

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(9515 Philadelphia Road)		
15 th Election District	*	OF ADMINISTRATIVE
6 th Councilman District		
Phill Mill, LLC	*	HEARINGS FOR
<i>Legal Owners</i>		
ACDH Maryland, LLC, <i>Lessee</i>	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2014-0012-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Jason T. Vettori, Esquire, on behalf of the legal owners, Phill Mill, LLC, and contract purchaser/ lessee, ACDH Maryland, LLC (“Petitioners”). The Variance was filed pursuant to Baltimore County Zoning Regulations (“B.C.Z.R”) §409.6 to permit 35 parking spaces in lieu of the minimum required 46 parking 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 of the requests was Ty Davenport and Matt Brewer. Jason T. Vettori, Esquire with Smith, Gildea & Schmidt, LLC, appeared as counsel and represented the Petitioners. There were no Protestants or interested citizens in attendance, and the file does not contain any letters of protest or opposition. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), Bureau of Development Plans Review (DPR) and State Highway Administration (SHA). None of the agencies opposed the petition.

Testimony and evidence revealed that the subject property is approximately 6.23 +/- acres and zoned BL/ML. The site is improved with a single family dwelling and out buildings. These will be razed, and in its place the Petitioners propose to construct a Dollar General Store.

Based upon the testimony and evidence presented, I will grant the petition for variance. Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (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).

Petitioners have met this test. The site is constrained with a large area of wetlands, which renders it unique.

If the B.C.Z.R. were strictly enforced, the Petitioners would indeed suffer a practical difficulty, since they would be unable to construct the proposed retail store. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the absence of County and/or community opposition. The DOP expressed concern with the amount of paved surface proposed on the plan, but the Petitioners' engineer explained that the paving shown is necessary to accommodate large tractor-trailer delivery trucks, and their ingress/egress from the site.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the variance relief requested shall be granted

THEREFORE, IT IS ORDERED, this 6th day of September, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Baltimore County Zoning Regulations ("B.C.Z.R") § 409.6 to permit 35 parking spaces in lieu of

the minimum required 46 parking spaces, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB: sln