

IN RE: PETITION FOR VARIANCE

NE corner of Belair Road and
Silver Spring Road
15th Election District
5th Council District
(8700-8830 Belair Road)

Silver Bell Associates, LLC,
Legal Owners
The Twisted Harp, LLC,
Lessee
Petitioners

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
*
* **CASE NO. 2012-0285-A**
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ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by the legal owners, Silver Bell Associates, LLC, and The Twisted Harp, LLC, lessee (the “Petitioners”). The Petitioners are requesting Variance relief from § 409.6.A.2 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to permit 607 parking spaces in lieu of 640 spaces. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support for this case was Larry Tapscott, and Rick Richardson, Jr., with Richardson Engineering, LLC, the consulting firm that prepared the site plan. John B. Gontrum, Esquire appeared and represented the Petitioners. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no interested citizens in attendance at the hearing, nor does the file contain any letters of opposition.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. A ZAC comment was received from the Development of Planning on July 24, 2012, which supports Petitioners’ request. There were no adverse comments received from any of the County

reviewing agencies.

Testimony and evidence revealed that the subject property is 15.70 acres (683,892 square feet) and is split-zoned BL, RO and DR 16. The property is improved with a strip retail shopping center (Perry Hall Crossing Shopping Center), and the current petition concerns the Twisted Harp family restaurant, a tenant at the center. The Petitioners would like to construct at the site an outdoor dining area for patrons, and the elevation drawings show that the space will be attractively designed and will enhance the shopping center. Creating the outdoor seating area will cause Petitioners to lose a certain number of the parking spaces on site, and for that reason zoning relief is needed.

Though filed as a Petition for Variance (at the behest of the County zoning officials), I believe relief in cases of this nature (involving large commercial enterprises with hundreds of parking spaces) is more appropriate under the “modified plan” regulations set forth at B.C.Z.R. § 409.12. That regulation permits the Zoning Commissioner to approve a modified parking plan (the requirements for which are set forth at B.C.Z.R. § 409.8.B.1) when compliance with the parking regulations would cause an “undue hardship.” Though this regulation shares certain attributes found in the § 307 variance procedure, it does not require a finding of uniqueness and focuses instead on special exception-type factors.

A modified parking plan can be approved when to do so would not be detrimental to the health, safety and welfare of the community and where the Petitioner satisfies certain technical and procedural requirements, as set forth at § 409.8.B.2.a-g. Here, the plan submitted by Petitioners (Exhibit 1) satisfies these requirements, and the approval of the modified parking plan will enhance the appearance and functionality of the restaurant and the larger shopping center, while having little or no impact upon the surrounding community.

Finally, the Petitioners would experience an “undue hardship” if the parking regulations were strictly enforced, since they would be unable to construct the proposed improvements.

Pursuant to the advertisement, posting of the property, and public hearing on this petition, and after considering the testimony and evidence, I find that Petitioners’ request should be granted.

THEREFORE, IT IS ORDERED, this 2nd day of August, 2012 by the Administrative Law Judge for Baltimore County, that the Petition to approve a Modified Parking Plan per § 409.12 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to permit 607 parking spaces in lieu of 640 spaces, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. The Petitioners may apply for their building permit and may be granted same upon receipt of this Order. However the Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason this Order is reversed, the Petitioners will be required to return and be responsible for returning said property to its original condition.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:dlw