

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(125 Industry Lane) *	OFFICE OF
8 th Election District *	
3 rd Council District *	ADMINISTRATIVE HEARINGS
HD Development of Maryland, Inc. *	
<i>Legal Owner</i> *	FOR BALTIMORE COUNTY
Petitioner *	Case No. 2014-0068-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed by Lawrence E. Schmidt, Esquire, of Smith, Gildea & Schmidt, LLC, on behalf of HD Development of Maryland, Inc., the legal owner. The Special Hearing was filed pursuant to §409.12 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to permit a modified parking plan. In addition, a Petition for Variance (seeking the same relief) was filed pursuant to B.C.Z.R. §409.6.A.2 to permit 568 parking spaces in lieu of the required 662 parking spaces for the existing Home Depot. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the requests were Ben Kulp, John Kerekes and Bill Kidd. Lawrence E. Schmidt, Esquire, of Smith, Gildea & Schmidt, LLC appeared and represented the Petitioner. The file reveals that the Petition was advertised and posted as required by the Baltimore County Zoning Regulations. There were no Protestants in attendance and the file does not contain any letters of protest or opposition.

No substantive Zoning Advisory Committee (ZAC) comments were received from any county reviewing agencies.

The subject property is 11.952 +/- acres in size and is zoned BM. The site is improved with a Home Depot store, approved by the County in 1998. Exhibit 3. Shortly thereafter, Petitioner sold a 4½ acre portion of the original property (totaling 18.1 acres in the aggregate) to Bill Kidd, who operates a new car sales facility on the adjoining property. For over ten years, Mr. Kidd has been leasing a small portion of the Home Depot parking lot for storage of his new vehicle inventory. At present, Mr. Kidd is under contract to purchase this small portion of land, and the Home Depot requires zoning relief concerning the number of parking spaces provided. The Petitioner has sought such relief under alternative theories: as a modified parking plan and variance.

Based upon the testimony and evidence presented, I will grant the petition for variance.

To obtain variance relief a petitioner must show:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

The Petitioner has met this test. A significant grade change exists on the property, and it is also an irregularly shaped parcel. In addition, the Petitioner obtained variance relief in 1999 (Case No.: 99-342-A, Ex. 4), upon a finding that the property was unique. For these reasons, I believe the Petitioner has satisfied the uniqueness requirement.

If the regulations were strictly interpreted, the Petitioner would experience a practical difficulty, given it would be unable to sell the small portion of land to Bill Kidd for new vehicle storage. Finally, the variance can be granted without injury to the public health, safety and welfare. There were no adverse comments from the County or the community, and (as noted by Petitioner's counsel) the proposal in question will in essence merely "formalize" the parking

arrangement that has been in place for over 10 years, during which time the Home Depot has thrived without ever experiencing a shortage in parking.

Pursuant to the advertisement, posting of the property, and public hearing, and after considering the testimony and evidence offered, I find that Petitioner's Variance request should be granted.

THEREFORE, IT IS ORDERED this 12th day of December, 2013, by this Administrative Law Judge, that Petitioner's request for Special Hearing filed pursuant to § 409.12 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to permit a modified parking plan, be and is hereby DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that Petitioner's Variance request pursuant to B.C.Z.R. §409.6.A.2 to permit 568 parking spaces in lieu of the required 662 parking spaces for the existing Home Depot, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for its appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would 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.

JEB/sln

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County