

IN RE: PETITION FOR VARIANCE

W side Wards Chapel Road, 1320 feet
SW from Reisberg Road
2nd Election District
2nd Councilmanic District
(3814 Wards Chapel Road)

Marilyn Lenz
Petitioner

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FORBALTIMORE COUNTY
* **CASE NO. 2009-0010-A**

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owner of the subject property, Marilyn Lenz. Petitioner is requesting variance relief from Section 100.6 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow eight small livestock on 3.35 acres in lieu of the required 4 acres. The subject property and requested relief are more fully depicted on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the variance request was Petitioner Marilyn Lenz and her attorney, A. Jalynn Almond, Esquire. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is irregular-shaped and contains approximately 3.35 acres of land, more or less, zoned R.C.2. The property is located on the west side of Wards Chapel Road, south of Liberty Road and north of Marriotsville Road, in the Marriotsville area of Baltimore County -- not far from the Baltimore County-Carroll County line. Access to the property off Wards Chapel Road is by way of a long macadam driveway that meanders across the property, through sloped terrain and around an existing pond. As shown on the site plan, the property is improved with a two-story dwelling, an in-ground pool, and a shed

and paddock area situated at the northwest corner of the property. Closer to the center of the property is a 1½-story stable. As also shown on the site plan, the in-ground pool and paddock areas are fenced-in and overall, the majority of the property is also surrounded by wood fencing.

Petitioner explained that she has always had an avid interest in animals and was looking for a farm with the land, fencing, and configuration for her to keep horses, ponies, and other similar animals. To that end, Petitioner purchased the subject property last year and has been living there ever since. Petitioner desires to keep three miniature horses, three ponies, and two alpacas on the land. Section 100.6 of the B.C.Z.R. requires small livestock to be kept at a rate of two animals for each acre of grazing or pasture land, with a minimum of three acres. As such, in order to keep the small livestock requested by Petitioner, she would need at least four acres for the eight animals. Petitioner has 3.35 acres, with a little more than three fenced-in acres available for grazing or pasture. As a result, Petitioner is requesting a variance from the minimum 4 acre requirement.

In support of the variance request, Petitioner's attorney, Ms. Almond, proffered the testimony and evidence. She discussed the differences between traditional horses and ponies, and their relationship to miniature horses. In addition, she submitted a copy of Chapter One from the book entitled, *Understanding the Pony: Your Guide to Horse Health Care and Management* by Karen Briggs, which delineates and explains the distinguishing characteristics of these animals. This document was marked and accepted into evidence as Petitioner's Exhibit 2. The book explains that the main difference between horses and ponies is that horses are the result of hundreds of years of selective breeding for greater speed, strength, and height, but with the sacrifice of losing their natural hardiness, disease resistance, and instincts that helped them survive in the wild. In contrast, most pony breeds have been forced to evolve in more

inhospitable conditions, thereby allowing ponies to retain qualities -- thick, shaggy manes and tails, heavier winter coats, hard hooves, more compact size, and proportionately shorter legs and a wider barrel and back -- to help in their survival over the long haul. *See, Petitioner's Exhibit 2.* The book also discusses miniature horses, which is the smallest member of the equine family. Miniature horses are designed with horse proportions, shrunk down to canine size, and are the result of breeding that uses mostly the tiniest offspring of various horse breeds to finally achieve a horse no more than 34 inches tall at the withers (the ridge between the shoulder bones of a horse). Miniature horses are rarely ridden by anyone other than a child, but are more often presented as show animals. *Id.*

As indicated above, Petitioner currently keeps three miniature horses. Marked and accepted into evidence as Petitioner's Exhibits 3A through 3C were the Certificates of Registration for the three miniature horses. These horses range in size from approximately 31 inches tall to 33½ inches tall. The total weight of the three horses is approximately 800 pounds. In addition, Ms. Almond noted that miniature horses are specifically delineated in Section 100.6 of the B.C.Z.R. as permitted small livestock. Photographs of the miniature horses were marked and accepted into evidence as Petitioner's Exhibits 6A through 6C. Petitioner also keeps three ponies on her property. One of the ponies is a foal and currently weighs approximately 400 pounds. He has been gelded and is about a year old and is 50 inches tall. The second pony is a full grown mare. She is eight years old and about 55 inches tall and is a Paso Fino breed. The third pony is also a full grown mare. She is about seven to eight years old and about 52 inches tall and is an Icelandic breed. Ms. Almond again noted that ponies are specifically delineated in Section 100.6 of the B.C.Z.R. as permitted small livestock. Photographs of the ponies were marked and accepted into evidence as Petitioner's Exhibits 6D through 6G.

In addition to the miniature horses and ponies, Petitioner has kept and desires to continue keeping alpacas on her property. Alpaca is a domesticated animal similar to the llama family of domesticated mammals. According to the Alpaca Owners & Breeders Association, Inc. Website, adult alpacas are about 36 inches tall at the withers and generally weigh between 100 and 200 pounds. They are gentle and easy to handle. Alpacas do not have incisors, horns, hooves or claws. They are not noisy and require minimal fencing and can be pastured at 5 to 10 per acre. They also have a community dung area so clean-up is relatively easy. Also according to the Website, alpacas produce one of the world's finest and most luxurious natural fibers. It is clipped from the animal without causing it injury, is as soft as cashmere, is warmer, lighter and stronger than wool, and comes in more colors than any other fiber producing animal. Petitioner indicated that alpaca fur presents a good alternative for people with wool aversions or allergies because the alpaca fur is hypoallergenic.

In further support of the variance requests, Ms. Almond presented a collection of photographs of the subject property. These photographs were marked and accepted into evidence as Petitioner's Exhibits 5A through 5X. As shown in the photographs, the property is characterized topographically by slopes and wooded terrain. A large pond is also located towards the center of the property. The photographs also depict the extensive fencing that surrounds the property and the fencing that surrounds the paddock. Petitioner indicated that the home was built in 1969 and that the 1½-story stable and fencing have existed for some time, predating her purchase of the property. Petitioner also indicated that prior owners kept horses on the property.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comments indicate no opposition or other recommendations concerning the requested relief.

Considering of all the testimony and evidence presented, I find, as a threshold issue, that the alpaca is an animal that fits within the category of “small livestock” in Section 100.6 of the B.C.Z.R. I also find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. The property has a number of characteristics that make it unique, including its size, irregular shape, and sloped terrain. It is also split by a long, curving driveway, as well as by a pond. As shown on the site plan, these characteristics, combined with the fencing that surrounds the property, limit the available areas for grazing and pasture. Hence, I find the property unique in a zoning sense. As it is, based on the grazing habits of miniature horses, ponies, and alpacas indicated by Petitioner, the available area for grazing (over three acres) appears more than sufficient for these animals. I also find that practical difficulty or unreasonable hardship would befall Petitioner if the relief were not granted. Petitioner indicated that at one time, she kept four alpacas and was able to place two of them elsewhere; she believes that attempting to place the remaining two alpacas at another location if the relief is not granted would be very difficult and might result in Petitioner having no choice but to euthanize the animals -- a result that appears to be wholly unnecessary given the moderate size, good temperament, and living habits of the alpacas.

Finally, I find this variance can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. Petitioner pointed out that were she attempting to keep traditional-size horses on her property, according to Section 100.6 of the B.C.Z.R., she could keep up to three

horses (characterized as “larger livestock”). According to the Maryland Department of Agriculture Website under “Animal Unit Equivalencies,” which was marked and accepted into evidence as Petitioner’s Exhibit 4, horses average approximately 2,000 pounds to only 100-115 pounds for alpacas. Hence, three horses would weigh approximately 6,000 pounds, while three alpacas would weigh only 300-345 pounds on average. Stated differently, Petitioner is entitled by right to keep the three miniature horses and three ponies. In my view, the addition of two alpacas will have very little, if any, additional impact on the property or the surrounding community. I also believe that granting the requested relief will continue to further the goals of the R.C.2 Zone, which includes fostering conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County. In my view, the raising or keeping of the aforementioned animals constitutes an agricultural use of the property.

Thus, I find that this variance can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R, as established in *Cromwell v. Ward*, 102 Md.App. 691 (1995).

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by Petitioner, I find that Petitioner’s variance request should be granted.

THEREFORE, IT IS ORDERED this 6th day of October, 2008 by this Deputy Zoning Commissioner, that Petitioner’s Variance request from Section 100.6 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow eight small livestock on 3.35 acres in lieu of the required 4 acres be and is hereby GRANTED. The relief granted herein shall be subject to the following:

1. Petitioner may apply for her building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at her own risk until such time as the 30-day appellate process from this Order has expired. If,

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

____SIGNED_____
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz