

IN RE: PETITION FOR VARIANCE

Located on the eastern corner of Saint
Marys Road and Tred Avon Road
15th Election District
6th Councilmanic District
(203 Saint Marys Road)

Donna K. and Mark R. Simmons
Petitioners

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* **CASE NO. 2012-0056-A**

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ORDER ON MOTION FOR RECONSIDERATION

This matter originally came before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed by Donna and Mark Simmons, legal owners of the subject property. The hearing took place on Wednesday, October 5, 2011 at 10:00 AM in Room 205 of the Jefferson Building located at 105 West Chesapeake Avenue, Towson, Maryland. After carefully considering the testimony and evidence presented in that case, a written decision was issued dated October 19, 2011, by the undersigned Administrative Law Judge for Baltimore County.

Thereafter, on November 10, 2011, this Office received two letters, one dated November 8, 2011, authored by Karen Lynn Weeks, and the other dated November 9, 2011, authored by Susan Wunder. Both of these individuals are neighbors of the Petitioners herein. At or about that time, the Petitioners in the variance case, Donna and Mark Simmons, attempted to have delivered to the Office certified mailing to me dated November 7, 2011, which contained a Motion for Reconsideration filed by these Petitioners as well as a petition signed by approximately 52 of the Petitioners' neighbors, all of whom reside in the surrounding community. Also contained within the Motion for Reconsideration packet was a letter written by the adjacent property owners and one of the Protestants in the underlying case, Jody Palmisano and family, which addresses the

keeping of these six chickens on their property. The Motion for Reconsideration was sent by certified mail restricted delivery. The packet containing the Motion was not signed for/delivered until after the requisite 30 day filing period. However, considering the number of documents that were brought into the Office of Administrative Hearings all within the 30 day filing period as well as the phone calls from Mr. and Mrs. Simmons during this time, I find that the Motion for Reconsideration was timely filed before this Office and that a ruling should be made on the merits of the Motion. There was no indication from the filing of this Motion for Reconsideration or any of the documents contained in the packet that the Protestants who appeared at the underlying hearing were notified of this Motion being filed. As the previous Order indicated, and the file reflects, Mr. and Mrs. Palmisano and Ronald Duncan appeared in opposition to the underlying variance request. It does not appear that either of these Protestants were notified of the filing of this Motion for Reconsideration. This is a technical defect as these individuals were entitled to know about the filing of this Motion. However, this procedural defect does not have an impact on the ultimate ruling on this Motion.

The Petitioners have asked that I reconsider my previous denial of their variance request to allow them to keep six chickens on their property which is approximately one-half acre in size. As stated in my previous decision, the Baltimore County Zoning Regulations require a minimum of a one acre parcel of property for the keeping of chickens.

As the exhibits attached to the Motion for Reconsideration demonstrate, the children of the Petitioners have circulated a petition around the neighborhood and have gathered the signatures of approximately 52 residents, all of whom support their keeping of the chickens on the Petitioners' property. In addition, two other letters of support were contained within the file. These neighbors all support the Simmons' family and the keeping of their chickens. However, it can be surmised

that many of these persons who signed the petition form do not live immediately adjacent to the property owned by Donna and Mark Simmons. Therefore, the adverse impacts of the chickens would not be felt or experienced by these neighbors as it would on the immediate neighbors, Mr. and Mrs. Palmisano.

While the immediate neighbors, Mr. and Mrs. Palmisano, were not contacted regarding this Motion for Reconsideration, their original testimony offered at the underlying hearing still remains the same. They clearly stated that the chickens do have an adverse impact on their family, their children's ability to sleep peacefully in their bedrooms at night, and the impact on their dog, who becomes irritated by the chickens throughout the course of the day. They were also concerned over the manure that is left behind from the chickens and believe that the keeping of the chickens has contributed to an increase in mice on their property.

After considering the additional factors presented in this Motion for Reconsideration, I find that the Motion should be denied. The one acre minimum lot size requirement for the keeping of chickens is a well settled rule. These regulations were carefully considered by the Department of Agriculture at the University of Maryland before being adopted by the Baltimore County Council. There is nothing unique about this property that causes this particular one acre size requirement to impact this property any differently than it would for any other property in this neighborhood. For these reasons, the Motion shall be denied.

Therefore, having considered the testimony and evidence presented in this Motion for Reconsideration,

IT IS ORDERED by the Administrative Law Judge for Baltimore County this 4th day of January, 2012, that the Motion for Reconsideration filed by Petitioners Donna and Mark Simmons dated the 7th day of November, 2011, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petitioners shall have one hundred eighty (180) days from the date of this Order on the Motion for Reconsideration to find a new home for the chickens and remove them from the subject property; and,

IT IS FURTHER ORDERED that the appeal of my original decision has been stayed by the filing of this Motion for Reconsideration. Accordingly, any appeal from this denial of the Motion for Reconsideration, must be made within thirty (30) days from the date of this Order.

Signed _____
TIMOTHY M. KOTROCO
Administrative Law Judge
for Baltimore County

TMK:pz