

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(1 Lamont Place)</b>		
11 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
3 <sup>rd</sup> Councilman District		
Kurt E. & Michelle A. Nachtman	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2015-0033-A</b>

\* \* \* \* \*

**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 owner of the subject property. The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) § 100.6 to permit the housing of chickens on a property smaller than one (1) acre. The property is approximately 34,848 sq. ft., while the regulations require one (1) acre (43,560 sq. ft.). 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 request was Kurt and Michelle Nachtman. An adjoining neighbor, represented by Maxwell Collins, Esquire, opposed the petition. The Petition was advertised and posted as required by the B.C.Z.R. A Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP) dated September 4, 2014, indicating that agency did not support the petition.

The subject property is zoned RC 5. This classification, like all RC zone designations, indicates the property is considered “rural Baltimore County.” B.C.Z.R. § 1A00.1.G. Keeping and raising chickens, as well as other forms of farming, agriculture and animal husbandry, are appropriate uses in rural areas of Baltimore County. But the regulations require one (1) acre,

while the Petitioners' lot is just 0.8 acre. As such, zoning relief is required.

Mr. Collins objected to the Petition, and argued that the prohibition on keeping chickens is also contained in the Baltimore County Code (B.C.C.) (§ 13-7-311). This, he argued, means the Administrative Law Judge (ALJ) is without authority to grant zoning relief. I disagree. The B.C.Z.R., like the B.C.C., is enacted by the Baltimore County Council, and has the force of law. B.C.Z.R. § 307 provides this office with authority to grant variances to (among other things) "area" regulations. In this case, the one acre requirement is an area regulation, and thus in keeping with this Office's long-standing practice, I believe the request is proper.

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.

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

Petitioners have met this test. As shown on the plan, the Petitioners' lot is of irregular dimensions and is bound on two sides by public roadways. But more importantly, it is the size of the lot, relative to those in the community, that makes the property unique. Petitioners submitted tax records indicating that the other homes in the Honeysuckle Hill subdivision are at least one acre in size. Indeed, current RC 5 regulations specify a 1.5 acre minimum lot size for a dwelling in the zone. B.C.Z.R. § 1A04.3.B.1. What this means is that nearly every other owner in the community, except for Petitioners, are permitted as of right to keep chickens on their property (with "no numerical limit"). B.C.Z.R. § 100.6. Thus I believe the property is unique.

If the B.C.Z.R. were strictly interpreted, the Petitioners would suffer a practical difficulty, given they would be unable to keep chickens, a privilege enjoyed by all neighboring owners. Variance relief is especially appropriate in such circumstances. 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. I will impose additional restrictions in the Order which follows in an effort to ensure that the use will not have a detrimental impact upon the neighborhood.

THEREFORE, IT IS ORDERED, this 1<sup>st</sup> day of October, 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 the housing of chickens on a lot smaller than one (1) acre, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. No roosters may be kept on the premises.
3. Petitioners may keep no more than three (3) chickens on the property.
4. Petitioners shall not allow the chickens off of their property.

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

JEB:dlw

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County