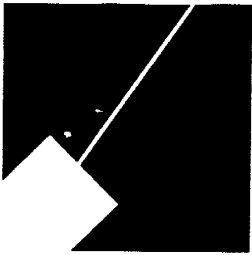


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MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

MCPB
Item #4
7/1/04

June 24, 2004

TO: Montgomery County Planning Board

VIA: Jeff Zyontz, Chief
Countywide Planning Division

Jorge A. Valladares, Chief
Environmental Planning

FROM: Cathy Conlon, Forest Conservation Program Administrator

SUBJECT: Forest Conservation Law Amendment, Bill No. 29-03

REVIEW BASIS: Advisory to the County Council sitting as the District Council,
Chapter 59 of the Zoning Ordinance

STAFF RECOMMENDATION

APPROVAL of the Forest Conservation Law Amendment as revised 4/29/04 with amendments.

BACKGROUND

Bill 29-03 – Forest Conservation, Equestrian facilities (FCA), sponsored by Councilmember Silverman, was introduced on July 29, 2004 along with companion items Zoning Text Amendment (ZTA) 03-21 and Subdivision Regulation Amendment (SRA) 03-01. A public hearing was held on these items on September 23, 2003 with subsequent Planning, Housing, and Economic Development (PHED) Committee worksessions on these items on October 20, 2003, November 25, 2003 and January 15, 2004. The Council adopted ZTA 03-21 and SRA 03-01, both with amendments, on March 16, 2004; both took effect on April 5, 2004. Action on FCA 29-03 was deferred.

FCA 29-03 as introduced would insert an exemption from the forest conservation law's requirements for forest stand delineation, forest conservation plans, retention, and reforestation for equestrian facilities located in agricultural zones. Its purpose was to exempt equestrian facilities – defined as a building, structure (such as bleachers around a show ring), or land used or designed for care, breeding and riding of horses or competitive equestrian events – to the same extent that agricultural activities are



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exempt from the law¹. However, tree save provisions for specimen and champion trees would still apply.

The Planning Board reviewed the ZTA, SRA and FCA at its regular meeting on September 25, 2003. By a vote of 4-0, the Board recommended DEFERRED/DENIAL of the amendments (Attachment 1). With regard to the Forest Conservation Law amendment, the Board concurred with staff that a full exemption from this legislation should not be provided to equestrian facilities. The Board concurred with staff recommended language limiting the exemption to proposed facilities that do not result in loss of any forest in a stream buffer, or any specimen or champion trees.

County Council staff considered the Planning Board recommendations, and comments received from citizens representing both sides of the issue, and recommended to the Council that any forest conservation exemption be limited to actions necessary to create or maintain riding trails in areas outside stream buffers. At its January 15, 2004 worksession, the PHED Committee considered the proposed amendment and these recommendations. During the worksession, an alternative proposal for an exemption conditioned upon protection of forest in stream buffers and retention of 25% of a site in forest, was presented by Mr. Steve Orens, attorney for one of the proponents of the bill. The Committee discussed and approved the more limited approach suggested by Mr. Orens in principle (with reservations being expressed by Councilmember Praisner) and directed Council staff to work with Planning staff and Mr. Orens to develop implementing language.

The staff redraft of the bill (Attachment 2) was presented for action by the full Council on June 15, 2004. The draft:

- prohibits clearing forest in stream buffers;
- requires the Planning Board to approve a forest conservation plan amendment before a landowner can clear any previously-preserved forest or trees;
- sets a 20% threshold (or all remaining forest if less than 20%) for onsite forest retention, which is slightly lower than the current law's 25% standard for residential development in agricultural zones;
- limits onsite forest clearing to 50% of the net tract area, effectively requiring a landowner to file a forest conservation plan before clearing more than half of a wooded site; and
- prohibits use of this exemption if, within the preceding 5 years, forest was cleared under the broader agricultural exemption; and

¹ Forest Conservation Law, Chapter 22A, Sec. 22A-5. Exemptions.
The requirements of Article II do not apply to:

* * *

(b) an agricultural activity that is exempt from both platting requirements under Section 50-9 and requirements to obtain a sediment control permit under Section 19-2(c)(2). Agricultural support buildings and related activities are exempt only if built using best management practices.

- exempts certain private equestrian facilities which are currently subject to the forest conservation law because the law's definition of agricultural activity specifies that the activity be commercial in nature.

Planning staff supported this redraft and agreed with the Council staff that it strikes a fair balance between the much broader agricultural exemption (see footnote 1), and requiring full application of the forest conservation law as it applies to residential developments in agricultural zones. Staff's support of this approach was also based on the Planning Board's recognition of this use as an important use that is vital to the economy of the Agricultural Reserve, during previous discussions of the ZTA, SRA and FCA.

Several citizens and environmental community advocates continued to object to this redraft of the bill, and to granting any forest conservation exemption for this use.

Council discussion of the redrafted bill centered on the appropriateness of granting any forest conservation exemption to equestrian facilities. Several Councilmembers expressed the opinion that no exemption should be given. Two amendments further limiting the proposed exemption were proposed by Councilmember Knapp (Attachments 3 and 4). An agreement on acceptable language was not reached by the Council. They decided to postpone their action, and directed Planning staff to present the redraft and proposed amendments to the Planning Board for review and recommendation. Additionally, they requested that staff consider other options for addressing these facilities with regard to forest conservation, and present them to the Board for review.

DISCUSSION AND ANALYSIS

Planning staff supported the redrafted amendment as proposed because it contains language preventing forest clearing in stream buffers which, at a minimum, staff believes is necessary to offset the development impacts equestrian facilities may have in comparison to other agricultural uses (grading and re-shaping of the land, large areas of impervious surfaces, and intensively used pasture areas). Staff also supported provisions for further limiting overall forest clearing as part of the exemption. Much of the county's existing forest resources (approximately 60%) are located on agriculturally zoned land. Up to now these forests have not been cleared for agricultural uses, but staff is uncertain how that might change as equestrian facilities are established. Until potential forest impacts resulting from this use are better understood, the exemption should contain a disincentive for choosing mostly forested sites.

Staff supports the proposed amendments by Councilmember Knapp for the reason noted above. As drafted, they provide further disincentive for using mostly wooded sites rather than converting existing cleared agricultural land. Staff does not believe these provisions will significantly limit the use of existing agricultural land for equestrian facilities since many properties already contain significant amounts of cleared land. Additionally, the requirement to do a forest conservation plan does not prevent land

from being used for an equestrian facility since forest mitigation planting can be done offsite.

In response to the County Council's request, staff has also considered the following options for addressing equestrian facilities with regard to forest conservation:

- No change to the existing forest conservation law

Per the existing forest conservation law, commercial equestrian facilities fall within the definition of agricultural activity². A blanket forest conservation exemption is provided for forest clearing associated with a commercial agricultural activity provided the activity does not trigger subdivision platting or sediment control requirements. Large equestrian facilities have been required to meet forest conservation requirements because they were required to be platted and provide sediment control (at least for building and paddock construction).

The recent Subdivision Regulations Amendment has removed the requirement for platting, and the recent Zoning Text Amendment clearly places equestrian facilities within the definition of agriculture. Since sediment control requirements only apply to building and paddock areas, large parts of commercial equestrian facilities are now exempt from forest conservation requirements (pastures, riding and exercise trails, uncovered fields, etc.). On a wooded property, clearing for establishment of these areas could be extensive. Per the agricultural exemption, the clearing may include stream valley buffer areas.

Staff believes that some change is needed to the existing forest conservation language to prevent wholesale forest clearing on sites that will include commercial equestrian facility construction. Forest retention, particularly within stream buffers, is an important tool for reducing the negative impacts associated with runoff from graded areas, impervious surfaces and intensively used pastures and trails associated with equestrian facilities.

- Specifically exclude any exemption for equestrian facilities from the law

Equestrian facilities could be specifically excluded from the agricultural exemption by amending Sec. 22A-5(b), as follows:

(b) an agricultural activity that is exempt from both platting requirements under Section 50-9 and requirements to obtain a sediment control permit under Section 19-2(c)(2). Agricultural support buildings and related activities are exempt

² *Agricultural activity* means farming activities conducted as part of a recognized commercial enterprise, including plowing, tillage, cropping, installation of best management practices, seeding, cultivating, and harvesting for production of food and fiber products (except commercial logging and timber harvesting operations), the grazing and raising of livestock, aquaculture, sod production, and the cultivation of orchard, nursery, and other products.

only if built using best management practices. Equestrian facilities are not included in this exemption.

Given the Board's previous recommendations on the FCA, and both Board and staff's desire to encourage agricultural rather than residential uses in the agricultural zones, staff recommends providing a limited equestrian facility exemption rather than this option.

- Limit the proposed forest conservation exemption based on size and intensity of proposed equestrian facilities

Language could be crafted to provide a forest conservation exemption limited to smaller, less intensive equestrian facilities. Staff believes a good measure of intensity for the use would be the number of horses per pasture acreage. Intensively used pastures provide reduced infiltration and filtering benefits. This, combined with the increased amounts of impervious surface associated with equestrian facilities is a problem, especially if stream buffer forest is permitted to be cleared.

This approach differs from the proposed amendment in that reforestation and afforestation planting could be required for the large-scale equestrian facilities depending upon the level to which the property is forested, and the amount of forest retained. Since stream buffer areas are highest priority for meeting planting requirements, this approach could provide opportunities to plant unforested buffer areas which would not be required under the provisions of the proposed forest conservation amendment.

The negative aspect of this approach is that there would be no limit to which forest could be cleared for equestrian facilities which meet the low intensity use criteria. While this clearing may not have the same water quality implications as clearing associated with higher intensity equestrian facilities, it could include large areas of forest. Forest losses could significantly reduce overall existing forest acreage in the agricultural preserve and contribute to loss of forest quality due to fragmentation. To reduce the potential for these effects, staff would recommend addition of language limiting the ability to completely clear forested sites without the approval of a forest conservation plan such as is included in the proposed amendment. Thus, in staff's view this option, or other variations of it, would not be significantly different than the proposed amendment.

CONCLUSION

For all of the above stated reasons, staff believes the latest version of FCA 29-03 (Attachment 2), with the proposed amendments (Attachments 3 & 4), is good approach to forest conservation requirements for equestrian facilities. As worded, the proposed amendment is in keeping with staff goals for protection of existing forest in environmentally sensitive areas such as stream buffers, and avoidance of forest

clearing without compensation of existing high priority contiguous forest stands. Staff recommends APPROVAL of the proposed legislation.