

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
S/S Acme Avenue, 417' SW of c/line		
Davis Avenue	*	ZONING COMMISSIONER
(10811 Acme Avenue)		
2 nd Election District	*	OF
4 th Council District		
	*	BALTIMORE COUNTY
Richard C. Brash, et ux		
Petitioners	*	Case No. 2011-0013-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the legal owners of the subject property, Richard C. Brash and Karen S. Brash, his wife. Variance relief is requested pursuant to Section 100.6 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow the accessory housing of fowl or poultry (chickens and ducks) on less than one (1) acre of ground as required. The subject property and improvements are described on the site plan submitted which was accepted into evidence and marked as Petitioners' Exhibit 2.

Appearing at the requisite public hearing in support of the request were Richard and Karen Brash, property owners, their children, Eli and Sarah, and Russell B. Frizzell, the owner of property adjacent to the Petitioners' rear property line. Appearing in opposition to the request were Lawrence B. and Debra Acord, whose property on the north side of Acme Avenue faces the Brash's property. It is also noted that this matter is the subject of an active violation (Code Enforcement Citation No. CO-0075545) and a copy of the Code Enforcement file was made a part of the zoning hearing file.

This is a very difficult case. Testimony and evidence offered revealed the property is zoned R.C.5, consists of 0.80 acres in area (35,761 square feet) and improved with a one-story

single-family dwelling and the subject chicken and duck coops located in the rear yard. Mr. Brash, whose written testimony was submitted as Petitioners' Exhibit 1, stated that the Woodstock/Granite community is an extremely diverse area with a long history of rural traditions. He stated that many horse farms, cattle farms, planted fields and accessory agricultural uses exist in the area. He believes that while recent trends towards a suburban community are taking place in some areas, his property is situated on a dead-end street, just east of the Howard County line and the Patapsco State Park, and in the more dominant rural area of the community. Photographs of the property, chickens and ducks were submitted at the hearing by Mrs. Brash demonstrating they were well cared for. The Brash's discussed the undue burden and emotional hardships on them and their children if they had to give up their backyard flock after the more than 4-year relationship that has evolved. Mr. Brash stated the chickens were not intended to support a commercial business in any way. The chickens have averaged in number from between eight (8) to 12. They now have three (3). The ducks number is between two (2) and four (4). The fresh eggs are strictly for the family and he strongly noted their importance to both the health of him and his son¹ and the educational benefits the chickens/ducks present for the children.

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,

¹ Eli Brash suffers from Attention Deficit Disorder and benefits from the fresh eggs and increased Omega 3 in his diet. He (Richard Brash) has had colon cancer that is prevalent in his family and consumes eggs regularly to reduce the risks associated with this disease. See his prepared testimony (Petitioners' Exhibit 1) that provides medical support for his contentions.

whose large parcel of land consists of approximately ten (10) acres, noted that if the variance were denied he planned on offering his property to house the poultry in controversy on his property, allowing Petitioners to have access to them. He realized this would be a hardship due to the distance they would have to travel to care for and feed the chickens and ducks.

Compelling testimony was further received from the Petitioners daughter, Sarah. Like her father, her testimony was reduced to written form and submitted as Petitioners' Exhibit 3. She obtained knowledge and skill as well as happiness through the caring for and raising of the chickens and ducks. She joined the 4-H Club for the purpose of continuing to learn about animals. She made a powerful argument that removal of the chickens and ducks would create real hardship and practical difficulty.

Perhaps, a decade ago that would be all the Brash family would have needed to show in order to be granted the variance they request. However, the Court of Special Appeals in the case of *Cromwell v. Ward*, 102 Md. 691 (1995) redefined the test for variance, requiring that before a Petitioner even gets to the question of hardship and practical difficulty, there must be a finding that the property is unique when compared to other properties in the neighborhood. By this, the Court requires a finding that the property has some special circumstances or conditions existing that are peculiar to the land or the structure which is the subject of the variance request. This finding must be made before any consideration of hardship or difficulty is made and if the property is not found to be unique, no variance can be granted.

Equally important, the Court wanted to correct the practice of many jurisdictions of finding hardship and difficulty first which would then be used to show the property was unique, reasoning that the unusual situation on the property was different from that found on surrounding properties.

The evidence before me gives no indication that the regulations requiring the one (1) acre of property to raise fowl or poultry impacts the Brash property in any way different from the other lots in the neighborhood. The lot is as plain a rectangular as one could find. The lot is indistinguishable from others in the neighborhood. Further, the size of the property is three quarters the size required by the regulations. These regulations found in the Livestock Ratio Table (Section 100.6 of the B.C.Z.R.) were derived by the Department of Agricultural at the University of Maryland and adopted by the Baltimore County Council. The Petitioners, although caring for their children's feelings and their attachment for the organic product benefits that they have enjoyed for some time, simply do not have the acreage to adequately care for the chickens and ducks in a way not to impact the neighborhood. This is no one's fault. It simply happens that the property, which is adequate for the Brash family, is not adequate to raise chickens which, according to testimony, have roamed free in the neighborhood on at least 12 occasions and are noisy at night so as to annoy the neighbors.

I find no special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. As noted above and much to the Petitioners' dismay, I may not use the finding that strict compliance with the zoning regulations would result in practical difficulty or unreasonable hardship to indicate uniqueness. For all these reasons, the relief requested must be denied. However, I will give Mr. Brash six (6) months from the date of this Order to find a new home for his birds.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons set forth above, the relief requested shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 10th day of September 2010 that the Petition for Variance seeking relief from Section 100.6

of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit the accessory housing of fowl or poultry (chickens and ducks) on a tract of land totaling 0.80 acres in lieu of the minimum one (1) acre required, be and the same is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petitioners shall have one hundred eighty (180) days from the date of this Order to find a new home for the chickens and ducks and remove them from the subject property.

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

WJW:dlw

____SIGNED_____
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County