

IN RE: <b>PETITION FOR VARIANCE</b>	*	BEFORE THE
N/S Chesapeake Avenue, 320' SW c/line of		
Baylight Road	*	ZONING COMMISSIONER
<b>(8810 Chesapeake Avenue)</b>		
15 <sup>th</sup> Election District	*	OF
7 <sup>th</sup> Council District		
	*	BALTIMORE COUNTY
Thomas L. Shoemaker, et ux,		
<i>Legal Owners</i>	*	
Gary Morris, et al, <i>Contract Purchaser</i>		
<i>Petitioners</i>	*	<b>Case No. 2010-0063-A</b>

\* \* \* \* \*

**ORDER OF DISMISSAL**

This matter was scheduled for a public hearing before the undersigned Zoning Commissioner on October 19, 2009 for consideration of a Petition for Variance filed by the owners of the property, Thomas L. Shoemaker, and his wife, Jane Marie Shoemaker, and the contract purchasers, Gary Morris and Caroline Eifert. The Petitioners sought variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed two-story dwelling to be built on a lot with a width of 50 feet in lieu of the required 55 feet.

Appearing at the public hearing in support of the request were Mr. and Mrs. Shoemaker, their real estate broker, Kay Staszak, Gary Morris and Caroline Eifert. Appearing as interested citizens/Protestants were neighbors residing across from the subject property, namely, Paul J. Watson, Jr. and his wife, Patricia L. Watson, whose waterfront home faces the Chesapeake Bay.

An appreciation of the properties past history and use is relevant and is briefly outlined. The Shoemakers have for some 26 years owned the property known as Lots 65, 66 and 67 of Baylight Beach, an older subdivision which was recorded in the Land Records of Baltimore County well prior to the effective date of the zoning regulations. In this regard, each of the lots are 50 feet wide with frontage on Chesapeake Avenue near the end of the peninsula on Millers Island. Each lot has maintained its own separate tax account number, 1900011278,

190009317 and 190009297 and all lots are in the D.R.5.5 zoning classification. Lot 65 is improved with a one-story single-family dwelling built in 1940. As evidenced by the site plan (Petitioners' Exhibit 1), a small portion of the dwelling known as 8812 Chesapeake Avenue crosses over the boundary line of Lot 66. Lot 67, *the subject property known as 8810 Chesapeake Avenue*, has never been developed or used in conjunction with the other two lots to invoke the doctrine of zoning merger as described in *Friends of the Ridge v. Baltimore Gas & Electric Company*, 352 Md. 645 (1999) and *Remes v. Montgomery County*, 387 Md. 52 (2005). While a portion of Lot 66 has effectively been merged or combined with Lot 65, the uncontradicted evidence clearly establishes that there has never been a desire to combine Lot 67.

Mrs. Watson informed this Commissioner that the Shoemakers had filed a Petition for similar variance relief in Case No. 07-554-A in June 2007 involving the same property. That case came before Deputy Zoning Commissioner Thomas H. Bostwick on August 30, 2007. At that time, the Office of Planning in its Zoning Advisory Committee (ZAC) comment, dated July 12, 2007, informed Bostwick that they did not support the Petitioners request (for a lot width of 50 feet in lieu of 55 feet) but would support *a lot line adjustment* to be approved by the Development Review Committee (DRC). The contract purchaser at that time, Melvin Wolinski, filed for a Limited Exemption with the Department of Permits and Development Management and was assigned DRC No. 091707K. Deputy Commissioner Bostwick issued a Memorandum to the File continuing the case pending the outcome of the lot line adjustment requested. Evidently, Wolinski elected not to purchase the property and the DRC tabled the matter.

Gary Morris and Caroline Eifert now come before me seeking identical relief as set forth above that was previously before this Commission in 2007. In response to this, the Watsons, who reside at 8811 Chesapeake Avenue, believe that I must deny the instant Petition on the basis of the doctrine of *res judicata*. The history above, however, indicates no evidence was presented before Commissioner Bostwick in Case No. 07-554-A nor was a decision rendered by the zoning authority. *Res judicata* is the legal doctrine of preclusion, which conveys that the matter has been litigated to a conclusion and decided, and that this finality precludes

further litigation. *See Alvey v. Alvey*, 225 Md. 386, 390 (1961) and *DeLeon v. Slear*, 328 Md. 569, 580 (1992). Thus, the doctrine does not apply here, as the prior Petitioners never brought forward their case, including all relevant facts and legal issues. Next, the Watsons object to the granting of the requested variance as they do not want to see a precedent set that allows the building of single-family homes on a 50 foot wide lot in this area of Millers Island. An aerial photograph of Chesapeake Avenue was submitted to show the pattern of development for this portion of the neighborhood were homes that have been built on combined lots.

Subsequently, after further consultation between Ms. Staszak, Leonard Buerhaus, the contract purchaser's surveyor, and the Shoemakers, Mr. Morris informed me on November 2, 2009 that they were withdrawing their variance request. Apparently, during the course of the continuance, it was decided by the parties that obtaining the necessary five (5) feet of land by pursuing a lot line adjustment through the DRC was the better alternative. Whereas, the matter shall be dismissed without prejudice.

NOW, THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 3<sup>rd</sup> day of November 2009 that the Petition for Variance relief as set forth above, be and the same is hereby DISMISSED without prejudice.

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SIGNED  
WILLIAM J. WISEMAN, III  
Zoning Commissioner  
for Baltimore County

WJW:dlw

- c: Thomas Leonard and Jane Marie Shoemaker, 839 Mildred Avenue, Dundalk, MD 21222
- Catherine (Kay) Staszak, Realtor, Coldwell Banker, 7939 Honeygo Boulevard,  
Suite 108, Baltimore, MD 21236
- Gary Morris and Caroline Eifert, 1727 Drexel Road, Dundalk, MD 21222
- Leonard Buerhaus, 9432 Bellhall Drive, Baltimore, MD 21236
- Paul J. and Patricia L. Watson, 8811 Chesapeake Avenue, Sparrows Point, MD 21219
- Chesapeake Bay Critical Area Commission, 1804 West Street, Suite 100,  
Annapolis, MD 21401
- People's Counsel; Development Review Committee, DPDM; Development Plans Review;  
Office of Planning; File