

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(2100 Northland Road)		
1 st Election District	*	OF ADMINISTRATIVE
1 st Council District		
Tony Kinsler	*	HEARINGS FOR
<i>Legal Owner</i>		
Nicholas Chavez, Jr.	*	BALTIMORE COUNTY
<i>Contract Purchaser</i>		
Petitioners	*	CASE NO. 2019-0481-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Tony Kinsler, legal owner, and Nicholas Chavez, Jr., contract purchaser of the subject property (“Petitioners”). The Petitioners are requesting variance relief from Section 432.A.1.A(3) of the Baltimore County Zoning Regulations (“BCZR”) to permit an Assisted Living Facility (“ALF”) within 1,000 ft. of another property with an ALF. A site plan was marked as Petitioners’ Exhibit 1.

Petitioner, Nicholas Chavez appeared in support of the petition. There were numerous Protestants in attendance. 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”).

The Petitioner explained at length his desire to operate an Assisted Living Facility (ALF) for elderly persons at this location. He testified that he has signed a three year lease with an option to purchase the property. The Protestants voiced opposition to the proposed ALF for a variety of reasons. First and foremost they pointed out that there are already numerous ALFs in the neighborhood, including one on the same block as this proposed ALF. They also described extreme traffic and parking congestion. They explained that when emergency vehicles are called to this block they completely block ingress and egress for the residents on the block due to the extremely narrow street. They expressed understandable concern that if an ALF for elderly

citizens were allowed to open on the block that there would likely be an increase in the number of medical emergency responses. Finally, they expressed concern about falling property values due to the influx of ALFs and rental units in the neighborhood.

The subject property is 8,296 square feet in size and is zoned DR 5.5.

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).

The property in question is virtually identical to the other properties on the street and was developed at the same time. As such the property is not unique. Therefore, although I recognize and regret the hardship that a denial of the requested variance will cause the Petitioner, it cannot be granted. Furthermore, even if Petitioner could satisfy both prongs of this legal analysis, the variance would not be appropriate because another ALF on this block would not be within the spirit and intent of the BCZR. Finally, the requested relief would, in my view, also be injurious to the public health, safety and general welfare.

THEREFORE, IT IS ORDERED, this **10th** day of **December, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to Section 432.A.1.A(3) of the Baltimore County Zoning Regulations (“BCZR”) to permit an Assisted Living Facility (“ALF”) within 1,000 ft. of another property with an ALF, be and is hereby DENIED.

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

Signed
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:sln