

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(2105 Vailthorn Road) *	OFFICE OF
15 th Election District *	ADMINISTRATIVE HEARINGS
6 th Council District *	
Renfro Carter *	FOR BALTIMORE COUNTY
<i>Legal Owner</i> *	
Petitioner *	Case No. 2015-0134-SPHA
* * * * *	

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of the legal owner. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve a pigeon coop as a nonconforming use/structure. In addition, a Petition for Variance §100.6 seeks to permit the housing of pigeons on a lot of 0.037 acre in lieu of the required 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 of the requests was Renfro Carter and several neighbors. John Roche, Esq. appeared on behalf of the Petitioner. There were no Protestants or interested citizens in attendance.

The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A substantive Zoning Advisory Committee (ZAC) comment was submitted by the Department of Planning (DOP). That agency opposed the petition for variance.

The subject property is approximately 0.037 acres and is zoned DR 10.5. The property is improved with a row home, and it is part of the Hawthorne Community created by plat in 1953. Exhibit 5.

To obtain variance relief a petitioner must show:

- (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 cannot satisfy this test. I concur with the DOP's ZAC comment that there are no special circumstances peculiar to this lot. Indeed, it is nearly identical in size and configuration to the many other houses in the community. As such, the petition for variance will be denied.

PETITION FOR SPECIAL HEARING

Petitioner purchased the subject property in 1992, as shown on state tax records in the case file. Petitioner testified he constructed his coop shortly after that time and has kept pigeons continuously since that time. William Lantz, Petitioner's neighbor, has lived in the area since 1986, and he recalls Petitioner informing him (shortly after moving to the house in 1992) that he would be keeping pigeons. Mr. Lantz stated that he has no concerns with the coop, and he (and Tammy Jackson Lincoln who also resides with Mr. Lantz) testified that the coop is clean and that Petitioner takes good care of the birds.

Similar testimony was provided by Norman Burke, who has for over 15 years lived just four houses away from the Petitioner. Also, Mr. Burke grew up with his parents in the same neighborhood, and was aware that since 1992 or thereabout the Petitioner kept pigeons on the property. Mr. Burke advised that the Petitioner takes care of his property and the coop, and said the pigeons have never caused a problem or concern.

The final witness was Janet Miller, a 30+ year resident of the community who lives a several streets away. Ms. Miller testified she received a Baltimore County e-newsletter advising of the zoning hearing in this case, and she attended the hearing without being requested to do so by Petitioner or anyone on his behalf. She testified she has through the years frequently walked her dogs through the alleys and streets in the community, and has long been aware of the pigeon

coop. She stated that the coop and birds are well cared for, and she believes Petitioner should be entitled to keep the structure and the pigeons as he has done for years.

Bill 63-09, which became effective on or about September 2009, added “pigeons to the list of animals for which the Zoning Regulations require a minimum amount of acreage.” The testimony in this case clearly establishes Petitioner constructed the coop and kept pigeons long before 2009, and has done so on a continuous basis. As such, Petitioner has established a lawful nonconforming use B.C.Z.R. §104.3.

THEREFORE, IT IS ORDERED this 6th day of February, 2015, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to approve a pigeon coop as a nonconforming use/structure, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking to permit the housing of pigeons on a lot of 0.037 acre in lieu of the required 1 acre, be and is hereby DENIED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at his own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.

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

JEB/sln

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County