

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(8027 Hillendale Road)		
9 th Election District	*	OFFICE OF
6 th Council District		
Patricia Wolfe	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No. 2020-0192-A
* * * * *		

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of a Petition for Variance filed on behalf of Patricia Wolfe, legal owner (the “Petitioner”) for property located at 8027 Hillendale Road (the “Property”). The Variance was filed pursuant to Baltimore County Zoning Regulations (“BCZR”) §100.6 and §400.1 to permit a proposed poultry (chickens) on .41 acres in lieu of the required minimum 1 acre, and to permit an accessory structure (chicken coop) located in the front yard in lieu of the required rear yard.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Matthew Todd Dooms appeared at the hearing on behalf of his mother, Patricia Wolfe, the legal owner. There were no Protestants or interested citizens in attendance.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and the Department of Environmental Protection and Sustainability (“DEPS”) which did not oppose the requested relief.

The Property measures 9,000 sq. ft. +/- (SDAT records) and zoned Density Residential (DR 5.5). A site plan indicates that the Property measures 18,000 sf. It is comprised of Lots 853-856. It is located in the residential neighborhood of Hillendale Park. It is improved with a 1-story

brick and frame single family home which faces Hillendale Rd. but is accessed via a driveway off Daytona Rd. The home sits within 5 ft. of the rear Property line. (Pet. Ex. 4). Thus, the front yard is larger because the home is not centered within the Property. (Pet. Ex. 2a and 2b). There is an 8 ft. x 10 ft. shed located on the eastern/side yard.

Patricia Wolfe, the legal owner was not present at the hearing. Her son, Matthew Dooms, who testified, confirmed that this Petition is actually his request to have a chicken coop. He wants to have 10 hens, no roosters. The coop would be made of wood and would measure 3 ft. x 4 ft. and will sit next to the shed. Mr. Dooms stated that although he has never built a chicken coop, he has built other things. He intends to use pieces of concrete blocks which came from another area of the Property as the floor of the coop.

Mr. Dooms plans to use a galvanized feeder. Mr. Dooms testified that he will regularly clean coop. He will place pine shavings inside to keep the moisture down. A fenced-in area measuring 15 x 15 will surround the coop for the chickens to run. Mr. Dooms also testified that he would supervise the chickens if he let them run in the fenced in area to keep away other animals who might attack them. He was unaware if there were other chicken coops in the neighborhood.

The general rule is that “the authority to grant a variance should be exercised sparingly and only under exceptional circumstances.” *Mueller v. People’s Counsel for Baltimore County*, 177 Md. App. 43, 71(2007). This is because “a variance is an authorization for that which is prohibited by a zoning ordinance.” *Cromwell v. Ward*, 102 Md. App. 691, 699 (1995). “Citizens [of a given county or municipality] are entitled to strict enforcement of the existing zoning regulations.” *Salisbury Bd. of Zoning Appeals v. Bounds*, 240 Md. 547, 555-56 (1965). Therefore, “[t]he burden is on the applicant to show facts to warrant a variance,” and “the specific need for the variance must be substantial and urgent and not merely for the convenience of the applicant.” *Mueller v.*

People's Counsel for Baltimore County, 177 Md. App. at 70.

Under BCZR, §307, and Maryland common law, in order to be entitled to variance relief the Petitioners must satisfy a two-step legal analysis, 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 is what necessitates the requested variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

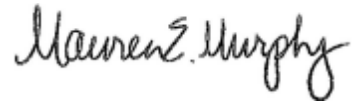
Cromwell v. Ward, supra.

In the instant case, the Site Plan, photographs, and testimony favor the finding that the Property is unique due to the large front yard and minimal rear yard. However, I do not find that this uniqueness causes a practical difficulty or unreasonable hardship on Mrs. Wolfe because even if the coop could be placed in the rear yard, the Property is still fails to meet the 1 acre minimum required under BCZR, §100.6. It is also for this reason that a variance here cannot be granted within the strict harmony of the BCZR which specifies that 1 acre minimum lot size for a chicken coop is required and that the coop needs to be placed in the rear yard. I further find that this Petition is at the request of Mr. Dooms who is not the legal owner of the Property and a variance, if granted, would run with the land. This Petition is for the mere convenience and personal desire of Mr. Dooms; it is not a necessity. Because this area is not farmland, I find that having a chicken coop on this undersized lot will be detrimental to this neighborhood of single family homes which are close together. At a minimum, I find that a chicken coop here will attract foxes, rats and hawks to this residential area.

THEREFORE, IT IS ORDERED this **15th** day of **April, 2021** by this Administrative Law Judge, that the Petition for Variance seeking relief pursuant to §100.6 and §400.1 of the Baltimore County Zoning Regulations (“BCZR”) to permit a proposed raising poultry (chickens) on .41 acres

in lieu of the required minimum 1 acre and to permit an accessory structure (chicken coop) located in the front yard in lieu of the required rear yard is hereby **DENIED**.

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

A handwritten signature in black ink that reads "Maureen E. Murphy". The signature is written in a cursive style with a large, looped 'M' and 'P'.

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlm