

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
(11605 Terry Town Drive)		
4 th Election District	*	OFFICE OF ADMINISTRATIVE
4 th Council District		
Melyssa A. & Patrick N. Kenney	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	CASE NO. 2020-0263-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, Melyssa A. and Patrick N. Kenney (“Petitioners”). The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (“BCZR”) § 100.6 to permit the housing of fowl on a lot that is 8,125 sq. ft. in lieu of the required minimum of one (1) acre or 43,560 sq. ft. 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.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on November 8, 2020, 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”). I will therefore apply the law to the submitted evidence.

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.

In the instant case, fails to show that there is anything unique about this property. The site plan shows a dwelling and lot that are quite similar to all the surrounding properties. 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 the petitioners’ desire to raise chickens on their property. However, the applicable zoning regulation requires a minimum lot size of an acre to do so and the petitioner’s lot is only a fifth of an acre.

Perhaps because of the Covid pandemic I have recently received numerous requests to permit chickens on undersized lots and I have denied them all because it is not my role to act as a legislator. The County Council has deemed that an acre is the minimum lot size for this activity in residential zones, and that is not for me to gainsay. Finally, as noted above, the other residents in the neighborhood are entitled to “strict enforcement of the existing zoning regulations.” *Salisbury Bd. Of Zoning Appeals v. Bounds*, 240 Md. 547, 555-56 (1965).

THEREFORE, IT IS ORDERED, this 25th day of **November, 2020**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance from the Baltimore County Zoning Regulations (“BCZR”) § 100.6 to permit the housing of fowl on a lot that is 8,125 sq. ft. in lieu of the required minimum of one (1) acre or 43,560 sq. ft., 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