

IN RE: **PETITION FOR VARIANCE**
S side of Forge Road; 420 feet E
of the c/l of Winkler Road
11th Election District
5th Council District
(5309 Forge Road)

Raymond and Shirley Winkler
Petitioners

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* **CASE NO. 2012-0199-A**

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for consideration of a Petition for Variance filed by Raymond and Shirley Winkler, the legal property owners. Petitioners are requesting variance relief from Section 100.6 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a pigeon coup on a tract of land with the area of 0.459 acre in lieu of the required minimum area of 1 acre. The subject property and requested relief are more fully described on the site plan marked and accepted into evidence as Petitioners’ Exhibit 4.

Appearing at the public hearing were the Petitioner Raymond Winkler, his son Philip Winkler, and Dennis Psoras, Esquire, and James D. Psoras, Esquire, attorneys for the Petitioners.

The Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. Comments were received from the Department of Planning dated March 29, 2012 which state:

“The Department of Planning has reviewed the petitioner’s request, letter explaining hardship and accompanying site plan. The Department of Planning does not oppose the petitioner’s request as it does not appear to have a negative impact on the surrounding area or neighboring properties. The petitioner’s pigeon coup is located in the rear yard of the subject property and is farthest removed

from residents of 5307 Forge Road. As indicated by the petitioner, a relative lives in the dwelling located at 5311 Forge Road who is also involved with the training, flying and care of the pigeons. Additionally the petitioner owns the lot described as lot 15 on the site plan, which is also noted as being vacant.

Provided there is no opposition from other neighbors in close proximity to the subject lot, this department does not oppose the request or pigeon operation at 5309 Forge Road.”

This matter is currently the subject of an active violation case (Case No. CO-0099852) before the Office of Administrative Hearings, and a copy of the Code Enforcement file was made a part of the zoning hearing file. It should be noted that the fact that a code violation is issued is generally not considered in a zoning case. Zoning enforcement is conducted by the Department of Permits, Approvals and Inspections, which has the authority to issue Correction Notices and Citations and to impose fines and other penalties for violation of law. On the other hand, the role of the Administrative Law Judge in this matter is to decide the discreet legal issue of whether the Petitioners are entitled to the requested variance.

Testimony and evidence offered at the hearing demonstrated that the property which is the subject of this variance request consists of 0.344 acres, more or less, and is zoned DR 2. The property is located on the south side of Forge Road and has a street address of 5309 Forge Road. The property is improved with an existing single family dwelling with a 14 x 24 foot pigeon coop located in the rear yard. The Petitioner also owns a vacant lot located to the rear of his property.

Testimony demonstrated that Mr. Winkler, who currently resides at the property has raised pigeons at his home for the past 65 years. He stated that he built his house in 1947 and has raised pigeons open and continuously since 1947 and to the present time. There has been no interruption

in this use. Mr. Winkler has, at one time, housed as many 75 pigeons on his property. Currently, he has 60 pigeons – 40 for breeding and 20 which are used for racing. The testimony and evidence offered clearly showed that the Petitioner enjoys a non-conforming use for the keeping of pigeons on his property. However, he has chosen to file for a variance to allow the pigeons to remain on his property on a lot that is less than one acre in size. The Petitioner's son, Officer Philip Winkler, appeared at the hearing and resides on the next door property with has a street address of 5311 Forge Road. Mr. Winkler's son and grandson are also active in the care and maintenance of these pigeons.

It was clear from the testimony offered that the keeping of these pigeons on this property has been a family tradition and now spans three generations in the Winkler family. There is no reason why the continued keeping of pigeons on this property should not continue to exist into the future. The pigeons are well cared for, there have been no complaints regarding the pigeons, and letters of support were submitted into evidence from the surrounding property owners.

As stated previously, the Petitioner has chosen to request variance relief to allow the pigeons to remain on the property as they have for the past 65 years. It was quite possible that the Petitioner may have had one acre of land; however, he subdivided his property so that his son could construct a home next to his. In addition, the Petitioner's cousin lives on the other side of his dwelling. His cousin lives at the residence located at 5307 Forge Road and also has no objection to the pigeons remaining on the property.

Pigeons may be kept on a lot containing less than one acre only when they do not create a nuisance on the property. B.C.Z.R. § 100.6. A nuisance is generally defined as any activity that prevents a neighboring owner from the use and enjoyment of his property. No one expressed any

opposition to the keeping of pigeons on this property, and the fact that these pigeons have existed at this location for the past 65 years without objection demonstrates that they are not a nuisance.

Based on the evidence presented, I find that the 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). Based upon the testimony and evidence presented, I am persuaded to grant the request for variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioner.

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property and public hearing held, and after considering the testimony and evidence offered, I find that Petitioners variance requests should be granted. I further find that based on the testimony and evidence that the Petitioner has proven a lawful non-conforming use, but has not petitioned for that relief. I have granted the variance. However, the Petitioner could have just as easily gotten approval for a non-conforming use.

THEREFORE, IT IS ORDERED by this Administrative Law Judge for Baltimore County this 27 day of April, 2012 that Petitioners' Petition for Variance from Section 100.6 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a pigeon coup on a tract of land with the area of 0.459 acre in lieu of the required minimum area of 1 acre, , be and are hereby GRANTED.

The relief granted herein is subject to the following condition:

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 its own risk until the 30-day appeal period from the date of 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.

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

Signed _____
TIMOTHY M. KOTROCO
Administrative Law Judge
for Baltimore County

TMK/pz