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

March 24, 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 Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Pursuant to the enclosed, this Order is not a final decision of the Board of Appeals for Baltimore County and does not constitute an appealable event at this time. This matter will be held open on the Board's docket until such time as a final opinion can be issued.

If you have any questions, please do not hesitate to contact us.

Very truly yours,

Sunny Cannington/taz

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
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law

Board of Appeals of Baltimore County

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March 31, 2022

NOTICE OF ASSIGNMENT - DAY 2

IN THE MATTER OF: John and Elisabeth Martin
1540-1542 S. Rolling Road
21-166-A 13th Election District; 1st Councilmanic District

Re: Petition for Variance relief from BCZR §100.6 to approve fowl or poultry on 0.939 acres of land in lieu of the required minimum 1 acre of land.

9/22/21 Opinion and Order of the Administrative Law Judge wherein the Petition for Variance was DENIED.

ASSIGNED FOR: APRIL 28, 2022, AT 9:00 A.M.

The above scheduled hearing will be held remotely using WebEx for audio and video participation. **Call-in information and a link to the hearing will be posted on our web calendar at** www.baltimorecountymd.gov/departments/appeals **the night before.**

A complete set of **exhibits must be emailed** at least **48 hours before the hearing** to **appealsboard@baltimorecountymd.gov** in a format that complies with MDEC (Maryland Electronic Court) standards.

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you require special accommodations, please contact this office at least one week prior to hearing date.

If you do not have access to a computer or smart device, please contact our office for the call-in information the day before the scheduled hearing.

Krysundra Cannington, Administrator

Backyard Chicken License Application

Elisabeth Martin

1540-1542 South Rolling Road

Relay, MD 21227

sismartin@comcast.net

Description of property management for BYC

1. The litter will be removed at a minimum weekly in a compose pile.
2. Water will be provided from metered water from property to multiple feeders and water bowls. There are 4 small ponds for fowl.
3. The feed is kept in a 55 gal. drum that is sealed and locked and located in the mudroom
4. The coop is a commercial dog kennel type.

Imagery ©2022 Commonwealth of Virginia, Maxar Technologies, U.S. Geological Survey, USDA/FPAC/GEO, Map data ©2022 100 ft

1542 S Rolling Rd

Building

Directions Save Nearby Send to your phone Share

Backyard Chicken License Application

Elisabeth Martin

1540-1542 South Rolling Road

Relay, MD 21227

sismartin@comcast.net

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Imagery ©2022 Commonwealth of Virginia, Maxar Technologies, U.S. Geological Survey, USDA/FPAC/GEO, Map data ©2022 100 ft

1542 S Rolling Rd

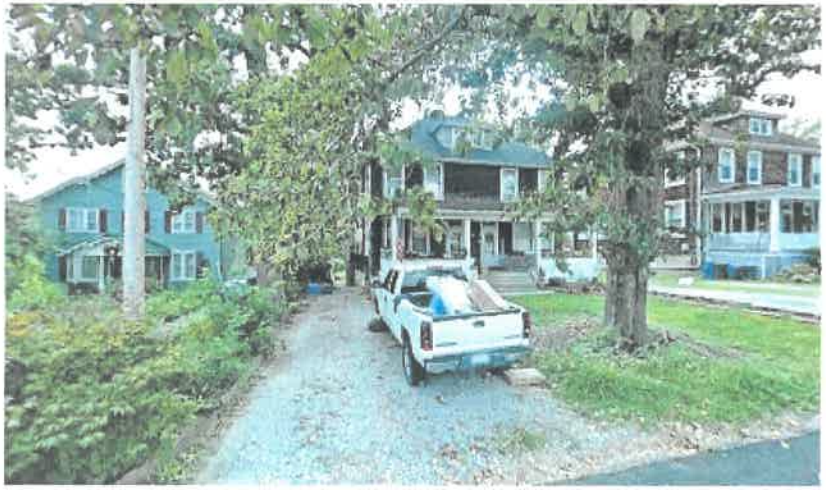
Building

Directions Save Nearby Send to your phone Share

Google Maps 1542 S Rolling Rd

95
47B
47A
ADVENT
LABORATORIES, INC
S Rolling Rd
Woodland Dr
S Rolling Rd
S Rolling Rd
Woodland Dr
1542 S Rolling Rd,
Arbutus, MD 21227
18 min drive - home
Woodland Dr
Woodland Dr
S Rolling Rd
Viaduct A

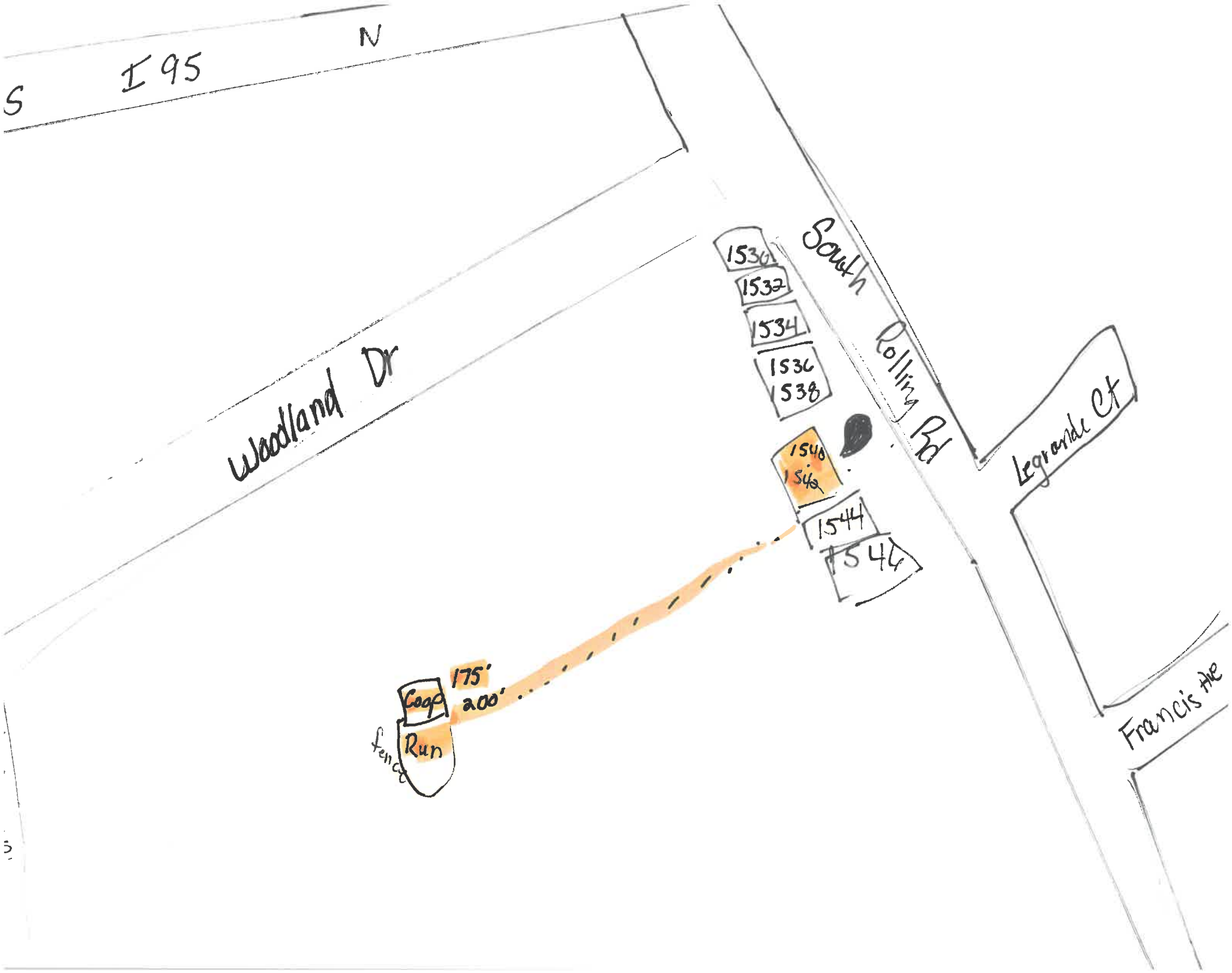
Imagery ©2022 Commonwealth of Virginia, Maxar Technologies, U.S. Geological Survey, USDA/FPAC/GEO, Map data ©2022 100 ft



1542 S Rolling Rd

Building

Directions Save Nearby Send to your phone Share


S
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N
Woodland Dr
South Rolling Rd
1530
1532
1534
1536
1538
1540
1542
1544
1546
Legrande Ct
Francis Ave
Coop
Run
fence
175'
200'

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. 203914

Date: 10-21-21

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806		6150					300.00
						Total:		300.00

Rec From: Elisabeth Martin

For: OAH - Appeal
Case No. 2021-0168-A
1540-1542 S. Rolling Rd.
Hearing Date - 9-3-21
ck # 2503

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
PLEASE PRESS HARD!!!!

CASHIER'S VALIDATION

To Baltimore County Government

Request for an Appeal

Case No. 2021-0166-A

Property: 1540-1542 South Rolling Road

RECEIVED
OCT 21 2021
OFFICE OF
ADMINISTRATIVE HEARINGS

To whom it may concern,

I am requesting an appeal for the above mentioned case for a Petition for Variance pursuant to BCZR for approval of fowl or poultry on 0.939 acres of land in lieu of the required 1 acre of land that was denied on September 22nd 2021 by Administrative Law Judge for Baltimore County Maureen E. Murphy.

I am pleading my request on several factors brought up during the virtual hearing held September 3rd, 2021.

- The ALJ stated using only ½ of the property since the Wheeler's (my son and family) live at 1542 and tenant at 1540. This property is owned by me the Petitioner in its entirety as deeded and titled as one not two separate. Only separate is the house numbers. This property is a duplex owned by me and my husband. If only ½ is considered for the denial decision then why am I charged as a property owner the full amount of taxes paid to Baltimore County since October 1980?
- The ALJ stated the Wheeler's are the petitioner since they own the fowl not me. That is not correct my husband and me are the petitioners and documented as such. This is my property, my choice, my son and his family including the fowl.
- Fowl has been on this property for a minimum of 12 years and never was there a complaint regarding noise from anyone including the home owner at the 1538 residence.
- During the pandemic Ms. Herman was working from home like most of us and did not complain till February 2021 only to my daughter-in-law and not once did she reach out to me. She has my contact information as she had done several years ago on a matter of resurfacing the driveways. I would have taken possibly other measures if I were informed as the owner of the property.
- The ALJ stated that the Wheelers often took in baby chicks this was done post Easter not on a regular basis. The comment was they were kept in the basement which is not true they were only washed with warm water to remove Easter dye.
- The comment of the Wheelers observing fox, coyote and hawks is true and the coyote was only a onetime event many years ago and not confirmed as coyote or light color dog. The foxes have been in the neighborhood for as long as I lived at this residence and 5135 Viaduct Ave property which backs up to the Rolling Road property. Hawks on limited bases. I might add deer, raccoon and field mice are always and had always been in the woods. There are also snakes along with other animals living in the heavily wooded area. The fowl make no difference of the animals being there or not, they have been there more than likely forever.

extremely missed in schools. Currently groups trying to support those efforts so homeowners as me stop spending countless time and money to plea our case for a healthier living in Baltimore County especially in homes they have lived in decades. I have expensed $75 filing fees, $400 posting fees and now $300 appeal fees. Not accounting and time of mine.

- It is disturbing that if someone's limits to noise why did he/she move into a duplex? A comment was made in the decision from the ALJ if the Wheeler's wanted to live on a farm to move to property zoned as farm. How insulting since not only my son has lived in Relay at this residence or 5135 Viaduct his entire 41 years. The Wheeler family has been in Relay since about 1900, why would we want to move out of Baltimore County somewhere else?
- When the virtual hearing started the ALJ stated she could not use the affidavits since they were not notarized or those individuals were not testifying. I was informed this was not necessary from the zoning office. But the ALJ commented that not surprising 2 of the 15 affidavits of MS Jane and MS Kathy Park were tenants of mine and of course would not find any complaints of the fowl. This contradicts the ALJ earliest comments regarding the affidavits and using such documents against my request for variance.
- Final notes of the ALJ that MS Herman being deprived of the enjoyment of her property. MS Herman living at 1538 since 2006 never till February 2021 made any complaints regarding the fowl that has been on the property for at least 12 years. The ALJ also stated the Wheelers and should find property which is suitable for zoned for their needs and are not the property owners. MS Herman rarely comes outdoors, should enjoy the beauty of the wooded property and might add for 15 years my son (Wheeler) has cut her grass for that time since she was a single lady at no charge for 15 years in being a kind good neighbor. The Wheelers may not be current owners of the property but we are in that process of that sale but would like this matter to be resolved for the enjoyment of our family as well who does enjoy the backyard of the property. It is also known that MS Herman routinely searches the neighborhood to find trivial items such as a crack on a sidewalk or how far the asphalt goes into the street or over storm drains etc. Several of the neighbors fear retaliation in participating in a hearing or other matters since MS Herman tends to contact the County Council office or zoning on those trivial matters that often found to be compliant.
- I hope our response clarifies our continued efforts to enjoy our property as once stated and the appeal process or zoning change allows a reasonable reduction in acreage since my property is hundredth shy of permitted fowl.

Respectfully Submitted,

Elisabeth Martin

Elisabeth Martin

sismartin@comcast.net

202-38-5254

ELISABETH A MARTIN
2613 LARCHMONT DR
BALTIMORE, MD 21207
PH 410-298-3119

2503

Oct 21, 2021
DATE

65-7675/2550
BRANCH 9

PAY TO THE ORDER OF Baltimore County of Maryland $ 300

Three hundred 00/100 DOLLARS

Security Features Details on Back.

© HARLAND 2001

SECU
CREDIT UNION
LINTHICUM, MD 21090

FOR Appeal Case# 2021-0166-A

Elisabeth A M Martin

⑆255076753⑆ 1116109871⑈ 2503

To Baltimore County Government

Request for an Appeal

Case No. 2021-0166-A

Property: 1540-1542 South Rolling Road

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Respectfully Submitted,

Elisabeth Martin

sismartin@comcast.net

202-38-5254

September 22, 2021

John and Elisabeth Martin – sismartin@comcast.net
1540-1542 S. Rolling Road
Halethorpe, MD 21227

RE: Petition for Variance
Case No. 2021-0166-A
Property: 1540-1542 South Rolling Road

Dear Mr. and Mrs. Martin:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

Pursuant to Baltimore County Code § 32-3-401(a), "a person aggrieved or feeling aggrieved" by this Decision and Order may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,

Maureen E. Murphy

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlm
Enclosure

c: Sharyn Herman – sharynherman24@verizon.net

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(1540-1542 S. Rolling Road)		
13th Election District	*	OFFICE OF ADMINISTRATIVE
1st Council District		
John & Elisabeth Martin	*	HEARINGS OF
Legal Owners	*	BALTIMORE COUNTY
Petitioners	*	**CASE NO: 2021-0166-A**

* * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") as a Petition for Variance filed by John Martin and Elisabeth Martin, Petitioners (the "Petitioners") for property located at 1540 – 1542 S. Rolling Road, Relay (the "Property"). The Petitioners are requesting variance relief from the Baltimore County Zoning Regulations ("BCZR") §100.6 to approve fowl or poultry on 0.939 acres of land in lieu of the required minimum 1 acre of land.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. The Petitioners appeared at the hearing along with Mrs. Martin's son, Arthur Wheeler, and his wife Adrienne Wheeler (the "Wheelers"). Adjacent property owner Sharyn Herman, 1538 S. Rolling Rd. appeared in opposition.

Zoning Advisory Committee ("ZAC") comments were received from the Department of Planning ("DOP") and Department of Environmental Protection and Sustainability ("DEPS") which agencies did not oppose the requested relief.

The Property is approximately 40,920 sq. ft., is zoned Density Residential (DR2) and is located in the Relay Historic District. It is improved with a duplex dwelling addressed as 1540 and 1542. The portion addressed as 1540 is rented by Kathy and/or Jane Parks and the other

Rd., Ms. Herman's home is one-half of a duplex and sits adjacent to 1540/1542. There is no fence to separate 1536/1538 from 1540/1542.

Ms. Herman testified that the squawking noise from the Wheelers' poultry is constant and intolerable particularly, the noise from the rooster and geese. It can be heard at all hours of the day and night. It keeps her awake and disturbs her ability to work from home. She testified that the poultry are not always contained within the pen and often freely wander into her yard, even up to her rear porch. She added that the Wheelers initially set up the pen onto Ms. Herman's property and removed trees belonging to her without her permission. At Ms. Herman's request, the pen was moved from its initial location near the homes to the rear of the Property. While moving the poultry farther away from the homes reduced the noise, the problem still occurs all day. The ducks quacking and the geese squawking is a constant disruption of Ms. Herman's enjoyment of her home. The noise is amplified by the area between the homes at 1536/1538 and 1540/1542 which acts as a wind tunnel.

In the spring of 2021, Ms. Herman put her house on the market for sale. A buyer who was initially interested in buying the Property, declined to make an offer due to the Wheelers' poultry farm. Due to the constant noise disturbance and nuisance of the poultry, and the negative effect it is having on her ability to sell her home, Ms. Herman is opposed to having poultry at the Property located at 1540-1542.

A variance request involves a two-step process, summarized as follows:

> (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
> (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

neighbors stating that they are not opposed to the poultry does not mean that the presence of the same is in the interest of health, safety or general welfare of the neighborhood. Indeed, it is not surprising that Kathy/Jane Parks, who are also renting 1540 from the Petitioners, would sign such a Petition.

The general rule is that "the authority to grant a variance should be exercised sparingly and only under exceptional circumstances." *Mueller v. People's Counsel for Baltimore* County, 177 Md. App. 43, 71(2007). This is because "a variance is an authorization for that which is prohibited by a zoning ordinance." *Cromwell v. Ward,* 102 Md. App. 691, 699 (1995). "Citizens [of a given county or municipality] are entitled to strict enforcement of the existing zoning regulations." *Salisbury Bd. of Zoning Appeals v. Bounds,* 240 Md. 547, 555-56 (1965). Therefore, "[t]he burden is on the applicant to show facts to warrant a variance," and "the specific need for the variance must be substantial and urgent and not merely for the convenience of the applicant." *Mueller v. People's Counsel for Baltimore* County, 177 Md. App. at 70.

I find that the variance here cannot be granted within the strict harmony of the BCZR which specifies that 1 acre minimum lot size for a chicken coop is required. I further find that this Petition is at the request of the Wheelers who are not the legal owners of the Property and a variance, if granted, would run with the land. This Petition is for the mere convenience and personal desire of the Wheelers to have chickens, ducks and geese; it is not a necessity. The Wheelers can still make reasonable use of the 1542 property without having poultry. Indeed, a self-imposed hardship is not a legal justification for granting a variance. The law is clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell, supra*, Judge Cathell noted:

> Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but