

<b>IN RE: PETITION FOR SPECIAL</b>	*	BEFORE THE
<b>EXCEPTION</b>		
S side of Davis Avenue, 230' E of	*	OFFICE OF
c/line of intersection with Siena Way	*	
2 <sup>nd</sup> Election District	*	ADMINISTRATIVE HEARINGS
2 <sup>nd</sup> Councilmanic District		
<b>(10307 Davis Avenue)</b>	*	FOR
The Polakoff Family, LLC,	*	BALTIMORE COUNTY
<i>Legal Owners</i>		
Wayne Schaefer, <i>Lessee</i>	*	<b>Case No. 2012-0322-X</b>
Petitioners		

\* \* \* \* \*

**ORDER AND OPINION**

This matter comes before the Office of Administrative Hearings as a Petition for Special Exception filed for property located at 10307 Davis Avenue. The Petition was filed by the legal owner of the subject property, The Polakoff Family, LLC and the lessee, Wayne Schaefer (the “Petitioners”). The Special Exception Petition seeks approval to permit a riding stable pursuant to § 1A07.3.B.12 of the Baltimore County Zoning Regulations (B.C.Z.R.). The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners’ Exhibit A.

Appearing at the hearing on behalf of the Petitioners were Wayne and Bethany Schaefer. Benjamin L. Polakoff, Esquire attended and represented the Petitioners. Appearing in opposition were Richard Rynd, Dorothy and Vincent J. Varvaro, Cathy M. Wolfson, Melvin Thomas, and Martin B. Mintz. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. A ZAC comment was received from the Department of Planning on July 16, 2012, which indicated that the riding stable is consistent with the spirit and intent of the RC 6

regulations, and that the proposal enhances the unique rural character of the site by preserving the agricultural use of the property.

In addition, a ZAC comment was received from the Department of Environmental Protection and Sustainability (DEPS), dated July 16, 2012, as follows:

**Comments from Environmental Impact Review (EIR)**

1. Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).
  - A Forest Buffer Easement may be required off of any existing streams and/or wetland that may effect the amount of pasture available onsite.

**Comments from Agricultural Preservation (AP):**

2. The request raises the following concerns:
  - A.) the size and configuration of the pasture relative to the number of horses,
  - B.) the impact on soil and soil erosion, and
  - C.) the treatment of manure especially because of proximity to many dwellings.

**Recommendations:**

- A.) One acre per horse is not sufficient acreage to protect soil & promote good condition for horses. Limit the number of horses to no more than 1 horse per acre of land owned and/or leased.
- B.) The acreage is small and the number of horses can quickly lead to erosive conditions. Require the operator to have and implement a “Soil and Water Quality Conservation Plan” from the Baltimore County Soil Conservation District.
- C.) The number of horses and proximity to neighboring homes could easily create a nuisance situation with flies and other nuisances from improperly managed manure. Require a State approved “Nutrient Management Plan”.

Mr. Wayne Schaefer, who leases the subject property, testified in support of the petition. He stated that the property has three pasture areas totaling over eight acres, and that he has seven stalls provided for the horses. He also indicated the property has an automatic watering system for the horses, and fans in the stalls to control insects and keep the horses comfortable. Mr. Schaefer said that at present he has ten horses on site, seven of which are owned by customers who board their horses at the facility.

Three neighbors testified at the hearing, and each opposed the special exception petition. While each of the witnesses expressed certain individual concerns regarding the proposal, the main points of concern shared by the neighbors were: (1) concern with the safety at the point of ingress/egress at Davis Avenue, (2) concern with the over-use and congestion on the private driveway shared by the Petitioners and the home at 10305 Davis Avenue, and (3) that the Petitioners have long ignored County zoning laws and should not be entitled to relief.

While it is unfortunate that relations between the Petitioners and their neighbors have deteriorated to the point they have, the zoning hearing process cannot remedy the situation. Rather, I am obliged to consider the case solely on the facts and the law, and having done that I believe the petition should be granted. At the same time, the regulations provide me with the authority to impose certain conditions, which I will do in this case to address the valid concerns raised by the neighbors.

Under Maryland law, a special exception use is presumptively in the interest of the general welfare, absent evidence that the adverse effects of such use (inherent in all special exception uses) would be greater at the location proposed than elsewhere in the zone. *People's Counsel v. Loyola College*, 406 Md. 54 (2008). In this case, no evidence was presented to rebut this presumption, and Petitioners are therefore entitled to special exception relief.

Some of the concerns identified by the neighbors – i.e., increased traffic, use of horse trailers, a commercial enterprise within a rural, residential neighborhood – are inherent in the operation of any riding stable where horses are boarded. The County Council is presumed to have been aware of such negative impacts when it permitted riding stables by special exception in an RC 6 zone. To overcome the presumption that this use is permissible, the opponents need to show that the negative impacts associated with this stable at this location are greater than they would be if the stable was located elsewhere in the RC 6 zone. I do not believe the Protestants made such a showing.

At the same time I take seriously the agricultural and environmental concerns raised by DEPS and will impose conditions to address those issues. In addition, I was especially troubled by the testimony of Mrs. Varvaro, who described certain altercations or conflicts she has had with Mr. Schaefer regarding use of the driveway. While I cannot force neighbors to like each other or get along, I will impose conditions regarding the use of this shared driveway that should help to alleviate some of the friction. The Order granting relief will clearly provide that this driveway is not part of the special exception area, and cannot be used by the Petitioners or their guests, invitees and/or licensees in connection with the riding stable operation.

Pursuant to the advertisement, posting of the property, and public hearing on this petition, and after considering the testimony and evidence offered, I find that Petitioners' Special Exception request should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 24<sup>th</sup> day of August, 2012, that the Petition for Special Exception seeking approval to permit a riding stable pursuant to § 1A07.3.B.12 of the Baltimore County Zoning Regulations (B.C.Z.R.), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the area of land encompassing the special exception use shall be restricted to the three pasture areas (referred to on the Plan as Pasture Area #1, Pasture Area #2 and Pasture Area #3) identified on the site plan (totaling 8.78 acres per Note 12 on Exhibit A) and the shared driveway used by both 10305 and 10307 Davis Avenue shall not be considered part of the special exception area, and the Petitioners, their guests, invitees and licensees shall not be permitted to use this driveway in connection with the riding stable operation.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioners may apply for any needed permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioners must comply with the ZAC comments provided by the Department of Environmental Protection and Sustainability (DEPS), a copy of which is attached and made a part hereof.
3. The subject property shall be used as a riding stable for no more than eight (8) horses, regardless of whether the horses are owned by Petitioners or are owned by clients boarding their horses at the facility.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

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Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB/dlw