

**IN RE: PETITIONS FOR VARIANCE
AND SPECIAL VARIANCE**

N Side of East Joppa Road, 209' E of
c/line of Drumwood Road

9th Election District

6th Councilmanic District

(1402 East Joppa Road)

Dat T. Tran

Petitioner

* BEFORE THE
OFFICE OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY

* CASE NO. 2011-0366-ASA

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of Petitions for Variance and Special Variance filed by the Dat T. Tran, legal owner. The Petitioner requested variance relief pursuant to Section 307 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows:

- Section 409.8A(4) to allow an 8 foot setback for a parking space from the right-of-way line in lieu of the required 10 feet,
- Section 409.8A(1) to allow a 3 foot landscape strip in between paved surfaces and lot lines adjacent to commercial uses in lieu of the required 6 feet,
- Section 409.8A(1) to allow a .7 foot setback from the face of the building to the parking lot edge in lieu of the 6 feet required,
- Section 202.3(C)(2)(b) to allow a 3 foot setback from the property lines in lieu of the required 10 feet,
- Section 202.3(C)(2)(c) to allow 1 van accessible parking space to be located in the front yard in lieu of the side and rear yards,
- Section 409.4(C) to allow a two way drive aisle of 10 feet in lieu of the 22 feet required, and
- Section 450.4, Attachment “A” 5(m) to allow a freestanding sign facing residentially zoned property.

In addition, Petitioner is requesting a Special Variance pursuant to Section 4A02.4(G) of the B.C.Z.R. to allow 12 peak hour trips in lieu of the permitted zero number of peak hour trips. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner’s Exhibit 1.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning received July 15, 2011, which indicate as follows:

“The Office of Planning has reviewed the petitioner’s request and accompanying site plan. The petitioner requests several variances to facilitate the proposed nail salon to be located on the subject property. The proposed parking and landscaping included on the site plan would not be detrimental to the adjacent neighbors and the community.

Due to the challenges of the site such as topography and ADA requirements, the Office of Planning recommends granting the petitioner’s seven requested variances.

The Office of Planning also recommends approval of the Special Variance, as the proposed business would begin daily operations after peak hours with regard to traffic on Joppa Road.

Lastly, no retail uses shall be permitted for this non-retail, service use, located in a residential zone.”

A ZAC comment was also received from the Bureau of Development Plans Review, dated July 6, 2011, which indicates as follows:

“We do not oppose granting of the variance request for items 1 through 7. Regarding the special variance, the proposed nail salon would generate relatively few peak hour trips and given its distance from the failing intersection, we do not oppose granting the variance. We could actually be in favor of granting the variance if the petitioner would offer some form of mitigation such as restricting business hours to non-peak times.”

Appearing at the public hearing in support of the Petition was Dat T. Tran, legal owner, and Thomas J. Hoff of Thomas J. Hoff, Inc., the professional engineer who prepared the site plan. J. Neil Lanzi, Esquire appeared as counsel representing the Petitioner. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. Appearing in opposition to this request were Di Zhang and Yidian

Dong, adjacent property owners and Annamaria Walsh, Esquire and Douglas Sachse, Esquire, their representatives.

Testimony and evidence offered at the hearing demonstrated that the property which is the subject of this special variance and variance requests consists of a gross area of 0.16 acres, more or less, and is zoned R.O. The subject property is located on the north side of East Joppa Road near its intersection with Drumwood Road. The property is improved with a 1-½ story masonry single-family dwelling. The property is zoned R.O. and the owner of the property, Dat Tran, is desirous of converting the former dwelling into a nail salon. The Petitioner testified that he currently operates a nail salon at 203 East Joppa Road. He pays rent at that location. He and his brother recently purchased the property which is the subject of this request and is in the process of converting the dwelling into a nail salon. Mr. Tran is interested in relocating his business from 203 East Joppa Road to this location and in lieu of paying rent will own the premises.

Mr. Tran testified briefly regarding the type of business he hopes to operate within this property. As stated previously, he currently operates a nail salon where he works along with his wife, who is a part-time technician. They also employ a part-time worker who is Mr. Tran's sister-in-law. Their hours of operation are basically 10 AM to 8 PM, Monday through Saturday with hours on Sunday from 11 AM to 4 PM. Mr. Tran has been working on the interior of the house in order to convert it to a nail salon; however, in order to make the exterior improvements to the property the variance relief as previously cited is necessary. A review of Petitioner's Exhibit 1, the site plan submitted into evidence and prepared by Thomas J. Hoff, indicates that Mr. Tran is desirous of paving a parking area in the rear yard of the property with a driveway to the side of the building whereupon customers can park. The driveway will lead out to East Joppa Road where Mr. Tran and his customers will have access to the property. He also proposes to provide a

handicapped parking space in front of the dwelling adjacent to Joppa Road. A review of the surrounding properties along East Joppa Road in this area of Towson indicates that many of the other properties along this stretch of Joppa Road have already converted these former dwellings into businesses and have provided paved macadam surfaces for their customers similar to what Mr. Tran wishes to do at this location.

Also appearing and testifying on behalf of the Petitioner's request was Mr. Thomas Hoff. Mr. Hoff submitted into evidence several photographs of the subject property as well as surrounding properties. He also testified regarding some improvements that the Petitioner has been requested to make to East Joppa Road by the Baltimore County Bureau of Traffic Engineering. He testified that in his expert opinion the subject property will function well as a nail salon given the limited number of customers that come in any given time and the amount of parking that will be provided for those customers. Mr. Hoff also testified about the special variance request given that the subject property is located on the outer perimeter of the failing traffic shed. The failing intersection in question is located at Loch Raven and Joppa Road. That intersection is functioning at a current level "F". In order to convert the subject property to a business use, the special variance is necessary to provide relief from the regulations pertaining to failing intersections.

Mr. Hoff testified that the intersection at Loch Raven and Joppa Road fails in the morning hours between 7 AM and 9 AM only. It does not fail in the evening hours. He also stated that the Petitioner's business does not open until 10 AM, one hour after the morning rush hour traffic passes through that intersection; therefore, Mr. Hoff opined that this particular nail salon will not have an adverse impact on that intersection given the fact that it does not even open for business until one hour after the intersection ceases to fail.

As stated previously, the adjacent property owners appeared and testified in opposition to the Petitioner's request. Ms. Di Zhang testified that she owns and resides at 1404 East Joppa Road, which is the property located to the east of the subject site. Ms. Zhang testified that she uses her property as a residence even though it is zoned R.O. Residential use is certainly a permitted use in the R.O. zone. Ms. Zhang resides in the property with her 21-month old baby and her husband. She is very much concerned over the safety of her child playing on their property given the amount of vehicular traffic that will come and go to this nail salon. She requests that the variance relief be denied.

In this case, relief is requested because the intersection of Loch Raven Boulevard and East Joppa Road is a failing intersection. It has been graded as an "F" level of service intersection and the "shed" of this intersection includes the subject property. As the subject property is located within that shed, building permits cannot be issued nor development approval given until the intersection is improved and no longer failing or special variance relief is granted.

Obviously, the manner in which a proposed development will impact specific directions/movements in the intersection is a significant consideration in determining the merits of a special variance request. The testimony in this case revealed that this business will open no earlier than 10 AM on any given day. The intersection in question fails only during the morning rush hours between 7 AM to 9 AM.

Thus, based on the above, it is clear there will be no impact from the development of the subject property on the failing intersection during its peak volume. It is equally clear that existing traffic patterns, anticipated road improvements, the contemplated volume direction and timing of traffic to and/or from the proposed development are all factors that weigh in favor of a finding that

the anticipated impact of this development will have no impact on the intersection during the time that it fails.

Based upon the foregoing, I find that the testimony and evidence that has been offered is sufficient to comply with the special variance standard set forth in Section 4A03.4.G of the B.C.Z.R. Thus, the Petition for Special Variance shall be granted and relief approved so that the proposed development may be approved and building permits issued for this project, notwithstanding its location within the shed of a failing intersection.

In addition, after considering all the testimony and evidence presented at the hearing, including the testimony in opposition thereto, I am persuaded to grant the request for variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioner.

I further find that the variances can be granted in strict harmony with the spirit and intent of said regulations, and in such a manner as to grant relief without injury to the public health, safety, and general welfare. Thus, I find that the variances can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R, as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

Pursuant to the advertisement, posting of the property and public hearing on these Petitions held, and for the reasons set forth above, the Petition for Variances should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge of Baltimore County, this ____13th_____ day of September, 2011 that the Petition for Variance from Section 307 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows:

- Section 409.8A(4) to allow an 8 foot setback for a parking space from the right-of-way line in lieu of the required 10 feet,

- Section 409.8A(1) to allow a 3 foot landscape strip in between paved surfaces and lot lines adjacent to commercial uses in lieu of the required 6 feet,
- Section 409.8A(1) to allow a .7 foot setback from the face of the building to the parking lot edge in lieu of the 6 feet required,
- Section 202.3(C)(2)(b) to allow a 3 foot setback from the property lines in lieu of the required 10 feet,
- Section 202.3(C)(2)(c) to allow 1 van accessible parking space to be located in the front yard in lieu of the side and rear yards,
- Section 409.4(C) to allow a two way drive aisle of 10 feet in lieu of the 22 feet required, and
- Section 450.4, Attachment “A” 5(m) to allow a freestanding sign facing residentially zoned property,

be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Variance pursuant to Section 4A02.4(G) of the B.C.Z.R. to allow 12 peak hour trips in lieu of the permitted zero number of peak hour trips, be and is hereby GRANTED.

The relief granted herein is subject to the following:

1. Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his 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.
2. Petitioner shall comply with the Zoning Advisory Committee (ZAC) comments received from the Office of Planning dated July 8, 2011, and the Bureau of Development Plans Review, dated July 6, 2011; copies of which are attached and made a part hereof.

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

TMK:dlw

Signed
TIMOTHY M. KOTROCO
 Administrative Law Judge
 for Baltimore County