

IN RE: PETITION FOR VARIANCE
(3003 Edwards Avenue)
9th Election District
3rd Council District
Roxana Gomez
Legal Owner

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS OF
* BALTIMORE COUNTY
*
* **CASE NO: 2021-0237-A**

Petitioner

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by Roxana Gomez (the “Petitioner”) for property located at 3003 Edwards Avenue (the “Property”). The Petitioner is requesting variance relief from the Baltimore County Zoning Regulations (“BCZR”) §100.6 to permit chickens to be kept on a property with an area of 7,800 sq. ft. of land in lieu of the required 1 acre of land.

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. Ms. Gomez appeared at the hearing. A site plan was admitted as Petitioner’s Exhibit 1.

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

The Property is approximately 7,800 sq. ft., is zoned DR 5.5. Ms. Gomez explained that she has an autistic son who is 15 years old and that she bought the chickens and constructed the coop as an emotional support for him, and that caring for these animals has been very therapeutic for him. She further explained that prior to constructing the coop and purchasing the chickens she was unaware of the regulation requiring a minimum one acre lot size. She submitted letters from

her son's Registered Nurse and from his Licensed Clinical Social Worker attesting to the medical and psychological benefits these animals provide for her son. In addition, Ms. Gomez submitted a petition in support of the requested variance signed by all of her adjoining neighbors. Finally, she explained that the only complaint she had received about the chickens was about the noise made by her rooster. But she testified that she has arranged for the relocation of the rooster and that it is no longer on the property.

A variance request involves a two-step process, 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 must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

The question of uniqueness is a stretch in this case since the lot is essentially a rectangle and the topography is unremarkable. However, the adjoining lots are shaped differently and it is on a quiet dead-end street. Further, due to the layout of the street the houses are further apart than is typical in DR 5.5 zones, and as shown on the site plan the coop is over 70 ft. away from the closest adjoining residences. I also find that the Petitioner and her disabled son would suffer extreme hardship if the variance were denied because her son would be denied the therapeutic benefits of the chickens. In a similar scenario the Board of Appeals recently held that the Americans with Disabilities Act, 42 U.S.C. § 12101 *et. seq.* protected the Petitioner's right to keep her emotional support chickens on an undersized lot. *See*, BOA Case No. 20-056-A.¹ Finally, I find that the variance relief will not harm the public health, safety, or welfare, and this is evidenced

¹ In that case the BOA actually denied the Variance relief upon finding that the Petition did not meet the legal elements. However, relying on the A.D.A., the Board granted the relief subject to certain conditions. Those conditions will also be imposed here.

in part by the fact that all the adjoining neighbors, as well as the County agencies, are not opposed.

THEREFORE, IT IS ORDERED, this 8th day of **December 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR § 100.6 to permit chickens to be kept on a property with an area of 7,800 sq. ft. of land in lieu of the required 1 acre of land is hereby **GRANTED**, subject to the following conditions:

1. The number of chickens cannot be increased;
2. The chickens cannot be used for commercial purposes;
3. The Petitioners must maintain the mitigation strategies already employed to minimize and untoward impact on neighboring properties or the people who inhabit those properties.
4. The Petitioners must make good faith efforts to resolve any complaints that individuals on adjoining properties may have; and
5. No roosters are permitted on 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