

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
(713 Hollow Road)		
1 st Election District	*	OFFICE OF ADMINISTRATIVE
1 st Council District		
Christopher J. & Jessica L. Hughes	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	CASE NO. 2021-0054-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Administrative Variance filed by the legal owners of the property, Christopher J. and Jessica L. Hughes (“Petitioners”). The Petitioners are requesting Variance relief from § 100.6 of the Baltimore County Zoning Regulations (“BCZR”), to permit the housing of chickens for non-commercial use on a residential lot that is 33,512 sq. ft. in lieu of the required 43,560 sq. ft. (1 acre) minimum lot size. 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.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. There were no adverse ZAC comments received from any of the County reviewing agencies. However, it is to be noted that an email was received on March 24, 2021 from Shirley McMonigle expressing her concerns about the Petitioners’ request.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on March 7, 2021, and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

The Petitioners have filed the supporting affidavits as required by § 32-3-303 of the Baltimore County Code (“BCC”). However, I must also consider the objections raised by Ms. McMonigle in her email. And I am also bound by the controlling law, which holds 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). And because “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. Finally, “unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship.” *Mueller, supra*, 177 Md. App. at 70.

In the instant case, the site plan and photographs fail to show that there is anything unique about this property. The Petitioners have therefore failed to meet the first prong of the legal analysis. Further, even if I were to reach the second prong, the record evidence does not support

a finding that Petitioners' need for this variance is "substantial and urgent." *Mueller, supra*, 177 Md. App. at 70. I understand that the Hughes have many good reasons for wanting to raise chickens on their property. However, I must also consider the rights of their neighbors, who are entitled to "strict enforcement of the existing zoning regulations." *Salisbury Bd. Of Zoning Appeals v. Bounds*, 240 Md. 547, 555-56 (1965). The existing zoning regulations require an acre of property to raise chickens, and in this case the Hughes' lot is only three quarters of an acre.

THEREFORE, IT IS ORDERED, this 7th day of **April, 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance from § 100.6 of the Baltimore County Zoning Regulations ("BCZR") to permit the housing of chickens for non-commercial use on a residential lot that is 33,512 sq. ft. in lieu of the required 43,560 sq. ft. (1 acre) minimum lot size, be and is hereby DENIED.

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

Signed _____
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:dlw