

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(4813 Ridge Road)		
14 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
6 <sup>th</sup> Council District		
Bush River, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	<b>CASE NO. 2018-0136-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Bush River, LLC, legal owner of the subject property (“Petitioner”). The Petition seeks variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed single-family dwelling with a side yard setback of 8 ft. and a sum of side yard setbacks of 23 ft. in lieu of the minimum required 10 ft. and sum of 25 ft. A site plan was marked as Petitioner’s Exhibit 1.

Glenn Grasso and Paul Fortier appeared in support of the petition. A neighbor attended the hearing and opposed the request. The Petition was advertised and posted as required by the B.C.Z.R. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (DOP). That agency did not oppose the request.

The site is approximately 10,000 sq. ft. in size and zoned DR 3.5. A variance was granted in 2006 to approve construction of a single-family dwelling on a lot 50 ft. wide in lieu of the required 70 ft. The property is unimproved and Petitioner proposes to construct a dwelling on the lot. To do so a setback variance is required.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

The Deputy Zoning Commissioner in 2006 (No. 2006-0204-A) approved a lot width of 50 ft., but in the same order he denied a variance for a sum of side yard setbacks of 22 ft. in lieu of the required 25 ft. That is essentially the same request as in the current petition; i.e., 23 ft. in lieu of the required 25 ft.

In these circumstances I believe the petition is barred by the doctrine of *res judicata*. Under Maryland law, a final agency determination is entitled to preclusive effect. *Esslinger v. Balto. City*, 95 Md. App. 607, 621 (1993). The court of special appeals has confirmed that the doctrine of *res judicata* is applicable in zoning cases. *Seminary Galleria, LLC v. Dulaney Valley Improv. Assn.*, 192 Md. App. 719 (2010). Indeed, *res judicata* will apply unless there has been a significant change in circumstances between the earlier and subsequent action. *See, e.g., Alvey v. Hedin*, 243 Md. 334, 340 (1966). The Petitioner did not indicate that any substantial changes have occurred in the intervening years. The property is unimproved, as it was at the time of the earlier case. As such, the doctrine of *res judicata* requires that the petition in this case be denied.

THEREFORE, IT IS ORDERED, this **24th** day of **January, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from §1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed single-family dwelling with a side yard setback of 8 ft. and a sum of side yard setbacks of 23 ft. in lieu of the minimum required 10 ft. and sum of 25 ft., be and is hereby DENIED

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

\_\_\_\_ Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB:sln