

IN RE: PETITION FOR VARIANCE
(1206 Boyce Avenue)
9th Election District
2nd Councilman District
Mark F. & Christie A. Williams
Petitioners

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BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2013-0144-A

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Mark F. & Christie A. Williams, the legal owners of the subject property. The Petitioners are requesting Variance relief from Section 100.6 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit the accessory pasturing of chickens (hens) on a tract of land which is 0.56 acre in size in lieu of the required 1.0 acre. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the public hearing in support of the requests was Mark Williams and his immediate neighbor, Kathleen Palencar, who is also the past president of the Ruxton-Riderwood-Lake Roland Area Improvement Associations (RRLRAIA). The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the record of this case. There were no substantive comments from any of the County reviewing agencies.

Testimony and evidence revealed that the subject property is 24,394 square feet and is zoned DR 2. The property, located in Ruxton, is improved with a single family dwelling, mature trees and landscaping. The Petitioners would like to keep 6-8 hens (no roosters) in a mobile chicken coop. Mr. Williams and his wife are health conscious and grow most of their own produce, some of which has won awards at the State Fair. They would like to have chickens to provide healthy, antibiotic free eggs for their family. Ms. Palencar indicated she supported the petition, and noted that RRLRAIA has not taken any position on the case.

Based upon the testimony and evidence presented, I will grant the request for variance relief. Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

Petitioners have met this test. The relief requested here is properly characterized as a “use variance,” since it permits a “use (keeping chickens) other than that permitted in the particular district.” Anderson v. Board of Appeals, 22 Md. App. 28, 38 (1974). In Cromwell, the court noted that it was “not even clear that (B.C.Z.R.) §307 ‘Variances,’ would even permit any use variances except perhaps as to signs or parking.” Just a year later, the Court of Special Appeals held that section 307 only allows height and area variances. Umerley v. People's Counsel, 108 Md. App. 497, 504-05 (1996).

But in a more recent case, the Court of Special Appeals implied otherwise, and noted that section 307 contains language requiring a showing of either “undue hardship” or “practical difficulty.” Mueller v. People's Counsel, 177 Md. App. 43, 73-74 (2007). This terminology, stated in the disjunctive, correlates to the legal standard for a “use variance” and “area variance,”

respectively. In the end, it does not appear as if Maryland's highest court has ever resolved this issue and, according to a familiar principle of statutory construction, no words or phrases in an ordinance should be rendered surplusage when interpreting a statute. In that regard, if B.C.Z.R. § 307 does not permit the granting of "use variances," why then would the County Council have employed the "undue hardship" language, which applies only in the case of "use variances." Loyola Federal v. Buschman, 227 Md. 243, 249 (1961).

Turning to the requirements for variance relief, the Petitioners' home is situated on a sloping lot and is positioned on the lot in a non-rectilinear manner. Thus, it is unique for zoning purposes. If the B.C.Z.R. were strictly enforced, the Petitioners would indeed suffer undue hardship, given that they would be unable to keep chickens and enjoy natural, wholesome eggs, which in this case seems to be a reasonable accessory use on a fairly large (and expensive) property.

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. This is demonstrated by the support of Petitioners' adjacent neighbors and the lack of comments from County reviewing agencies.

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

THEREFORE, IT IS ORDERED, this 13th day of March, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Section 100.6 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit the accessory pasturing of chickens (hens) on a tract of land which is 0.56 acre in size in lieu of the required 1.0 acre, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for appropriate 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.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:slh