

<b>IN RE: PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE OFFICE
(7002 Railway Avenue)		
12 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
7 <sup>th</sup> Council District		
Estate of Robert L. Martin &	*	HEARINGS FOR
Christine Martin, PR		
<i>Legal Owners</i>	*	BALTIMORE COUNTY
Alpha Homes, LLC		
<i>Contract Purchaser</i>	*	<b>CASE NO. 2019-0022-SPH</b>
<b>Petitioners</b>		

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**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by the Estate of Robert L. Martin, the legal owner of the subject property and Alpha Homes, LLC, contract purchaser (“Petitioners”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve the continuance of the non-conforming use of the subject property as a commercial business (pub) in a residential zone. A site plan was marked as Petitioners’ Exhibit 1.

Christine Martin and Henry Valasquez appeared in support of the petition. W. Timothy Sutton, Esq. represented Petitioners. Several citizens attended the hearing and opposed the request. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”). That agency did not oppose the request.

The subject property is 4,725 sq. ft. in size and zoned DR 5.5. The property is improved with a building constructed in 1940, which is being operated as a bar known as “Hops Inn.”

Christine Martin, personal representative of the estate of Robert L. Martin, testified the property has been used as a bar for nearly 80 years. She testified she has old liquor licenses, utility bills and similar records at home, although she did not present any documents at the

hearing. One neighbor testified she has lived in the area since approximately 1970, and that since that time a bar has been operated at the property. Other than this, no other evidence or testimony was presented concerning the status of the bar as a lawful nonconforming use. In these circumstances I believe the petition must be denied.

Generally speaking, a nonconforming use is one that was operating lawfully as of the date zoning regulations were first adopted which rendered the use non-permitted. *Howard County v. Meyer*, 207 Md. 389 (1955). The BCZR defines a nonconforming use as “[a] legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use.” BCZR §101.1. The burden of proving the existence of a lawful nonconforming use falls upon the party asserting that claim. *County Comm’rs of Carroll County v. Uhler*, 78 Md. App. 140 (1989). Maryland’s highest court has held that “nonconforming uses pose a formidable threat to the success of zoning. They limit the effectiveness of land use controls, contribute to urban blight, imperil the success of the community plan, and injure property values.” *Prince George’s County v. E.L. Gardner, Inc.*, 293 Md. 259 (1982).

In many cases, evidence is produced to show the community was well aware of the use before the enactment of a zoning ordinance that would have prohibited that use. *Calhoun v. Baltimore County*, 262 Md. 265 (1971). In this case, one neighbor testified the bar was in operation when she moved to the area in about 1970. But that is insufficient to establish a nonconforming use since Baltimore County adopted in 1955 zoning regulations which would have prohibited commercial enterprises in residential zones. Petitioner was required to produce admissible evidence showing the use predated 1955, and (other than uncorroborated statements that the bar has been in operation for 80 years) such evidence was not produced at the hearing.

THEREFORE, IT IS ORDERED, this 1st day of **October, 2018**, by the Administrative

Law Judge for Baltimore County, that the Petition for Special Hearing pursuant to BCZR Section 500.7 to approve the continuance of the non-conforming use of the subject property as a commercial business (pub) in a residential zone, be and is hereby DENIED.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB:sln