans (Exhibit 29) is hereby administratively **APPROVED**, and it is further

ORDERED: That Condition Nos. 2 and 3 of the Hearing Examiner's decision dated September 23, 2016, are hereby modified as follows:

2. Physical improvements for the equestrian facility are limited to those shown on the Amended Conditional Use Plan filed (Exhibit 29)
3. No more than three horses may be kept on the property.

and, it is further

ORDERED: That this amendment and the continued use of the conditional use are subject to all terms and conditions imposed in connection with the initial approval, except as specifically amended by the Hearing Examiner in this Opinion and Order. The Conditional Use holder is directed to comply fully with all applicable county, state and federal regulations; and, it is further

ORDERED: That pursuant to Section 59.7.3.1.K.2.b. of the Zoning Ordinance, any party may request a public hearing on the Hearing Examiner's action within 15 days after this decision is issued. The request for public hearing must be in writing, and must specify the reason for the request and the nature of the objection or relief desired. If a request for a hearing is received, the Hearing Examiner must suspend his administrative amendment and conduct a public hearing to consider whether the amendment substantially changes the nature, character, or intensity of the conditional use or its effect on the immediate neighborhood. If the Hearing Examiner determines that such impacts are likely, then the amendment application must be treated as a major amendment application. A decision of the Hearing Examiner may be appealed on the basis of the Hearing Examiner's record to the Board of Appeals.



Lynn Robeson Hannan
Hearing Examiner

NOTICES TO:

Jennifer Freeman, Applicant
Barbara Jay, Executive Director
Montgomery County Board of Appeals
Elsabett Tesfaye, Planning Department
Ehsan Motazedi, Department of Permitting Services, Zoning & Site Plan Enforcement
Victor Salazar, Department of Permitting Services
Michael Coveyou, Acting Director, Finance Department
Charles Frederick, Esquire, Associate County Attorney
Current abutting and confronting property owners
All parties entitled to notice at the time of the original filing:
 Abutting and Confronting Property Owners (or a condominium's council of unit owners or renters, if applicable)
 Civic, Renters' and Homeowners' Associations within a half mile of the site
 Any Municipality within a half mile of the site