

**IN THE MATTER OF:**  
**DAT T. TRAN**  
*Petitioner*

1402 E. Joppa Road

9<sup>th</sup> Election District  
6<sup>th</sup> Councilmanic District

\* BEFORE THE  
\* BOARD OF APPEALS  
\* FOR  
\* BALTIMORE COUNTY  
\* **Case No.: 2011-0366-ASA**

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**OPINION**

This matter comes before the County Board of Appeals of Baltimore County (hereinafter "Board") on an appeal of the September 13, 2011 Opinion and Order of the Administrative Law Judge for Baltimore County. Therein, Administrative Law Judge Timothy M. Kotroco granted certain zoning relief to permit the conversion of the subject property and improvements thereon for use as a nail salon. The adjacent property owners in interest, namely, Di Zhang and Yidion Dong (hereinafter "Appellants") filed a timely appeal on October 6, 2011. The matter then came before the Board at a public hearing on November 29, 2011. Appearing at that hearing were J. Neil Lanzi, Esquire, representing Petitioner/owner of the subject property, Dat T. Tran and Lawrence E. Schmidt, Esquire representing Appellants, Di Zhang and Yidion Dong, principals of DZD, LLC, the Maryland Limited Liability Company on title for 1404 East Joppa Road.

At the onset of the hearing, counsel informed the Board that, subsequent to the filing of the appeal by the Appellants and prior to the hearing before the Board, an agreement had been reached between the parties. This agreement relates to the proposed use of the property and the zoning relief to be granted in connection therewith; as well as the amendment of an existing private easement binding these adjacent properties. The parties requested that amended relief be granted, as hereinafter described, and that the case be presented through the proffer of counsel. This request was approved by the Board and the matter proceeded in that fashion.

Proffered testimony and evidence indicated the subject property located at 1402 East Joppa Road consists of 7,225 square feet or 0.16 acres and is currently zoned Residential-Office (RO). A one and a half story masonry building is located on the subject property which is being converted to a nail salon. The proposed nail salon will utilize the first floor while the second floor will be utilized for storage.

Mr. Lanzi proffered the following testimony on behalf of Henry Tran, brother of Owner, Dat T. Tran. Henry Tran will be the owner and operator of the nail salon business at the subject property along with his wife. Mr. Tran previously operated a nail salon business in a leased space near the subject property. The hours of operation for the nail salon business will be Monday through Saturday, 10:00 a.m. – 8:00 p.m. and Sunday, 11:00 a.m. – 4:00 p.m. Saturdays are typically the busiest day. Customers will be mostly by appointment, however, some walk-ins are anticipated. The purchase of the subject property and improvements to date have cost in excess of \$300,000.00. Parking will be sufficient for employees and customers and the proposed improvements will be compatible with the various businesses, residences and offices in the area along the Joppa Road corridor.

Additional evidence presented and as shown on the site plan accepted as Exhibit No. 1, was that the Appellants own the adjacent property known as 1404 Joppa Road and use that property as their residence. Although they do not object to the proposed use, they object to the Petitioner's initial proposal which provided for the construction of a driveway between properties to a proposed parking lot in the rear. The Appellants fear that this proposed driveway (which would be constructed on both properties pursuant to a recorded easement which permits joint access in between the respective buildings) would detrimentally impact their property and cause an unsafe condition. Moreover, construction of that driveway and parking configuration

would necessitate a series of zoning variances; as more particularly described in Administrative Law Judge Kotroco's opinion and order.

In lieu of these concerns, the Petitioner, with the consent of the Board, amended the relief requested. In lieu of the variances required under the prior proposal, the Petitioner now seeks the approval of a modified parking plan, pursuant to Baltimore County Zoning Regulation ("BCZR") Section 409.12. The modified parking plan shows that the number of parking spaces required for this proposed use are in fact provided and the configuration of the proposed parking area is revised from the initial proposal. All of the parking is now provided in the front yard to take advantage of the existing means of access from Joppa Road and existing impervious surface. The modification requested relates to the configuration of the proposed lot.

Mr. Lanzi next proffered the following testimony on behalf of Thomas J. Hoff, landscape architect, who has testified before this Board as an expert landscape architect and expert in land use matters. The modified parking plan as shown on the site plan prepared by Mr. Hoff was offered and accepted as Petitioner's Exhibit 1. Exhibit 1 reflects the proposed nail salon, three standard parking spaces and one van accessible handicap space in the front yard and one employee parking space in the side yard. The modified parking plan was necessary as a result of the undue hardship upon Petitioner in order to meet the requirements for parking under Section 409 of the BCZR. This undue hardship includes the necessity of creating and paving a driveway between the subject property and 1404 East Joppa Road. Additional hardship includes the removal and relocation of an existing fence between the two properties and the elimination of natural/pervious area. Paving would have to be installed along the side of Petitioner's Property, through the neighbor's side yard and into the Petitioner's landscaped rear yard. The area as shown on the modified plan is paved and available for the proposed parking.

Mr. Hoff's further proffered testimony included his expert opinion that the modified parking plan as shown on Exhibit 1 meets the requirements of Section 409.8(B)(2) of the BCZR as follows:

- i. The land being used for the modified parking plan adjoins the nail salon business;
- ii. The modified parking plan is limited to passenger vehicles only;
- iii. The modified parking plan reflects the limitation of no loading, service or uses other than parking;
- iv. The modified parking plan shows that lighting will be restricted as to location, direction, glare and intensity;
- v. The modified parking plan shows satisfactory parking arrangements and vehicle access;
- vi. The modified parking plan provides for maintenance by the owner of the property and business; and
- vii. The modified parking plan will not be detrimental to the health, safety or general welfare of the surrounding community.

Section 409.8B(1)(e)(4) of the BCZR requires Petitioner to meet the requirements of Section 502.1 of the BCZR and Mr. Hoff's further proffered expert testimony included the following opinions:

- i. The modified parking plan will not be detrimental to the health, safety, general welfare of the area.
- ii. The modified parking plan will not tend to create congestion in roads, streets or alleys.
- iii. The modified parking plan will not create a potential hazard from fire, panic or other danger.
- iv. The modified parking plan will not tend to overcrowd land or cause undue concentration of population.
- v. The modified parking plan will not interfere with adequate provisions for schools, parks, water, sewage, transportation or other public requirements.
- vi. The modified parking plan will not interfere with adequate light and air.
- vii. The modified parking plan will not be inconsistent with the purposes of the properties RO zoning classification or in any other way be inconsistent with the spirit and intent of the BCZR.
- viii. The modified parking plan will not be inconsistent with the impermeable surface and vegetative retention provisions of the BCZR.
- ix. The modified parking plan will not be detrimental to the environmental and natural resources of the site and vicinity.

A Certificate of Zoning Approval for Cosmetology or Barber Related Uses as signed by Arnold Jablon, Director, Permits, Approvals and Inspections, dated July 12, 2011, was offered and

accepted as Petitioner's Exhibit 2. Seven recent photographs taken by Mr. Hoff of the subject property and adjoining properties were offered and accepted as Petitioner's Exhibit 3.

The exhibits and further testimony proffered on behalf of Mr. Hoff confirmed the unique characteristics of the subject property which caused the BCZR to impact disproportionately on the subject property and thus resulting in practical difficulty or unreasonable hardship to the Petitioner. These characteristics included the narrow nature of the lot, the steep grade in the rear, the existence of the residence since 1942 and the fact the lot is surrounded by Joppa Road in the front and the Merritt Retail Center in the rear.

The only variance requested under the revised proposal is for signage. Across the street from the subject property and all along the Joppa Road corridor in this area are residential townhouses. Section 450.4, Attachment 1, Section A(5)(m) of the BCZR requires that in the event of a residential zone across from a RO zoned property, a variance is necessary for a freestanding identification sign. Proffered testimony described the proposed 15 square foot non-illuminated freestanding sign, no more than six feet in height, as essential for locating the business for existing and potential customers. The size and height of the proposed sign is in accordance with the sign regulations in the BCZR.

A Special Variance is also requested due to the property's location in a deficient traffic shed. The proffered testimony confirmed discussions had been held and plans reviewed by Mr. Hoff and Steve Weber of the Baltimore County Traffic Division with regard to the impact of the proposed nail salon business on the failing intersection located at Loch Raven Boulevard and East Joppa Road. Testimony confirmed that the distance of the subject property from the intersection, the small number of employees and potential customers and the hours of operation would result in little or no adverse impact on this intersection. In conclusion, counsel proffered on behalf of Mr. Hoff that

without the sign variance, special variance for traffic and modified parking plan, Petitioner would be unable to use the property for the permitted nail salon use.

On behalf of the Appellants, Di Zhang and Yidion Dong, Lawrence E. Schmidt, Esquire represented there was no objection to the modified parking plan and requested zoning relief for the proposed nail salon at the subject property.

### **DECISION**

Section 307 of the BCZR permits granting of a variance upon certain terms and conditions, which in pertinent part allows a variance where special circumstances or conditions exist that are peculiar to the land that is the subject of the variance request and where strict compliance with the Zoning Regulations would result in practical difficulty or unreasonable hardship. Under the Court of Special Appeals Decision in Cromwell v. Ward, 102 Md. App. 691, 1995 which sets forth the legal standard under which a variance may be granted, the Board of Appeals, hearing the case *De Novo*, is given the task of interpreting regulations and statutes where issues are debatable in the light of the law. Once having established the property is unique, the Board must find the application of the zoning ordinances impose a practical difficulty and undue hardship on the Petitioner. Finally, the Board must determine whether the approval of the requested zoning relief will be contrary to the spirit and intent of the BCZR.

Upon consideration of the testimony and evidence offered during this hearing, the Board finds the subject property is unique because of its narrow size, steep slopes and 1942 structure. The proffered testimony of the proprietor, Henry Tran and Petitioner's expert Thomas J. Hoff, was uncontradicted by the Appellants. Having established the property is unique, the Board finds the application of the zoning ordinances impose a practical difficulty and undue hardship on the Petitioner. The Board finds as a matter of fact, the location of the subject property in an RO zone

across from a townhouse community located in a Density Residential (DR) zone and its location at the outer boundary of a failing intersection area result in practical difficulty upon the Petitioner. The Board finds as a matter of fact, that the steep topography, narrow lot and limited area between the Petitioner's property and the Appellant's property renders the proposed location of the modified parking appropriate. None of these factors were self-imposed by the Petitioner. The Board finds the uncontradicted evidence establishes there will be no injury to public safety, health and general welfare by the granting of the requested zoning relief nor will approval be contrary to the spirit and intent of the BCZR.

In conclusion, the Board is unanimous in granting the amended zoning relief; to wit, (i) Petition for Special Hearing pursuant to Section 500.7 for the approval of a modified parking plan pursuant to Section 409.12 of the BCZR; (ii) Petition for Variance from Section 450.4, Attachment 1, Section A(5)(m) of the BCZR to allow a freestanding sign in a RO zoned property facing residentially zoned property; and (iii) Petition for Special Variance from Section 4A02.4(D) to allow twelve (12) peak hour trips in lieu of the permitted zero number of peak hour trips.

**ORDER**

**THEREFORE**, it is this 5<sup>th</sup> day of January, 2012, by the Board of Appeals for Baltimore County,

**ORDERED**, the Petition for Special Hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations to approve the modified parking plan pursuant to Section 409.12; the Petition for Variance from Section 450.4, Attachment 1, Section A(5)(m) of the BCZR to allow a freestanding sign facing residentially zoned property and, the Petition for Special Variance

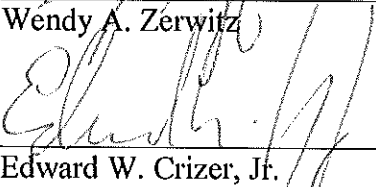
from Section 4A02.4(D) to allow twelve (12) peak hour trips in lieu of the permitted zero number of peak hour trips, be and the same are hereby **GRANTED**.

Any Petition for Judicial Review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules.

**BOARD OF APPEALS  
OF BALTIMORE COUNTY**

  
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Lawrence S. Wescott, Chairman

  
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Wendy A. Zerwitz

  
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Edward W. Crizer, Jr.