

IN RE: PETITION FOR VARIANCE (12 Oakwood Road) Jennifer L. Rennebu and Stephen Lockett Petitioners	* * * * *	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY CASE NO. 2013-0031-A
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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by the legal owners, Jennifer L. Rennebu and Stephen Lockett. The Petitioners are requesting Variance relief from § 100.6 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to permit the housing of chickens on non-commercial property with an acreage of 7,600 sq. ft. (.175 acre) in lieu of the required 43,560 sq. ft. (1 acre). The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support for this case was Jennifer Rennebu and Stephen Lockett, Petitioners, Bryan Durst, Jenesse Wannall, and Kelly Dieumegarde. Appearing in opposition to the request was Amy Bednar and Christine Baxk, adjoining neighbors. David Gaine, Code Enforcement Officer, was also present on behalf of the Division of Code Inspections and Enforcement, Department of Permits, Approvals, and Inspections (PAI). The file reveals that the site was properly posted as required by the Baltimore County Zoning Regulations. There was some discrepancy concerning whether the Petition was advertised in the newspaper as required by the B.C.Z.R. Assuming it was not, the County would be to blame for the shortcoming, since it, and not the Petitioner, is responsible for submitting the advertisement to the publisher. In any

event, adjoining neighbors attended the hearing and opposed the relief, and thus actual notice was received.

This matter is currently the subject of a violation case (Case No. CO-115124). It should be noted that the fact that a code violation is issued is generally not considered in a zoning case. Zoning enforcement is conducted by the Department of Permits, Approvals, and Inspections, which has the authority to issue Correction Notices and Citations and to impose fines and other penalties for violation of law. On the other hand, the role of the Administrative Law Judge in this matter is to decide the discreet legal issue of whether the Petitioner is entitled to the requested zoning relief.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. A ZAC comment was received from the Department of Planning (DOP) on September 11, 2012, as follows:

The Department of Planning has visited the subject site, reviewed the petitioner's request and accompanying site plan.

The petitioner requests a variance to permit the housing of chickens on non-commercial property with acreage of 7600 sq. feet (.175 acre) in lieu of the permitted 43,560 sq. feet (1 acre). There is a current violation case (#115124) for chicken, rooster and rats on the subject property.

The subject lot sits at the corner of Oakwood Road and Gray Manor Terrace, and the back yard, where the chicken coop/chickens are kept is clearly visible from Gray Manor Terrace. The property is clearly visible from the neighboring property, 10 Oakwood Road, and from the rear yard of 2706 Gray Manor Terrace. The fronts of the properties on the odd side of Gray Manor Terrace (across the street) face the side and rear yard of the subject property.

The entire property is fenced with white picket style fencing, approx 3½ to 4 foot high. The contents of the rear yard are visible from the Oakwood Road. At the time of the site visit, several chickens/roosters were visible walking around the rear yard, but quiet. The chicken coop appears to be in good condition, as is another shed on the property. The homeowners appear to be avid gardeners, and there is a lot of vegetation (some overgrown) on the property. Some areas outside of the home are in need of clean up, maintenance and repair (i.e. sidewalk, vegetation, leftover wood and debris, indoor refrigerator).

The petitioner requests a substantial variance. Granting of the request could have significant negative impacts on several neighboring properties in a fairly dense community. As such, the Department of Planning **does not support** the aforementioned variance request.

Testimony and evidence revealed that the subject property is 7,600 square feet (.175 acres) and is zoned DR 5.5. The Petitioners are avid gardeners, and grow organic produce on their property. They also have a chicken coop in the yard, and keep seven hens they refer to as “the girls.” Mr. Luckett provided extensive testimony concerning his gardening practices and methods for keeping the hen house clean and sanitary. The Petitioners also submitted several photos (Exhibit 2) and a neighborhood petition with approximately 20 signatures of residents who support the Petitioners. After reviewing the materials and considering the testimony of the Petitioners, it is apparent they are sincere and conscientious residents, and I believe they are well intentioned. Unfortunately, Baltimore County law, unlike that of the City of Annapolis or Baltimore City, does not permit the keeping of chickens in a residential zone on less than one (1) acre of property.

Based upon the testimony and evidence presented, I will deny the request for variance relief. Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People’s Counsel, 407 Md. 53, 80 (2008).

Petitioners have not met this test.

In their testimony and submissions, the Petitioners contended the subject property is unique because of the organic dirt they have cultivated over the past several years. While this may be a rare circumstance, it does not qualify as “unique” under variance case law, which looks

instead to the inherent physical characteristics of a property, such as its topography, shape, historical significance, etc. *Trinity Assembly of God v. People's Counsel*, 407 Md. 53, 80 (2008).

In addition, the B.C.Z.R. requires a minimum of one acre of land before an owner may keep chickens. This is obviously to provide a buffer between adjoining properties, and in this case two adjoining neighbors objected to the petition. In these circumstances, granting the relief would constitute a "use variance," which is not permitted under B.C.Z.R. Section 307 of the B.C.Z.R. provides for dimensional, parking and sign regulation variances only. Varying the acreage requirement would permit a use that would otherwise not be permitted, and the Administrative Law Judge is not given the authority to grant such a variance.

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

THEREFORE, IT IS ORDERED, this 17th day of October, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from § 100.6 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to permit the housing of chickens on non-commercial property with an acreage of 7,600 sq. ft. (.175 acre) in lieu of the permitted 43,560 sq. ft. (1 acre), be and is hereby DENIED.

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

JEB:dlw

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County