Baltimore County, Maryland

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March 3, 2022

SENT VIA EMAIL
Deborah C. Dopkin, Board Chair
Board of Appeals for Baltimore County
The Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, Maryland 21204

RE: John & Elisabeth Martin
1540-1542 South Rolling Road
Case No.: 2021-166-A

Dear Chair Dopkin:

Upon review of this case scheduled for March 9, it has come to our office's attention that recently enacted Bill 113-21 amends the law on stabling and pasturing of animals. It was enacted January 21, 2022 and became effective February 1, 2022. It is enclosed. It is settled that this complex new law applies here under the *Yorkdale Rule*. See Grasslands Plantation v. Frizz-King Enterprises 410 Md. 191 (2009).

As described in Administrative Law Judge Maureen E. Murphy's opinion, the lot occupies 40,920 square feet in area. There is a duplex dwelling. Each portion is rented. The Wheelers rent one portion but occupy the entire rear yard with their geese, ducks, and chickens.

We draw attention to revised BCZR Sec. 100.6, which includes a Table with area and other provisions for various animals. The Minimum Land Area (MLA) column of the Table lists a minimum acreage for chickens, ducks and geese of 1-acre, and a nuisance prohibition generally. There is a separate MLA area provision for hens, with 10 allowed for a lot of at least 40,000 square feet, but only where there is an owner-occupied single-family detached dwelling.

There is then new BCZR Sec. 418. It refers in Sec. 418.1 to licensing under the Baltimore County Code. It also appears to prohibit a variance from the Table MLA provisions for hens. So it doesn't look like a hen variance is available for a duplex, and which is not owner-occupied. Whether or not this also affects the variance for geese, ducks and roosters may be debated. Meanwhile, BCZR Sec. 418.2 adds detailed provisions for hen coops and outdoor runs or free range areas.

I hope the parties and the Board find this information helpful.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

cc: John & Elisabeth Martin, sismartin@comcast.net
Sharyn Herman, sharynherman24@verizon.net
Steve Lafferty, Planning Director, slafferty@baltimorecountymd.gov
Jeffrey Perlow, Zoning Supervisor, Jperlow@baltimorecountymd.gov

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2021, Legislative Day No. 22

Bill No. 113-21

Councilmembers Marks, Bevins, & Jones

By the County Council, December 20, 2021

A BILL
ENTITLED

AN ACT concerning

Backyard Chickens

FOR the purpose of permitting backyard chickens and other fowl under certain circumstances; defining certain terms; providing for a licensing scheme; providing for requirements for shelter and other structures; providing certain care requirements; setting certain limitations on the number of backyard chickens permitted on certain acreage; and generally related to backyard chickens.

BY adding

Sections 12-2-401 through 12-2-407
Article 12 – Animals
Title 2 – Permits and Licenses
SUBTITLE 4 – BACKYARD CHICKENS AND HENS
Baltimore County Code, 2015

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

BY repealing and re-enacting, with amendments

Section 13-7-311(a)-(b)
Article 13 – Public Health, Safety, and the Environment
Title 7 – Nuisances
Subtitle 3 – Rodent Control
Baltimore County Code, 2015

BY repealing and re-enacting, with amendments

Section 100.6
Baltimore County Zoning Regulations, as amended

BY adding

SECTION 418 – BACKYARD CHICKENS AND HENS
Baltimore County Zoning Regulations, as amended

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the Laws of Baltimore County read as follows:

ARTICLE 12 – ANIMALS

Title 2 – Permits and Licenses

SUBTITLE 4 – BACKYARD CHICKENS AND HENS

§ 12-2-401.

IN THIS SUBTITLE, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(A) "COOP" MEANS AN OUTDOOR ACCESSORY STRUCTURE FOR THE HOUSING OF CHICKENS OR OTHER FOWL WITH WALLS AND A ROOF.

(B) “DIRECTOR” MEANS THE DIRECTOR OF THE DEPARTMENT OF PERMITS, APPROVALS, AND INSPECTIONS OR THEIR DESIGNEE.

(C) “HEN” MEANS A FEMALE CHICKEN THAT LAYS EGGS.

(D) “ROOSTER” MEANS A MALE CHICKEN THAT DOES NOT LAY EGGS.

§ 12-2-402.

(A) A PERSON MAY ONLY OWN OR KEEP A HEN ON AN OWNER-OCCUPIED PROPERTY THAT IS LESS THAN ONE ACRE AS IN ACCORDANCE WITH §§ 100.6 AND 418 OF THE BALTIMORE COUNTY ZONING REGULATIONS IN ACCORDANCE WITH A LICENSE ISSUED BY THE DIRECTOR AS PROVIDED IN THIS SUBTITLE.

(B) A HEN OWNED OR KEPT IN ACCORDANCE WITH THIS SUBTITLE SHALL BE REGISTERED WITH THE MARYLAND DEPARTMENT OF AGRICULTURE AS REQUIRED BY § 3-804 OF THE AGRICULTURE ARTICLE OF THE ANNOTATED CODE OF MARYLAND.

(C) A PERSON MAY NOT OWN OR KEEP A ROOSTER ON A LOT THAT IS LESS THAN ONE ACRE.

(D) THIS SUBTITLE DOES NOT APPLY TO A HEN OR ROOSTER KEPT ON A LOT GREATER THAN ONE ACRE.

§ 12-2-403.

A LICENSE ISSUED IN ACCORDANCE WITH THIS SUBTITLE ALLOWS THE LICENSE HOLDER TO OWN AND KEEP A HEN AS A PET OR TO CONSUME EGGS

PRODUCED BY A HEN BUT DOES NOT PERMIT A PERSON TO KEEP OR MAINTAIN A HEN FOR THE PURPOSE OF HUMAN CONSUMPTION, EXCEPT WHERE THE HEN IS MAINTAINED FOR THE PURPOSE OF CONSUMPTION AS PART OF A RELIGIOUS OBSERVANCE.

§ 12-2-404.

(A) AN APPLICANT FOR A LICENSE SHALL:

(1) SUBMIT TO THE DIRECTOR AN APPLICATION ON A FORM THE DIRECTOR PROVIDES;

(2) ATTACH TO THE APPLICATION A SITE PLAN FOR A COOP AND A RUN OR FREE RANGE AREA, INCLUDING THE LOCATION AND DESCRIPTION OF ALL FENCES AND LOT BOUNDARIES; AND

(3) PAY TO THE DIRECTOR THE APPLICATION FEE ESTABLISHED BY THE COUNTY ADMINISTRATIVE OFFICER IN ACCORDANCE WITH § 3-1-202 OF THE CODE.

(B) THE APPLICATION SHALL INCLUDE:

(1) THE NAME, ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER OF THE APPLICANT;

(2) THE OWNER-OCCUPIED ADDRESS ON WHICH THE HENS ARE TO BE KEPT;

(3) THE LOT SIZE OF THE PROPERTY;

(4) THE BREED AND NUMBER OF HENS INTENDED TO BE KEPT ON THE PROPERTY;

(5) EVIDENCE OF CURRENT REGISTRATION WITH ALL APPLICABLE STATE PERMITS UNLESS THE APPLICANT IS EXEMPT FROM REGISTRATION UNDER STATE LAW;

(6) WRITTEN CERTIFICATION THAT THE APPLICANT SHALL BE RESPONSIBLE FOR THE CARE OF THE HENS KEPT ON THE PROPERTY AND WILL COMPLY WITH ALL REQUIREMENTS SET FORTH IN THIS SUBTITLE; AND

(7) ANY OTHER RELEVANT INFORMATION OR DOCUMENTS THAT THE DIRECTOR REQUIRES.

(C) (1) THE DIRECTOR MAY ATTACH LIMITATIONS OR CONDITIONS TO THE LICENSE IF REASONABLY NECESSARY TO PROTECT ANY PERSON OR NEIGHBORING USE FROM UNSANITARY CONDITIONS, UNREASONABLE NOISE OR ODORS, OR TO PROTECT THE PUBLIC HEALTH, SAFETY, OR WELFARE.

(2) THE DIRECTOR SHALL NOT ISSUE OR RENEW A LICENSE IF THE LOCATION OF THE PROPERTY THAT IS THE SUBJECT OF THE LICENSE IS PART OF THE COUNTY'S RAT ERADICATION PROGRAM AT THE TIME THE APPLICATION OR REQUEST FOR RENEWAL IS SUBMITTED.

(D) (1) A LICENSE ISSUED ~~PURSUANT TO~~ UNDER THIS SUBTITLE ~~SHALL~~ MAY BE RENEWED ANNUALLY.

(2) UPON A REQUEST FOR RENEWAL, A LICENSE HOLDER SHALL UPDATE ANY INFORMATION PROVIDED IN THE APPLICATION THAT HAS CHANGED SINCE ISSUANCE OR THE PREVIOUS LICENSE RENEWAL, OR ANY OTHER RELEVANT INFORMATION REQUESTED BY THE DIRECTOR.

(E) FALSIFICATION OF ANY INFORMATION ON AN APPLICATION, ATTACHMENT, OR REQUEST FOR LICENSE RENEWAL IS CAUSE FOR THE IMMEDIATE REVOCATION OF A LICENSE.

(F) A LICENSE IS NOT TRANSFERRABLE TO A NEW PERSON OR PROPERTY.

§ 12-2-405.

(A) A LICENSE HOLDER IS RESPONSIBLE FOR KEEPING ALL HENS ON THE PROPERTY IN A HUMANE MANNER AT ALL TIMES, INCLUDING:

(1) CONDUCTING REGULAR AND PROPER LITTER MANAGEMENT PRACTICES SO THAT ODORS ARE NOT DETECTABLE FROM ADJOINING PROPERTIES, INCLUDING STORING WASTE MATERIAL IN COVERED CONTAINERS UNTIL COLLECTED;

(2) PROVIDING POTABLE WATER AND PROPER FEED TO ALL HENS ON THE PROPERTY;

(3) STORING ALL FEED IN A SECURE, RODENT PROOF CONTAINER;

(4) PROVIDING FOR PROPER VETERINARY CARE TO ALL HENS ON THE PROPERTY; AND

(5) PROVIDING ADEQUATE SUPERVISED ACCESS DURING DAYLIGHT HOURS TO A RUN OR FREE RANGE AREA.

(B) A LICENSE HOLDER SHALL NOT:

(1) USE OR PERMIT THE USE OF WASTE MATERIAL AS GARDEN OR YARD FERTILIZER ON THE PROPERTY;

(2) BE ABSENT FROM THE PROPERTY FOR MORE THAN TWO DAYS WITHOUT PROVIDING FOR THE PROPER CARE OF THE HENS; AND

(3) PERMIT THE SLAUGHTERING OF A HEN KEPT ON THE PROPERTY.

§ 12-2-406.

(A) AT THE REQUEST OF THE HEALTH OFFICER, THE DIRECTOR MAY REVOKE A LICENSE ISSUED UNDER THIS SUBTITLE IF IN THE JUDGEMENT OF THE HEALTH OFFICER, THE KEEPING OF HENS ON A PROPERTY IS DETRIMENTAL TO THE PUBLIC HEALTH, SAFETY, OR WELFARE.

(B) THE DIRECTOR, AT THEIR DISCRETION, MAY REVOKE A LICENSE ISSUED UNDER THIS SUBTITLE IF A LICENSE HOLDER RECEIVES THREE OR MORE FINAL ORDER CODE VIOLATIONS RELATED TO THE PROVISIONS OF THIS SUBTITLE OR SECTION 418 OF THE BALTIMORE COUNTY ZONING REGULATIONS IN A 12 MONTH PERIOD. THE DIRECTOR SHALL CONSIDER THE NATURE AND SEVERITY OF THE VIOLATIONS IN MAKING THIS DETERMINATION.

(C) THE DIRECTOR SHALL REVOKE A LICENSE ISSUED UNDER THIS SUBTITLE IF A LICENSE HOLDER RECEIVES THREE OR MORE FINAL ORDER VIOLATIONS OF ARTICLE 12, TITLE 3 OF THE BALTIMORE COUNTY CODE RELATED TO ANIMAL WELFARE IN A 12 MONTH PERIOD.

§ 12-2-407.

THE DIRECTOR MAY ADOPT REGULATIONS TO CARRY OUT THE PURPOSES OF THIS SUBTITLE.

ARTICLE 13 – PUBLIC HEALTH, SAFETY, AND THE ENVIRONMENT

Title 7 – Nuisances

Subtitle 3 – Rodent Control

§ 13-7-311. Housing of Fowl and Livestock.

(a) This section does not apply to Asian pot-bellied pigs OR HENS.

(b) A person may not house or maintain within a residential area less than 1 acre in size:

(1) Fowl, including [chickens] ROOSTERS, ducks, and geese;

(2) Small livestock, including pigs, sheep, and goats; or

(3) Large livestock, including horses, cows, and ponies.

SECTION 2. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the Baltimore County Zoning Regulations read as follows:

ARTICLE 1 – GENERAL PROVISIONS

Section 100 – Zones and Districts; Boundaries

§ 100.6. Land used for stabling and pasturing of animals.

A tract of land used for the accessory stabling and pasturing of animals and which is not a commercial agricultural operation is subject to the following provisions:

Type	Limitation	Minimum [Acreage] LAND AREA
Large Livestock:		

Horses, burros and cattle	1 animal for each acre of grazing or pasture land	3 ACRES
Small Livestock:		
Sheep, goats and pigs, except an Asian potbellied pig, ponies and miniature horses	2 animals for each acre of grazing or pasture land	3 ACRES
Fowl or Poultry:		
Chickens, ducks, turkeys, geese, pigeons	No numerical limit, provided that a nuisance is not created or allowed to exist on the property	1 ACRE
CHICKENS – ONLY HENS, SUBJECT TO SECTION 418 OF THESE REGULATIONS AND SUBTITLE 4 OF ARTICLE 12, TITLE 2 OF THE BALTIMORE COUNTY CODE	4 6 8 10	PROVIDED THE LOT IS IMPROVED WITH A SINGLE-FAMILY DETACHED DWELLING AND OWNER-OCCUPIED AS A RESIDENCE: 10,000 SQUARE FEET 20,000 SQUARE FEET 30,000 SQUARE FEET 40,000 SQUARE FEET

ARTICLE 4 – SPECIAL REGULATIONS

SECTION 418 – BACKYARD CHICKENS AND HENS

§ 418.1. USE PERMITTED. HENS MAY BE KEPT ON AN OWNER-OCCUPIED PROPERTY WITH A SINGLE-FAMILY DETACHED DWELLING IN ACCORDANCE WITH A LICENSE ISSUED UNDER ARTICLE 12, TITLE 2, SUBTITLE 4 OF THE BALTIMORE COUNTY CODE AND THE MINIMUM LAND AREA REQUIREMENTS OF § 100.6 OF THESE REGULATIONS. <u>THE NUMBER OF HENS AND MINIMUM LAND AREA SET FORTH IN § 100.6 OF THESE REGULATIONS SHALL NOT BE REDUCED THROUGH A VARIANCE.</u>

§ 418.2. IN ADDITION TO ANY OTHER REQUIREMENTS OR CONDITIONS SET FORTH IN THE BALTIMORE COUNTY CODE OR THESE REGULATIONS, THE USE PERMITTED IN THIS SECTION IS SUBJECT TO THE FOLLOWING:

A. COOP OR SHELTER; LOCATION AND SETBACKS; CONSTRUCTION.

1. ANY LOT WHERE A HEN IS KEPT SHALL HAVE A COOP SUITABLE IN SIZE FOR THE NUMBER OF HENS KEPT ON THE PROPERTY.

2. THE COOP SHALL BE LOCATED IN THE REAR YARD OR IF A CORNER LOT, THE NON-STREET FACING HALF OF THE REAR YARD OF THE PROPERTY AND SET BACK AT LEAST 10 FEET FROM ALL LOT LINES AND 30 FEET FROM A NEIGHBORING DWELLING. THE MINIMUM SETBACKS FOR A COOP ~~CANNOT~~ SHALL NOT BE REDUCED THROUGH A VARIANCE.

3. A COOP SHALL BE CONSTRUCTED ACCORDING TO THE FOLLOWING:

A. DURABLE AND WEATHER RESISTANT MATERIAL SHALL BE USED SUCH THAT A COOP ADEQUATELY PROTECTS THE HENS FROM HARSH WEATHER DURING ALL SEASONS;

B. A COOP SHALL BE DESIGNED TO ALLOW FOR EASE OF CLEANING AND ADEQUATE AIR CIRCULATION TO PREVENT THE CONCENTRATION OF ODORS;

C. A COOP SHALL BE ELEVATED AT LEAST EIGHT INCHES ABOVE GRADE TO PREVENT RODENT ACCESS, UNLESS THE COOP IS CONSTRUCTED WITH CONCRETE FOOTERS, APRONS, OR OTHER DIG-DETERRENT BARRIERS, AND SHALL HAVE A MAXIMUM HEIGHT OF EIGHT FEET; AND

D. A COOP SHALL PROVIDE A MINIMUM OF THREE SQUARE FEET TO EACH HEN.

B. OUTDOOR RUN OR FREE RANGE AREA.

1. ANY LOT WHERE A HEN IS KEPT SHALL HAVE AN OUTDOOR RUN OR FREE RANGE AREA SUITABLE IN SIZE FOR THE NUMBER OF HENS KEPT ON THE PROPERTY WHERE A HEN MAY ROAM UNDER THE DIRECT SUPERVISION OF THE LICENSE HOLDER OR OTHER RESPONSIBLE PERSON.

2. A RUN OR FREE RANGE AREA SHALL:

A. BE LOCATED AT LEAST TWENTY-FIVE FEET FROM ANY NEIGHBORING RESIDENCE <u>AND</u> SHALL BE SET BACK AT LEAST TEN FEET FROM A SIDE OR REAR PROPERTY LINE<u>, BOTH OF WHICH SHALL NOT BE REDUCED THROUGH A VARIANCE</u>;

B. BE FULLY FENCED <u>AT A HEIGHT THAT COMPLIES WITH ALL COUNTY LAWS, POLICIES, AND REGULATIONS, AND</u> SUCH THAT THE HENS ARE CONFINED TO THE PROPERTY AND PROTECTED FROM PREDATORS;

C. BE KEPT FREE OF ALL OFFENSIVE ODORS AND MATERIALS THAT MAY ATTRACT RODENTS, INSECTS, OR OTHER PESTS; AND

D. PROVIDE AT LEAST FOUR SQUARE FEET TO EACH HEN.

C. A COOP, RUN, OR FREE RANGE AREA SHALL BE KEPT CLEAN, DRY, FREE OF ANY DEBRIS, AND MAINTAINED IN GOOD REPAIR AT ALL TIMES;

D. ANY STRUCTURE ASSOCIATED WITH THE KEEPING OF A HEN, INCLUDING A COOP, RUN, OR FREE RANGE AREA FENCE, THAT HAS NOT BEEN

ACTIVELY USED TO HOUSE OR KEEP A HEN FOR AT LEAST ONE YEAR SHALL BE PROMPTLY REMOVED FROM THE PROPERTY.

SECTION 3. AND BE IT FURTHER ENACTED, that this Act, having been passed by the affirmative vote of five members of the County Council, shall take effect on February 1, 2022.

LEGISLATION DETAIL

LEGISLATION	BILL 113-21
DISPOSITION	PASSED
ENACTED	01/21/22
EFFECTIVE	02/01/22
AMENDMENTS	YES (2)

ROLL CALL - LEGISLATION

MOTION MARKS SECOND BEVINS

AYE	NAY	
✔		Councilman Quirk
✔		Councilman Patoka
	✔	Councilman Kach
✔		Councilman Jones
✔		Councilman Marks
✔		Councilwoman Bevins
	✔	Councilman Crandell

ROLL CALL - AMENDMENTS (MARKS)

MOTION MARKS SECOND BEVINS

AYE	NAY	
✔		Councilman Quirk
✔		Councilman Patoka
✔		Councilman Kach
✔		Councilman Jones
✔		Councilman Marks
✔		Councilwoman Bevins
	✔	Councilman Crandell

ROLL CALL - AMENDMENTS (KACH) 1

MOTION MARKS SECOND KACH

AYE	NAY	
✔		Councilman Quirk
✔		Councilman Patoka
✔		Councilman Kach
✔		Councilman Jones
✔		Councilman Marks
✔		Councilwoman Bevins
	✔	Councilman Crandell

ROLL CALL - AMENDMENTS (KACH)2

MOTION SECOND ***WITHDRAWN BY KACH**

AYE	NAY	
		Councilman Quirk
		Councilman Patoka
		Councilman Kach
		Councilman Jones
		Councilman Marks
		Councilwoman Bevins
		Councilman Crandell