

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
W side of Davis Avenue; 210 feet		
NW of the c/l of Acme Avenue	*	DEPUTY ZONING
2 nd Election District		
4 th Councilmanic District	*	COMMISSIONER
(10803 Davis Avenue)		
	*	FOR BALTIMORE COUNTY
Steven Goodmuth and Karen Koelbel		
<i>Petitioners</i>	*	CASE NO. 2010-0304-A

* * * * *

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 owners of the subject property, Steven Goodmuth and Karen Koelbel. Petitioners are requesting Variance relief from Sections 100.6 and 1A04.2.A of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow three goats for each acre of grazing or pasture land in lieu of the permitted two animals for each acre of grazing or pasture land, and to allow small livestock (three goats) on one acre of land in lieu of the minimum required three acres. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the variance requests were Petitioners Steven Goodmuth and Karen Koelbel and their daughters, Hannah and Maggie Goodmuth. The case garnered interest in the community and also appearing in support of the requested relief were Mark Dulin, Russell Frizzell, and Eleanor Danko-Waterman, as well as a number of other residents of the surrounding community whose names and addresses are listed on the “Petitioner’s Sign-In Sheet” contained in the case file. Appearing in opposition to Petitioners’ request for relief were neighbors Lawrence and Debra Accord of 10812 Acme Avenue.

The case came before the undersigned by way of a Code Enforcement citation on the property. Following a complaint, Paul Cohen, a Code Inspector with the County's Division of Code Inspections and Enforcement, observed the property on April 13, 2010 and issued a Correction Notice to Petitioners for failing to meet the minimum acreage requirements for the stabling and pasturing of small livestock.¹ A copy of this citation along with the Code Enforcement file was marked and accepted into evidence as Petitioners' Exhibit 3. It should be noted at this juncture that the issuance of a Correction Notice has no bearing on the case at hand. It is neither beneficial nor prejudicial to Petitioners' case. This matter involves the discreet legal and factual issue of whether variance relief should be granted and is decided on those merits alone.

Now turning to the specifics of the instant matter, the testimony and evidence offered by Petitioners revealed that the subject property is predominantly square-shaped and consists of approximately one acre, more or less, zoned R.C.5. The property is a corner parcel located at the northwest intersection of Davis Avenue and Acme Avenue, with frontage on both roads and ingress/egress via Acme Avenue, in the Woodstock/Granite area of Baltimore County, just east of the Howard County line. The subject property is improved with a primary structure comprising approximately 2,658 square feet, and purchased by Petitioners in 1989.² As shown on the site plan, the original home consists of a two-story structure measuring approximately 25 feet by 25 feet and a porch. A one-story addition measuring approximately 50 feet long was added later. These improvements are located near the upper northwest corner of the property. Because of the configuration of the property and the placement of the home so far to one side, there is essentially very little rear yard (approximately 15 feet deep) and the side yard fronting

¹ CO-0075375.

² The primary structure of the subject property was built in 1900 according to the Real Property Data Search contained in the file. Petitioners' purchase from John O. Kurtz is recorded as Liber-Folio 8169-392.

Davis Avenue is just 36 feet from that road. This does, however, leave a substantial open area at the southern side of the property, which is where Petitioners keep the three goats at issue. As a result of the Code Enforcement citation, Petitioners are requesting variance relief pursuant to Section 100.6 of the B.C.Z.R. to legitimize existing conditions and permit small livestock (three dairy goats) on one acre of land in lieu of the minimum required three acres, and three animals for each acre of grazing or pasture land in lieu of the maximum two animals.

Testifying in support of the variance request, Petitioner Karen Koelbel stated that the Granite community, of which the subject property is a part, is an extremely diverse area with a long history of rural traditions. It was revealed that the surrounding properties vary in size and use. Ms. Koelbel submitted maps of the surrounding community that were marked and accepted into evidence as Petitioners' Exhibits 4A and 4B and explained these varied uses. She stated that many neighbors in the community have chicken coops or accessory agricultural uses on their properties. Ms. Koelbel indicated that she recognizes the Granite community is slowly displaying attributes of a suburban community but still with a more dominant rural character of the neighborhood and community, which can sometimes be at odds with truly suburban neighborhoods. As to the specifics of her livestock, Ms. Koelbel indicated that her family has three female dairy goats on their property and they are all generously well cared for, they provide a unique family and educational experience, and are consistent with the rural character that the community has long maintained. Further, Ms. Koelbel noted that the request for relief has garnered much support from her surrounding neighbors and the goats do not detrimentally or adversely affect the surrounding community. Letters of support were submitted and marked and accepted into evidence as Petitioner's Exhibits 5A through 5D. These letters echo Ms. Koelbel's sentiments, citing the unique rural atmosphere of the community and the desire to halt

gentrification. Further, a petition signed by fourteen (14) persons in support of the request for relief was submitted and marked and accepted into evidence as Petitioners' Exhibit 6. Ms. Koelbel's written statement -- from which her testimony was based -- was marked and accepted into evidence as Petitioners' Exhibit 7.

Also testifying in support of the variance request was Petitioner John Goodmuth, who resides at the subject property with Ms. Koelbel and their two children. Mr. Goodmuth echoed Ms. Koelbel's testimony and explained that the family's goats are not only wonderful pets and provide his children with educational benefits, but also allow his family to have a self-sustaining supply of milk. Mr. Goodmuth related that he has health issues including a neurological condition and immune disorders that affect his ability to walk and his digestive system. He stated it is difficult for him to tolerate wheat products and cow's milk, but that his system digests and tolerates raw goat's milk much better.

Additional testimony from Russell Frizzell, a resident of 10727 Davis Avenue, revealed that the Granite area has a long history of livestock ownership and that this rural history carries into today in that most of the current houses are old farm structures that strive for some form of self-sustainability. Moreover, many homes in the Granite area to this day retain rural accessory uses including raising livestock, harvesting crops and owning tractors. Mr. Frizzell, whose large parcel of land consists of approximately 10 acres, noted that if the variance were denied he planned on housing the goats in controversy on his property, allowing Petitioners to have access to them, but still causing hardship due to the distance they would have to travel to care for and milk the goats. Mark Dulin, a retired veterinarian who worked for over two decades for the U.S. Department of Agriculture, testified that Petitioners have ample space for housing the three dairy

goats on the property and added that these were not grazing animals that needed large amounts of land, especially considering the supplemental diet the goats receive.

Compelling testimony was further received from the Goodmuth daughters, Hannah and Maggie. Hannah, who is 20 years old, expressed that the goats were not only pets but are more like members of the family. Hannah indicated that the goats, Naomi (two years old), Delilah (three years old), and Ellie May (two years old), are properly cared for and milked every twelve hours. Milking every twelve hours is necessary in order to avoid infection and Hannah noted that milking is performed every day at 7 a.m. and 7 p.m. Hannah also revealed that dairy goats are not grazers, especially these goats because their diet is supplemented with nutrient rich hay. Hence, they do not need the large “pasture” that some other livestock may require. Further testimony revealed that the goats live in a fenced in “pen” with two sections. This pen contains a 10 foot by 10 foot shelter the goats are able to go in and out of at their own will and also a small milking shed. The goats are female and because they are being milked, must be bred. However, Hannah assured that goat offspring are not kept as pets, but are, and will continue to be, given away or sold to others. The family only plans on keeping the three goats that are currently kept on the property. In addition, Hannah stated that goats are typically bred until they are ten years old. Pictures of the three goats were submitted after the hearing and are contained within the case file.

Maggie and Hannah first became acquainted with dairy goats in connection with their affiliation with the 4-H Club.³ In 4-H, the Goodmuth daughters obtained knowledge and skills about caring for and raising dairy goats and even participated in “Skillathons” at various

³ 4-H is a non-profit youth education program that has as its goal the four-fold development of youth: Head, Heart, Hands and Health. The mission of 4-H is empowering youth to reach their full potential, working and learning in partnership with caring adults. The 4-H club, since its unofficial inception in 1902, has grown into a community of 6 million young people across America learning leadership, citizenship and life skills. Information was provided from their Website at <http://4-h.org/4hstory.html>.

competitions with much success. In a letter dated June 24, 2010, Sheryl L. Bennett, a 4-H Youth Development Educator, noted the Goodmuths' accomplishments and contributions to 4-H. This letter was marked and accepted into evidence as Petitioners' Exhibit 8. Eleanor Danko-Waterman added that her family lives in a row home in Catonsville, but that her daughters, Sophie and Beatrice, are able to visit the Petitioners' property and learn about goats and participate in 4-H activities that would otherwise be unavailable to them. Finally, Cathy Wolfson, who is known to this Commission through her work with the Greater Patapsco Community Association, provided brief testimony in support of the requested relief, stating that she believed Petitioners' activities were the type of wholesome, rural activities that are good for the area.

In opposition to the Petitioner's request for relief, Lawrence and Debra Accord, residents of 10812 Acme Avenue, testified that the goats have adversely affected their home value, and perhaps values overall in the community. Mr. Accord indicated that he lived in Baltimore City from 1992 through 2000 and was very excited to get into the more open spaces of the suburbs. However, he believes Petitioners' raising and keeping of goats, and the attendant pens and accessory structures for the goats goes a bit too far. He stated that the goats are visible from Acme Avenue and Petitioners' use of their property in this regard is in conflict with the area's transition to a more suburban community. He cited to the large estates and residential developments located in the nearby area. Mrs. Acord also echoed these sentiments. She stated that it is not her nor her husband's desire to be anti-neighbor or anti-goat for that matter, but that she believes the regulations concerning minimum acreage were put in place for a reason and should be adhered to.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated June 2, 2010 that indicates they visited the subject site and after a careful evaluation recommends denial of the Petitioners' request. While the subject property appears to be well screened from adjacent properties, three goats (small livestock) on one acre of land are not appropriate according to the Regulations. The Petitioners have not indicated in the subject petition any hardship or practical difficulty that would warrant such zoning relief.

The determination of a variance request from the Zoning Regulations is governed by Section 307.1 of the B.C.Z.R., as interpreted by the Court of Special Appeals of Maryland in *Cromwell v. Ward*, 102 Md. App. 691 (1995). As indicated by the Court in *Cromwell*, "the general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances." 102 Md. App. at 700. The two-part variance test involves finding that a property is unique and unusual and that if strict adherence to the regulations were required absent relief, an unreasonable hardship or practical difficulty would result.

Traditionally, this Commission has taken a very careful review of these types of cases under Section 100.6 of the B.C.Z.R., recognizing the potential impact that the raising and quartering of small livestock can have on adjacent properties and neighborhoods. Decisions have been based on the particular circumstances at issue.⁴ Perhaps this way of life as described by Petitioners and their daughters may not be for everyone. But considering all the testimony and evidence presented, I am persuaded to grant the variance relief in this case. The requested

⁴ Previously in Case No. 2007-512-A, this Commission denied a request for two dwarf pygmy goats on approximately 0.14 acre of land zoned D.R.5.5 in the Essex area; in Case No. 2000-0072-A, this Commission granted a request for three pygmy goats on 1.11 acres of land zoned R.C.2 in the Glen Arm area; and in Case No. 2001-0071-A, this Commission granted a request for two ponies on 1.11 acres of land zoned R.C.2 in the Glen Arm area.

relief is from Section 100.6 of the Regulations which states that “a tract of land used for the accessory stabling and pasturing of animals and which is not a commercial agriculture operation is subject to the following provisions.” The provisions following this language govern small livestock including goats, mandating a minimum of three acres to have goats as an accessory use in a residential zone with a limitation of two goats per acre of grazing/pasturing land.⁵ In the instant matter, in my judgment, Petitioners have satisfied the standard for variance relief to warrant use of their land for the accessory use of stabling and pasturing three goats on one acre. Evidence and testimony revealed that the subject property is located in a community that is gradually evolving from a long, rich history of rural traditions and associated uses towards a combination of a more rural and suburban environment. The abundant presence of chicken coops, horse and goat ownership, large vegetable gardens, crop harvesting and relative self-sustainability is a testament to the rural character of the Granite community. These circumstances render Petitioners property unique. While the comments of the Office of Planning are noted and taken into account, due to the special circumstances involving the property, if strict adherence to the Regulations were required, Petitioners would suffer unreasonable hardship and practical difficulty by being forced to abandon an accessory use consistent with the unique rural character of the Granite community.

I also find that the variance requests can be granted in strict harmony with the spirit and intent of the Regulations and in such a manner as to grant relief without injury to the public health, safety and general welfare. However, given the fact that the area is in the process of transitioning to a more suburban environment, relief shall be granted *in gross* and will be personal to Petitioners. In addition, following the hearing and through emails from the parties,

⁵ It should be noted that the goats in controversy are not grazing animals in need of large tracts of land and that as testified by Mr. Dulin, the veterinarian, the current space provided is adequate for proper care.

Mr. Acord and Ms. Koebel expressed their ideas as to providing additional buffers and screening of Petitioners' property from Acme Avenue and the adjacent Brantley property in order to lessen the impact of the appearance of the goat pens and accessory structures. I shall include what I believe to be appropriate conditions to that effect at the end of this Order. I shall also include a condition that Petitioners are only permitted to keep the three goats currently being raised and quartered on the subject property, and furthermore, that the relief granted herein shall be limited to a period of seven (7) years from the date of this Order or if within that time Petitioners abandon the use or sell, rent or otherwise convert the property to another, whichever time period is earlier.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered, I find that Petitioners' variance requests should be granted.

THEREFORE, IT IS ORDERED this 20th day of July, 2010 by this Deputy Zoning Commissioner, that Petitioners' Variance requests from Sections 100.6 and 1A04.2.A of the Baltimore County Zoning Regulations ("B.C.Z.R.") to allow small livestock in the form of three goats for each acre of grazing or pasture land in lieu of the permitted two animals for each acre of grazing or pasture land, and to allow small livestock on one acre in lieu of the minimum required three acres, be and are hereby **GRANTED**, subject to the following:

1. Petitioners are advised that they may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. The relief granted herein is *in gross* and shall be personal to Petitioners Steven Goodmuth and Karen Koebel. It shall not be *appurtenant* and run with the land.

3. Relief is limited to the raising and quartering of the three goats currently on the property as an accessory use, known and identified during the hearing as Naomi (two years old), Delilah (three years old), and Ellie May (two years old).
4. Within sixty (60) days of the date of this Order, Petitioners shall provide and install evergreen plantings along the subject property's frontage on Acme Avenue and the adjacent Brantley property in order to provide screening and a buffer of this accessory use from Acme Avenue. The areas to be screened are depicted in the photographs attached to this Order and labeled as DSCF2 through DSCF11.
5. After the areas to be screened are planted, Petitioners shall within one week provide evidence of compliance in the form of photographs submitted to this Commission either via regular mail or email referencing the above-captioned case number.
6. Due to the unique nature of this case, the relief granted herein shall be limited to a period of seven (7) years from the date of this Order, or if within that time, Petitioners abandon the use or sell, rent or otherwise convert the property to another, whichever time period is earlier. At the time the discontinuance of the use is triggered, Petitioners shall thereafter immediately cease and desist such use and remove the pens and accessory structures intended for the raising and quartering of small livestock (three goats) on the property.
7. To assure the current and future use of the subject property, Petitioners shall, within sixty (60) days of the date of this Order, record in the Land Records of Baltimore County a Covenant to the Deed for their property (in the form attached) expressly conditioning the use of the property. To assure compliance with this condition, a copy of the fully executed and recorded Covenant to the Deed shall be submitted to the Office of the Zoning Commissioner within thirty (30) days following the expiration of the sixty (60) day recording requirement. Failure to do so shall render the relief granted herein null and void.
8. Said Covenant shall contain the proviso that the use of the subject property for the raising and quartering of small livestock (three goats), as depicted on Petitioners' Exhibit 1 site plan and the photographs attached as DSCF2 through DSCF11, shall be *in gross* and personal to Petitioners and not run with the land. Further, that the use is limited to the raising and quartering of the three goats currently on the property as an accessory use, known and identified as Naomi (two years old), Delilah (three years old), and Ellie May (two years old), and that the use shall be limited to a period of seven (7) years from the date of this Order, or if within that time, Petitioners abandon the use or sell, rent or otherwise convert the property to another, whichever time period is earlier. At the time the discontinuance of the use is triggered, Petitioners shall thereafter immediately cease and desist such use and remove the pens and accessory structures intended for the raising and quartering of small livestock (three goats) on the property.

9. The decision in this case is not a legal precedent that may be cited as such in any other zoning case involving Section 100.6 of the B.C.Z.R. and/or the raising and quartering of small livestock or the minimum acreage required for grazing or pasture land.

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

COVENANT TO THE DEED

Whereas, in a Petition for Variance before the Zoning Commissioner of Baltimore County, Case No. 2010-0304-A, Steven C. Goodmuth and Karen A. Koelbel, the Petitioners, requested a Variance from Sections 100.6 and 1A04.2.A of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow three goats for each acre of grazing or pasture land in lieu of the permitted two animals for each acre of grazing or pasture land, and to allow small livestock (three goats) on one acre of land in lieu of the minimum required three acres. The Deputy Zoning Commissioner, by Order dated the 20th day of July, 2010, granted the Variance, providing the following Covenant be added to their Deed, which Deed was recorded in the Land Records of Baltimore County, at Liber _____, Folio _____.

Steven C. Goodmuth and Karen A. Koelbel, hereby covenant that the use of the subject property for the raising and quartering of small livestock (three goats), as depicted on Petitioners’ Exhibit 1 site plan and the photographs attached as DSCF2 through DSCF11, shall be *in gross* and personal to Petitioners and not run with the land. Further, that the use is limited to the raising and quartering of the three goats currently on the property as an accessory use, known and identified as Naomi (two years old), Delilah (three years old), and Ellie May (two years old), and that the use shall be limited to a period of seven (7) years from the date of this Order, or if within that time, Petitioners abandon the use or sell, rent or otherwise convert the property to another, whichever time period is earlier. At the time the discontinuance of the use is triggered, Petitioners shall thereafter immediately cease and desist such use and remove the pens and accessory structures intended for the raising and quartering of small livestock (three goats) on the property. Said property is subject to all terms and conditions contained in the Order issued in Case No. 2010-0304-A.

As witness our hands and seals this _____ day of _____, 2010.

_____(SEAL)
Steven C. Goodmuth

_____(SEAL)
Karen A. Koelbel

State of Maryland)

To wit

County of Baltimore)

I HEREBY CERTIFY THAT ON THIS _____ day of _____, 2010, before me a Notary Public of the State of Maryland, in and for Baltimore County, personally appeared Steven C. Goodmuth and Karen A. Koelbel, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument, and acknowledge that they executed the same for the purposes therein contained, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and Notarial Seal:

NOTARY PUBLIC

My Commission Expires: