Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

May 2, 2019

Adam M. Rosenblatt, Esquire
Venable LLP
210 W. Pennsylvania Avenue, Suite 500
Towson, Maryland 21204

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: In the Matter of: Ross and Emily Taylor – Legal Owners
Marcia and Barry Friedman – Petitioners
Case No.: 18-241-SPH

Dear Counsel:

Enclosed please find a copy of the Order of Dismissal issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Sunny Cannington ltaz

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Duplicate Original Cover Letter
Enclosure

c: Ross and Emily Taylor
Barry and Marcia Friedman
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Jeff Mayhew, Acting Director/Department of Planning
Michael Mohler, Acting Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
	*	BOARD OF APPEALS
(8641 Park Heights Avenue)	*	FOR BALTIMORE COUNTY
3rd Election District 2nd Council District	*	
Marcia and Barry Friedman *Petitioners*	*	Case No. 2018-0241-SPH
Ross and Emily Taylor *Legal Owners*	*	
	*	

* * * * * * * * * * * * *

STIPULATION OF DISMISSAL WITH PREJUDICE

The parties, through their respective undersigned counsel, hereby stipulate to the dismissal of this proceeding with prejudice. Each party shall pay its own costs and attorneys' fees.

Respectfully submitted,

Adam M. Rosenblatt
Venable LLP
210 West Pennsylvania Avenue
Suite 500
Towson, Maryland 21204
410-494-6200
amrosenblatt@venable.com
Counsel for Petitioners

[By permission]
Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 West Pennsylvania Avenue
Towson, Maryland 21204
Council for Protestants

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
	*	BOARD OF APPEALS
(8641 Park Heights Avenue)	*	FOR BALTIMORE COUNTY
3rd Election District 2nd Council District	*	
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* * * * * * * * * * * * *

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Counsel for Petitioners

[By permission]
Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 West Pennsylvania Avenue
Towson, Maryland 21204
Council for Protestants

Krysundra Cannington

From: Krysundra Cannington
Sent: Tuesday, August 28, 2018 1:42 PM
To: 'Karceski, David H.'
Cc: Carole Demilio; Alsip, Matthew R.; Michael McCann; Peoples Counsel
Subject: RE: Case No. 18-241-SPA (8641 Park Heights Avenue)

Good afternoon Counsel,

This email is to confirm that the hearing scheduled at 10:00 is being postponed to allow additional time for settlement negotiations.

Thank you for your email.

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

From: Karceski, David H. [mailto:DKarceski@Venable.com]
Sent: Tuesday, August 28, 2018 12:27 PM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Carole Demilio <cdemilio@baltimorecountymd.gov>; Alsip, Matthew R. <MRAlsip@Venable.com>; Michael McCann <michael@mmccannlaw.net>; Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: Case No. 18-241-SPA (8641 Park Heights Avenue)

Ms. Cannington,

I am writing to advise that the parties in the above-referenced case jointly request that the hearing scheduled for tomorrow at 10 a.m. (motion to dismiss only) be postponed to a later date in light of ongoing settlement discussions. In the event the parties are unable to reach a final settlement, we will contact your office to request a new hearing date.

Krysundra Cannington

From: Karceski, David H. <DKarceski@Venable.com>
Sent: Tuesday, August 28, 2018 12:27 PM
To: Krysundra Cannington
Cc: Carole Demilio; Alsip, Matthew R.; Michael McCann; Peoples Counsel
Subject: Case No. 18-241-SPA (8641 Park Heights Avenue)

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Thank you,

David

David Karceski, Esq. | Venable LLP
t 410.494.6285 | f 410.821.0147 | m 443.956.7425
Towson: 210 W. Pennsylvania Avenue, Ste. 500, Towson, MD 21204
Baltimore: 750 East Pratt Street, Ste. 900, Baltimore, MD 21201

Board of Appeals of Baltimore County

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SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
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August 20, 2018

AMENDED NOTICE OF REASSIGNMENT
ARGUMENT ONLY ON MOTION TO DISMISS

IN THE MATTER OF: Ross and Emily Taylor – Legal Owners
Marcia and Barry Friedman – Petitioners
18-241-SPH 8641 Park Heights Avenue
3rd Election District; 2nd Councilmanic District

Re: Petition for Special Hearing as follows:
- Whether the property owner's development of the subject property required an amendment to the Final Development Plan governing the Garden View community?
- What standards and procedures in BCZR Section 1B01.3.A.7 apply to the property owner's amendment to the Final Development Plan?
- Whether all applicable standards and procedures in/under the Zoning Regulations, including those in Section 1B01.3.A.7, were met and fully complied with?
- Such other and further relief as is necessary under the Zoning Regulations to ensure that the development of the subject property complies therewith.

4/24/18 Opinion and Order on Owners' Motion to Dismiss issued by the Administrative Law Judge wherein the Owners' Motion to Dismiss was GRANTED, and the case was DISMISSED WITH PREJUDICE.

Having received a Motion to Dismiss from David Karceski, Esquire and Adam Rosenblatt, Esquire of Venable, LLP on behalf of Property Owners, Ross and Emily Taylor, on August 2, 2018, the de novo hearing on the merits has been changed to argument only on the Motion to Dismiss. The date and time will remain as

ASSIGNED ON: **AUGUST 29, 2018, AT 10:00 A.M.**

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.

- Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington, Administrator

c: Counsel for Legal Owner : David Karceski, Esquire and Adam Rosenblatt, Esquire
Legal Owners : Ross and Emily Taylor

Counsel for Petitioner : Michael R. McCann, Esquire
Petitioners : Marcia and Barry Friedman

Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney
Office of People's Counsel

Krysundra Cannington

From: Krysundra Cannington
Sent: Monday, August 20, 2018 10:52 AM
To: David Karceski, Esquire; Adam Rosenblatt Esquire; Michael McCann, Esquire; Peter Max Zimmerman
Cc: Carole Demilio; Peoples Counsel
Subject: Taylor/Friedman Hearing August 29, 2018
Attachments: Amended Notice - Argument Only on Motion to Dismiss.pdf

Good morning Counsel,

For clarification purposes, attached please find an Amended Notice of Reassignment being issued today. The hearing next week will be Argument Only on the Motion to Dismiss.

Please do not hesitate to contact me with any questions.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

Baltimore County, Maryland
OFFICE OF PEOPLE'S COUNSEL
Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

August 3, 2018

HAND DELIVERED
Jason S. Garber, Chairman
Board of Appeals of Baltimore County
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Ross & Emily Taylor – Legal Owners
Marcia & Barry Friedman - Petitioners
8641 Park Heights Avenue
Case No.: 2018-241-SPH

Dear Chairman Garber,

This letter serves to register our office's support of the decision of the Administrative Law Judge dated April 24, 2018 granting a Motion to Dismiss filed by Ross and Emily Taylor on the grounds of *res judicata* and to ask the CBA to dismiss the Petition for Special Hearing filed by Marcia and Barry Friedman ("Petitioners"). The decision is currently on appeal before the CBA. The hearing is scheduled August 29th.

As the CBA may have observed, our office often participates in cases involving the important legal principles of *res judicata and collateral estoppel.* We offer our position in these cases (i) out of respect for the finality of prior zoning decisions by the administrative agencies and appellate courts; (ii) to support the policy of judicial economy; and (iii) to prevent an unjustified burden on interested and participating citizens.

In the spirit of the 17th century English proverb, "What's good for the goose is good for the gander" our position may, at times, support a property owner. To be sure, that is the case here, and we agree with the reasons stated by the ALJ and the cases cited in Judge Beverungen's April, 2018 decision.

Briefly, by way of background, in April, 2016, Ross and Emily Taylor, ("Taylor"), the property owners at 8641 Park Heights Avenue, and Protestants in this 2018 case, were approved for an administrative variance to construct a single family dwelling on the R.C. 5 site which would be 80 feet in lieu of 150 feet from an R.C. 2 zone, and for amendment to the Final Development Plan of Garden View for their Lot 9. BCZR Sections 1A04.3B.2.c. and 1B01.3A.7.c., respectively.

The Department of Planning, the Department of Environmental Protection and Sustainability and the Bureau of Development Plans Review supported the proposed dwelling with conditions. In his April 21, 2016 Order granting the relief, the ALJ incorporated those conditions and actually attached the written comments to his Order. No opposition was registered from other agencies or citizens. There is no allegation of noncompliance with the conditions in the Order. And there is no allegation the Taylors did not comply in 2016 with the procedure for administrative relief under Baltimore County Code 32-3-303. (See attached Administrative Zoning Petition filed March 11, 2016). It is undisputed the property was properly posted on March 19, 2016. (See attached Certificate of Posting). Thereupon, the Taylors obtained a building permit on September 26, 2017 and proceeded to construction.

Two years later, Petitioners, who have lived in their current home since 1983, are challenging the ALJ's April 21, 2016 decision. It is uncontroverted neither the Protestants here nor any qualified owner requested a public hearing in 2016 under BCC 32-3-303 (b) (1):

> " (1) Within the 15 day posting period required under subsection (a) (3) of this section, an occupant or owner within 1000 feet of the lot in question may file a written request for a public hearing with the Department of Permit, Approvals and Inspection.
>
> (2) The Department shall schedule a hearing to be held on a date within 75 days after receiving a request for a public hearing."

Petitioners now claim the ALJ in 2016 did not address the amendment of development plan under BCZR 1B01.3. But it's too late to raise that issue once a final decision is made and no longer appealable; *res judicata* prohibits relief in a second case when the objections could and should have been raised at the first hearing. Here, that is all the CBA need consider to dismiss the current Petition for Special Hearing with prejudice.

Should the CBA want to hear argument on the issues raised in Petitioners' (Friedmans) Response to Motion to Dismiss filed with the ALJ below, we offer the following comments.

Contrary to Petitioners' claims, there can be no other interpretation than the ALJ in 2016 specifically granted both the distance variance and the amendment to the Final Development Plan (FDP) of Garden View for Lot 9. The ALJ referred to and attached to his Order the comments from three agencies analyzing the relief. The comments were both referred to in the Opinion and attached to the Order itself. Those incorporated comments addressed the special exception standards applicable to a requested amendment to a FDP after sales have occurred. We note that the following department comments, and, concomitantly, the 2016 order, apply BCZR "502.1 Conditions determining granting of special exception.":

1. Ground water Management review required for the private septic – **502.1 A. E.**
2. Install vegetative screening along the northeast property line to complement existing vegetation. **502.1 G. H.**

3. Retain the forested land on the site in accordance with the Screening Exhibit submitted to Planning on April 12, 2016. **502.1 A., G., H., I.** (This condition followed an extensive comment from the Planning Department subsequent to a site visit, noting the subject site is visible from Greenspring Valley Road, a designated scenic road, across intervening farm fields that are in the Maryland Environmental Trust easement).
4. A recognition from the Planning Department on conditions in **502.1 A., B., C., E., F.** that "density and lot size are not an issue."

All these comments also reflect consideration of **502.A.**

By adopting these comments, the ALJ clearly considered the elements of BCZR 502.1 and ruled the " . . . amendment [for Lot 9] is in keeping with the spirit and intent of this article and other Baltimore County land use and development requirements , and . . . that the amendment does not violate the spirit and intent of the original plan." BCZR 1B01.3 7.c.

But, to reiterate, even if these issues were not addressed in the Order, it is irrelevant since these was no appeal of the 2016 Order; right or wrong, it is a final Order. See *Freeland Comm Ass'n v. HZ Props., LLC* (No. 0656, [2016] Unreported in the Court of Special Appeals) attached. Petitioners here erroneously rely on the 1975 *Board of County Commr's of Cecil County v. Racine* which is clearly no longer applicable law. This was stated unequivocally by Judge Keough in *HZ*:

> "In support of their contention, HZ cites several cases: *Department of Health and Mental Hygiene v. Reeders,* 86 Md. App. 447 (1991), *Klein v. Colonial Pipeline Co.,* 55 Md. App. 324 (1983), and *Board of County Com'rs of Cecil County v. Racine,* 24 Md. App. 435 (1975). We do recognize that all three of these cases state that administrative orders based on erroneous interpretations of law do not have a preclusive effect under the doctrine of *res judicata. Reeders,* 86 Md. App. at 455; *Klein,* 55 Md. App. at 340; *Racine,* 24 Md.App. at 443. However, these decisions are no longer representative of the current law on this issue.
>
> After *Reeders*—the most recent of HZ's cited cases—was decided, the Court of Appeals issued several decisions that indicate that administrative decisions *should* have the same preclusive effect as decisions by courts under the doctrine of *res judicata.* The first of these is *Baston v. Shiflett,* 325 Md. 684 (1992). In *Baston,* the Court discussed three elements which must be present in an administrative decision in order for the decision to have a preclusive effect under *res judicata.*[6] The Court concluded that when an administrative decision embodies all three of these elements, the administrative decision should be: "given the same preclusive effect as findings made by a court;" *Id.* at 702; *see also Seminary Galleria, LLC v. Dulaney Valley Improvement Ass'n, Inc.,* 192 Md. App. 719, 735 (2010) ("[A] valid and final adjudicative determination by an administrative tribunal has the same effects under the rules of *res judicata,* subject to the same exceptions and qualifications, as a judgment of a court.") .[7]
>
> Moreover, we believe the purposes of the doctrine of *res judicata* are not furthered by the conclusions in *Reeder* and similar cases. The principles behind the doctrine of *res judicata*

> are: "avoiding the expense and vexation attending multiple lawsuits, conserving judicial resources, and fostering reliance on judicial action by minimizing the possibilities of inconsistent decisions." *Norville,* 390 Md. 106–07. These principles are poorly served if an administrative decision is denied its preclusive effect under an allegation that the administrative decision was legally incorrect. The expense, both to the parties and to the administrative agency, would often be as great in determining whether the prior administrative decision committed an error of law as it would be if the agency simply issued a judgment on the merits of the case. Furthermore, the goal of minimizing the possibility of inconsistent decisions is not furthered by denying erroneous final agency orders a preclusive effect. The proper procedure for disputing an erroneous decision, administrative or judicial, is to file a petition for judicial review, or an appeal, as the case may be." (emphasis added)

Judge Beverungen's reliance on HZ and dismissal of Racine is correct.

Radio Communications, Inc. and *Gould* cited by Petitioners are inapplicable here. Neither involved the issues of zoning *res judicata and collateral estoppel*, but rather involved those agencies' specific statutes and authority. There was no appeal by a party or request for a rehearing in *Radio Communications*. *Gould* involved an interpretation of a statute prohibiting an appeal from the agency decision on the original claim, not a second claim. And *Gould* predates *HZ. Radio Communications* was decided in 1982 by the Court of Special Appeals, also before *HZ. Austin* involved Baltimore City liquor license statutes and policies and a unique set of facts inapplicable to the case here, which is more closely aligned with the plethora of *res judicata* cases, including zoning decisions in Baltimore County and throughout Maryland. For instance, in addition to *HZ,* Judge Beverungen cited *Seminary Galleria LLC v. Dulaney Valley Improvement Ass'n, Inc.*, 192 Md. App. 719 (2010), another Baltimore County zoning case in which our office successfully argued *res judicata* barred a second Petition on issues that could and should have been raised, or were in fact raised in the first case.

Finally, Petitioners' argument fails to consider the appellate courts' recognition of deference given to the ALJ Opinion. The Court of Appeals addressed the adequacy of an agency Opinion (there the Board of Appeals) in a critical area variance case, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, et al. v. Moreland, LLC, et al. 418 Md. 111(2011). The Board of Appeals denied relief, but was reversed by the Circuit Court for Anne Arundel County, which remanded the case to the Board for failure to reference specific evidence. The Court of Special Appeal affirmed the Circuit Court and the Court of Appeals granted certiorari. Judge

Battaglia stated at the onset that the Court was ". . . asked to consider what level of detail a Board of Appeals must employ in supporting its findings with evidentiary references, in order to enable meaningful judicial review." *Id.* 113. The Court of Appeals reversed the Court of Special Appeals and affirmed the Board of Appeals without remand. The Court pointed out the limited role of an appellate court on review of an agency decision and emphasized that ". . . a reviewing court "must review the agency's decision in the light most favorable to it; . . . the agency's decision is prima facie correct and presumed valid." *Id.* (citations omitted). The Court found that the Board's references to explicit testimony of the witnesses, regardless that such references were discussed in a section separate from its conclusive findings, were sufficient support for the decision. In other words, the Moreland Court refused to ". . . elevate form over substance." *Id.* 134.

Here, Judge Beverungen's incorporation and attachment of agency comments provide more than sufficient evidence of his consideration of the special exception standards applicable to the amendment of the final development plan.

In summary, our office supports and joins in a Motion to Dismiss the Special Hearing Petition. We shall also participate in the hearing, should the CBA choose to hear from the parties.

Sincerely,

Carole S. Demilio
Deputy People's Counsel for Baltimore County

cc: Adam Rosenblatt, Esquire
Michael McCann, Esquire

IN RE: PETITION FOR SPECIAL HEARING	*	**BEFORE THE**
	*	**BOARD OF APPEALS**
(8641 Park Heights Avenue)	*	**FOR BALTIMORE COUNTY**
3rd Election District **2nd Council District**	*	
Marcia and Barry Friedman ***Petitioners***	*	**Case No. 2018-0241-SPH**
	*	
Ross and Emily Taylor ***Legal Owners***	*	
	*	

* *

OWNERS' MOTION TO DISMISS

Owners, Ross and Emily Taylor (the "Owners"), by undersigned counsel, hereby move to dismiss the above-captioned petition for special hearing for the following reasons:

INTRODUCTION

This is a potentially dangerous case where neighbors that did not participate in a zoning case from 2016 are attempting to contest the relief obtained by the Owners two years after the expiration of the appeal period. The Administrative Law Judge properly dismissed the case, and this Board should do the same. Allowing this case to proceed would call into question the finality of all zoning cases and provide neighbors or protestants the opportunity to question zoning cases in perpetuity. As explained below, this case must be dismissed.

BACKGROUND

On April 21, 2016, the Baltimore County Administrative Law Judge ("ALJ") issued an Order in Case Number 2016-0214-A (the "2016 Case") granting: (1) the Owners' Petition for

Variance to reduce the principal building setback on their property from 150 feet to 80 feet, and (2) a request to amend the Final Development Plan (FDP) of Garden View for Lot 9 only. *See* Order, attached hereto as Exhibit A (the "2016 Order"). The relief granted in the 2016 Order related to the proposed construction of a single-family dwelling to be located on the property known as 8641 Park Heights Avenue (the "Property").

On March 19, 2016, prior to the hearing in the 2016 Case, and in accordance with the requirements of the Baltimore County Code, the Property was posted with a sign advertising the requested relief and providing instructions for any protestants, including the Petitioners in this case, to request a formal hearing. Exhibit A, p. 2; *see also* Certificate of Posting, attached hereto as Exhibit B. The Petitioners owned the neighboring property at this time, as they obtained title by deed dated August 24, 1983. *See* Exhibit C.

As stated in the 2016 Order, Baltimore County did not receive any request for a public hearing. Exhibit A, p. 2. After granting the relief for both the setback reduction and the FDP amendment, the 2016 Order specifically stated that "any appeal of this decision must be made within thirty (30) days of the date of this Order." Exhibit A, p. 3. No person, including the Petitioners in this case, moved for reconsideration of the 2016 Order within the thirty-day time period permitted by Rule 4.K of Appendix G of the Baltimore County Zoning Regulations.

On May 24, 2016, the Office of Administrative Hearings authored a Memorandum confirming that the appeal period for Case Number 2016-0214-A had expired and that no person, including the Petitioners in this case, filed an appeal of the 2016 Order to the Baltimore County Board of Appeals. *See* Exhibit D. The file was subsequently returned to the Office of Zoning Review. *Id.* With the 2016 Case having concluded, the Owners moved forward with the design and construction of a single-family detached dwelling on the Property. Pursuant to and in

accordance with the 2016 Order, a building permit (No. B938177) was issued for the Owners to construct a single-family dwelling on the Property to be their primary residence. *See* Exhibit E. In reliance on the 2016 Order and building permit issued by Baltimore County, the Owners began construction of the dwelling in September 2017.

On March 14, 2018, nearly two years after the expiration of the appeal period for the 2016 Order, neighbors Marcia and Barry Friedman (the "Petitioners") hired an attorney (Michael McCann) and filed a petition for special hearing asking the ALJ to revisit the relief that was granted in the 2016 Order. Specifically, Petitioners ask the ALJ for a determination as to whether the Owners were required to amend the FDP, what standards applied to the FDP amendment, and whether the Owner's 2016 zoning petition complied with the standards for amending the FDP. Petitioners' inquiries are untimely and are barred by the doctrine of waiver, res judicata, or both. As a matter of law, this petition must be dismissed.

ARGUMENT

I. PETITIONERS WAIVED THEIR RIGHT TO CONTEST THE 2016 ORDER.

In their petition for special hearing, Petitioners ask for a determination of the following:

> (1) Whether the property owner's development of the subject property required an amendment to the Final Development Plan governing the Garden View community;
>
> (2) What standards and procedures in section 1B01.3.A.7 of the Zoning Regulations apply to the property owner's amendment of the Final Development Plan; and
>
> (3) Whether all applicable standards and procedures in/under the Zoning Regulations, including those in section 1B01.3.A.7, were met and fully complied with.

Petition, p. 2. Each of the questions directly relates to the relief granted in the 2016 Order.

In Maryland, it is well settled that a party who has failed to file a timely notice of appeal of a zoning decision may not cure its defect by attempting to revive or revisit potential issues after the expiration of the appeals period. In *United Parcel Serv., Inc. v. People's Counsel for Baltimore Cty.*, protestants sought to challenge an unappealed determination of the Baltimore County Zoning Commissioner that allowed the United States Parcel Service ("UPS") to seek and obtain a building permit for the construction of a warehouse. 336 Md. 569, 573-74 (1994). The following year, a neighboring landowner submitted a letter to the Zoning Commissioner concerning the construction of the UPS warehouse. *Id.* The Zoning Commissioner responded with a letter in which he confirmed that the prior, unappealed decision authorized the construction of the warehouse. *Id.* at 573-74. The neighbor attempted to file an appeal of the Zoning Commissioner's letter to the County Board of Appeals *Id.* at 574. The case ultimately made its way to the Court of Appeals, which held that the protestants were not entitled to revisit the zoning issues surrounding the warehouse when they failed to appeal the Zoning Commissioner's initial determination. *Id.* at 583. The Court recognized that holding otherwise would allow a protestant to "circumvent entirely the statutory time limits for taking appeals." *Id.* This is precisely what the Petitioners are attempting to do in this case.

Here, Petitioners filed the instant case in an effort to re-litigate issues that were resolved in the 2016 Case nearly two years after the expiration of the appeals period. The Petitioners had ample opportunity to contest the 2016 Case and to raise any issues regarding the amendment to the Final Development Plan, the standards and procedures applied to the amendment to the Final Development Plan, and whether the Owners' complied with all relevant standards and procedures in obtaining their zoning relief. Indeed, a review of the Land Records confirms that the Owners owned their neighboring property at the time that the 2016 was posted and decided.

See deed to the property, attached hereto as Exhibit C. Instead, Petitioners failed to request a hearing, failed to file any motion for reconsideration, failed to appeal, and are now barred from "circumventing the time limits" for challenging the 2016 Order. *United Parcel Serv.*, 336 Md. at 583.

By virtue of their failure to challenge the relief granted in the 2016 Case, Petitioners have waived their right to seek the relief requested in this petition. *See Board of Physician Quality Assurance v. Levitsky*, 353 Md. 188, 199 (1999) (holding that the "doctrine of acquiescence – or waiver – is that 'a voluntary act of a party which is inconsistent with the assignment of errors on appeal normally precludes that party from obtaining appellate review"). This case must be dismissed with prejudice.

I. THE ALJ CORRECTLY HELD THAT THE PETITION FOR SPECIAL HEARING IS BARRED BY *RES JUDICATA*.

a. The Doctrine of *res judicata*

The doctrine of *res judicata* provides that "a judgment on the merits in a previous suit between the same parties or their privies precludes a second suit predicated upon the same cause of action." *Seminary Galleria, LLC v. Dulaney Valley Improvement Ass'n, Inc*, 192 Md.App. 719, 734-737 (2010). A point of crucial importance to this zoning petition is that *res judicata* acts as "an absolute bar, not only as to all matters which were litigated in the earlier case, but as to all matters which *could have been* litigated." *Id.* (*citing Whittle v. Bd. of Zoning Appeals*, 211 Md. 36, 49 (1956) (emphasis in original)). In *Whittle*, the Court of Appeals stressed that successive litigation of zoning petitions is discouraged because it "would be arbitrary for the board to arrive at opposite conclusions on substantially the same state of facts and the same law."

211 Md. at 45. The doctrine applies to the decisions reached by administrative agencies. *Batson v. Shiflett*, 325 Md. 684, 705 (1992).[1]

b. *Res judicata* bars this Petition for Special Hearing

As previously stated, the Petitioners owned the neighboring property at the time that the 2016 Case was advertised and posted. They did not request a hearing in the 2016 Case, file a motion for reconsideration, or attempt to appeal the 2016 Order. Any argument as to the standard at issue in the 2016 Case or the facts as they apply to that standard could and should have been made in the 2016 Case. Quite simply, *res judicata* acts "as an absolute bar, not only as to all matters which were litigated in the earlier case, but as to all matters which *could have been* litigated." *Seminary Galleria, supra*, 192 Md. App. 719. The law specifically admonishes the behavior exercised by the Petitioners here, where parties attempt to twist facts or legal argument in an attempt to create a second bite at the apple. *See Chatham Corp v. Beltram*, 243 Md. 138 (1966); *Woodlawn Ass'n v. Board of Appeals*, 241 Md. 187 (1965); *Fertitta v. Brown*, 252 Md. 594 (1969). All issues related to the Owners' amendment of the FDP have been finally decided and cannot be reconsidered by the Board.

c. Even if the 2016 Order is incorrect, the decision cannot be revisited

Citing to outdated case law from over 40 years ago, the Petitioners argued before the ALJ that this petition is not barred by *res judicata* because they contend that the 2016 Order was based on an error in law. *See* Petitioner's Opposition, ¶ 6, *citing Board of County Commr's of Cecil County v. Racine*, 24 Md. App. 435 (1975). As the ALJ correctly noted, the *Racine*

[1] The Board has consistently applied the doctrine of *res judicata. See John P. and Mary E. Ford*, 06-397-SPH, aff'd Circuit Court, 03-C-07-12133, aff'd CSA No. 1309 (11-18-09), *Charles and Daryl Wolinski*, 06-309-A & 06-310-A, *Dr. Harlan Zinn*, 07-545-A, *Howard and Melanie Becker*, 06-651-SPHA, *Andrew and Stephanie Mattes*, 11-051-SPH.

decision cited by the Petitioners is "no longer representative of the current law on this issue." *See Freeland Comm. Ass'n v. HZ Props., LLC*, (No. 0656, Unreported September 16, 2016).

The current rule in Maryland is that "[A] valid and final adjudicative determination by an administrative tribunal has the same effects under the rules of *res judicata*, subject to the same exceptions and qualifications, as a judgment of a court." *Seminary Galleria, LLC v. Dulaney Valley Improvement Ass'n, Inc.*, 192 Md. App. 719, 735 (2010). Even if a decision is "legally erroneous" it does not lose its preclusive effect. *See Powell v. Breslin*, (2013) (holding that the "mere fact that the prior ruling is wrong does not deprive it of *res judicata* effect"); *see also Gonsalves v. Bingel*, 194 Md.App. 695, 719, 5 A.3d 768, 783 (2010) (holding that res judicata applies even when a trial court's decision was erroneous). While there is no evidence that the 2016 Order contains an error or law, even if it does, this petition is barred by *res judicata*.

CONCLUSION

For the reasons stated herein, the Owners respectfully request that this case be dismissed with prejudice.

Respectfully submitted,

David H. Karceski
Adam M. Rosenblatt
Venable, LLP
210 W. Pennsylvania Avenue, Ste. 500
Towson, MD 21204
(410) 494-6825
dkarceski@venable.com
amrosenblatt@venable.com

CERTIFICATE OF SERVICE

I hereby certify on this 2nd day of August, 2018 that a copy of the foregoing pleading was mailed to the Law Offices of Michael F. McCann, P.A., 118 W. Pennsylvania Avenue, Towson, Maryland 21204.

Adam M. Rosenblatt

EXHIBIT A

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
(8641 Park Heights Avenue)		
3rd Election District	*	OFFICE OF ADMINISTRATIVE
2nd Council District		
Ross and Emily Taylor	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	**CASE NO. 2016-0214-A**

* * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of a Petition for Administrative Variance filed by the legal owners of the property, Ross and Emily Taylor ("Petitioners"). The Petitioners are requesting Variance relief pursuant to § 1A04.3.B.2.b of the Baltimore County Zoning Regulations ("B.C.Z.R") to permit a proposed single family dwelling with a principal building setback of 80 ft. in lieu of the required 150 ft. from a RC-2 zone which is contiguous to a RC-5 zone and amend the Final Development Plan (FDP) of Garden View for Lot 9 only. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. ZAC comments were received on March 25, 2016 from the Department of Environmental Protection and Sustainability (DEPS), indicating that the ground water management section must review any proposed building permit for a replacement house, since it is served by private septic, and from the Bureau of Development Plans Review (DPR) dated March 28, 2016, indicating that screening should be installed along the northeast property line to complement existing vegetation. In addition, a ZAC comment was received from the

Department of Planning (DOP) on April 15, 2016, indicating they had no objections to the zoning request provided certain conditions were met.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on March 19, 2016, and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented. Although the OAH does not usually entertain Administrative Variance petitions filed by contract purchasers or owners not residing at the subject property, an exception is warranted here. Mr. Matz, the professional engineer assisting Petitioners, provided a copy of an Administrative Variance application checklist supplied to him by the Office of Zoning Review. That form indicates a petition for Administrative Variance can be filed by petitioners who "reside or, upon purchase, will reside" at the property. This would appear to be an outdated form, since the law requires the property to be "an owner-occupied lot" (B.C.C. § 32-3-303) and the affidavit submitted with a petition for Administrative Variance was revised in 2014 and specifies the property is "owned and occupied" by the affiant.

The Petitioners have filed the supporting affidavits as required by § 32-3-303 of the Baltimore County Code (B.C.C.). Based upon the information available, there is no evidence in the file to indicate that the requested variance would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Administrative Law Judge, the information, photographs, and affidavits submitted provide sufficient facts that comply with the requirements of §-307.1 of the B.C.Z.R. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioner.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be granted.

THEREFORE, IT IS ORDERED, this 21st day of **April, 2016**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from § 1A04.3.B.2.b of the Baltimore County Zoning Regulations ("B.C.Z.R") to permit a proposed single family dwelling with a principal building setback of 80 ft. in lieu of the required 150 ft. from a RC-2 zone which is contiguous to a RC-5 zone and amend the Final Development Plan (FDP) of Garden View for Lot 9 only, 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.

2. Petitioners must comply with the ZAC comments submitted by DEPS, dated March 25, 2016, DPR dated March 28, 2016, and DOP dated April 14, 2016; 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.

JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:dlw

ORDER RECEIVED FOR FILING
Date 4-21-16
By DW

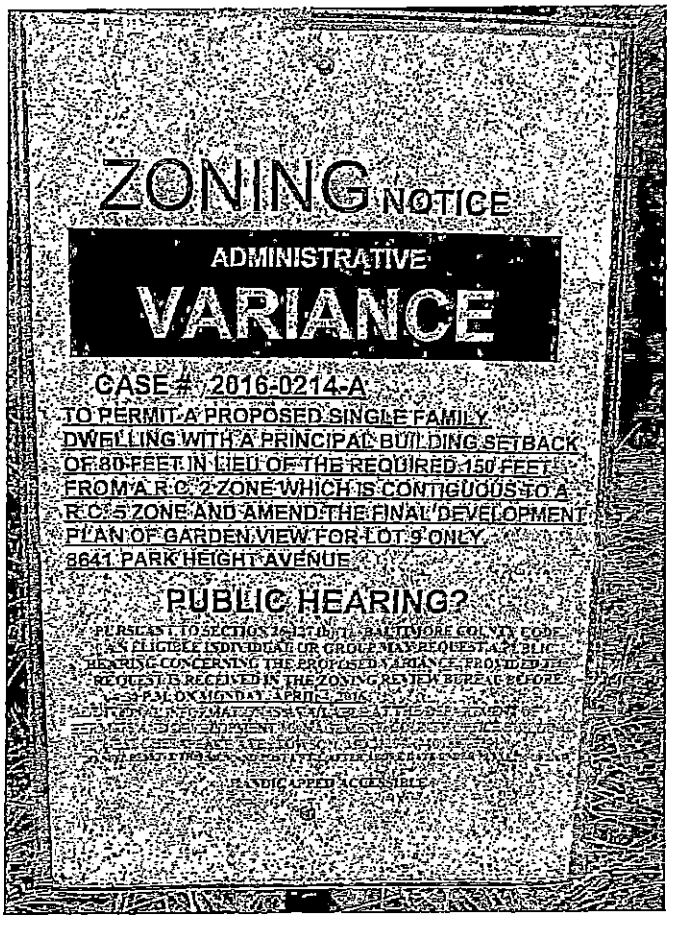
EXHIBIT B

CERTIFICATE OF POSTING

ATTENTION: KRISTEN LEWIS
DATE: 3/21/2016
Case Number: 2016-0214-A
Petitioner / Developer: COLBERT, MATZ & ROSENFELT, INC. ~ ROSS & EMILY TAYLOR
Date of Hearing (Closing): APRIL 4, 2016

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at:
8641 PARK HEIGHTS AVENUE

The sign(s) were posted on: MARCH 19, 2016



Linda O'Keefe
(Signature of Sign Poster)

Linda O'Keefe
(Printed Name of Sign Poster)

523 Penny Lane
(Street Address of Sign Poster)

Hunt Valley, Maryland 21030
(City, State, Zip of Sign Poster)

410 – 666 – 5366
(Telephone Number of Sign Poster)

EXHIBIT C

DEED — FEE SIMPLE — INDIVIDUAL GRANTOR — LONG FORM

LIBER 6586 PAGE 747

STATE DEPARTMENT OF
ASSESSMENTS & TAXATION
Barbara 9/7/83
CLERK DATE

This Deed, MADE THIS 24th day of August

in the year one thousand nine hundred and eighty-three by and between

HERBERT C. HOOVER, JR. and SHERRILL A. HOOVER, his wife,

of Baltimore County, State of Maryland, of the first part, and

BARRY HOWARD FRIEDMAN and MARSHA LEE FRIEDMAN, his wife,

of the second part.

WITNESSETH, That in consideration of the sum of Three Hundred Thirty-Five Thousand ($335,000.00) Dollars----------

D RC/F 14.00
D T TX 1675.00
D DOCS 1675.00
DEED 0 #
EHK JR T 3364.00
#688034 C002 R02 T09:41
09/09/83

the said Herbert C. Hoover, Jr. and Sherrill A. Hoover, his wife, do grant and convey to the said Barry Howard Friedman and Marsha Lee Friedman, his wife, as tenants by the entireties, their assigns, the survivor of them, and the survivor's----------personal representatives/successors and assigns, in fee simple, all those lot of ground situate in Baltimore County, State of Maryland, and described as follows, that is to say:

PARCEL ONE: Being known and designated as Lot No. 6A as shown on the plat entitled "Garden View, a resubdivision of Lots 4, 5 and 6 'Amended Plat of Garden View' Plat Book 37 folio 100", which Plat is recorded among the Land Records of Baltimore County in Plat Book EHK, Jr. 47, folio 125. The improvements thereon being known as 6 Green Heather Court.

PARCEL TWO: Being known and designated as Lot No. 7 as shown on the Plat entitled Plat of Garden View which plat is recorded among the Land Records of Baltimore County in Plat Book EHK,Jr. 37 folio 100. Said Lot being referred to as 12 Green Heather Court.

BEING all of the property which by Deed dated June 27, 1978 and recorded among the Land Records of Baltimore County in Liber EHK,Jr. 5905 folio 854, was granted and conveyed by Barry Portner and Marcia G. Portner to Herbert C. Hoover, Jr. and Sherrill A. Hoover, his wife.

NOTE that portion of Lot 5 and all of Lot 6 conveyed in the aforementioned Deed are now known as Lot 6A in Plat Book EHK, Jr. 47 folio 125.

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE
SIGNATURE BB DATE 9-6-83

1675-
1675-
14-

B B023****5360000a 3078A

TOGETHER with the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

TO HAVE AND TO HOLD the said described lot of ground and premises to the said Barry Howard Friedman and Marsha Lee Friedman, his wife, their personal representatives/successors and assigns, in fee simple.

AND the said part ies of the first part hereby covenant that they have not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that they will warrant specially the property hereby granted; and that they will execute such further assurances of the same as may be requisite.

WITNESS the hand s and seal s of said grantor s

Test:

Joel Margolis

Herbert C. Hoover, Jr. (SEAL)

Sherrill A. Hoover (SEAL)

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, That on this 29th day of August, in the year one thousand nine hundred and eighty-three, before me, the subscriber, a Notary Public of the State aforesaid, personally appeared HERBERT C. HOOVER, JR. and SHERRILL A. HOOVER, his wife, known to me (or satisfactorily proven) to be the person s whose name s is/are subscribed to the within instrument, and acknowledged that they executed the same for the purposes therein contained, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Joel Margolis Notary Public

My Commission expires:

July 1, 1986

NOTARY PUBLIC BALTIMORE COUNTY, MD.

Rec'd for record SEP 9 ... at ...
Per Elmer H. Kahline, Jr., Clerk
Mail to Margolis — Margolis
Receipt No. ...

EXHIBIT D

MEMORANDUM

DATE: May 24, 2016

TO: Zoning Review Office

FROM: Office of Administrative Hearings

RE: Case No. 2016-0214-A – Appeal Period Expired

The appeal period for the above-referenced case expired on May 23, 2016. There being no appeal filed, the subject file is ready for return to the Zoning Review Office and is placed in the 'pick up box.'

c: Case File
Office of Administrative Hearings

EXHIBIT E

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS, APPROVALS, AND INSPECTIONS

Arnold Jablon, Deputy Administrative Officer & Director

Donald E Brand, Building Engineer

BUILDING PERMIT

PERMIT #: B938177 CONTROL #: NR DIST: 03 PREC: 01
DATE ISSUED: 09/26/2017 TAX ACCOUNT #: 1900003720 CLASS: 04

PLANS: CONST 02 PLOT 9 R PLAT 0 DATA 0 ELEC YES PLUM YES
LOCATION: 8641 PARK HEIGHTS AVE
SUBDIVISION: GARDEN VIEW

OWNERS INFORMATION
NAME: TAYLOR ROSS I AND EMILY
ADDR: 1112 S BAYLIS ST,BALTIMORE MD 21224

TENANT: TO BE SPRINKLERED
CONTR: OWNER-AFFIRMATION OF LANDOMNER ATTACHED
ENGNR:
SELLR:
WORK: CONST SFD 2-STY W/FINSHD BSMT W/BEDRM,F/L & S/L GARAGES,ELEVATOR PIT (FOR FUTURE),BUTLER PANTRY SCREENED PORCH W/FP (NO OS PROJ), OPEN DECK, COVRD OUTDOOR KITCHEN, 6 BEDROOMS. 122'X152'X32'=16,028SF.

BLDG. CODE:
RESIDENTIAL CATEGORY: DETACHED OWNERSHIP: PRIVATELY OWNED

PROPOSED USE: SFD
EXISTING USE: VACANT - SEE B931295 FOR RAZING

TYPE OF IMPRV: NEW BUILDING CONTRUCTION
USE: ONE FAMILY
FOUNDATION: CONCRETE BASEMENT: FULL
SEWAGE: PRIV. EXISTS WATER: PUBLIC EXIST

LOT SIZE AND SETBACKS

SIZE: 3.30AC
FRONT STREET:
SIDE STREET:
FRONT SETB: 82'
SIDE SETB: 91'/80'
SIDE STR SETB:
REAR SETB: 240'

THIS PERMIT EXPIRES ONE YEAR FROM DATE OF ISSUE

PLEASE REFER TO PERMIT NUMBER WHEN MAKING INQUIRIES

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

June 15, 2018

NOTICE OF POSTPONEMENT AND REASSIGNMENT

IN THE MATTER OF: Ross and Emily Taylor – Legal Owners
Marcia and Barry Friedman – Petitioners
18-241-SPH 8641 Park Heights Avenue
3rd Election District; 2nd Councilmanic District

Re: Petition for Special Hearing as follows:
- Whether the property owner's development of the subject property required an amendment to the Final Development Plan governing the Garden View community?
- What standards and procedures in BCZR Section 1B01.3.A.7 apply to the property owner's amendment to the Final Development Plan?
- Whether all applicable standards and procedures in/under the Zoning Regulations, including those in Section 1B01.3.A.7, were met and fully complied with?
- Such other and further relief as is necessary under the Zoning Regulations to ensure that the development of the subject property complies therewith.

4/24/18 Opinion and Order on Owners' Motion to Dismiss issued by the Administrative Law Judge wherein the Owners' Motion to Dismiss was GRANTED, and the case was DISMISSED WITH PREJUDICE.

ASSIGNED FOR: **AUGUST 29, 2018, AT 10:00 A.M.**

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.
- Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington, Administrator

c:	Counsel for Legal Owner	: David Karceski, Esquire and Adam Rosenblatt, Esquire
	Legal Owners	: Ross and Emily Taylor
	Counsel for Petitioner	: Michael R. McCann, Esquire
	Petitioners	: Marcia and Barry Friedman

Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney
Office of People's Counsel

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

May 10, 2018

Karceski, Esq.
osenblatt, Esq.
P
ia Avenue, Suite 500
21204

Michael R. McCann, Esq.
118 W. Pennsylvania Avenue
Towson, Maryland 21204

RECEIVED
MAY 10 2018
BALTIMORE COUNTY
BOARD OF APPEALS

David Fr

EAL TO BOARD OF APPEALS
ion for Special Hearing
No. 2018-0241-SPH
erty: 8641 Park Heights Avenue

Please be advised that an appeal of the above-referenced case was filed in this Office on May 9, 2018. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals ("Board").

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to contact the Board at 410-887-3180.

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

c:
Baltimore County Board of Appeals
People's Counsel

APPEAL

Petition for Special Hearing
(8641 Park Heights Avenue)
3rd Election District – 2nd Councilmanic District
Legal Owners: Ross and Emily Taylor
Petitioners: Marcia and Barry Friedman
Case No. 2018-0241-SPH

******This case was dismissed before a hearing was heard******

Petition for Variance Hearing (March 14, 2018)

Zoning Description of Property

Certificate of Posting –April 6, 2018- Bruce Doak

Newspaper Advertisement – April 5, 2018 - Jeffersonian

Notice of Zoning Hearing – March 29, 2018

People's Counsel Entry of Appearance – March 26, 2018

Zoning Advisory Committee Comments

Petitioner's Sign-in Sheets – "NO HEARING HELD"

Citizen's Sign-in Sheets- "NO HEARING HELD"

Petitioner(s) Exhibits – "NO EXHIBITS, NO HEARING HELD"

Protestants' Exhibits – None

Miscellaneous (Not Marked as Exhibits)- N/A

Owners' Motion to Dismiss- April 11, 2018- David Karceski, Esq.

Petitioners' Response to Motion to Dismiss- April 18, 2018-Michael R. McCann, Esq.

Administrative Law Judge Order and Letter on Motion to Dismiss (GRANTED and DISMISSED WITH PREJUDICE) – April 24, 2018

Notice of Appeal & Receipt – May 9, 2018- Michael R. McCann, Esq.

PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 8641 Park Heights Avenue **which is presently zoned** RCS & RCZ

Deed References: 35081/0824 10 Digit Tax Account # 1900003720

Property Owner(s) Printed Name(s) Ross Taylor and Emily Taylor

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. X **a Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

   See attachment

2. ____ **a Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

3. ____ **a Variance** from Section(s)

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: **(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)**

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

~~Contract Purchaser/Lessee:~~ Petitioner

Marcia Friedman / Barry Friedman
Name- Type or Print

/s/ attorney in fact / /s/ attorney in fact
Signature

6 Green Heather Ct., Pikesville, MD
Mailing Address City State

21208 / / /
Zip Code Telephone # Email Address

Legal Owners (~~Petitioners~~):

Ross Taylor / Emily Taylor
Name #1 – Type or Print Name #2 – Type or Print

N/A /
Signature #1 Signature #2

8641 Park Heights Stevenson MD
Mailing Address City State

21154 / / /
Zip Code Telephone # Email Address

Attorney for Petitioner:

Michael R. McCann
Name- Type or Print

Signature

118 W. Pennsylvania Towson MD 21204
Mailing Address City State

21204 / 410 825-2150 / michael@mmccannlaw.net
Zip Code Telephone # Email Address

Representative to be contacted:

Michael R. McCann
Name – Type or Print

Signature

118 W. Pennsylvania Ave. Towson MD
Mailing Address City State

21204 / 410 825-2150 / michael@mmccannlaw.net
Zip Code Telephone # Email Address

CASE NUMBER 2018-0241-SPH **Filing Date** 3/14/2018 **Do Not Schedule Dates:** ____ **Reviewer** JNP for WCR

REV. 10/4/11

Attachment to Petition for Special Hearing
8641 Park Heights Avenue

Whether the property owner's development of the subject property required an amendment to the Final Development Plan governing the Garden View community?

What standards and procedures in section 1B01.3.A.7 of the Zoning Regulations apply to the property owner's amendment of the Final Development Plan?

Whether all applicable standards and procedures in/under the Zoning Regulations, including those in section 1B01.3.A.7, were met and fully complied with?

Such other relief as is necessary under the Zoning Regulations to ensure that the development of the subject property complies therewith.

2018-0241-SPH

TO: PATUXENT PUBLISHING COMPANY
Thursday, April 5, 2018 Issue - Jeffersonian

Please forward billing to:
Michael McCann 410-825-2150
118 W. Pennsylvania Avenue
Towson, MD 21204

NOTICE OF ZONING HEARING

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2018-0241-SPH
8641 Park Heights Avenue
1670 ft. NE of Park Heights Avenue, 2200 sq. ft. S/of Greenspring Valley Road
3rd Election District – 2nd Councilmanic District
Legal Owners: Ross & Emily Taylor
Contract Purchaser/Lessee: Barry & Marcia Friedman

Special Hearing 1. Whether the property owner's development of the subject property required an amendment to the Final Development Plan governing the Garden View community? 2. What standards and procedures in section 1B01.3.A.7 of the Zoning Regulations apply to the property owner's amendment of the Final Development Plan? 3. Whether all applicable standards and procedures in/under the Zoning Regulations, including those in Section 1B01.3.A.7 were met and fully complied with? 4. Such other relief as is necessary under the Zoning Regulations to ensure that the development of the subject property complies therewith.

Hearing: Friday, April 27, 2018 at 10:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director of Permits, Approvals and Inspections for Baltimore County

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
ZONING REVIEW OFFICE

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the legal owner/petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least twenty (20) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the legal owner/petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Case Number: 2018-0241-SPH

Property Address: 8641 Park Heights Avenue

Property Description: 1670' northeast of Park Heights Avenue, 2200' south of Greenspring Valley Road

Legal Owners (~~Petitioners~~): Ross Taylor and Emily Taylor

~~Contract Purchaser/Lessee~~: Marcia Friedman / Barry Friedman
Petitioners

PLEASE FORWARD ADVERTISING BILL TO:

Name: Michael McCann

Company/Firm (if applicable):

Address: 118 W. Pennsylvania Avenue
Towson, MD 21204

Telephone Number: 410 825-2150

Revised 7/9/2015

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: 4/17/2018

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: **ZONING ADVISORY COMMITTEE COMMENTS**
Case Number: 18-241

INFORMATION:
Property Address: 8641 Park Heights Avenue
Petitioner: Ross Taylor, Emily Taylor
Zoning: R.C. 5, R.C. 2
Requested Action: Special Hearing

The Department of Planning has reviewed the petition for special hearing entreating the Administrative Law Judge to decide on the standing of the issues identified on the attachment filed in support of the petition.

A site visit was conducted on March 27, 2018. The property was the subject of prior zoning case no. 16-0214 wherein setback relief was granted.

The Department will concur with the decision of the Administrative Law Judge subsequent to the public hearing with the condition that the Department's conditions set in the aforementioned zoning case no. 16-0214 and made a part of the Decision and Order in that case remain in full effect.

For further information concerning the matters stated herein, please contact Bill Skibinski at 410-887-3480.

Prepared by:

Lloyd T. Moxley

Deputy Director:

Jeff Mayhew

AVA/KS/LTM/

c: Bill Skibinski
James Hermann, R.L.A., Department of Permits, Approvals and Inspections
Michael R. McCann
Office of the Administrative Hearings
People's Counsel for Baltimore County

CERTIFICATE OF POSTING

April 7, 2018

Re:
Zoning Case No. 2018-0241-SPH
Petitioner: Barry & Marcia Friedman
Hearing date: April 27, 2018

Baltimore County Department of Permits, Approvals & Inspections
County Office Building
111 West Chesapeake Avenue, Room 111
111 West Chesapeake Avenue Towson, MD 21204

Attention: Kristen Lewis

Ladies and Gentlemen,

This letter is to certify under the penalties of perjury that the two necessary signs required by law were posted conspicuously on the property located at **8641 Park Heights Avenue.**

The signs were posted on **April 6, 2018.**

The signs were inspected again on **April 24, 2018.** At the time of the inspection, one of the signs was missing (see attached photo).

Sincerely,

Bruce E. Doak
MD Property Line Surveyor #531

See the attached sheet(s) for the photos of the posted sign(s)

Bruce E. Doak Consulting, LLC
3801 Baker Schoolhouse Road
Freeland, MD 21053
410-419-4906 cell / 443-900-5535 office
bdoak@bruceedoakconsulting.com


Vicki
ALMOND
For Baltimore County Executive
VickiAlmond.org


Vicki
ALMOND

IN RE: **PETITION FOR SPECIAL HEARING**	*	BEFORE THE
(8641 Park Heights Avenue)		
3rd Election District	*	OFFICE OF
2nd Council District		
Ross & Emily Taylor	*	ADMINISTRATIVE HEARINGS
Legal Owners		
Marcia & Barry Friedman	*	FOR BALTIMORE COUNTY
Petitioners		
Petitioners	*	**Case No. 2018-0241-SPH**

* * * * * * * *

OPINION AND ORDER ON OWNER'S MOTION TO DISMISS

Now pending is a Motion to Dismiss filed by Ross & Emily Taylor, owners of the property at 8641 Park Heights Avenue (the "subject property"). Marcia & Barry Friedman (Petitioners) filed a petition for special hearing in the above captioned case, seeking a determination of whether zoning relief was properly granted in connection with a 2016 administrative variance case filed by the Owners. In that case (Case No. 2016-0214-A), the ALJ granted variance relief for a building setback and approved an amendment to the Final Development Plan (FDP) for Garden View, Lot 9 only. The petition filed in the above case primarily seeks a determination as to whether the FDP was amended properly in the 2016 case.

In their motion to dismiss the owners contend Petitioners waived their right to revisit the relief granted in the 2016 order, since they did not request a hearing or file an appeal in the 2016 case, citing *United Parcel Serv., Inc. v. People's Counsel*, 336 Md. 569 (1994). In their Response, Petitioners argue that the legal issue involved in this case is slightly different than the one considered in UPS. Specifically, petitioners believe the pertinent issue is whether the order in the 2016 case has "any preclusive effect" on the special hearing relief sought in this case. Response, ¶ 2. I agree, and believe the Motion to Dismiss should be granted based on *res judicata.*

Since, as Petitioners argue, the FDP amendment issue was not "litigated in the 2016 [administrative variance] case," (Response, ¶4) collateral estoppel would be inapplicable. But I believe the doctrine of *res judicata* is applicable and bars the petition in the above case. Petitioners contend they "were not parties in the 2006 [sic] case and the issues presented in this case were not presented in the 2006 [sic] case." Response, ¶5. This is incorrect. Petitioners or their predecessors in title (with whom they are in privity) had the opportunity to become a party in the 2016 case, but failed to request a hearing or file an appeal. I believe as a result of their acquiescence, in the unique context of an administrative variance case, Petitioners should be considered parties in the 2016 case.

Had Petitioners requested a hearing or filed an appeal of the 2016 order, they would have been permitted to raise at the hearing any germane legal issues, including whether the Garden View FDP was properly amended. Since no hearing was requested, the petition was granted in accordance with BCC §32-3-303 as it has been interpreted by the Office of the Zoning Commissioner for 20+ years.

Petitioners are also incorrect that *res judicata* does not apply to errors of law by administrative agencies. Response, ¶6. Assuming for sake of argument the order in the 2016 case was erroneous as a matter of law, it would still have preclusive effect based on *res judicata.* The cases cited by Petitioners in support of this proposition are 35+ years old; the law has changed since that time. Indeed, in *Freeland Comm. Ass'n. v. HZ Props., LLC,* (No. 0656, Unreported September 16, 2016) the court of special appeals held that *Racine* and similar cases cited by Petitioners are "no longer representative of the current law on this issue." Citing *Seminary Galleria*, the *Freeland* court noted the modern rule is that a final determination by an administrative body has the same *res judicata* effects as the judgment of a court.

THEREFORE, IT IS ORDERED this 24th day of **April, 2018** by this Administrative Law Judge, that the Owners' Motion to Dismiss be and is hereby GRANTED, and the above case is hereby DISMISSED WITH PREJUDICE.

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

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

March 12, 2018

Via Hand-Delivery

Carl Richards
Zoning Review Office
111 W. Chesapeake Avenue
Towson, MD 21204

Re: *Petition for Special Hearing*
8641 Park Heights Avenue

Dear Carl:

Enclosed for your review and filing are:

1. Petition for Special Hearing
2. Plan to Accompany Petition for Special Hearing
3. Property description
4. GIS Zoning Map, and
5. Advertising form

Thank you for your consideration.

Best,

Michael R. McCann

Enclosures

2018-0241-SPH

Kristen L Lewis

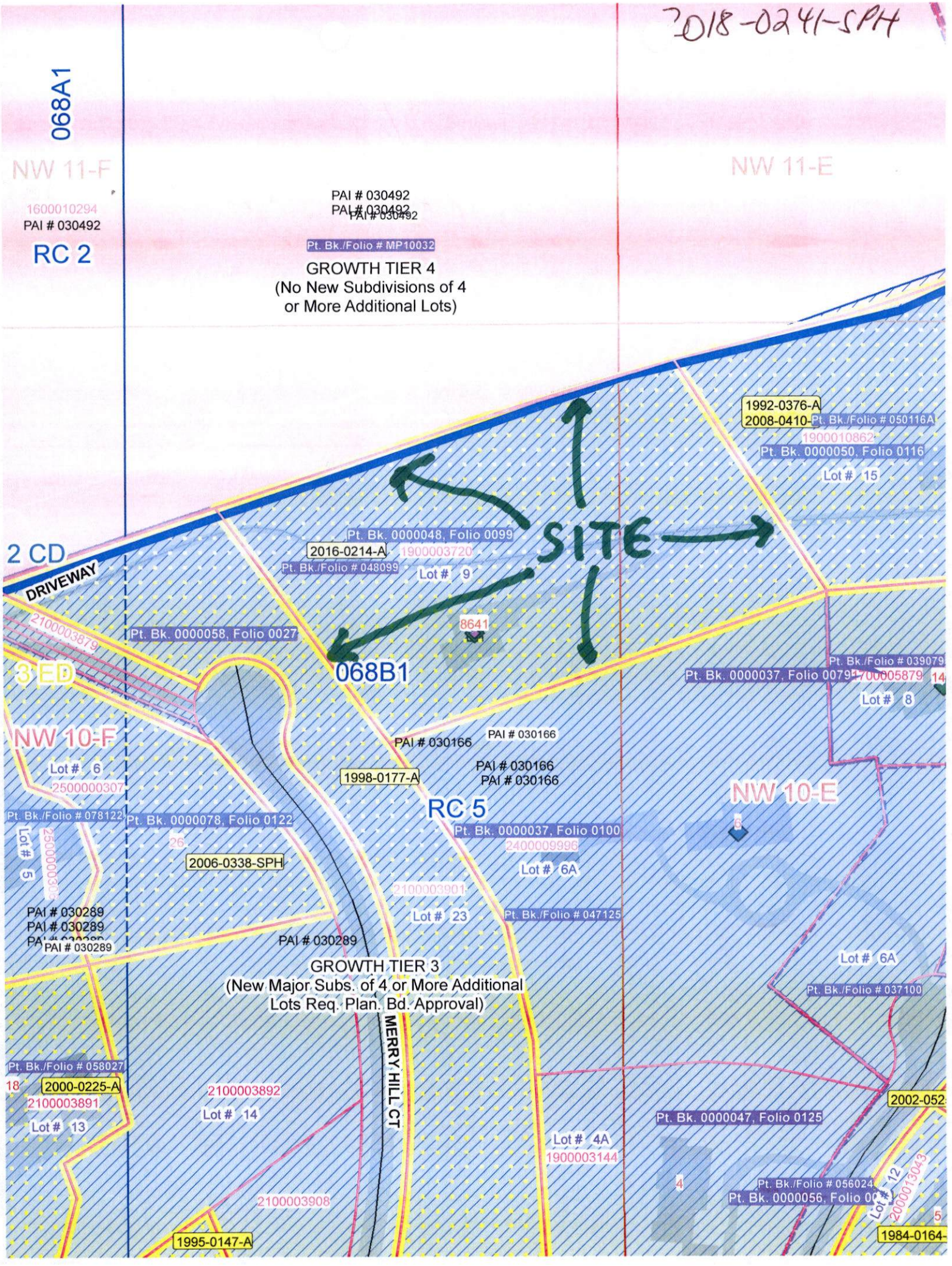
From: Michael McCann <michael@mmccannlaw.net>
Sent: Monday, March 26, 2018 7:11 PM
To: Kristen L Lewis
Subject: Re: Park Heights Avenue

K. The 27th is good. Thanks you.

Sent from my iPhone

On Mar 26, 2018, at 3:00 PM, Kristen L Lewis <klewis@baltimorecountymd.gov> wrote:

> The next available hearing date is Friday, April 27th at 10 a.m. If that works I will send out the notice today.
>
> *Kristen Lewis*
> PAI – Zoning Review
> 410-887-3391
>
> ---
>
> **From:** Michael McCann [mailto:michael@mmccannlaw.net]
> **Sent:** Monday, March 26, 2018 2:40 PM
> **To:** Kristen L Lewis <klewis@baltimorecountymd.gov>
> **Subject:** Park Heights Avenue
>
> Hey Kristen. Unfortunately, I will be out of town for my son's college intro on 4/23. Any earlier dates :) or soon after April 23 would be great.
>
> Thanks.
>
> Michael
>
> **Michael R. McCann**
> *Michael R. McCann, PA*
> *118 W. Pennsylvania Avenue*
> *Towson, Maryland 21204*
> *(p) 410-825-2150*
> *(f) 410-825-2149*
>
>


2018-0241-SPH
068A1
NW 11-F
1600010294
PAI # 030492
RC 2
PAI # 030492
PAI # 030492
PAI # 030492
Pt. Bk./Folio # MP10032
GROWTH TIER 4
(No New Subdivisions of 4
or More Additional Lots)
NW 11-E
1992-0376-A
2008-0410-
Pt. Bk./Folio # 050116A
1900010862
Pt. Bk. 0000050, Folio 0116
Lot # 15
SITE
2 CD
DRIVEWAY
Pt. Bk. 0000048, Folio 0099
2016-0214-A
1900003720
Pt. Bk./Folio # 048099
Lot # 9
2100003879
Pt. Bk. 0000058, Folio 0027
8641
3 ED
068B1
Pt. Bk./Folio # 039079
Pt. Bk. 0000037, Folio 0079
1700005879
Lot # 8
NW 10-F
PAI # 030166
PAI # 030166
PAI # 030166
PAI # 030166
Lot # 6
2500000307
1998-0177-A
RC 5
NW 10-E
Pt. Bk./Folio # 078122
Pt. Bk. 0000078, Folio 0122
26
Pt. Bk. 0000037, Folio 0100
2400009996
Lot # 6A
2006-0338-SPH
Lot # 5
2100003901
Lot # 23
Pt. Bk./Folio # 047125
PAI # 030289
PAI # 030289
PAI # 030289
PAI # 030289
GROWTH TIER 3
(New Major Subs. of 4 or More Additional
Lots Req. Plan. Bd. Approval)
Lot # 6A
Pt. Bk./Folio # 037100
MERRY HILL CT
Pt. Bk./Folio # 058027
18
2000-0225-A
2100003891
Lot # 13
2100003892
Lot # 14
Pt. Bk. 0000047, Folio 0125
2002-052
Lot # 4A
1900003144
4
Pt. Bk./Folio # 056024
Pt. Bk. 0000056, Folio 00
Lot # 12
2000013043
5
2100003908
1995-0147-A
1984-0164-

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

№ 166287

Date: 3/14/2018

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				75.00

Total: 75.00

Rec From: Michael R McCann, P.A.

For: Special Hearing - 8641 Park Heights Ave.
2018-0241-SPH (Taylor-Diuser / Fu-Aman - Petitioner)

DROP OFF - NO REVIEW

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
PLEASE PRESS HARD!!!!

CASHIER'S VALIDATION

PAID RECEIPT
BUSINESS ACTUAL TIME
3/16/2018 3/15/2018 12:32:31
REG: WS03 WALKIN LKB
>>RECEIPT # 947023 3/15/2018 OFL
Dept 5 528 ZONING VERIFICATION
CR NO. 166287
Recpt Tot $75.00
$75.00 CK $.00 CA
Baltimore County, Maryland

Tammy Zahner

From: Rosenblatt, Adam M. <AMRosenblatt@Venable.com>
Sent: Wednesday, June 20, 2018 1:48 PM
To: Tammy Zahner
Subject: RE: Ross and Emily Taylor

Tammy,

Mr. Taylor has asked that you use his office address:

Ross Taylor
8 Park Center Ct, Suite 200
Owings Mills, MD 21117

Adam M. Rosenblatt, Esq. | Venable LLP
t 410.494.6271 | f 410.821.0147 | m 410.294.9430
210 W. Pennsylvania Avenue, Suite 500, Towson, MD 21204

AMRosenblatt@Venable.com | http://secure-web.cisco.com/1llv2bp35CG5dZJireQ5vPyHd7HWVSA7bmssxtuHCvGujQdlxZH_zO4t38TkHohpCUpMHluzPyiNGVtVYCILT_w-QB5OgVW4k7kBkzD129AsyADOMc0o6ySNVi08qyqLop6Cg9yydOVAwRePXJ7gUCGBTCmrOrfZkqHgRxcU3ixTJ76KoxjwSiFvn4s_oPNb326L9UanIQar3IgOiNffl7r5tydApZdFmVYpllKFgn3aHKI_gjvgWKqFmRUwaWr6ydMK23sa-hcFMODbrR24XVpyraA1MOjNbzcEAhyARyYJ6G0rh-aWeRbCZPYm99IBkaSuIldEIk1M4dAdFmZs-ggmms_dG-CWfDnXYNei2tWf8EYS2T_lup8ZEcI4gZPRk-MIZQafsy8Tp2yDBJRw9aLUin9VPJ_jDNWeEAZmouuL3nVVEeXqsLisbNBkJRbE28gI7h4e4T2cAoyFIzmhH-A/http%3A%2F%2Fwww.Venable.com

From: Tammy Zahner [mailto:tzahner@baltimorecountymd.gov]
Sent: Wednesday, June 20, 2018 12:27 PM
To: Rosenblatt, Adam M. <AMRosenblatt@Venable.com>
Subject: Ross and Emily Taylor

Hi Adam,

Do you have a good mailing address for the Taylor's?
We used 8641 Park Heights Avenue and the mail was returned – unable to forward.

Thank you.

Tammy A. Zahner, Legal Secretary
Board of Appeals of Baltimore County
Second Floor, Suite 203
105 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3180
(410) 887-3182 (Fax)

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

April 8, 2016

NOTICE OF ASSIGNMENT

IN THE MATTER OF: Ross and Emily Taylor – Legal Owners
Marcia and Barry Friedman – Petitioners
18-241-SPH 8641 Park Heights Avenue
3rd Election District; 2nd Councilmanic District

Re: Petition for Special Hearing as follows:
- Whether the property owner's development of the subject property required an amendment to the Final Development Plan governing the Garden View community?
- What standards and procedures in BCZR Section 1B01.3.A.7 apply to the property owner's amendment to the Final Development Plan?
- Whether all applicable standards and procedures in/under the Zoning Regulations, including those in Section 1B01.3.A.7, were met and fully complied with?
- Such other and further relief as is necessary under the Zoning Regulations to ensure that the development of the subject property complies therewith.

4/24/18 Opinion and Order on Owners' Motion to Dismiss issued by the Administrative Law Judge wherein the Owners' Motion to Dismiss was GRANTED, and the case was DISMISSED WITH PREJUDICE.

ASSIGNED FOR: AUGUST 9, 2018, AT 10:00 A.M.

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.
- Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington, Administrator

c: Counsel for Legal Owner : David Karceski, Esquire and Adam Rosenblatt, Esquire
Legal Owners : Ross and Emily Taylor

Counsel for Petitioner : Michael R. McCann, Esquire
Petitioners : Marcia and Barry Friedman

Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney
Office of People's Counsel

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

June 5, 2018

Via Email and US Mail

Krysundra Cannington
Baltimore County Board of Appeals
Jefferson Building
105 W. Chesapeake Avenue, Ste. 203
Towson, Maryland 21204

Re: *Ross and Emily Taylor*
Case No: 18-241-SPH

Dear Ms. Cannington:

I received the Notice of Assignment in this matter and write to request a postponement of the hearing scheduled for August 9, 2018. My clients, the petitioners, will be out of town on August 9th, not returning until August 17th.

Thank you for your attention to this matter. Please contact me if you have any questions or concerns.

Best Regards,

Michael McCann

cc: Adam Rosenblatt (via email and US Mail)

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

June 5, 2018

Via Email and US Mail

/sundra Cannington
altimore County Board of Appeals
efferson Building
105 W. Chesapeake Avenue, Ste. 203
Towson, Maryland 21204

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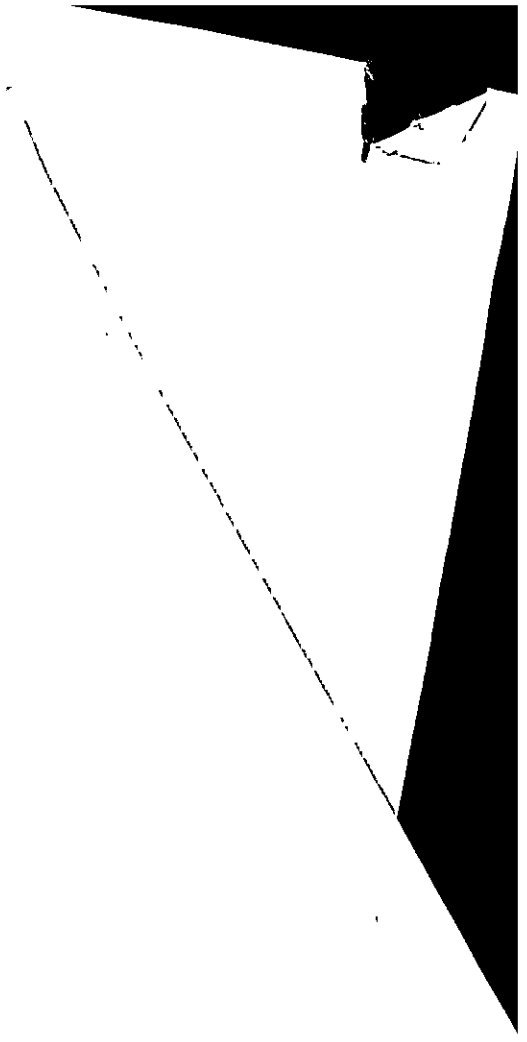
Best Regards,

Michael McCann

cc: Adam Rosenblatt (via email and US Mail)



Krysundra Cannington

From: Michael McCann <michael@mmccannlaw.net>
Sent: Tuesday, June 05, 2018 4:36 PM
To: Krysundra Cannington
Cc: Rosenblatt, Adam M.
Subject: 18-241-SPH
Attachments: 20180605154046602.pdf

Sunny: Please see the attached. Thank you.

Michael

Michael R. McCann
Michael R. McCann, PA
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(p) 410-825-2150
(f) 410-825-2149

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

April 8, 2016

NOTICE OF ASSIGNMENT

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Marcia and Barry Friedman – Petitioners
18-241-SPH 8641 Park Heights Avenue
3rd Election District; 2nd Councilmanic District

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Krysundra "Sunny" Cannington, Administrator

c: Counsel for Legal Owner : David Karceski, Esquire and Adam Rosenblatt, Esquire
Legal Owners : Ross and Emily Taylor

Counsel for Petitioner : Michael R. McCann, Esquire
Petitioners : Marcia and Barry Friedman

Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney
Office of People's Counsel

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

May 10, 2018

David H. Karceski, Esq.
Adam M. Rosenblatt, Esq.
Venable, LLP
210 W. Pennsylvania Avenue, Suite 500
Towson, Maryland 21204

Michael R. McCann, Esq.
118 W. Pennsylvania Avenue
Towson, Maryland 21204

RECEIVED
MAY 10 2018
BALTIMORE COUNTY
BOARD OF APPEALS

RE: **APPEAL TO BOARD OF APPEALS**
Petition for Special Hearing
Case No. 2018-0241-SPH
Property: 8641 Park Heights Avenue

Dear Counsel:

Please be advised that an appeal of the above-referenced case was filed in this Office on May 9, 2018. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals ("Board").

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to contact the Board at 410-887-3180.

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

c:
Baltimore County Board of Appeals
People's Counsel

APPEAL

Petition for Special Hearing
(8641 Park Heights Avenue)
3rd Election District – 2nd Councilmanic District
Legal Owners: Ross and Emily Taylor
Petitioners: Marcia and Barry Friedman
Case No. 2018-0241-SPH

****This case was dismissed before a hearing was heard******

Petition for Variance Hearing (March 14, 2018)

Zoning Description of Property

Certificate of Posting –April 6, 2018- Bruce Doak

Newspaper Advertisement – April 5, 2018 - Jeffersonian

Notice of Zoning Hearing – March 29, 2018

People's Counsel Entry of Appearance – March 26, 2018

Zoning Advisory Committee Comments

Petitioner's Sign-in Sheets – "NO HEARING HELD"

Citizen's Sign-in Sheets- "NO HEARING HELD"

Petitioner(s) Exhibits – "NO EXHIBITS, NO HEARING HELD"

Protestants' Exhibits – None

Miscellaneous (Not Marked as Exhibits)- N/A

Owners' Motion to Dismiss- April 11, 2018- David Karceski, Esq.

Petitioners' Response to Motion to Dismiss- April 18, 2018-Michael R. McCann, Esq.

Administrative Law Judge Order and Letter on Motion to Dismiss (GRANTED and DISMISSED WITH PREJUDICE) – April 24, 2018

Notice of Appeal & Receipt – May 9, 2018- Michael R. McCann, Esq.

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

Nº 143383

Date: 5/9/18

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	000		6150				265.00

Total: 265.00

Rec From: Mike McCann, Esq

For: 2018-0241-SPH

8641 Rock Heights

CK# 5080

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
PLEASE PRESS HARD!!!!

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
5/10/2018	5/09/2018	11:53:59	1

REG WS01 WALKIN LJR
>>RECEIPT # 785692 5/09/2018 OFLN
Dept 5 528 ZONING VERIFICATION
CR NO. 143383
Recpt Tot $265.00
$265.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

May 9, 2018

Office of Administrative Hearings
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: *Petition for Special Hearing re: 8641 Park Heights Avenue*
Case No. 2018-0241-SPH

To whom it may concern:

Enclosed for filing in the above-referenced matter is a Notice of Appeal.

Thank you.

Best regards,

Michael R. McCann

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(8641 Park Heights Avenue) 3rd Election District 2nd Councilmanic District	*	OFFICE OF
	*	ADMINISTRATIVE HEARINGS
Legal Owner: Ross & Emily Taylor Petitioners: Marcia & Barry Friedman	*	FOR BALTIMORE COUNTY
	*	Case No: 2018-0241-SPH
	*	
	*	

* * * * * * * * * * * *

NOTICE OF APPEAL

Petitioners, Marcia and Barry Friedman, pursuant to Baltimore County Code §32-3-401, hereby file an appeal to the Board of Appeals of Baltimore County from the Opinion and Order of the Administrative Law Judge dated April 24, 2018. Pursuant to Rule 3 of the Rules of Practice and Procedure of the Board of Appeals, the address of the appellants is: Marcia and Barry Friedman, 6 Green Heather Court, Baltimore, Maryland 21208.

Respectfully submitted,

Michael R. McCann
Michael R. McCann, P.A.
118 W. Pennsylvania Ave.
Towson, MD 21204
(410) 825-2150

Attorneys for Petitioners/Appellants

CERTIFICATE OF SERVICE

I hereby certify that on 9th day of May 2018 a copy of the foregoing Notice of Appeal was mailed, *via* first-class mail, postage prepaid to:

David H. Karceski, Esq.
Adam Rosenblatt, Esq.
Venable, LLP
210 W. Pennsylvania Avenue, Ste. 500
Towson, MD 21204

and hand-delivered to:

Arnold Jablon, Director
Department of Permits, Approvals & Inspections
111 W. Chesapeake Ave.
Suite 205
Towson, Maryland 21204

Michael R. McCann

IN RE: **PETITION FOR SPECIAL HEARING** **(8641 Park Heights Avenue)**	*	BEFORE THE
3rd Election District	*	OFFICE OF
2nd Council District		
Ross & Emily Taylor	*	ADMINISTRATIVE HEARINGS
Legal Owners		
Marcia & Barry Friedman	*	FOR BALTIMORE COUNTY
Petitioners		
Petitioners	*	**Case No. 2018-0241-SPH**

* * * * * * * *

OPINION AND ORDER ON OWNER'S MOTION TO DISMISS

Now pending is a Motion to Dismiss filed by Ross & Emily Taylor, owners of the property at 8641 Park Heights Avenue (the "subject property"). Marcia & Barry Friedman (Petitioners) filed a petition for special hearing in the above captioned case, seeking a determination of whether zoning relief was properly granted in connection with a 2016 administrative variance case filed by the Owners. In that case (Case No. 2016-0214-A), the ALJ granted variance relief for a building setback and approved an amendment to the Final Development Plan (FDP) for Garden View, Lot 9 only. The petition filed in the above case primarily seeks a determination as to whether the FDP was amended properly in the 2016 case.

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Since, as Petitioners argue, the FDP amendment issue was not "litigated in the 2016 [administrative variance] case," (Response, ¶4) collateral estoppel would be inapplicable. But I believe the doctrine of *res judicata* is applicable and bars the petition in the above case. Petitioners contend they "were not parties in the 2006 [sic] case and the issues presented in this case were not presented in the 2006 [sic] case." Response, ¶5. This is incorrect. Petitioners or their predecessors in title (with whom they are in privity) had the opportunity to become a party in the 2016 case, but failed to request a hearing or file an appeal. I believe as a result of their acquiescence, in the unique context of an administrative variance case, Petitioners should be considered parties in the 2016 case.

Had Petitioners requested a hearing or filed an appeal of the 2016 order, they would have been permitted to raise at the hearing any germane legal issues, including whether the Garden View FDP was properly amended. Since no hearing was requested, the petition was granted in accordance with BCC §32-3-303 as it has been interpreted by the Office of the Zoning Commissioner for 20+ years.

Petitioners are also incorrect that *res judicata* does not apply to errors of law by administrative agencies. Response, ¶6. Assuming for sake of argument the order in the 2016 case was erroneous as a matter of law, it would still have preclusive effect based on *res judicata.* The cases cited by Petitioners in support of this proposition are 35+ years old; the law has changed since that time. Indeed, in *Freeland Comm. Ass'n. v. HZ Props., LLC,* (No. 0656, Unreported September 16, 2016) the court of special appeals held that *Racine* and similar cases cited by Petitioners are "no longer representative of the current law on this issue." Citing *Seminary Galleria*, the *Freeland* court noted the modern rule is that a final determination by an administrative body has the same *res judicata* effects as the judgment of a court.

THEREFORE, IT IS ORDERED this **24th day** of **April, 2018** by this Administrative Law Judge, that the Owners' Motion to Dismiss be and is hereby GRANTED, and the above case is hereby DISMISSED WITH PREJUDICE.

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

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln

Sherry Nuffer

From: Sherry Nuffer
Sent: Tuesday, April 24, 2018 12:03 PM
To: 'Rosenblatt, Adam M.'; 'Michael McCann'
Cc: Debra Wiley; Kristen L Lewis; June Wisnom
Subject: 2018-0241-A- Dismissed
Attachments: 20180424121857098.pdf

Please see attached Motion to Dismiss in reference to the above mentioned case.

Mr. Rosenblatt and Mr. McCann please be sure to make all interested parties aware.

Should you have any questions or concerns, please feel free to contact me.

Thank you,

Sherry

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

April 18, 2018

The Honorable John Beverungen
Administrative Law Judge
Office of Administrative Hearings
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: *Petition for Special Hearing re: 8641 Park Heights Avenue*
Case No. 2018-0241-SPH

Dear Judge Beverungen:

Enclosed for filing in the above-referenced matter is Petitioners' Response to Motion to Dismiss.

Thank you for your consideration.

Respectfully,

Michael R. McCann

cc: counsel of record

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(8641 Park Heights Avenue) 3rd Election District 2nd Council District	*	OFFICE OF ADMINISTRATIVE HEARINGS
Marsha and Barry Friedman	*	Case No: 2018-0241-SPH
Petitioners	*	
Ross and Emily Taylor	*	
Legal Owners	*	
	*	

* * * * * * * * * * * *

RESPONSE TO MOTION TO DISMISS

Petitioners, Barry and Marsha Friedman, file this response to the motion to dismiss filed by property owners Ross and Emily Taylor, and state as follows:

1. In their motion to dismiss, the Taylors contend that Petitioners' inquiries in their Petition for Special Hearing are "untimely" and "waived" because they failed to request a hearing and failed to file a timely appeal of the Administrative Law Judge's ("ALJ's") Order of April 21, 2016 in Case no. 2016-0213-A. Specifically, the Taylors rely upon *United Parcel Service, Inc. v. People's Counsel for Baltimore Cty,* 336 Md. 569 (1994) for the proposition that "a party who has failed to file a timely notice of appeal of a zoning decision may not cure its defect by attempting to revive or revisit potential issues after the expiration of the appeals period." (Mot. to Dismiss, p. 3).

2. This argument fails to properly frame the issue before the ALJ. Petitioners do not dispute that they did not file an appeal of the ALJ's Order of April 21, 2016 (per § 32-3-401) and that they did not submit a written request for a public hearing

(per BCC, § 32-3-303(b)).[1] As a result, Petitioners may be prohibited from filing an appeal or requesting a public hearing under these sections, but that is not the question before the ALJ. Rather, the question is whether Petitioners are prohibited from filing their *Petition for Special Hearing* or, more accurately, whether the relief granted by the ALJ in the 2016 Order has *any preclusive effect* on the relief sought or the issues raised in the Petition for Special Hearing.[2]

3. In determining the preclusive effect *vel non* of the 2016 Order, the ALJ's decision must be guided by *res judicata* and collateral estoppel principles. In *Colandrea v. Wild Lake Comm. Ass'n*, 361 Md. 371 (2000), the Court of Appeals described *res judicata* and collateral estoppel, and the distinction between them, as follows:

> Thus, if a proceeding between parties *involves the same cause of action as a previous proceeding between the same parties*, the principle of res judicata applies and all matters actually litigated or that could have been litigated are conclusive in the subsequent proceeding. If a proceeding between parties *does not involve the same cause of action as a previous proceeding between the same parties*, the principle of collateral estoppel applies, and only those facts or issues actually litigated in the previous action are conclusive in the subsequent proceeding. When the principle of collateral estoppel applies, facts or issues decided in the previous action are conclusive only if identical to facts or issues presented in the subsequent proceeding.

361 Md. at 388-89 (emphasis added) (*quoting Mackall v. Zayre Corp.*, 293 Md. 221, 227-28 (1982) (internal citations omitted)).

---

[1] Petitioners do not concede that the posting requirements for an administrative variance were complied with or that they otherwise had notice of either the variance request or the ALJ's decision.

[2] The *UPS* case cited by the Taylors is inapposite. In that case, the Court simply held that (i) the 30-day appeal period for appealing decisions of the Zoning Commissioner is not a statute of limitations that can be tolled under the discovery rule, and (ii) a letter from the Zoning Commissioner confirming an earlier approval is not an appealable event. The *UPS* case does not stand for the rather vague proposition cited by the Taylors, that "a party who has failed to file a timely notice of appeal of a zoning decision *may not cure its defect by attempting to revive or revisit potential issues* after the expiration of the appeals period." (Mot. to Dismiss, p. 3).

In *Klein v. Whitehead*, 40 Md. App. 1 (1978), Judge Wilner, after noting the confusion that often accompanies discussions of *res judicata* and collateral estoppel, stated:

> Suffice it to say that the question whether this is a case of *res judicata* on the one hand or collateral estoppel on the other is one of critical importance. If, for example, the two causes of action are the same, and *res judicata* is therefore applicable, the first judgment would bar appellants . . . from raising any matters which could have been decided in that case. . . . If, however, we are not dealing with the same cause of action, collateral estoppel rather than res judicata would apply and only those determinations of fact or issues actually litigated in the first case are conclusive in this action....
>
> With this background, it is possible to construct a simple comparative checklist for determining which, if either, of the two doctrines is applicable. For either to apply, the second action must be between the same parties or those in privity with them. For direct estoppel to apply, it must be shown, in addition, that the two causes of action are the same. Collateral estoppel does not require that the causes of action be the same, but it applies only with respect to issues of fact actually determined in the earlier proceeding.

Id. at 15 (*quoting MPC, Inc. v. Kenny*, 279 Md. 29, 33 (1977)) (internal citations omitted)).

In short, *res judicata* applies to matters between the *same parties* involving the *same claims* and operates to bar matters that were litigated as well as matters that could have been litigated. Collateral estoppel, in contrast, applies to matters between the same parties involving *different claims* and bars only matters that were "actually litigated."

4. In the present case, collateral estoppel would *not* bar the Petition for Special Hearing because the issues presented in the Petition were not litigated in the 2016 case. That case did not address, much less determine, whether the standards in 1B01.3.A.7 apply, whether those standards are met, or whether the procedures for an

amendment to a final development plan were followed. The file for the 2016 case and the 2016 Order itself reflect that a hearing was not held, that no consideration was given to the standards for amending final development plans, and that the process for amending such plans was not followed.[3] The ALJ simply granted the amendment to the final development plan. (Order, p. 3).

5. The Petition for Special Hearing is, likewise, not barred by *res judicata* principles. Petitioners were not parties in the 2006 case and the issues presented in this case were not presented in the 2006 case. It cannot reasonably be said that these issues *could have* been litigated in the 2006 because the amendment process was not followed and no consideration was given to the applicable standards.[4]

6. Even if we assume that the parties and the issues in the present case are precisely the same as they were in 2016, the Petition for Special Hearing would still not be barred because *res judicata* principles do not apply to prior errors of law by administrative agencies such as the Office of Administrative Hearings. *See Board of County Commr's of Cecil County v. Racine*, 24 Md. App. 435, 438, 450-52 (1975); *Radio Communications, Inc. v. Public Serv. Comm'n of Md.*, 50 Md. App. 422 (1982).

In *Racine*, the Board of Appeals had previously denied, in December 1967, an application filed by Racine for a permit to construct mobile homes, on the basis that mobiles were not permitted in the C-2 zone. 24 Md. App. at 439-40. Racine appealed that decision, but the appeal was subsequently dismissed as untimely. *Id.* at 443. In

[3] Among other things, and assuming that the amendment did not require a public hearing, neither the ALJ (formerly the Zoning Commissioner) nor the Director of Planning certified that the amendment is in keeping with the spirit and intent of the original plan or Article 1B. *See* § 1B01.3A.7.c(4).

[4] That Petitioners could have raised these issues if they had participated in the 2016 proceeding or appealed the ALJ's decision in that case is not what is meant by "could have been litigated." That is no different than the Taylors' argument that Petitioners waived their right to appeal. *Res judicata* requires that the parties be the same in the two proceedings in order for there to be preclusive effect.

1973, Racine filed an identical application for a permit to construct a mobile home, which the Board again denied, finding that there had not been any change in circumstances which would justify the Board altering its decision on the first application. *Id.* On appeal, the Court of Special Appeals framed the issue as follows: "[I]t is uncontroverted that the issue presented is identical, the parties are identical. The sole question for our decision is the issue whether final decision by the Cecil County Board of Appeals on December 6, 1067 prevents subsequent litigation upon the identical subject by Racine under a doctrine akin to res judicata.... [W]e are called upon to determine whether the rule giving binding effect as between the parties, to a final decision of a zoning board extends to a decision by such a body that solely is the product of an error of law." *Id.* at 444, 451. After discussing the preclusive effect resulting from application of *res judicata* generally, the Court asked: "Should such an inflexible rule of law be made applicable to errors of law by administrative bodies?" The Court answered "no." *Id.* The Court recognized that "an unreversed final decision by a zoning board passed in the exercise of its discretion upon issues of fact or upon mixed issues of law and fact are fully binding upon the parties to the cause and their privies as to all issues determined thereby," but observed that such a decision may be reversed if there has been "a substantial change of conditions or it is shown that decision was the product of fraud, surprise, *mistake, or inadvertence*...." *Id.* at 450 (emphasis added). "Mistaken interpretations of the law, however honestly arrived at, are held not to be within the exercise of sound administrative discretion..., but to be arbitrary and illegal. Perpetuation of illegality by an administrative body by inflexible application of the principle of res judicata is impermissible." *Id.* at 452 (*quoting Criminal Injuries Compensation Board v. Gould*, 273

Md. 486 (1975)); *see also Board of Liquor Commr's for Baltimore City v. Austin*, 232 Md. App. 361, 376 (2017) (holding, based on *Racine*, that board was authorized at second hearing to consider whether it made mistake in prior interpretation of law).

7. Here, assuming the procedure in subsection c of 1B01.3.A.7 applies, Petitioners contend, *inter alia*, that the ALJ erred in approving an amendment to the final development plan (i) without addressing or determining that the amendment is in keeping with the spirit and intent of the original plan, Article 1B, and other land use and development requirements, (ii) without certification from the Director of Planning regarding the same; and (iii) without considering the other standards and procedures in 1B01.A.7. These are errors of law that the ALJ is authorized to consider.

8. In sum, Petitioners' failure to request a public hearing or appeal the ALJ's 2016 decision may have resulted in the "waiver" of their right to do so as the Taylors contend, but it does not preclude them the filing the Petition for Special Hearing or the ALJ from addressing the issues raised in the Petition.

WHEREFORE, Petitioners Barry and Marsha Friedman respectfully request that the Administrative Law Judge deny the motion to dismiss filed by property owners Ross and Emily Taylor.

Respectfully submitted,

Michael R. McCann
Michael R. McCann, P.A.
118 W. Pennsylvania Ave.
Towson, MD 21204
(410) 825-2150

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on 18th day of April, 2018 a copy of the foregoing Response to Motion to Dismiss was emailed and mailed, via first-class mail, postage prepaid to:

David H. Karceski, Esq.
Adam Rosenblatt, Esq.
Venable, LLP
210 W. Pennsylvania Avenue, Ste. 500
Towson, MD 21204

Michael R. McCann

IN RE: PETITION FOR SPECIAL HEARING	*	**BEFORE THE**
	*	**OFFICE OF**
(8641 Park Heights Avenue)	*	**ADMINISTRATIVE HEARINGS**
3rd Election District **2nd Council District**	*	**FOR BALTIMORE**
Marcia and Barry Friedman *Petitioners*	*	
	*	**Case**
Ross and Emily Taylor *Legal Owners*	*	
	*	

Sched: 4/27 @ 10 am
OAH get file: April 20

* *

OWNERS' MOTION TO DISMISS

Owners, Ross and Emily Taylor (the "Owners"), by undersigned counsel, hereby move to dismiss the above-captioned petition for special hearing for the following reasons:

INTRODUCTION

On April 21, 2016, the Baltimore County Administrative Law Judge ("ALJ") issued an Order in Case Number 2016-0214-A (the "2016 Case") granting: (1) the Owners' Petition for Variance to reduce the principal building setback on their property from 150 feet to 80 feet, and (2) a request to amend the Final Development Plan (FDP) of Garden View for Lot 9 only. *See* Order, attached hereto as Exhibit A (the "2016 Order"). The relief granted in the 2016 Order related to the proposed construction of a single-family dwelling to be located on the property known as 8641 Park Heights Avenue (the "Property"). On March 19, 2016, prior to the hearing in the 2016 Case, and in accordance with the requirements of the Baltimore County Code, the Property was posted with a sign advertising the requested relief and providing instructions for

any protestants, including the Petitioners in this case, to request a formal hearing. Exhibit A, p. 2; see also Certificate of Posting, attached hereto as Exhibit B. As stated in the 2016 Order, Baltimore County did not receive any request for a public hearing. Exhibit A, p. 2. After granting the relief for both the setback reduction and the FDP amendment, the 2016 Order specifically stated that "any appeal of this decision must be made within thirty (30) days of the date of this Order." Exhibit A, p. 3. No person, including the Petitioners in this case, moved for reconsideration of the 2016 Order within the thirty-day time period permitted by Rule 4.K of Appendix G of the Baltimore County Zoning Regulations.

On May 24, 2016, the Office of Administrative Hearings authored a Memorandum confirming that the appeal period for Case Number 2016-0214-A had expired and that no person, including the Petitioners in this case, filed an appeal of the 2016 Order to the Baltimore County Board of Appeals. *See* Exhibit C. The file was subsequently returned to the Office of Zoning Review. *Id.* With the 2016 Case having concluded, the Owners moved forward with the design and construction of a single family dwelling on the Property. Pursuant to and in accordance with the 2016 Order, a building permit (No. B938177) was issued for the Owners to construct a single-family dwelling on the Property to be their primary residence. *See* Exhibit D. In reliance on the 2016 Order and building permit issued by Baltimore County, the Owners began construction of the dwelling in September 2017.

On March 14, 2018, nearly two years after the expiration of the appeal period for the 2016 Order, neighbors Marcia and Barry Friedman (the "Petitioners") hired an attorney (Michael McCann) and filed a petition for special hearing asking the ALJ to revisit the relief that was granted in the 2016 Order. Specifically, Petitioners ask the ALJ for a determination as to whether the Owners were required to amend the FDP, what standards applied to the FDP

amendment, and whether the Owner's 2016 zoning petition complied with the standards for amending the FDP. Petitioners' inquiries are untimely and were waived when they failed to request a hearing and failed to file a timely appeal of the 2016 Order. As a matter of law, this petition must be dismissed.

ARGUMENT

In their petition for special hearing, Petitioners ask for a determination of the following:

> (1) Whether the property owner's development of the subject property required an amendment to the Final Development Plan governing the Garden View community;
>
> (2) What standards and procedures in section 1B01.3.A.7 of the Zoning Regulations apply to the property owner's amendment of the Final Development Plan; and
>
> (3) Whether all applicable standards and procedures in/under the Zoning Regulations, including those in section 1B01.3.A.7, were met and fully complied with.

Petition, p. 2. Each of the questions directly relates to the relief granted in the 2016 Order.

In Maryland, it is well settled that a party who has failed to file a timely notice of appeal of a zoning decision may not cure its defect by attempting to revive or revisit potential issues after the expiration of the appeals period. In United Parcel Serv., Inc. v. People's Counsel for Baltimore Cty., protestants sought to challenge an unappealed determination of the Baltimore County Zoning Commissioner that allowed the United States Parcel Service ("UPS") to seek and obtain a building permit for the construction of a warehouse. 336 Md. 569, 573-74 (1994). The following year, a neighboring landowner submitted a letter to the Zoning Commissioner concerning the construction of the UPS warehouse. Id. The Zoning Commissioner responded with a letter in which he confirmed the prior, unappealed decision that authorized the construction of the warehouse. Id. at 573-74. The neighbor attempted to file an appeal of the

Zoning Commissioner's letter to the County Board of Appeals. Id. at 574. The case ultimately made its way to the Court of Appeals, which held that the protestants were not entitled to revisit the zoning issues surrounding the warehouse when they failed to appeal the Zoning Commissioner's initial determination. Id. at 583. The Court recognized that holding otherwise would allow a protestant to "circumvent entirely the statutory time limits for taking appeals." Id. This is precisely what the Petitioners are attempting to do in this case.

Here, Petitioners filed the instant case in an effort to re-litigate issues that were resolved in the 2016 Case nearly two years after the expiration of the appeals period. Petitioners had ample opportunity to contest the 2016 Case and to raise any issues regarding the amendment to the Final Development Plan, the standards and procedures applied to the amendment to the Final Development Plan, and whether the Owners' complied with all relevant standards and procedures in obtaining their zoning relief. Instead, Petitioners failed to request a hearing, failed to file any motion for reconsideration, failed to appeal, and are now barred from "circumventing the time limits" for challenging the 2016 Order. United Parcel Serv., 336 Md. at 583.

By virtue of their failure to challenge the relief granted in the 2016 Case, Petitioners have waived their right to seek the relief requested in this petition. See Board of Physician Quality Assurance v. Levitsky, 353 Md. 188, 199 (1999) (holding that the "doctrine of acquiescence – or waiver – is that 'a voluntary act of a party which is inconsistent with the assignment of errors on appeal normally precludes that party from obtaining appellate review"). This case must be dismissed with prejudice.

CONCLUSION

For the reasons stated herein, the Owners respectfully request that this case be dismissed with prejudice.

Respectfully submitted,

David H. Karceski
Adam M. Rosenblatt
Venable, LLP
210 W. Pennsylvania Avenue, Ste. 500
Towson, MD 21204
(410) 494-6825
dkarceski@venable.com
amrosenblatt@venable.com

CERTIFICATE OF SERVICE

I hereby certify on this 11th day of April, 2018 that a copy of the foregoing pleading was hand delivered to the Law Offices of Michael F. McCann, P.A., 118 W. Pennsylvania Avenue, Towson, Maryland 21204.

Adam M. Rosenblatt

EXHIBIT A

IN RE: PETITION FOR ADMIN. VARIANCE (8641 Park Heights Avenue)	*	BEFORE THE
3rd Election District	*	OFFICE OF ADMINISTRATIVE
2nd Council District		
Ross and Emily Taylor	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	**CASE NO. 2016-0214-A**

* * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of a Petition for Administrative Variance filed by the legal owners of the property, Ross and Emily Taylor ("Petitioners"). The Petitioners are requesting Variance relief pursuant to § 1A04.3.B.2.b of the Baltimore County Zoning Regulations ("B.C.Z.R") to permit a proposed single family dwelling with a principal building setback of 80 ft. in lieu of the required 150 ft. from a RC-2 zone which is contiguous to a RC-5 zone and amend the Final Development Plan (FDP) of Garden View for Lot 9 only. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. ZAC comments were received on March 25, 2016 from the Department of Environmental Protection and Sustainability (DEPS), indicating that the ground water management section must review any proposed building permit for a replacement house, since it is served by private septic, and from the Bureau of Development Plans Review (DPR) dated March 28, 2016, indicating that screening should be installed along the northeast property line to complement existing vegetation. In addition, a ZAC comment was received from the

Department of Planning (DOP) on April 15, 2016, indicating they had no objections to the zoning request provided certain conditions were met.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on March 19, 2016, and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented. Although the OAH does not usually entertain Administrative Variance petitions filed by contract purchasers or owners not residing at the subject property, an exception is warranted here. Mr. Matz, the professional engineer assisting Petitioners, provided a copy of an Administrative Variance application checklist supplied to him by the Office of Zoning Review. That form indicates a petition for Administrative Variance can be filed by petitioners who "reside or, upon purchase, will reside" at the property. This would appear to be an outdated form, since the law requires the property to be "an owner-occupied lot" (B.C.C. § 32-3-303) and the affidavit submitted with a petition for Administrative Variance was revised in 2014 and specifies the property is "owned and occupied" by the affiant.

The Petitioners have filed the supporting affidavits as required by § 32-3-303 of the Baltimore County Code (B.C.C.). Based upon the information available, there is no evidence in the file to indicate that the requested variance would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Administrative Law Judge, the information, photographs, and affidavits submitted provide sufficient facts that comply with the requirements of §·307.1 of the B.C.Z.R. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioner.

ORDER RECEIVED FOR FILING

Date 4-21-16

By DW

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be granted.

THEREFORE, IT IS ORDERED, this 21st day of **April, 2016**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from § 1A04.3.B.2.b of the Baltimore County Zoning Regulations ("B.C.Z.R") to permit a proposed single family dwelling with a principal building setback of 80 ft. in lieu of the required 150 ft. from a RC-2 zone which is contiguous to a RC-5 zone and amend the Final Development Plan (FDP) of Garden View for Lot 9 only, 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.

2. Petitioners must comply with the ZAC comments submitted by DEPS, dated March 25, 2016, DPR dated March 28, 2016, and DOP dated April 14, 2016; 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.

JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:dlw

ORDER RECEIVED FOR FILING
Date 4-21-16
By

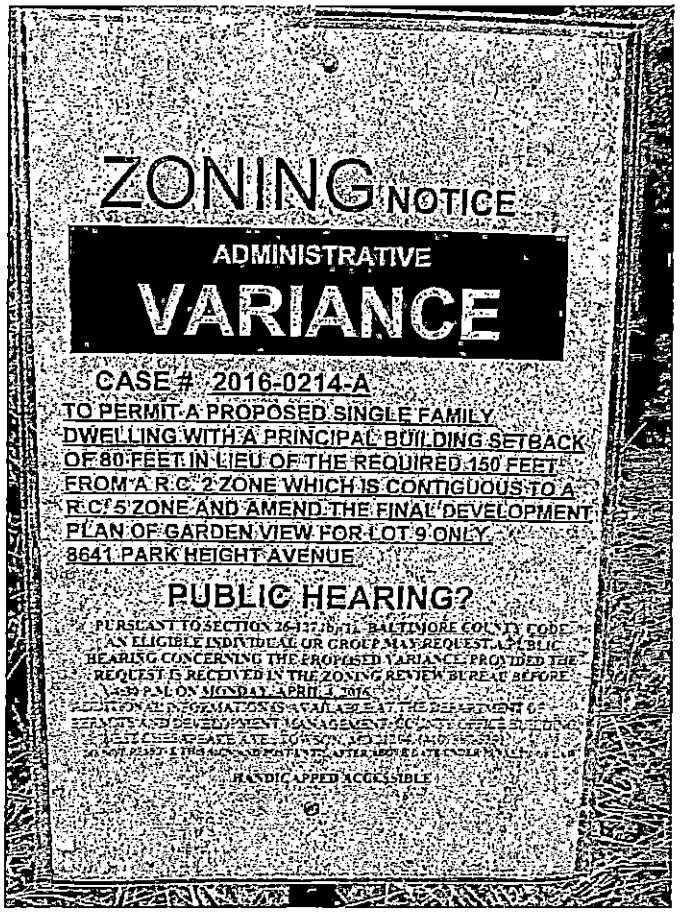
EXHIBIT B

CERTIFICATE OF POSTING

ATTENTION: KRISTEN LEWIS
DATE: 3/21/2016
Case Number: 2016-0214-A
Petitioner / Developer: COLBERT, MATZ & ROSENFELT, INC. ~ ROSS & EMILY TAYLOR
Date of Hearing (Closing): APRIL 4, 2016

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at:
8641 PARK HEIGHTS AVENUE

The sign(s) were posted on: MARCH 19, 2016



Linda O'Keefe
(Signature of Sign Poster)

Linda O'Keefe
(Printed Name of Sign Poster)

523 Penny Lane
(Street Address of Sign Poster)

Hunt Valley, Maryland 21030
(City, State, Zip of Sign Poster)

410 – 666 – 5366
(Telephone Number of Sign Poster)

EXHIBIT C

MEMORANDUM

DATE: May 24, 2016

TO: Zoning Review Office

FROM: Office of Administrative Hearings

RE: Case No. 2016-0214-A – Appeal Period Expired

The appeal period for the above-referenced case expired on May 23, 2016. There being no appeal filed, the subject file is ready for return to the Zoning Review Office and is placed in the 'pick up box.'

c: Case File
Office of Administrative Hearings

EXHIBIT D

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS, APPROVALS, AND INSPECTIONS

Arnold Jablon, Deputy Administrative Officer & Director

Donald E Brand, Building Engineer

BUILDING PERMIT

PERMIT #: B938177 CONTROL #: NR DIST: 03 PREC: 01
DATE ISSUED: 09/26/2017 TAX ACCOUNT #: 1900003720 CLASS: 04

PLANS: CONST 02 PLOT 9 R PLAT 0 DATA 0 ELEC YES PLUM YES
LOCATION: 8641 PARK HEIGHTS AVE
SUBDIVISION: GARDEN VIEW

OWNERS INFORMATION
NAME: TAYLOR ROSS I AND EMILY
ADDR: 1112 S BAYLIS ST,BALTIMORE MD 21224

TENANT: TO BE SPRINKLERED
CONTR: OWNER-AFFIRMATION OF LANDOWNER ATTACHED
ENGNR:
SELLR:
WORK: CONST SFD 2-STY W/FINSHD BSMT W/BEDRM,F/L & S/L GARAGES,ELEVATOR PIT (FOR FUTURE),BUTLER PANTRY SCREENED PORCH W/FP (NO OS PROJ), OPEN DECK, COVRD OUTDOOL KITCHEN, 6 BEDROOMS. 122'X152'X32'=16,028SF.

BLDG. CODE:
RESIDENTIAL CATEGORY: DETACHED OWNERSHIP: PRIVATELY OWNED

PROPOSED USE: SFD
EXISTING USE: VACANT - SEE B931295 FOR RAZING

TYPE OF IMPRV: NEW BUILDING CONTRUCTION
USE: ONE FAMILY
FOUNDATION: CONCRETE BASEMENT: FULL
SEWAGE: PRIV. EXISTS WATER: PUBLIC EXIST

LOT SIZE AND SETBACKS

SIZE: 3.30AC
FRONT STREET:
SIDE STREET:
FRONT SETB: 82'
SIDE SETB: 91'/80'
SIDE STR SETB:
REAR SETB: 240'

THIS PERMIT EXPIRES ONE YEAR FROM DATE OF ISSUE

PLEASE REFER TO PERMIT NUMBER WHEN MAKING INQUIRIES

KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

April 18, 2018

Ross & Emily Taylor
8641 Park Heights Avenue
Stevenson MD 21154

RE: Case Number: 2018-0241 SPH, Address: 8641 Park Heights Avenue

Dear Mr. & Ms. Taylor:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on March 14, 2018. This letter is not an approval, but only a **NOTIFICATION.**

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards Jr.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: jaw

Enclosures

c: People's Counsel
Marcia & Barry Friedman, 6 Green Heather Court, Pikesville MD 21208
Michael McCann, Esquire, 118 W Pennsylvania Avenue, Towson MD 21204

MARYLAND DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION

Larry Hogan
Governor
Boyd K. Rutherford
Lt. Governor
Pete K. Rahn
Secretary
Gregory Slater
Administrator

Date: 3/19/18

Ms. Kristen Lewis
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
111 West Chesapeake Avenue
Towson, Maryland 21204

Dear Ms. Lewis:

Thank you for the opportunity to review your referral request on the subject of the Case number referenced below. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Case No. 2018-0241-SPH
Special Hearing
Ross & Emily Taylor
8641 Pankhurst Avenue

Should you have any questions regarding this matter, please contact Mr. Richard Zeller at 410-229-2332 or 1-866-998-0367 (in Maryland only) extension 2332, or by email at (rzeller@sha.state.md.us).

Sincerely,

for Wendy Wolcott, P.L.A.
Metropolitan District Engineer
Maryland Department of Transportation
State Highway Administration
District 4 - Baltimore and Harford Counties

WW/RAZ

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

DATE: April 4, 2018

FROM: Vishnu Desai, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For March 26, 2018
Item No. 2018-0241-SPH

The Bureau of Development Plans Review has reviewed the subject zoning items and we have the following comments.

Owner/Developer has to extinguish a portion of the existing "Private Ingress & Egress Easement for the Sharrow Property & Others" since the proposed improvements on Lot #9 (8641 Park Heights Ave.) will eliminate the access to Parks Heights Ave for the residents at 11 Green Heather Court.

* * * * *

VKD: efc
cc: file

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and Sustainability (EPS) - Development Coordination

DATE: March 27, 2018

SUBJECT: DEPS Comment for Zoning Item # 2018-0241-SPH
Address 8641 Park Heights Avenue
(Taylor Property)

Zoning Advisory Committee Meeting of **March 26, 2018**.

X The Department of Environmental Protection and Sustainability has no comment on the above-referenced zoning item.

Reviewer: Steve Ford

C:\Users\jwisnom\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\XEGA1Q0V\ZAC 18-0241-SPH 8641 Park Heights Avenue.doc

CERTIFICATE OF POSTING

April 7, 2018

Re:
Zoning Case No. 2018-0241-SPH
Legal Owner: Ross & Emily Taylor
Petitioner: Barry & Marcia Friedman
Hearing date: April 27, 2018

Baltimore County Department of Permits, Approvals & Inspections
County Office Building
111 West Chesapeake Avenue, Room 111
111 West Chesapeake Avenue Towson, MD 21204

Attention: Kristen Lewis

Ladies and Gentlemen,

This letter is to certify under the penalties of perjury that the two necessary signs required by law were posted conspicuously on the property located at **8641 Park Heights Avenue**.

The sign was posted on **April 6, 2018.**

Sincerely,

Bruce E. Doak
MD Property Line Surveyor #531

See the attached sheets for the photos of the posted signs

Bruce E. Doak Consulting, LLC
3801 Baker Schoolhouse Road
Freeland, MD 21053
410-419-4906 cell / 443-900-5535 office
bdoak@bruceedoakconsulting.com

SIGN 1

ZONING NOTICE

CASE NO. 2018-0241-SPH

8641 Park Heights Avenue

A PUBLIC HEARING WILL BE HELD BY THE ADMINISTRATIVE LAW JUDGE IN TOWSON MARYLAND

PLACE: Room 205 JEFFERSON BUILDING
105 W. CHESAPEAKE AVENUE TOWSON, MD 21204

DATE & TIME: Friday April 27, 2018 10:00 AM

REQUEST: SPECIAL HEARING TO DETERMINE
1.WHETHER THE PROPERTY OWNER'S DEVELOPMENT OF THE SUBJECT PROPERTY REQUIRED AN AMENDMENT TO THE FINAL DEVELOPMENT PLAN GOVERNING THE GARDEN VIEW COMMUNITY?
2. WHAT STANDARDS AND PROCEDURES IN SECTION 1B01.3.A.7 OF THE ZONING REGULATIONS APPLY TO THE PROPERTY OWNER'S AMENDMENT OF THE FINAL DEVELOPMENT PLAN?
3. WHETHER ALL APPLICABLE STANDARDS AND PROCEDURES IN / UNDER THE ZONING REGULATIONS, INCLUDING THOSE IN SECTION 1B01.3.A.7 WERE MET AND FULLY COMPLIED WITH?
4. SUCH OTHER RELIEF AS IS NECESSARY UNDER THE ZONING REGULATIONS TO ENSURE THAT THE DEVELOPMENT OF THE SUBJECT PROPERTY COMPLIES THEREWITH.

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY. TO CONFIRM THE HEARING CALL 410-887-3391.

DO NOT REMOVE THIS SIGN AND POST UNTIL THE DAY OF THE HEARING UNDER PENALTY OF LAW.

THE HEARING IS HANDICAPPED ACCESSIBLE


8641
ZONING NOTICE

SIGN 2

ZONING NOTICE

CASE NO. 2018-0241-SPH

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THE HEARING IS HANDICAPPED ACCESSIBLE


Sign 2
ZONING NOTICE
CASE NO. 2018-0241-SPH
9641 Park Heights Avenue

THE BALTIMORE SUN MEDIA GROUP

501 N. Calvert St., P.O. Box 1377
Baltimore, Maryland 21278-0001
tel: 410/332-6000
800/829-8000

WE HEREBY CERTIFY, that the annexed advertisement of Order No 5544151

Sold To:
Michael McCann - CU00646940
118 W Pennsylvania Ave
Towson,MD 21204-4518

Bill To:
Michael McCann - CU00646940
118 W Pennsylvania Ave
Towson,MD 21204-4518

Was published in "Jeffersonian", "Bi-Weekly", a newspaper printed and published in Baltimore County on the following dates:

Apr 05, 2018

NOTICE OF ZONING HEARING

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2018-0241-SPH
8641 Park Heights Avenue
1670 ft. NE of Park Heights Avenue, 2200 sq. ft. S/of Greenspring Valley Road
3rd Election District - 2nd Councilmanic District
Legal Owners: Ross & Emily Taylor
Contract Purchaser/Lessee: Barry & Marcia Friedman

Special Hearing 1. Whether the property owner's development of the subject property required an amendment to the Final Development Plan governing the Garden View community? 2. What standards and procedures in section 1B01.3.A.7 of the Zoning Regulations apply to the property owner's amendment of the Final Development Plan? 3. Whether all applicable standards and procedures in/under the Zoning Regulations, including those in Section 1B01.3.A.7 were met and fully complied with? 4. Such other relief as is necessary under the Zoning Regulations to ensure that the development of the subject property complies therewith.

Hearing: Friday, April 27, 2018 at 10:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

/s/ Arnold Jablon
Arnold Jablon
Director of Permits, Approvals and Inspections for Baltimore County
NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS, PLEASE CONTACT THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.
5544151 - 04/05/2018

The Baltimore Sun Media Group

By S. Wilkinson

Legal Advertising

KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits, Approvals & Inspections

March 29, 2018

NOTICE OF ZONING HEARING

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

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Hearing: Friday, April 27, 2018 at 10:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director

AJ:kl

C: Michael McCann, 118 W. Pennsylvania Avenue, Towson 21204
Mr. & Mrs. Friedman, 6 Green Heather Court, Pikesville 21208
Mr. & Mrs. Taylor, 8641 Park Heights Avenue, Stevenson 21154

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, APRIL 7, 2018.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

RE: PETITION FOR SPECIAL HEARING 8641 Park Heights Avenue; 1670' NE of Park Height Ave, 2200' S of Greenspring Valley Rd* 3rd Election & 2nd Councilmanic Districts Legal Owner(s): Ross & Emily Taylor Petitioner(s): Marcia & Barry Friedman	*	BEFORE THE OFFICE OF ADMINSTRATIVE HEARINGS FOR BALTIMORE COUNTY 2018-241-SPH

* * * * * * * * * * * * *

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

RECEIVED
MAR 26 2018

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of March, 2018, a copy of the foregoing Entry of Appearance was mailed to Michael McCann, Esquire, 118 W. Pennsylvania Avenue, Towson, Maryland 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 8641 Park Heights Avenue **which is presently zoned** RCS & RCZ

Deed References: 35081/ 0244 10 Digit Tax Account # 1900003720

Property Owner(s) Printed Name(s) Ross Taylor and Emily Taylor

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:.

1. X **a Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

See attachment.

2. ____ **a Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

3. ____ **a Variance** from Section(s)

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: **(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)**

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

~~**Contract Purchaser/Lessee:**~~ Petitioner

Marcia Friedman / Barry Friedman
Name- Type or Print

M a attorney in fact / M a attorney in fact
Signature

6 Green Heather Ct., Pikesville, MD
Mailing Address City State

21208 / /
Zip Code Telephone # Email Address

Legal Owners (~~Petitioners~~):

Ross Taylor / Emily Taylor
Name #1 – Type or Print Name #2 – Type or Print

N/A /
Signature #1 Signature # 2

8641 Park Heights Stevenson MD
Mailing Address City State

21154 / /
Zip Code Telephone # Email Address

Attorney for Petitioner:

Michael R. McCann
Name- Type or Print

Signature

118 W. Pennsylvania Towson MD 21204
Mailing Address City State

21204 / 410 825-2150 / michael@mccannlaw.net
Zip Code Telephone # Email Address

Representative to be contacted:

Michael R. McCann
Name – Type or Print

Signature

118 W. Pennsylvania Ave Towson MD
Mailing Address City State

21204 / 410 825-2150 / michael@mccannlaw.net
Zip Code Telephone # Email Address

CASE NUMBER 2018-0241-SPH Filing Date 3/14/2018 Do Not Schedule Dates: _____ Reviewer JNP for WCR

REV. 10/4/11

Attachment to Petition for Special Hearing
8641 Park Heights Avenue

Whether the property owner's development of the subject property required an amendment to the Final Development Plan governing the Garden View community?

What standards and procedures in section 1B01.3.A.7 of the Zoning Regulations apply to the property owner's amendment of the Final Development Plan?

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Such other relief as is necessary under the Zoning Regulations to ensure that the development of the subject property complies therewith.

2018-0241-SPH

ZONING DESCRIPTION – 8641 Park Heights Avenue

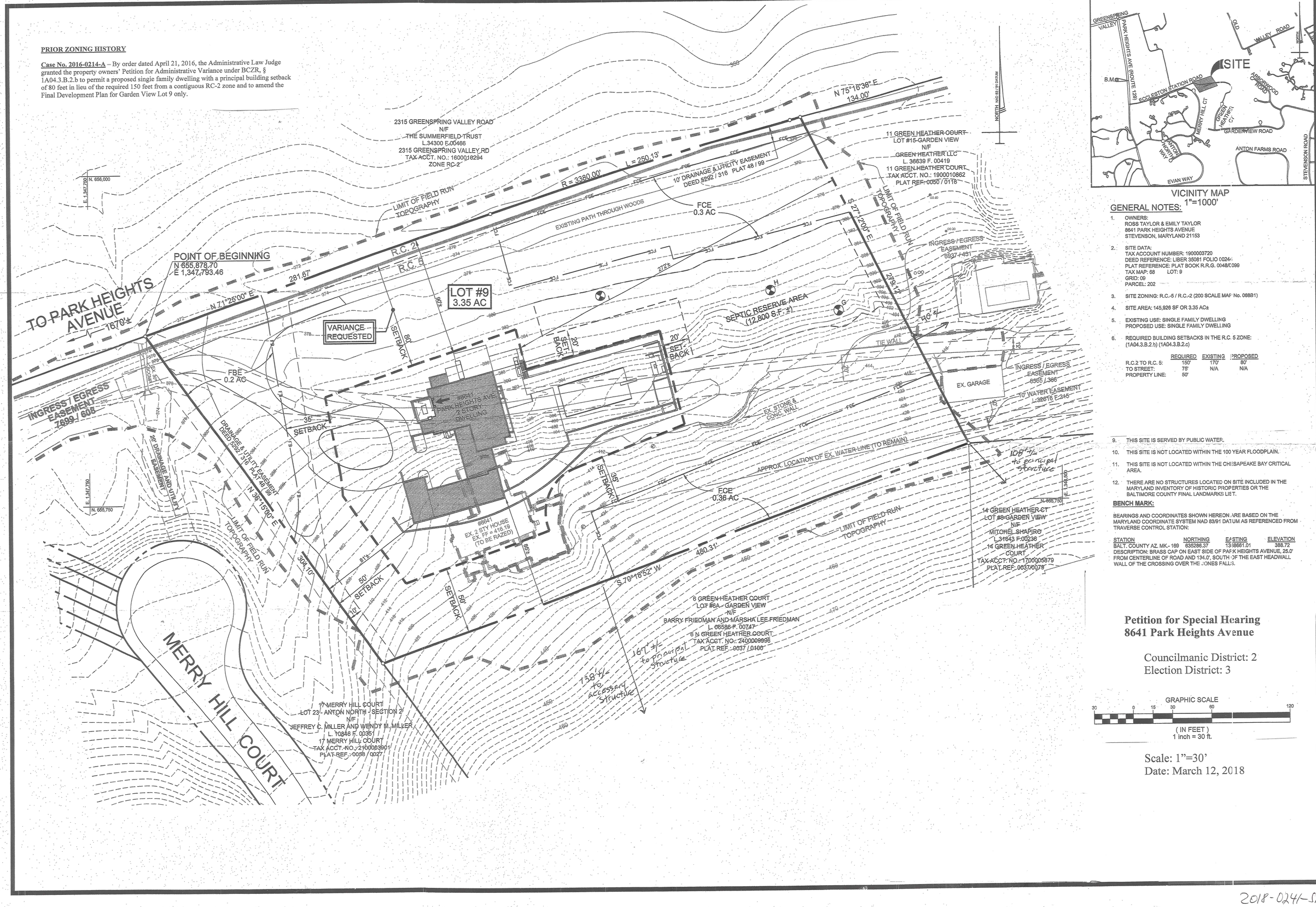
Commencing at a point on the east side of Park Heights Avenue, thence northeasterly 1670 feet, more or less, to the zoning point of beginning.

Being Lot #9, Section 2 in the subdivision of Garden View as recorded in Baltimore County Plat Book # 48, folio 99, containing 3.35 acres. Located in the 3rd Election District and 2nd Councilmanic District.

2018-0241-SPH

PRIOR ZONING HISTORY

Case No. 2016-0214-A – By order dated April 21, 2016, the Administrative Law Judge granted the property owners' Petition for Administrative Variance under BCZR, § 1A04.3.B.2.b to permit a proposed single family dwelling with a principal building setback of 80 feet in lieu of the required 150 feet from a contiguous RC-2 zone and to amend the Final Development Plan for Garden View Lot 9 only.



VICINITY MAP
1"=1000'

GENERAL NOTES:

1. OWNERS:
   ROSS TAYLOR & EMILY TAYLOR
   8641 PARK HEIGHTS AVENUE
   STEVENSON, MARYLAND 21153

2. SITE DATA:
   TAX ACCOUNT NUMBER: 1900003720
   DEED REFERENCE: LIBER 35081 FOLIO 0024
   PLAT REFERENCE: PLAT BOOK R.R.G. 0048/0099
   TAX MAP: 68 LOT: 9
   GRID: 09
   PARCEL: 202

3. SITE ZONING: R.C.-5 / R.C.-2 (200 SCALE MAP No. 088B1)

4. SITE AREA: 145,926 SF OR 3.35 AC±

5. EXISTING USE: SINGLE FAMILY DWELLING
   PROPOSED USE: SINGLE FAMILY DWELLING

6. REQUIRED BUILDING SETBACKS IN THE R.C. 5 ZONE: (1A04.3.B.2.b) (1A04.3.B.2.c)

	REQUIRED	EXISTING	PROPOSED
R.C.2 TO R.C. 5:	150'	170'	80'
TO STREET:	75'	N/A	N/A
PROPERTY LINE:	50'		

9. THIS SITE IS SERVED BY PUBLIC WATER.

10. THIS SITE IS NOT LOCATED WITHIN THE 100 YEAR FLOODPLAIN.

11. THIS SITE IS NOT LOCATED WITHIN THE CHESAPEAKE BAY CRITICAL AREA.

12. THERE ARE NO STRUCTURES LOCATED ON SITE INCLUDED IN THE MARYLAND INVENTORY OF HISTORIC PROPERTIES OR THE BALTIMORE COUNTY FINAL LANDMARKS LIST.

BENCH MARK:

BEARINGS AND COORDINATES SHOWN HEREON ARE BASED ON THE MARYLAND COORDINATE SYSTEM NAD 83/91 DATUM AS REFERENCED FROM TRAVERSE CONTROL STATION:

STATION	NORTHING	EASTING	ELEVATION
BALT. COUNTY AZ. MK.- 169	635288.37	1348681.01	388.72

DESCRIPTION: BRASS CAP ON EAST SIDE OF PARK HEIGHTS AVENUE, 25.0' FROM CENTERLINE OF ROAD AND 134.0', SOUTH OF THE EAST HEADWALL WALL OF THE CROSSING OVER THE JONES FALLS.

Petition for Special Hearing
8641 Park Heights Avenue

Councilmanic District: 2
Election District: 3

GRAPHIC SCALE
30 0 15 30 60 120
(IN FEET)
1 inch = 30 ft.

Scale: 1"=30'
Date: March 12, 2018

2018-0241-SPH

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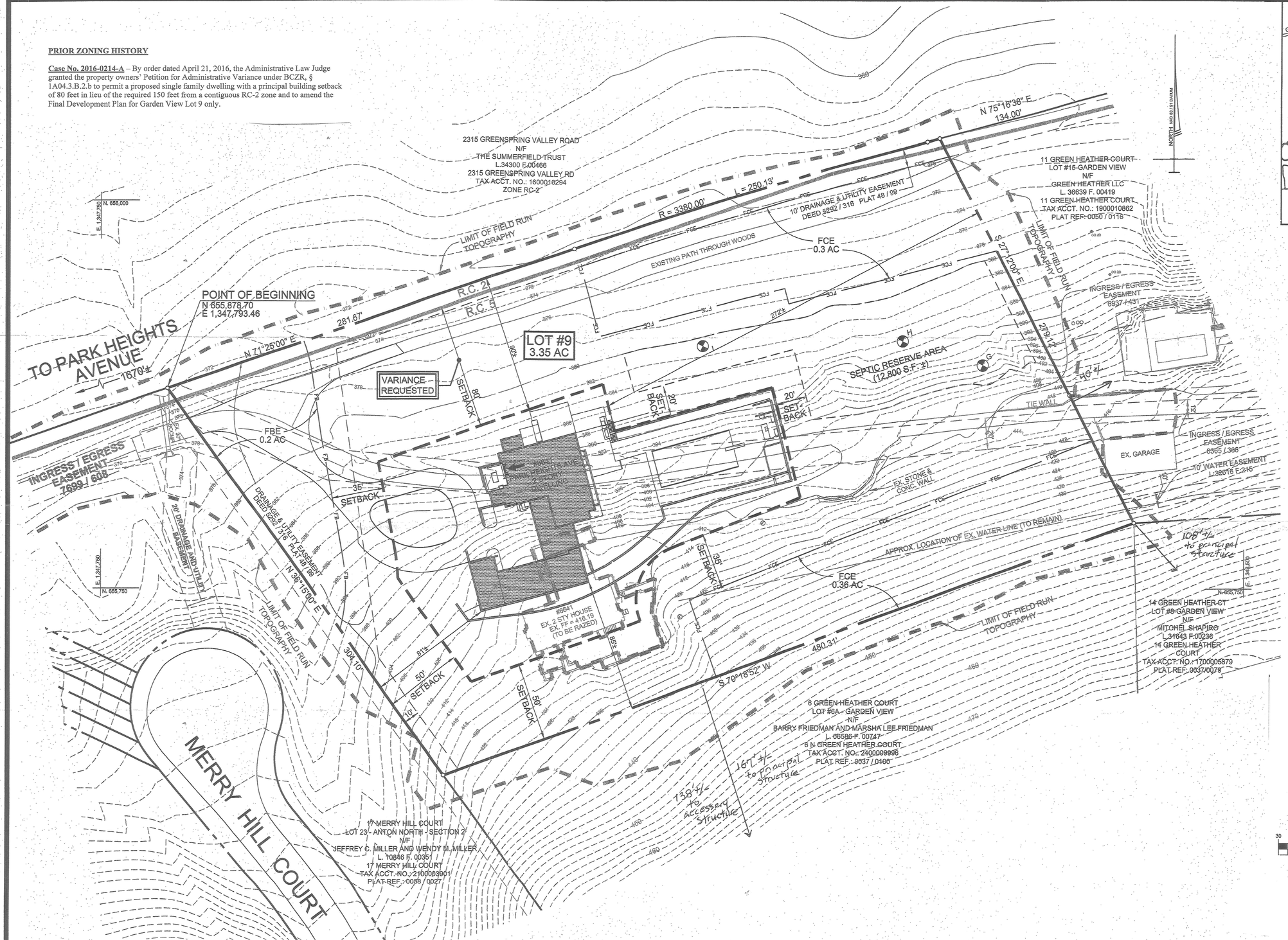

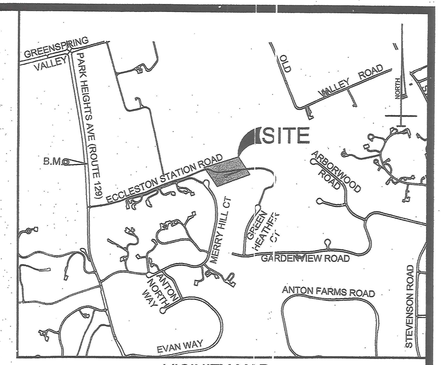

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