

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(1955 Ewald Avenue)		
12th Election District	*	OF ADMINISTRATIVE
7th Council District		
Edwin C. Perez	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2020-0140-A
* * * * *		

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Edwin C. Perez, legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief from Baltimore County Zoning Regulations (“BCZR”) §§ 100.6 and 400.1 to approve pigeons/pigeon coop on 2,600 sq. ft. of land (.06 of an acre) in lieu of the minimum required 1 acre of land; and for an accessory structure (pigeon coop) in the left side yard of the property in lieu of the required rear yard. A site plan was marked as Petitioners’ Exhibit 1.

Due to the COVID-19 pandemic, a WebEx hearing was conducted remotely by computer and/or phone participation.

Edwin Perez appeared in support of the petition. There were interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. A Substantive Zoning Advisory Committee (“ZAC”) was received from the Department of Planning (“DOP”). They did not oppose the requested relief, subject to proposed conditions.

FINDINGS OF FACT

Petitioner’s residence is the end unit in a group of row homes in Dundalk. The site is approximately 2600 square feet in size and is zoned DR 10.5. It is a flat, rectangular lot, with no

remarkable natural features. On May 7, 2020 a neighbor lodged a complaint with the Baltimore County Code Enforcement office, alleging “[r]at infestation underneath shed in backyard which is converted into a pigeon coupe (*sic*). Constant rat traffic in and out of side yard which houses pigeon coupes. Rat droppings are eminent everywhere.” In response to this complaint a County code inspector responded to the subject address and issued a Correction notice requiring Mr. Perez to “cease illegal pigeon coop, one acre of land is required for any poultry on residential property.” That Correction notice has been held in abeyance pending resolution of the instant variance case.

The Petitioner, Mr. Perez, explained that he has had a pigeon “loft” on the property since 2013 and had never received any complaints until now. Mr. Perez testified that these are racing pigeons, and he submitted a current membership card indicating that he is a member of the American Racing Pigeon Union, Inc. He noted that under the Code of Federal Regulations pigeons are not defined as poultry. *See*, 9 C.F.R. Sub-part A, 145.1. He testified that the pigeons are not wild birds. Rather, they each have a pedigree and are registered, highly trained, and well cared for. He explained that they are not allowed to fly freely but only under his direct supervision. He further explained that he keeps the lofts and the rest of his yard neat and clean. He testified that their feed is delivered every Wednesday and that he cleans the lofts every day and stores the pigeons’ waste in a sealed metal container. The waste is collected each Friday and taken to a farm in Howard County to be used as fertilizer. Mr. Perez further explained that his son Camaron has cerebral palsy and that the pigeons are very therapeutic for him because he helps with their care and enjoys their companionship. Medical evidence of Camaron’s condition was admitted as Petitioner’s Exhibit No. 7.

In addition Mr. Perez submitted a letter (Petitioner’s Exhibit No. 2) signed by nearly all the surrounding neighbors attesting that the pigeons have not been a nuisance, and expressing

support for the requested variances. Andrea Chambless, who lives two doors down at 1959 Ewald Avenue, testified that there has been an ongoing rat problem throughout the neighborhood and that the problem has been exacerbated by the Covid crisis because when restaurants shut down the rats were forced to forage more in the residential areas. She stated that Mr. Perez has been a good neighbor and that he keeps his pigeon loft and the rest of his property neat and clean. She testified that she has never been bothered by the pigeons and that she does not believe that they are causing the rat problem.

Finally, Rick Remeto testified that he purchased the house immediately next door to Mr. Perez last August and that he has been doing substantial renovations. He explained that the former owner did not inform him of the fact that Mr. Perez has a pigeon loft. Mr. Remeto explained that he recently found a large rat in his basement and that he believes the pigeon loft almost certainly attracts rats looking for food. He explained that he does not want to be a bad neighbor but that he is strongly opposed to these pigeons on such a small lot in this very densely populated neighborhood.

CONCLUSIONS OF LAW

BCZR § 100.6 requires a minimum of one acre of land in order to keep “Fowl or Poultry,” which the regulation defines as “chickens, ducks, turkeys, geese, or *pigeons*.” (emphasis added). The subject property is only 2600 sq. ft, or .06 of an acre. Mr. Perez pointed out that the federal regulations do not define pigeons as poultry, but, unfortunately for him, the County zoning regulations *do*. That is why he needs the variance relief requested.

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, Petition 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.

I am very sympathetic to Mr. Perez’s situation and plight. I do believe, based on his testimony, the testimony of his neighbor Ms. Chambless, and the petition signed by the other neighbors, that he has maintained the pigeon loft and the pigeons in a cleanly condition. I am also not convinced that the pigeon loft exacerbates the neighborhood rat problem, although I cannot rule out that possibility. Further, I am also loathe to impact his son Camaron’s health by removing this therapeutic hobby. However, the record evidence, including the site plan, photographs, and testimony fail to show that there is anything unique about this property. To the contrary, the subject property is identical to all the others in this row home community. It is true that it is an end unit but there are numerous other identical end units in the community. Petitioner has therefore failed

to meet the first prong of the legal analysis, and I am constrained from even proceeding to the second prong. *Mueller, supra*, 177 Md. App. at 70.

Further, even if I could reach the second prong of the analysis, a “self-inflicted” hardship cannot support the grant of a variance. And in this case it is undisputed that Mr. Perez has created this hardship by building and maintaining his pigeon loft on this undersized lot. In *Cromwell, supra*, the court explained that “[i]t is not the purpose of variance procedures to effect a legalization of a property owner’s intentional or unintentional violation of zoning requirements.” *Id.*, 102 Md. App. at 726. The court further stressed that “[w]ere we to hold that self-inflicted hardships in and of themselves justified variances, we would effectively not only generate a plethora of such hardships but we would also emasculate zoning ordinances.” *Id.*

In sum, I would like nothing more than to grant these variances but I am bound to follow the law. And I must also consider the rights of the next door neighbor, who is entitled to “strict enforcement of the existing zoning regulations.” *Salisbury Bd. Of Zoning Appeals v. Bounds*, 240 Md. 547, 555-56 (1965). When he moved into this densely populated neighborhood he did not expect that he would be living next door to over thirty pigeons. And the County zoning regulations simply do not allow it. This decision is in line with the decision in Case No. 2020-0056-A (denying a variance for chickens on an undersized lot), and Case No. 06-112-A (denying a variance for racing pigeons on an undersigned lot). Because I understand the attachment that the Perez family has to their pigeons, and because of the uncertainties associated with the ongoing Covid crisis, I will provide Mr. Perez 180 days to find a new home for the pigeons, and I sincerely hope that he and his son are able to continue to own them.

THEREFORE, IT IS ORDERED, this **16th** day of **November, 2020**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to (“BCZR”) §§ 100.6

and 400.1 to allow the keeping of pigeons on 2,600 sq. ft. of land in lieu of the minimum required 1 acre of land; and to allow an accessory structure (pigeon loft) in the side yard of the property in lieu of the required rear yard is hereby DENIED.

IT IS FURTHER ORDERED that the Petitioner shall have 180 days from the date of this Order to remove the subject pigeons from the property.

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/dlm