

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(1945 Victory Drive)		
13 th Election District	*	OF ADMINISTRATIVE
1 st Council District		
Thomas & Carol Newhart	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	CASE NO. 2015-0072-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance on behalf of the legal owners of the subject property. The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §100.6 to permit pigeons on property with approximately 7,000 square feet of land in lieu of the required minimum one (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.

Thomas & Carol Newhart and David J. Glorioso appeared in support of the requests. No Protestants or interested citizens attended the hearing. The Petition was advertised and posted as required by the B.C.Z.R. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) dated October 23, 2014 and the Bureau of Development Plans Review (DPR) dated October 9, 2014. Neither agency opposed the request, but did provide suggested conditions for inclusion in the final order.

Prior to addressing the petition for variance, based on the testimony and evidence I believe Petitioners are entitled to continue the pigeon coop as a lawful nonconforming structure/use. Petitioners purchased the home in 1987, and Mr. Glorioso testified he has used the

coops on a continuing basis since that time. The seller of the property submitted a letter confirming the coops were on the property when it was sold in 1987. The prohibition on keeping pigeons on a property less than one acre in size was added to the B.C.Z.R. in 2009 (Bill 63-09), which was long after Petitioners had begun the use in question. As such, the Order which follows will also include a finding that Petitioners have established a lawful nonconforming use (B.C.Z.R. § 104) for the pigeon coop.

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 met this test. The property is narrow and deep (35' x 204') and is improved with a duplex dwelling. As such it is unique. If the B.C.Z.R. were strictly interpreted, the Petitioners would suffer a practical difficulty, given they would need to dismantle the pigeon coop they have used for over 25 years. 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 support from Petitioners' neighbors, 36 of whom signed a petition (Exhibit 2) stating they have "no objection or complaint regarding the pigeon hobby at 1945 Victory Drive."

The DPR suggested a fence be installed along Petitioners' rear property line. Petitioners submitted a photo (Exhibit 3) showing the property is in fact enclosed with chain link fencing. The DOP recommended that one of the two pigeon coops be removed, and Petitioners indicated they were amenable to this request.

THEREFORE, IT IS ORDERED, this 21st day of November, 2014, by the

Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations (“B.C.Z.R.”) §100.6 to permit pigeons on property with approximately 7,000 square feet of land in lieu of the required minimum one (1) acre, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the pigeon coop on the premises is a lawful nonconforming structure/use.

The relief granted herein shall be subject to the following:

1. Petitioners must within 60 days of the date hereof remove from the subject property the pigeon coop which is closest to their dwelling.

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