IN THE MATTER OF JOHN AND ELISABETH MARTIN LEGAL OWNERS AND PETITIONERS FOR VARIANCE ON THE PROPERTY LOCATED AT 1540-1542 SOUTH ROLLING ROAD 13th Election District 1st Council District	* * * * * *	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY Case No.: 21-166-A

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OPINION

This matter comes before the Baltimore County Board of Appeals as an appeal from the September 22, 2021 Opinion and Order of the Administrative Law Judge denying a Petition for Variance pursuant to BCZR § 100.6 to approve fowl or poultry on 0.93 acres of land in lieu of the required one acre of land at 1540-1542 South Rolling Road.

A public hearing was conducted virtually on March 9, 2022, using Webex. Both Petitioners, John and Elisabeth Martin, and the Protestant, Sharyn Herman, appeared *pro se*. In between the time of the September 22, 2021 Opinion and Order of the Administrative Law Judge, and the March 9, 2022 hearing before this Board, the Baltimore County Council passed Bill 113-21 amending the law pertaining to the stabling and pasturing of animals, and in particular, fowl and poultry. This new legislation amended provisions found in BCZR § 100.6, as well as BCZR §§ 418.1.-.2. Pursuant to these statutory changes, citizens are now permitted to seek licenses for the backyard housing of certain chickens and other foul on properties occupying land short of one acre in size. Pursuant to these amended statutes, applications can now be made to the Director of the Department of Permits, Approvals and Inspections for licenses to allow for the backyard housing of such animals. Consequently, variance relief is no longer available in certain circumstances regarding certain such chickens and fowl.

In keeping with the amended statutes, the Board issued an Order on March 24, 2022, allowing the Petitioners the opportunity to apply for such licenses available under law with the understanding that failure to apply for such licensing will result in the dismissal of any request for variance that is deemed to be within the purview of the amended statutes pertaining to chickens and other fowl. An additional hearing was scheduled by the Board to address all remaining issues. The Board convened for Day 2 on April 28, 2022. Closing statements were received from both parties. A public deliberation was held on June 29, 2022.

Mrs. Martin testified that she does not live at the property but that her son lives there with his family. Mrs. Martin's testimony established that the property is less than one acre, and the request is not for chickens, which are now allowed by law, but instead the actual request is for ducks and geese which her son and his family maintain. The County Council decided to deviate from the one-acre requirement for chickens. Bill 113-21 specifically amended Baltimore County Code Section 13-7-311(b)(1) to read "A person may not house or maintain within a residential area less than 1 acre in size: (1) fowl, including roosters, ducks, and geese..." Strict application of the law means there is no provision for waterfowl on less than one acre.

As indicated above, the Martins have requested variance relief from the one-acre requirement under Section 100.6. Under *Cromwell*, there is a two-step process to determine if a variance is warranted. First, the petitioner must demonstrate that the property is unique in relation to the surrounding properties, and this uniqueness is what necessitates variance relief. Second, the petitioner must show that without the requested relief, the petitioner will experience a practical hardship not of the petitioner's own making. 102 Md. App. at 694-95. In this instance, *Cromwell* is clearly not met. First, there is nothing unique about the property. It is a home and lot that is typical in the area, and nothing distinguishes it in relation to the maintenance of ducks and geese. Second, though the Martins may incur emotional hardship were removal of the ducks

and geese to be ordered, there is no hardship that relates to the use and enjoyment of her property within the meaning of *Cromwell*. Additionally, whatever hardship that may exist is arguably of her own making. Finally, the Board notes that variances run with the land. If the Board were to grant the Martins a variance allowing ducks and geese to be kept at the property, then any subsequent owner of that property would also have the right to maintain ducks and geese for any purpose. This would be an unfortunate, unjustified, and ill-advised consequence.

ORDER

THEREFORE, IT IS this 9th day of December, 2022 by the Board of Appeals of Baltimore County,

ORDERED, that Petition for Variance pursuant to BCZR §100.6. to approve fowl (ducks and geese) on 0.93 acres of land in lieu of the required one acre of land is hereby DENIED.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

BOARD OF APPEALS OF
BALTIMORE COUNTY

Deborah C. Dopkin

Deborah C. Dopkin, Chair

Andrew M. Belt

Adam T. Sampson

Adam T. Sampson

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

December 9, 2022

John and Elisabeth Martin
2613 Larchmont Drive
Baltimore, Maryland 21207-6019

Sharyn Herman
1538 S. Rolling Road
Halethorpe, Maryland 21227

RE: In the Matter of: *John and Elisabeth Martin*
Case No.: 21-166-A

Dear Messrs. Martin and Herman:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney/Office of Law