

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(619 Northern Lane)		
9 th Election District	*	OFFICE OF
3 rd Council District		
Regina Kidd	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2017-0236-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed on behalf of Regina Kidd, legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) as follows: (1) To determine if the doctrine of merger is applicable in the context of this case; and (2) To permit a one family detached dwelling to be erected on a lot having an area or width at the building line less than that required by the area regulations contained in the Baltimore County Zoning Regulations, pursuant to B.C.Z.R. §304.

Regina Kidd and Bruce Doak appeared in support of the petition. Curtis C. Coon, Esq. appeared on behalf of several neighbors opposing the request. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations.

Petitioner filed with the OAH on the day of the hearing a request for postponement. Petitioner indicated a mistake was made when the subject property was conveyed recently, and that a corrective deed would be required to correct the chain of title. The ALJ is not authorized to resolve a dispute concerning the ownership of or title to property, and that issue is generally irrelevant in a zoning case. *See, e.g., Richard Roeser Prof. Builder, Inc. v. Anne Arundel County*, 368 Md. 294, 305 (2001) (“ownership is normally irrelevant to zoning”). As such, the

postponement request was denied, and the undersigned indicated the hearing could proceed on the assumption Petitioner was in fact the lawful owner of the property.

At the outset of the hearing Mr. Coon made a preliminary motion to dismiss, contending the case was barred by the doctrine of *res judicata*. Counsel noted a prior case concerning the same property was heard by the OAH earlier this year. See Case No. 2017-0131-SPHA. Petitions for variance and special hearing were denied in that case, which was not appealed to the board of appeals. In these circumstances I agree *res judicata* is applicable, and this case will be dismissed.

Under Maryland law, an agency determination in a quasi-judicial proceeding is entitled to preclusive effect, a doctrine known as *res judicata*. *Seminary Galleria, LLC v. Dulaney Valley Improv. Ass'n, Inc.*, 192 Md. App. 719, 736 (2010); *Esslinger v. Balto. City*, 95 Md. App. 607, 621 (1993). *Res judicata* will operate as a bar to a subsequent case based on the same or similar facts as an earlier proceeding, unless there is a significant change in circumstances between the earlier and subsequent action. *See, e.g., Alvey v. Hedin*, 243 Md. 334, 340 (1966). This case involves the same parcel of property, the parties are the same, as are the facts and circumstances considered in the prior action. As such, I believe *res judicata* is applicable.

THEREFORE, IT IS ORDERED this 27th day of April, **2017** by this Administrative Law Judge, that the Petition for Special Hearing as follows: (1) To determine if the doctrine of merger is applicable in this case; and (2) To permit a one family detached dwelling to be erected on a lot having an area or width at the building line less than that required by the area regulations contained in the Baltimore County Zoning Regulations, pursuant to B.C.Z.R. §304, be and is hereby DISMISSED with prejudice.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:slh