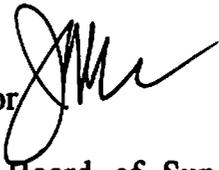


COUNTY OF YORK

MEMORANDUM

DATE: December 3, 2013 (PC Mtg. 12/11/13)

TO: York County Planning Commission

FROM: J. Mark Carter, Assistant County Administrator 

SUBJECT: Application No. ZT-147-13, York County Board of Supervisors: Text Amendment Application – Section 24.1-414, Horsekeeping Standards

ISSUE

This application, sponsored by the Board of Supervisors, would amend Section 24.1-414 of the York County Zoning Ordinance to: delete certain provisions that duplicate requirements contained in Chapter 4, Article II, Livestock, of the York County Code; and, to allow “qualified professionals” to prepare required soil conservation and management plans.

BACKGROUND

By letter dated October 7, 2013 (copy attached), and in remarks delivered at the Board’s October 15th meeting, Mr. and Mrs. Roberts (107 Forest Lane) requested that the Board consider revising the County Code (Chapters 4 and 24.1) to delete the current requirement for a 100-foot separation between horse pastures and active wells and to replace it with a reference to the standards of the Virginia Administrative Code and the Department of Health. The 100-foot separation requirement set out in Chapter 4 (Animals and Fowl, excerpt showing proposed changes attached) dates back to 1975. The horsekeeping provisions in the Zoning Ordinance were adopted in 1985 and duplicate those in Chapter 4.

The primary intent of Application No. ZT-147-13 is to adjust the language in Section 24.1-414 to simply reference, rather than duplicate, the requirements of Chapter 4, whatever they may be. This will allow the Chapter 4 provisions to be controlling and will eliminate the possibility of conflicting requirements within different parts of the County Code. Since the Chapter 4 provisions are not part of the Zoning Ordinance, the proposed changes regarding well separation do not require referral to the Planning Commission. The Board will be considering those proposed changes at a public hearing on January 21, 2014 – the same meeting at which this application will be scheduled for Board consideration (assuming Planning Commission action on December 11th).

The secondary aspect of Application No. ZT-147-13 is to make a minor adjustment in the provision requiring submission of a “soil conservation and management plan” (Section 24.1-414(g)) to allow such plans to be prepared by a “qualified professional” rather than only the Colonial Soil and Water Conservation District.

CONSIDERATIONS CONCLUSIONS

1. As noted in the Roberts' letter, staff has been unable to locate any County records that would document the origin of the 1975 requirements and how the distances were determined. Nevertheless, staff believes that their suggestion to allow State Health Department and Virginia Administrative Code requirements to control required separation distances has merit and would put the issue in the hands of the agency (i.e., the Health Department) that administers well permitting and monitoring and which has the specific expertise to classify wells by type and to review and evaluate water sample test results. Excerpts of the pertinent sections of the Virginia Administrative Code dealing with wells and separation distances from potential sources of contamination are attached for information.

Again, the purpose of this Zoning text amendment application is simply to adjust the language of Section 24.1-414 to delete any references to well separation (subsection f) as well as any other subsections or clauses that duplicate provisions contained in Chapter 4, Article II, Livestock, of the County Code. You will note that the last subsection of Section 414 already references the Chapter 4, Article II provisions, so there is no need to repeat them in the Zoning Ordinance.

2. The other minor recommended change in Section 24.1-414 is to adjust the language concerning the required soil conservation and management plan to allow such plans to be prepared by "a qualified professional" rather than only the Colonial Soil and Water Conservation District (CSWCD). This proposed change will broaden the pool of professionals / consultants from which a property owner could choose to comply with this requirement but would not eliminate the CSWCD as a possible selection.

RECOMMENDATION

With the exception of the change pertaining to preparation of soil conservation and management plans, these proposed amendments do not modify any existing requirements. Instead, they would eliminate redundancy between different chapters of the County Code and format Section 24.1-414 so that there will be no conflicts in the event the anticipated changes to Chapter 4, Article II are adopted by the Board of Supervisors in January. Additionally, they would expand opportunities for property owners in need of a consultant to prepare the required soil conservation and management plan. Staff recommends approval of proposed Resolution No. PC13-32 to endorse the proposed Zoning Ordinance text amendments and forward them to the Board with a recommendation of approval.

Carter/3337

Attachments:

- October 7, 2013 letter from Jocelyn and Timothy Roberts
- Excerpts, Virginia Administrative Code requirements – Private Wells
- Proposed amendments to Chapter 4, Article II, York County Code
- Proposed Resolution No. PC13-32

Mrs Jocelyn Roberts
107 Forest Ln
Williamsburg, VA 23188-2233

October 7, 2013

Walter C. Zaremba, Chairman
York County Board of Supervisors
P.O. Box 532
Yorktown, VA 23690

Dear Mr. Zaremba and Members of the Board:

We have recently been working with members of the York County Code enforcement staff to learn about and resolve certain issues associated with the pasturing of the horses that we keep on our property at 107 Forest Lane. Our discussion has focused on the terms of Section Nos. 4-20 (Animals and Fowl) and 24.1-414(f) (Zoning) of the York County Code, both of which require a separation of 100 feet between any "pasture" and an active well.

By way of background, our research indicates that the provision requiring a separation of 100 feet between livestock-keeping and active wells dates back to July 17, 1975 when it was added as Section 4-20 of the York County Code. That original wording remains a part of Chapter 4 of the County Code. The same language was incorporated into the horsekeeping provisions of the Zoning Ordinance in December 1985 and remains there as Section 24.1-414(f) in the current Ordinance. Excerpts of both Chapters are attached with several pertinent sections/phrases highlighted.

Your staff was unable to locate any documentation concerning the origin of either the 1975 provisions or how the 100-foot spacing requirement was determined. Certainly, the character of the County was much different at that time with public water service not as widely available as now. Likewise, we would guess that well design and construction standards and water quality testing methods have improved over the years and perhaps have led to changes in the State Health Department standards and regulations which, based on our research, indicate that the fenced area within which our horses could circulate would be subject only to a 20-foot separation requirement and would not be considered a contamination threat to our Class III-B well.

We would respectfully request that the Board consider amending the County Code (Chapters 4 and 24.1) to replace the current 100-foot separation requirement with a simple reference to the

Walter C. Zaremba

October 7, 2013

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requirements of the Virginia Administrative Code and the Virginia Department of Health. Since it is the Department of Health that regulates and inspects the installation of drinking water wells, it would seem appropriate to yield to their expertise in determining and administering the applicable separation requirements between the different types/classifications of wells and various potential sources of contamination (e.g., barnyards, animal keeping lots, etc.). Suggested replacement language for use in both sections follows:

Sec. 4-20. Keeping near wells; pollution of streams, etc.

- (a) All No person shall stables, pastures or other areas or facilities used to ~~keep livestock shall comply with all applicable standards of the Virginia Administrative Code and the Department of Health concerning separation from within one hundred feet (100') of any active wells and the protection of wells from drainage or runoff from such areas.~~ wise keep livestock shall comply with all applicable standards of the Virginia Administrative Code and the Department of Health concerning separation from within one hundred feet (100') of any active wells and the protection of wells from drainage or runoff from such areas. No person shall stable, pasture or keep any livestock in any manner whatsoever that causes drainage or water runoff from the stable, pasture or animal yard to flow within one hundred feet (100') of an active well.
- (b) No person shall permit the drainage from any animal yard, pasture or stable to contaminate or pollute any stream, watercourse or drainage way, natural or manmade.
- ***

Sec. 24.1-414. Standards for horsekeeping and commercial stables.

- (f) Horses shall not be stabled, pastured or otherwise kept in compliance with all applicable standards of the Virginia Administrative Code and the Department of Health concerning separation from within one hundred feet (100') of an active wells and the protection of wells from ~~nor shall they be stabled, pastured or kept in any manner whatsoever that causes drainage or water runoff from the stable, pasture or animal yard, to flow within one hundred feet (100') of an active well~~ nor shall they be stabled, pastured or kept in any manner whatsoever that causes drainage or water runoff from the stable, pasture or animal yard, to flow within one hundred feet (100') of an active well

While we cannot speak for your staff, the conversations that we have had lead us to believe that staff would recommend approval of the changes since they would place the evaluation and enforcement responsibility in the hands of those experts who are best qualified to review and assess the particular characteristics of a well and the uses around it. Therefore, we hope that the Board will consider initiating the processes necessary to amend the County Code.

Should you have questions or wish to discuss any of the above information or comments, please do not hesitate to contact us.

Sincerely,


Jocelyn and Timothy Roberts

Attachment

EXCERPTS
1 of 3

**Commonwealth of Virginia
State Board of Health**

Private Well Regulations



April 1, 1992

**Virginia Department of Health
1500 E. Main Street
Richmond, Virginia 23219**

PART III.**Design and Construction Criteria.****ARTICLE I
General Requirements.****12 VAC 5-630-350. General.**

This chapter does not apply to private wells constructed, altered, rehabilitated or extended prior to the effective date of these regulations unless the well construction is modified or expanded after the effective date of these regulations.

The class of well to be constructed shall be determined by the local or district health department or the division.

12 VAC 5-630-360. Classes of water wells.

The following classes of private wells are established for purposes of this chapter. These classes are in addition to those established in the current Commonwealth of Virginia Waterworks Regulations (12 VAC 5-590-10 et seq.) and are intended for use for private well systems:

1. Class III Private wells constructed to be used as a source of drinking water. There are three subclasses:

a. Class IIIA Drilled wells in which the annular space around the casing is grouted to a minimum depth of 20 feet.

(1) The well shall be drilled and cased to a depth of at least 100 feet.

(2) The cased drill hole shall pass through at least 50 feet of collapsing material such as caving sand, gravel or other material that will collapse against the casing.

b. Class IIIB Drilled wells in which the casing is installed to a minimum depth of 50 feet and the annular space around the casing is grouted to at least 50 feet.

c. Class IIIC Drilled, bored, driven or jetted wells other than Class IIIA and Class IIIB.

2. Class IV Private wells constructed for any purpose other than use as a source of drinking

Table 3.1
Distances (in feet) Between a Well and a Structure or
Topographic Feature

3 of 3

Structure or Topographic Feature	Class III C or IV	Class III A or B
Building Foundation	10	10
Building Foundation (Termite Treated)	50 ¹	50 ¹
House Sewer Line	50 ²	50 ²
Sewer Main including force mains	50 ³	50 ³
Sewerage System	50	50
Pretreatment System (e.g. Septic Tank, Aerobic Unit, etc.)	50	50
Sewage Disposal System or other contaminant source (e.g., drainfield underground storage tank, barnyard, hog lot, etc.)	100	50
Cemetery	100	50
Sewage Dump Station	100	50 ¹

¹ See 12 VAC 5-630-380.

² Private wells shall not be constructed within 50 feet of a house sewer line except as provided below. Where special construction and pipe materials are used in a house sewer line to provide adequate protection, and the well is cased and grouted to the water bearing formation, all classes of private wells may be placed as close as 10 feet to the house sewer line. Special construction for house sewer lines constitutes cast iron pipe with water-tight caulked joints or mechanical joints using neoprene gaskets, or solvent welded Schedule 40 or better polyvinyl chloride (PVC) pipe. It is the responsibility of the applicant to provide documentation from the contractor that such construction and pipe materials have been installed. In no case shall a private well be placed within 10 feet of a house sewer line.

³ Private wells shall not be constructed within 50 feet of a sewer main except as provided below. Where special construction and pipe materials are used in a sewer main to provide adequate protection, and the well is cased and grouted to the water bearing formation, Class III wells may be placed as close as 35 feet to a sewer main and Class IV wells as close as 10 feet. Special construction for sewer mains constitutes ductile iron pipe with water-tight joints, solvent welded Schedule 40 or better polyvinyl chloride (PVC) pipe (SDR-35 plastic PVC with neoprene gaskets). It is the responsibility of the applicant to provide documentation from the local building official or sanitary district that such construction and pipe materials have been installed. In no case shall a Class III well be placed within 35 feet of a sewer main. Likewise, in no case shall a Class IV well be placed within 10 feet of a sewer main.

ARTICLE II. LIVESTOCK

Sec. 4-17. Article does not authorize violation of zoning ordinance; conflicts with other ordinances.

Nothing in this article shall authorize the use of land for the raising or keeping of livestock in conflict with the provisions of the county zoning ordinance. In case of conflict between any terms, provision or requirement of this article with that of any other ordinance or regulation, the stricter interpretation shall prevail
Cross reference—Zoning ordinance, Ch. 24.1.

Sec. 4-18. Location of stable near abutting property or public road.

No stable or housing for livestock shall be constructed or located within one hundred feet (100') of any abutting property owned or occupied by a person other than the owner or occupant of the property on which such stable or housing is located, nor within one hundred feet (100') of a public highway or road.

Sec. 4-19. Keeping not to be detrimental to use of adjacent property.

No person shall utilize any stable, pasture or animal yard for the keeping of livestock in any manner that is detrimental to the use of adjacent property or that, because of odor, noise or attraction of flies or other pests, reduces or otherwise unreasonably restricts the rights of adjacent property owners to enjoy the use of their property.

Sec. 4-20. Keeping near wells; pollution of streams, etc.

- (a) ~~All No person shall stables, pastures or otherwise areas or enclosures used to~~ keep livestock ~~shall comply with all applicable standards of the Virginia Administrative Code and the Virginia Department of health concerning separation from within one hundred feet (100') of any active wells and the protection of wells from drainage or runoff from such areas. No person shall stable, pasture or keep any livestock in any manner whatsoever that causes drainage or water runoff from the stable, pasture or animal yard to flow within one hundred feet (100') of an active well.~~
- (b) No person shall permit the drainage from any animal yard, pasture or stable to contaminate or pollute any stream, watercourse or drainage way, natural or manmade.

Sec. 4-20.1. Boundary lines and streams declared to be fences as to livestock.

The boundary line of each lot or tract of land and any stream in the county are declared to be, and the same shall be henceforth, a lawful fence as to any and all livestock domesticated by man.

Sec. 4-21. Storage or accumulation of manure.

No person shall store, stockpile or permit any accumulation of manure or livestock waste in any manner whatsoever that, due to odor, attraction of flies or other pests or for any other reason, diminishes the rights of adjacent property owners to enjoy reasonable use of their property.

Sec. 4-22. Use of manure as fertilizer.

- (a) Manure spread or broadcast on bona fide agricultural lands for the purpose of fertilizing such lands shall be turned under or buried.
- (b) Manure used as fertilizer in landscaping, home gardens or spread upon land for any other reason shall be turned under or buried within twenty-four (24) hours.

Secs. 4-23—4-32. Reserved.

PLANNING COMMISSION
 COUNTY OF YORK
 YORKTOWN, VIRGINIA

Resolution

At a regular meeting of the York County Planning Commission held in the Board Room, York Hall, Yorktown, Virginia, on the ____ day of _____, 2013:

Present

Vote

Mark B. Suiter, Chair
 Melissa S. Magowan, Vice Chair
 Glenn A. Brazelton
 Timothy D. McCulloch
 Todd H. Mathes
 Richard M. Myer, Jr.

On motion of _____, which carried ____, the following resolution was adopted:

A RESOLUTION TO RECOMMEND APPROVAL OF APPLICATION NO. ZT-147-13 TO AMEND SECTION 24.1-414, HORSEKEEPING, OF THE YORK COUNTY ZONING ORDINANCE (CHAPTER 24.1, YORK COUNTY CODE)

WHEREAS, the York County Board of Supervisors has determined that amendments to certain requirements set forth in Chapter 4, Article II, Livestock, of the York County Code should be considered; and

WHEREAS, some of those provisions are unnecessarily repeated in Section 24.1-414, Horsekeeping, of the York County Zoning Ordinance (Chapter 24.1, York County Code); and

WHEREAS, in the interest of good zoning and land use practice, and to eliminate redundancy and minimize the potential for conflicting provisions, the Board has sponsored an application to delete the duplicative provisions from Section 24.1-414 of the Zoning Ordinance and to modify one other provision; and

WHEREAS, the application has been referred to the Planning Commission in accordance with applicable procedures; and

WHEREAS, the Commission has conducted a duly advertised public hearing on the application and has carefully considered the public comments received;

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this the ____ day of _____, 2013, that Application No. ZT-147-13 be, and it is hereby, forwarded to the York County Board of Supervisors with a recommendation for approval of the proposed amendments set forth below:

Sec. 24.1-414. Standards for horsekeeping and commercial stables.

- (a) The minimum area of any parcel proposed for the keeping of horses, whether accessory to a residential use or as a commercial stable, shall be two (2) usable acres. In determining usable acreage, the area occupied by any residential structures, the area of required front or side yards, and any areas unsuitable for keeping of horses by reason of topography, drainage conditions, or the extent of tree or other vegetation cover shall not be included in the computation.
- (b) The maximum number of horses permitted as an accessory and incidental use on a residential property shall be one (1) per each usable acre of land as defined in subsection (a) above. In the case of commercial stables, the maximum number of horses permitted shall be two (2) per usable acre of land or such fewer number as the zoning administrator may deem appropriate given the characteristics of the subject property and the surrounding area.
- ~~(c) Stables or housing for horses shall not be constructed or located within one hundred feet (100') of an abutting property owned or occupied by a person other than the owner or occupant of the property on which such stable or housing is located, nor within one hundred feet (100') of a public right-of-way.~~
- ~~(d) Stables, pastures, or animal yards shall not be utilized for the keeping of horses in any manner that is detrimental to the use of adjacent property or that, because of odor, noise or attraction of flies or other pests, reduces or otherwise unreasonably restricts the rights of adjacent property owners to enjoy the use of their property.~~
- (ce) Horses shall not be stabled, pastured, or otherwise kept within one thousand feet (1,000') of a drinking water reservoir unless it can be proven to the satisfaction of the health department and the zoning administrator that any runoff will be away from the reservoir and that public health will not be negatively impacted. In such cases, a two hundred foot (200') buffer must be maintained. This shall not be interpreted to preclude the riding of horses or establishment of bridle trails closer than the specified distance provided that the health department and owner of the reservoir approve.
- ~~(f) Horses shall not be stabled, pastured or otherwise kept within one hundred feet (100') of an active well nor shall they be stabled, pastured or kept in any manner whatsoever that causes drainage or water runoff from the stable, pasture or animal yard to flow within one hundred feet (100') of an active well.~~
- ~~(g) Manure or animal wastes shall not be stored, stockpiled, or permitted to accumulate in any manner whatsoever that attracts flies or other pests, or for any other reason diminishes the rights of adjacent property owners to enjoy reasonable use of their property. Drainage associated with the storage or stockpiling of animal manure shall not be permitted to contaminate or pollute any stream, well, watercourse, or drainageway, natural or manmade. The owner shall provide the county with a soil conservation and management plan prepared by a qualified professional the Colonial Soil and Water Conservation District which shall include:~~
 - (1) a nutrient management plan for the proper storage and application of animal waste;
 - (2) an erosion control plan to ensure the integrity of the slopes; and
 - (3) a best management practices program for controlling and treating surface runoff.

In determining consistency with this condition, the zoning administrator may require that the above plans be reviewed and approved by the Virginia Cooperative Extension Service and the U.S. Department of Agriculture - Soil Conservation Service.

- | (dh) The keeping of horses as an accessory use on residential property shall be solely for the recreational purposes of the family living on the premises. Boarding of horses owned by others is prohibited.
- | (ei) All horses shall be kept in pens or other enclosures designed and maintained for secure confinement.
- | (fj) The zoning administrator shall find, prior to approval, that such use will not be detrimental to the character of the neighborhood and may impose such additional conditions, including special requirements for setbacks of pastures and requirements for drainage control, as deemed necessary to promote the public interest and welfare.
- | (gk) Such uses shall comply in all respects with the standards and requirements established in chapter 4, article II, Livestock, York County Code.
(Ord. No. 11-15(R), 11/16/11)
