

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(13005 Eastern Avenue)		
15 th Election District	*	OF ADMINISTRATIVE
6 th Council District		
Jeffrey McCubbin	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner	*	CASE NO. 2016-0307-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 Jeffrey McCubbin, owner of the subject property (“Petitioner”). Petitioner is requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §100.6.A to permit fowl or poultry (chickens) on a tract of 0.835 acres in lieu of the required minimum one acre. A site plan was marked as Petitioner’s Exhibit 1.

Owner Jeffrey McCubbin appeared in support of the Petition. In addition, several neighbors wrote letters of support for the request. There were no protestants or interested citizens in attendance. 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) and the Bureau of Development Plans Review (DPR). Neither agency opposed the request, but they suggested certain conditions be imposed in the final Order.

The subject property is approximately 0.835 acres and zoned D.R. 2. The property is improved with a small single-family dwelling in which Petitioner and his wife reside. For over 4 years Petitioner has kept chickens in a cage located in the rear yard.

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).

Petitioner has met this test. The property is narrow and deep (100' x 365') and is therefore unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because he would not be able to keep the chickens he has had for over 4 years. 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 Baltimore County and/or community opposition.

The Bureau of DPR requested a landscape plan be submitted, but I do not believe such a requirement should be imposed in this case. As noted, the Petitioner has had the chickens for over 4 years, and only recently was an anonymous complaint lodged with the County. The chickens are kept in a large enclosure with an attached outdoor run, and they are located in the rear of the property. As explained by petitioner, due to the positioning of the neighbor's large garage, the chicken coop is in fact not visible from the road or adjoining properties.

The DOP suggested, among other things, that all 3 roosters be removed, and that Petitioner be limited to 6 hens. Petitioner explained he has given away one of his roosters, and anticipates relocating a second rooster in the near future. I do not believe keeping one rooster will create a nuisance at this location, and Petitioner stated he has never received a noise complaint. As for the number of hens, I believe that a limitation of 15 is appropriate given the size of the property, enclosure (which was previously used as a motor vehicle garage) and the 50+ sq. ft. outdoor run area. While the DOP suggested a 10 ft. side yard setback, the existing structure is located 5 ft. from the side yard property boundary, and the Regulations only require a 2 ½ ft. setback for

accessory structures. The remainder of the DOP's comments are included as conditions in the order below.

THEREFORE, IT IS ORDERED, this 5th day of August, 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 fowl or poultry (chickens) on 0.835 acres of land in lieu of the required minimum one acre, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may keep not more than 1 rooster on the property.
2. Petitioner may keep not more than 15 hens on the property.
3. The enclosure and run area for the chickens must be kept clean, dry and free of odors and debris.

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