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| IN RE: PETITION FOR VARIANCE | * | BEFORE THE |
| (2509 Maple Road) | * | OFFICE OF ADMINISTRATIVE |
| 15th Election District | * | HEARINGS OF |
| 7th Council District | * | BALTIMORE COUNTY |
| Herbert & Lindsey Hauck | * | CASE NO: 2021-0243-A |
| Legal Owners | * | |
| Petitioners | * | |
| * * * * * | | |

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by Herbert and Lindsey Hauck, Petitioners (the “Petitioners”) for property located at 2509 Maple Road (the “Property”). The Petitioners are requesting variance relief from the Baltimore County Zoning Regulations (“BCZR”) § 100.6 to approve fowl or poultry (8 chickens) on 0.316 acres of land in lieu of the required minimum 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. Petitioner, Herbert Hauck, appeared at the hearing.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) in opposition to the requested relief. The Property is approximately 13,800 sq. ft., and is zoned DR 5.5. Mr. Hauck explained that he constructed the chicken coop during the Covid pandemic as an outlet for his young son, and he described how much his son and the rest of the family have benefitted from raising these chickens. He acknowledged that he did not research the Baltimore County Zoning Regulations prior to doing so, and he was therefore unaware of BCZR § 100.6, which requires a minimum one acre lot size for the housing of fowl. He further acknowledged that his Variance request arises out of a Code Citation he received regarding this

violation of the zoning regulations. He submitted photos of the site and of the chicken coop and chickens which were admitted as Petitioner's Exhibit 2. He also submitted a Petition signed by numerous community members in support of his variance request.

I truly appreciate Mr. Hauck's candor in explaining his request for relief. He was forthright in stating that he is not claiming that his son or any other family member needs the chickens for emotional support. I also acknowledge the community's support – although I note that the Code Citation was issued based on an anonymous complaint – so the support is not unanimous. But as much as I regret denying the requested variance I am bound to follow the law as it is written by the County Council unless there is a lawful basis for granting a variance from the law. And here there is not.

In order to be entitled to the variances requested in this case the Petitioner must satisfy BCZR § 307, which states as follows:

The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are *peculiar to the land or structure* which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare. They shall have no power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification. (emphasis added)

This regulation essentially codifies Maryland common law, which holds that “the authority to grant a variance should be exercised sparingly and only under exceptional circumstances.”

Mueller, supra, 177 Md. App. at 71. 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*, 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. Further, “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. Finally, a self-created hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell, supra*, Judge Cathell explained that:

Were 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. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

Cromwell, 177 Md. App. at 722.

In this case, the Department of Planning conducted a site visit and found that the property is not unique in any sense that would justify the requested variance. Further, as explained above,

even if it were unique the need for the variance arises out of the Petitioner's own actions, which also bars the variance relief. The County Council may one day amend the zoning regulations to permit the raising of chickens on a lot the size of Petitioners, but the current law requires a lot three times greater, and that is the law I must apply.

THEREFORE, IT IS ORDERED, this 6th day of **December 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR § 100.6 to approve fowl or poultry on 0.316 acres of land in lieu of the required minimum 1 acre of land 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/dlm