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

ORDER RECEIVED FOR FILING
Date 9-22-21
By

portion is rented by the Wheelers. (Pet. Exs. 10). Notwithstanding the separate rental of these units, the Wheelers apparently use the entire rear yard, part of which is being used to raise, grow and house chickens, geese and ducks. Photographs of the rear yard were provided. (Pet. Exs. 12-14).

According to the Wheelers, they have 7 chickens, 5 geese and 6 ducks. The chickens are housed in a chicken coop; the ducks and geese are housed in a separate, movable facility called a tractor. All of the poultry roam together in an outdoor pen which is connected to a solar-powered electric fence. The movable pen allows the poultry to eat different areas of the grass. The Wheelers stated that they have owned chickens for 12 years, geese for 3 years and ducks for 3-4 years. Admittedly, they readily adopt baby chicks. At one point, the Wheelers owned at least two (2) roosters but have since disposed of them. The Wheelers testified that they have personally observed foxes, coyote and hawks in their yard and surrounding neighborhood. They acknowledged that foxes, coyote and hawks are attracted to the Property because of the poultry but believe that having the geese provides a deterrent.

The owners of 1544 S. Rolling Rd. (Muecio/Sheets) also have animals including a rooster(s). However, they have one (1) single family home (not a duplex) which sits on a larger property (1.34 acres). The Muecio/Sheets have a chicken coop for 10 chickens and 2 roosters.

After unsuccessful attempts to resolve the noise and other nuisance problems stemming from the Wheelers' poultry as experienced by Sharyn Herman, the owner of 1538 S. Rolling Rd., a Code Violation Complaint was filed. Ms. Herman provided a copy of an email string with the Wheelers dated February 7, 2021 – April 2, 2021 outlining her complaints about the poultry. (Prot. Ex. 2). The emails reflect that as of February of 2021, the Wheelers owned 2 roosters which were only put down after Ms. Herman voiced her complaints. Like the units at 1540/1542 S. Rolling

ORDER RECEIVED FOR FILING
Date 9-22-21
By LW

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).

ORDER RECEIVED FOR FILING
Date 9-22-21
By DW

There was no evidence presented that the Property is unique as compared to other properties in the neighborhood. Indeed, the existence of a duplex home, on a rectangular shaped lot with a wooded area in the rear is similar to the property at 1536/1538 S. Rolling Rd. Thus, I do not find that it meets the uniqueness test. In the alternative, even if the Property was found to be unique, I find that such uniqueness would not cause an unreasonable hardship or practical difficulty for the Petitioners in not being able to have poultry on land which is less than 1 acre.

While the metes and bounds description for the Property contains the area for both 1540 and 1542 which together is 2,640 sq. ft. shy of the required 1 acre under BCZR, §100.6, in this case, the Wheelers are the owners of the poultry but not the owners of the Property. Of significance here is that the portion of the Property that they rent is actually ½ of the total 40,920 sq. ft. Because the Wheelers are tenants and not owners of 1542, granting a variance to permit poultry in perpetuity as one that will run with the land, is not within the spirit and intent of the BCZR. In short, the Property is not a farm; it is a duplex house with a narrow yard, surrounded by other residences. Ms. Herman and her home are directly affected by the presence of the poultry adjacent to her home. It been demonstrated that Ms. Herman is being deprived of the use and enjoyment of her home due to the noise and uninvited poultry which enter her yard. It was only after Ms. Herman exhausted her pleas to the Wheelers to remove the poultry that the Wheelers put the roosters down and moved the pen away from her home. The evidence supports the conclusion that the noise will continue if the poultry remains, particularly because the adult geese, who, according to the Wheelers must be present to protect the chicken from the foxes, coyote and hawks, must remain.

Because the Wheelers clearly desire to have a farm, they should find property which is suitably zoned for their needs. The fact that they were able to obtain signatures from other

ORDER RECEIVED FOR FILING
Date 9-22-21
By DW

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

ORDER RECEIVED FOR FILING
Date 9-22-21
By DW

> we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

Cromwell, at 722.

Because this area is not farmland but DR 2 zoned land, I find that having a chicken coop on this undersized lot will be detrimental to this neighborhood of homes which are close together. It is undisputed that having poultry on this Property has already attracted foxes, coyotes and hawks which creates increased danger to this residential neighborhood.

THEREFORE, IT IS ORDERED, this **22nd** day of **September 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR § 100.6 to approve fowl or poultry on 0.939 acres of land in lieu of the required minimum 1 acre of land is hereby **DENIED**.

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

Maureen E. Murphy

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm

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Date 9-22-21
By DW

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