

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(898 Susquehanna Avenue)		
15 th Election District	*	OF ADMINISTRATIVE
6 th Council District		
Jennifer & Ryan Gray	*	HEARINGS FOR
<i>Legal Owners</i>		
Petitioners	*	BALTIMORE COUNTY
	*	CASE NO. 2019-0281-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Jennifer & Ryan Gray, legal owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from Section 100.6 of the Baltimore County Zoning Regulations (“BCZR”) to permit chickens to be kept on a property 0.735 acres in size in lieu of the required minimum 1 acre. A site plan was marked as Petitioners’ Exhibit 1.

Jennifer and Ryan Gray appeared in support of the petition. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and the Department of Environmental Protection and Sustainability (“DEPS”).

The site is approximately 32,016 square feet in size and is zoned DR 3.5. The property is improved with a single-family dwelling and is located in the Bowleys Quarters community. Petitioners purchased the property in 2016 and have since that time kept chickens and a rooster in a coop in their yard. An anonymous complaint was filed with Baltimore County and Petitioners were instructed to file a variance petition.

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).

The property is three times as deep as it is wide, which renders it unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to keep chickens on the property. Finally, I find that the variance can be granted in harmony with the spirit and intent of the BCZR, and in such manner as to grant relief without injury to the public health, safety and general welfare.

Petitioners own a relatively large lot and their adjoining neighbors submitted letters indicating they support the request. *See* Pets. Ex. Nos. 4-6. The photographs submitted at the hearing showed the chicken coop is clean and well-constructed. As such I do not believe granting the request would have a detrimental impact upon the community. According to the site plan the coop is located in the side yard of the dwelling. *See* Pets. Ex. 1. Section 400 of the BCZR requires accessory structures to be located in the rear yard; as such, the petition will be amended to include an additional variance request permitting the coop to remain in its current location.

In its ZAC comment the DEPS confirmed the site is within the Chesapeake Bay Critical Area. Since Petitioners are not proposing any new structures or improvements of any kind, DEPS determined the request is consistent with critical area requirements.

The DOP suggested Petitioners should be restricted to keeping no more than four chickens and no roosters. While such a restriction might well be appropriate in a case involving a smaller lot in a more dense community, I do not believe it would be appropriate in this case. The subject

property is in excess of ¾ of an acre, which means Petitioners' variance request is to reduce by less than 25% the minimum acreage requirement. This property is significantly larger than many of the properties which have been the subject of similar variance requests. In addition, the Bowleys Quarters community has a rural feel and a neighbor noted "chickens are very common throughout Bowleys Quarters." *See* Pet. Ex. 6. In addition, the BCZR does not limit the number of chickens which can be kept on a 1 acre parcel, as it does in the case of horses and livestock. BCZR §100.6.

THEREFORE, IT IS ORDERED, this 14th day of **May, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to the Baltimore County Zoning Regulations ("BCZR") to permit chickens to be kept on a property 0.735 acres in size in lieu of the required minimum 1 acre, and to permit an existing accessory structure (chicken coop) to be located in the side yard in lieu of the required rear yard, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners would be required to return the subject property to its original condition.
2. Petitioners shall be permitted to keep no more than twenty (20) chickens on the property.
3. Petitioners shall be permitted to keep the rooster they now own, but when that bird dies or is otherwise no longer kept on the premises it may not be replaced and no roosters may be kept on the property from that point forward.

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