

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(6212 Baltimore National Pike)		
1 st Election District	*	OF ADMINISTRATIVE
1 st Council District		
Sherlin Enterprises, Inc.	*	HEARINGS FOR
<i>Legal Owner</i>		
Harbor Freight	*	BALTIMORE COUNTY
<i>Contract Purchaser</i>		
Petitioners	*	CASE NO. 2018-0173-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Sherlin Enterprises, Inc., legal owner of the subject property and Harbor Freight, contract purchaser (“Petitioners”). The Petition seeks variance relief from §409.6.A.2 of the Baltimore County Zoning Regulations (“BCZR”) to allow 63 parking spaces in lieu of the 108 spaces required. A site plan was marked as Petitioners’ Exhibit 1.

Professional engineer Rick Richardson appeared in support of the petition. Timothy M. Kotroco, Esq. represented Petitioners. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR.

The site is approximately 1.45 acres in size and zoned BM-AS. The property is improved with a one-story commercial building (approximately 21,000 sf.) previously used as a Bassett furniture store. Harbor Freight proposes to open at the location, although it needs a parking variance since under the BCZR furniture stores require fewer spaces than traditional retail businesses.

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).

Petitioners must contend with existing site conditions and there is no area on the lot to add additional parking spaces. As such the property is unique. If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be unable to open the business at this vacant site. Finally, I find that the variances can be granted in harmony with the spirit and intent of the BCZR, 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 Baltimore County and/or community opposition.

In its ZAC comment the Bureau of DPR requested Petitioners to show on the plan the correct number of parking spaces. Mr. Richardson testified the site plan shows the number and size of all spaces, and note 21 contains the requisite parking calculation for the site. The DOP suggested landscape and lighting plans be submitted for review, although Petitioners' representatives spoke with the County's landscape architect who stated such plans were not required in this instance.

THEREFORE, IT IS ORDERED, this 5th day of **March, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to Section 409.6.A.2 of the Baltimore County Zoning Regulations ("BCZR") to allow 63 parking spaces in lieu of the 108 spaces required, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject 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