

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(2914 Delaware Avenue)		
13 th Election District	*	OF ADMINISTRATIVE
1 st Council District		
Donald & Eva Nieberlein	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2016-0265-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 Donald & Eva Nieberlein, legal owners of the subject property (“Petitioners”). Petitioners request variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §100.6 to permit chickens to be kept on a residential property that is 6,250 sq. ft. in lieu of the required 1 acre. A site plan was marked as Petitioners’ Exhibit 1.

Donald & Eva Nieberlein appeared in support of the Petition. The Petition was advertised and posted as required by the B.C.Z.R. No Protestants or interested citizens attended the hearing. A substantive Zoning Advisory Committee (ZAC) comment was submitted by the Department of Planning (DOP). That agency opposed the request, and indicated Petitioners failed to address how noise and/or nuisance concerns would be addressed.

The subject property is approximately 6,250 square feet and is zoned DR 5.5. The property is improved with a small single-family dwelling. Petitioners stated they acquired several chickens over a year ago, and have since that time kept the birds in a small coop in their backyard. Petitioners testified their neighbors and grandchildren are especially fond of the hens. The Petitioners eat the eggs laid by the hens, and also share many of the eggs with their neighbors.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

Petitioners have met this test. The property has irregular dimensions and is therefore unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would not be permitted to keep the chickens. 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.

Petitioners submitted photographs which show their property is attractive and well maintained. Exhibit 3. Mr. Nieberlein stated he cleans the chicken coop on a regular basis, and said they have never had a problem with pests or rodents. Petitioners stated they do not own a rooster, and that the hens are very quiet. In any event, leaf blowers and dogs (both common in suburban environments) generate far more noise than a small number of hens. I believe this testimony adequately addresses the concerns identified by the DOP.

In addition, Petitioners testified there have been no complaints whatsoever since they acquired the birds over a year ago. Petitioners suspect an anonymous complaint was filed by a neighbor down the street, with whom Petitioners recently had a disagreement. Petitioners also submitted a document signed by their adjoining and nearby neighbors, all of whom stated they are “NOT opposed to Mr. Nieberlein’s ownership of chickens.” Exhibit 2 (emphasis in original). In these circumstances, I do not believe granting the request would be detrimental to the health, safety and welfare of the community.

THEREFORE, IT IS ORDERED, this 22nd day of **June, 2016**, 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 chickens to be kept on a residential property that is 6,250 sq. ft. in lieu of the required 1 acre, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. No roosters may be kept on the subject property.

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