

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

\* \* \* \* \*

**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 **24<sup>th</sup>** 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.

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:sln