

REPORT FOR THE RECORD

To: Town of Glen Echo, Mayor and Town Council
From: Ronald M. Bolt, Esq.
Subject: Animal Control
Date: May 15, 2018

The Town of Glen Echo Code currently prohibits the keeping of bees, chickens and other farm animals. The Town Council is tasked to consider whether the prohibition should be maintained, amended, or eliminated. One option under consideration is to delete the prohibition and defer to Montgomery County for animal control. To assist the Council in its deliberations, this memorandum summarizes the status of the current Town and Montgomery County regulations concerning the keeping of bees, chickens and other farm animals.

Town Code

The Town Animal Control Ordinance was adopted in October 2000, by Ordinance No. 00-03, effective November 7, 2000.¹ As stated in the Ordinance recitals, the Ordinance adopted Montgomery County's animal control provisions with certain amendments. The Town Code, Section 2.2, as adopted in 2000, currently provides as follows:

A. Animals Prohibited. Notwithstanding any provision to the contrary in Montgomery County Code, Chapter 5, it shall be unlawful to own, keep or harbor within the corporate limits of the Town of Glen Echo the following animals: horses, swine, including, but not limited to pot-bellied pigs, cows, cattle, goats, chicken, ducks, geese, pigeons, other domestic or wild fowl, bees and any other animals except dogs, cats and other pets commonly kept indoors in private residences. This provision shall be enforced, and penalties imposed, by the Town. (Emphasis added).

County Code

The keeping of bees, chickens and other farm animals is regulated by animal control and zoning regulations. With respect to zoning, it is important to note that the County Code lacks clear rules for residential areas like the Town.

The Town is zoned R-60 (residential, with a minimum lot size of 6,000 square feet). To determine how property can be used in the R-60 zone, one must consult the County land use table contained in the County Code, Section 59-3.1. According to the County land use table, all "farming" is generally permissible in the R-60 zone (Sec. 59-3.1.6).

The County Council had considered a farming limitation for non-rural zones when it comprehensively amended the County Code in 2014. A use to be known as "animal husbandry" was initially proposed. That use would have allowed only limited farming activities in non-rural zones, including keeping up to 8 chickens. It proved controversial, however, and was removed from consideration.²

When the draft “animal husbandry” amendment was dropped from the comprehensive rewrite years ago, it was not replaced with another provision. As a result, most of the residential zones have no specific zoning regulation concerning “farming”, other than setback requirements for animal shelters.

With respect to setbacks for animal shelters, the County Code currently provides that, in the R-60 zone, **“Any accessory building or structure used for the housing, shelter, or sale of animals or fowl other than a household pet must be a minimum of 25' from a lot line and a minimum of 100' from a dwelling on another lot.”** (Sec. 59-4.4.9.B.2(e) (emphasis added)).

When the “animal husbandry” amendment was dropped from consideration, it was generally understood that chicken coops would continue to be effectively disallowed in the R-60 zone, because the existing setbacks for animal shelters were not being relaxed. See, *e.g.*, memo on the County zoning Code rewrite by Jeffrey Zyontz, Legislative Attorney to the County Council (“As a single land use, nothing received a greater amount of attention than animal husbandry. **The proposed code would eliminate the current setback requirements for animal shelters, including shelter for fowl.** While no one objected to a chicken in every pot, some residents objected to the possibility of 8 chickens in every back yard. Chickens certainly had their supporters. There was eloquent testimony by chicken owners about their benefits and, in their opinion, only unsubstantiated detriments”) (emphasis added).³

I sought clarification from Mr. Zyontz as to the appropriate interpretation of the current County Code. He directed the question to Ehsan Motazed, Division Chief, Department of Permitting Services (DPS), Zoning and Site Plan Enforcement, because DPS has the authority and discretion to interpret the County zoning regulations.

The lack of specific regulation in the County Code leaves DPS with the difficult task of interpreting it, administratively. Mr. Motazed explained that DPS interprets the County Code to allow “attached” chicken coops and other farm animal shelters in non-rural residential zones so long as, *e.g.*, the animal shelter is part of the resident’s house because it shares a common wall. (See attached email of 4/25/18).

Mr. Motazed further confirmed that goats, sheep, and other small farm animals would be acceptable because, as noted above, “farming” is permissible in the R-60 zone. (Email of 4/25/18). Notably, he indicates that DPS may decide whether an animal is appropriately “small”. Large farm animals could be reasonably disallowed by the County, in the R-60 zone. However, it is important to note that the definition of farming does not expressly limit the size of animals that can be kept. Farming, by definition, includes raising “horses, poultry, fish, game, and fur-bearing animals; dairying, beekeeping, and similar activities.” (Sec. 59-3.2.6).

As a result, it should be noted that reliance on the County for animal control would mean the Town would have to accept the County’s selection of what farm animals are appropriate, based on DPS’s administrative interpretation, which may include a review of the animal’s size. There are currently no clear rules in the County Code as to what farm animals may be kept in the Town. Also, it appears the 25-foot and 100-foot setback requirements for an animal shelter will not be enforced by DPS if the shelter is “attached” to the house.⁴ Once such a shelter is attached, it would

be deemed part of the house, and no longer an accessory structure subject to the accessory structure setbacks. Mr. Motazedi notes that the County zoning regulations do not contain express provisions governing attached animal shelters.

Mr. Motazedi states that the County would disallow roosters in the R-60 zone, borrowing from the restriction contained in the “urban farming” use regulation (which applies to other zones). This too would be an administrative interpretation. There is no express prohibition against keeping roosters in the R-60 zone (other than the setback requirements for the animal shelter).

Under DPS’s interpretation, an animal shelter attached to a house would need to meet the zoning requirements for the house. For example, the County generally imposes a front setback of 25 feet or the established building line, whichever is greater. The rear setback is 20 feet. The side setback is 8 feet for one side, and a combined setback of 18 feet applies for both sides. The setbacks may be less, based on when the lot was recorded. (See attached DPS Development Standards for R-60 Zone).

Prosecutorial Discretion

It may be worth noting that the Town has prosecutorial discretion, concerning Town laws. Although the Town has regulations in its Town Code, and additional animal control regulations are proposed to be added to the Town Code, Article 2, Animal Control, the existence of such regulations do not indicate the Town must or will actively begin “policing the streets” in enforcement. The Town lacks the staff to do so and most enforcement action in a small town such as Glen Echo is complaint-driven.

Also, when a complaint is raised, enforcement typically begins with an informal request by the Town for abatement. The next step is typically a formal written notice of violation, containing an abatement deadline. If abatement does not occur, the next step is typically the issuance of a municipal citation. Enforcement action can be time-consuming and costly. Accordingly, attempts to gain voluntary compliance are typically first pursued. Most folks are happy to correct violations once they are pointed out. Many violations are inadvertent. Escalated enforcement action in a small town such as Glen Echo is rarely required.

The Town should have clear regulations on the books concerning what the Town wants to have the ability to enforce, should enforcement become necessary in the rare circumstance. However, the fact that a regulation is included in the Code does not mean that the Town must or intends to undertake aggressive enforcement.

Conclusion

The keeping of bees, chickens and other farm animals has been prohibited in the Town since November 2000. The Town Council has been tasked to determine whether the prohibition should be maintained, amended, or deleted. An option under consideration is to defer to the County for animal control. Concerning this option, it should be noted that the County Code lacks clear provisions concerning the keeping of bees, chickens and other farm animals in the R-60 zone. The County Code imposes setback requirements for animal shelters but lacks specific provisions

governing what animals can be kept in those shelters. Because the County did not adopt specific provisions during the County's comprehensive rewrite in 2014, the County Code is now subject to interpretation.

Given the lack of clear provisions in the County Code, the Council may wish to consider continuing to regulate in the Town what it finds appropriate, if anything, rather than relying on the County for animal control. The County Code is subject to interpretation and such interpretation may change over time.

If the Town were to allow bees, chickens and other farm animals, it may be best for the Council to expressly impose whatever regulations it deems appropriate, including, *e.g.*, a requirement for setbacks and a ban on roosters. If the Town Council wishes to continue to disallow bees, chickens and other farm animals, the Code need not be amended.

¹ It was not clear in the past if other articles of the Town Code had been adopted, as copies of executed ordinances for certain articles could not be located. Accordingly, the Town Council adopted Ordinance No. 16-02 to reaffirm and readopt the entire Town Code, effective January 29, 2017.

² See, *e.g.*, these historical articles:

<http://www.montgomerycountybackyardchickens.org/proposed-law>

[https://www.washingtonpost.com/local/propos\(ed-montgomery-zoning-rules-look-to-a-more-urban-county/2013/06/08/c643d498-cf6b-11e2-8845-d970ccb04497_story.html?noredirect=on&utm_term=.0e641f684baa](https://www.washingtonpost.com/local/propos(ed-montgomery-zoning-rules-look-to-a-more-urban-county/2013/06/08/c643d498-cf6b-11e2-8845-d970ccb04497_story.html?noredirect=on&utm_term=.0e641f684baa)
("The changes that may draw the most heated debate involve animal husbandry. While small farm animals are currently permitted in many residential neighborhoods, the revisions would relax setback requirements for chicken coops and other animal housing. Many homeowners would, for example, be able to keep one miniature goat for every 2,000 feet and a hen, duck or rabbit for every thousand feet of land area, with a maximum of 8 animals per lot.")

³ Mr. Zyontz's memorandum to the County Council is available here:

http://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2013/130614/20130614_PHED2.pdf

⁴ This report summarizes only County zoning laws. There are other County laws that may apply to the keeping of bees, chickens and other farm animals. Health and sanitation, and housing regulations may be implicated. Bee colonies must be registered and kept according to State law. Also, per County Animal Control laws, an owner may not allow an animal to become a nuisance. County Code Section 5-203(a)(5) provides that, "An owner must not: ... (5) Allow an animal to cause an unsanitary, dangerous, or offensive condition because of the size or number of animals in a single location or because a facility is not appropriate for the animal or properly maintained." Also, Section 5-203(a)(8) provides that "An owner must not allow a domestic or exotic bird, including a homing pigeon, to be in an aviary within 100 feet of any structure used for human habitation or work. This does not apply to a bird inside the owner's dwelling...". In July, 2016, County Officer K.J. Zollers, Animal Services, explained that Animal Services no longer considers a chicken coop to be an "aviary" (*i.e.*, cage) if it has an open door that allows the chicken(s) to roam the yard.