

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(9 N Beaumont Avenue)		
1 st Election District	*	OF ADMINISTRATIVE
1 st Councilman District		
Kevin Richard Mercer	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	CASE NO. 2013-0304-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Kevin Richard Mercer, the legal owner of the subject property. The Petitioners are requesting Variance relief from Section 100.6 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit chickens on property with a 20,000 square foot lot area in lieu of the required 1 acre minimum. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the requests was Kevin Richard Mercer and Lindsay Thompson. The file reveals that the Petition was properly advertised and posted as required by the Baltimore County Zoning Regulations. Several neighbors attended the hearing and expressed support for the petition, and the file contains letters of support from all adjoining neighbors. Exhibit 3.

There were no substantive Zoning Advisory Committee (ZAC) comments received.

Testimony and evidence revealed that the subject property is approximately 20,000 square feet and is zoned DR 2. The Petitioner’s lot is large and wooded, and for over 3 years the Petitioner has kept chickens in a coop in the rear yard. A zoning complaint was filed with the County, and the Petitioner was informed he would need variance relief.

Based upon the testimony and evidence presented, I will grant 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).

Petitioner has met this test. The Petitioner's lot is large and wooded (more so than adjoining properties) and it is therefore unique.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty, given he would be unable to keep chickens on the property. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the lack of county opposition, and the strong support of the community.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the variance relief requested shall be granted

THEREFORE, IT IS ORDERED, this 28th day of August, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Baltimore County Zoning Regulations ("B.C.Z.R") to permit chickens on a property with 20,000 square foot lot area in lieu of the required 1 acre minimum, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.

- Petitioner may keep on the property a maximum of four (4) chickens. The Petitioner shall not keep a rooster on the premises.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:sln