

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
2 nd Election District		
2 nd Councilman District	*	OFFICE OF
(4512 Old Court Road)		
Reverend Lucy Ware	*	ADMINISTRATIVE HEARINGS
Petitioner		
	*	FOR BALTIMORE COUNTY
	*	Case No. 2014-0064-SPH

* * * * *

ORDER ON MOTION FOR RECONSIDERATION

Now pending is the Petitioner’s Motion for Reconsideration, to which responses have been filed by the Office of People’s Counsel and J. Carroll Holzer, Esq., on behalf of several area residents. The Motion will be denied, as discussed below.

In Case No. 2013-0147-SPHA (hereafter “Ware I”), the Board of Appeals (BOA) denied zoning relief, finding that the proposed church would not be “compatible with the neighborhood.” An appeal of that Order was filed in the Circuit Court for Baltimore County, which occurred subsequent to the pre-hearing dismissal of the above case (hereafter “Ware II”) by Order dated November 4, 2013. That Order dismissed with prejudice the Petition in Ware II, based on res judicata.

The Petitioner’s Motion contends the ruling is erroneous, because Ware II does not seek variance relief (as was sought in Ware I) and that the Residential Transition Area (RTA) relief sought is now different, given that the plan has been modified and the proposed parking relocated. The Petitioner argues that res judicata is inapplicable, based on the “same evidence” test. I do not believe this argument has merit, and the decision in *Jack v. Foster Branch* (upon which the Petitioner principally relies) is distinguishable.

As noted in Mr. Zimmerman's Memorandum, nothing has changed between the filing dates of these cases. The facts are the same, and the zoning proposal is the same: to use a single family dwelling in a DR zone as a church. Whether or not the parking arrangement has changed slightly is of no moment. If Petitioner's argument was credited, a Petitioner could simply "tweak" a previously denied plan in a minor way and avoid the bar of res judicata, leading to endless litigation.

Petitioner, citing *Jack*, argues that res judicata applies only if the cause of action is the same in both cases, which in turn requires application of the "same evidence" test. Petitioner is correct that variance relief is not sought in Ware II; but special hearing relief is, and such relief (pertaining to the relaxation of, or exception to, RTA requirements) was also sought in Ware I. Thus, the same evidence is required in both cases: proof that a church is entitled to a relaxation of or exception to RTA buffers and setback requirements as set forth in Baltimore County Zoning Regulations (B.C.Z.R.) § 1B01.1.B.1.

And this is what distinguishes *Jack*. In *Jack*, the Petitioner first sought variance relief, and in the second case sought relief for reduced parking requirements under a completely different (and "less restrictive") section of the Harford County zoning code. *Jack v. Foster Branch*, 53 Md. App. 325, 331 (1982). Here, special hearing relief (with respect to the RTA regulations) under B.C.Z.R. § 500.7 was sought in both cases. As in *Seminary Galleria*, where the Petitioner also cited *Jack* in an effort to avoid res judicata, both cases (Ware I and II) seek approval to convert a single family dwelling to a church in a DR zone, and Ware II is barred by res judicata.

WHEREFORE, it is this 19th day of December, 2013 by the Administrative Law Judge ORDERED that the Petitioner's Motion for Reconsideration, 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/dlw