

IN RE: <b>PETITION FOR VARIANCE</b>	*	BEFORE THE
<b>(907 Adana Road)</b>		
3 <sup>rd</sup> Election District	*	OFFICE OF
2 <sup>nd</sup> Council District		
Matthew P. & Maria F. Cesnik	*	ADMINISTRATIVE HEARINGS
<i>Legal Owners</i>	*	FOR BALTIMORE COUNTY
<b>Petitioners</b>	*	<b>Case No. 2020-0056-A</b>
* * * * *		

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of a Petition for Variance filed on behalf of Matthew P. and Maria F. Cesnik, legal owners (“Petitioners”). The Variance was filed pursuant to § 100.6 of the Baltimore County Zoning Regulations (“BCZR”) to permit fowl or poultry (chicken) on lot with 0.177 acres in lieu of the minimum 1.0 acres. A site plan was marked and admitted as Petitioners’ Exhibit 2.

Due to the COVID-19 pandemic, a WebEx hearing was conducted remotely by computer and/or phone participation. The Petition was advertised and posted as required by the BCZR.

Petitioners, Matthew P. and Maria F. Cesnik, appeared in support of the petition. Their next door neighbor, Jessica Skillman, testified in opposition to the requested variance. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”) dated April 24, 2020.

The site is approximately 7,701 sq. ft. in size and zoned DR 5.5. It is a flat, rectangular lot, with no remarkable natural features. It is similar to the other lots on the street. Mr. Cesnik testified that they moved from Bloomington, Indiana to Pikesville with four chickens. He testified that the realtor who sold them the house told them that chickens were permitted at this location. This is incorrect. BCZR § 100.6 requires a minimum of 1 acre of land in order to keep chickens. The

Cesnik's lot is only .177 of an acre. The Cesnik's testified that they are very attached to their chickens, Pippa and Maddie. They presented a powerpoint detailing every aspect of the chickens' lives. (Petitioners' Exhibit 1). They testified that the chickens are not overly noisy. Their neighbor, Ms. Skillman, told a very different story. She testified that the chickens are often loud and that they also have a strong odor. Ms. Skillman testified that the chickens' cries sound quite like a child's cry and that this is quite disturbing to her and her children. She submitted a video/audio tape of the chickens that supports her noise complaint. (Protestant's Exhibit 2).

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). 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 Sec. 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, photographs, and testimony 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 am sympathetic to the Cesniks because it is evident that they are very attached to their chickens. 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). Residents living in a densely populated neighborhood such as this one do not expect to be living next to barnyard sounds and odors.

THEREFORE, IT IS ORDERED this **25th** day of **August, 2020** by this Administrative Law Judge, that the Petition for Variance seeking relief pursuant to § 100.6 of the Baltimore County Zoning Regulations (“BCZR”) to permit fowl or poultry (chicken) on lot with 0.177 acres in lieu of the minimum 1.0 acres, is hereby DENIED.

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

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

PMM:dlm