

IN RE: DEVELOPMENT PLAN HEARING AND	*	BEFORE THE
PETITIONS FOR SPECIAL HEARING	*	BOARD OF APPEALS
AND VARIANCE	*	FOR
SW/S Falls Road (MD Rt. 25), N/S	*	BALTIMORE COUNTY
Greenside Valley Road	*	
(WESTWICKE/MARYVALE	*	
PREPARATORY SCHOOL)	*	
8 th Election District	*	
2 nd Council District	*	Case Nos: CBA-10-013
	*	and 09-0202-SPHA
Maryvale Preparatory School, Inc.	*	
<i>Owner/Petitioner</i>		

* * * * *

OPINION

These cases come to the Baltimore County Board of Appeals as a result of appeals filed by the Falls Road Community Association and Mr. Harold H. Burns, Jr., individually, of the Hearing Officer's decision below, dated August 11, 2009, approving the Petitioner's Amended Development Plan; granting a Petition for Special Hearing pursuant to Section 500.7 of BCZR to amend all prior plans and to amend the relief granted in 06-128-SPHA; and granting their Petition for Variance relief from Sections 1A01.3.B.3 and 102.2 of the BCZR to allow a principal building setback of 29 feet in lieu of 70 feet. A public *de novo* hearing was held by the Board on the following dates, commencing at 10:00 a.m.; October 29, 2009 (Day #1); November 4, 2009 (Day #2); and was completed on January 7, 2010 (Day #3). The Appellants, Falls Road Community Association and Mr. Harold H. Burns, Jr., Individual, were represented by Michael R. McCann, Esquire. Maryvale Preparatory School was represented by Robert Hoffman, Esquire; Patsy Malone, Esquire; and Christopher Mudd, Esquire of Venable, LLP. In lieu of closing arguments, Messrs. McCann and Hoffman agreed to submit simultaneous post-hearing

Memorandum on February 4, 2010. A Public Deliberation was held by the Board on February 24, 2010 at 9:00 a.m. o'clock.

BACKGROUND

Maryvale Preparatory School is a girls college preparatory school situated on a 111 (+/-) acre(s) parcel of land on the west side of Falls Road, north of Greenspring Valley Road, in the 8th Election District, 2nd Councilmanic District of Baltimore County, known as Brooklandville.

Prior to 1995, the total site under consideration consisted of 182 acres in area owned by the Sisters of Notre Dame deNamur, Inc. Of this acreage, 112 acres were zoned R.C.2 and 70 acres were zoned R.C.5. In 1995, the Scottish Development Company purchased the northern 70-acre tract in the R.C.5 zone from the Sisters of Notre Dame for a proposed residential development with 29 single-family lots. The remainder of the property with its century old castle was later purchased by Maryvale Preparatory School, Inc. In this regard, Maryvale initially opened at this site 65 years ago and used the "Wickcliffe Castle at Maryvale" built in 1916.

Since then, Maryvale has added buildings, science and computer labs, and a learning center to accommodate its enrollment of about 400 girls in grades six through high school. The proposed humanities building will house a needed auditorium, galleries and six classrooms that have been designed with deference to the castle in order to ensure that it remains the dominant campus feature.

FACTS

As regards the record of the Westwicke/Maryvale plan proceeding through the development review process, a concept plan of the proposal was prepared and a conference held on March 13, 1995. As required, a Community Input Meeting was thereafter conducted on April

12, 1995 at the St. Paul's School. The original Plan was submitted, a Development Plan Conference was held on June 21, 1995 and a Hearing Officer's Hearing was scheduled and held on August 3, 1995. As noted, then Zoning Commissioner Lawrence E. Schmidt granted approval on August 17, 1995.

On November 29, 2005, Maryvale next sought a refinement of the previously approved Development Plan, specifically to amend the plan to reflect additional building areas, parking lots and playing fields. The Development Review Committee (DRC) instructed the Developer to file for a zoning hearing to amend the special exception relief previously granted in Case No. 95-435-X and to obtain confirmation that the number of parking spaces would be sufficient to accommodate the proposed improvements. By Order dated January 10, 2006 (Case No. 06-128-SPHA), the relief requested was granted subject to restrictions, which essentially limited the schools enrollment to 425 students. After receiving DRC approval to process the changes as a refinement, the Falls Road Community Association and Harold Burns, Jr. appealed to the County Board of Appeals (CBA). This Board determined that Maryvale's contemplated improvements constituted a material amendment to the approved Development Plan, not a refinement. Maryvale was instructed to process its Amended Development Plan in accordance with the County's development regulations. *See* CBA Order in Case No. 06-006 dated March 18, 2008.

Michael McCann, Esquire, attorney for Mr. Burns and the Falls Road Community Association, then wrote a letter to the Director of the Department of Permits and Development Management inquiring how the County would process Maryvale's plan. Mr. Walter Smith, Development Manager, by letter, explained the "material amendment" process requiring Maryvale to file an Amended Development Plan, attend a Development Plan Conference and appear at a Hearing Officer's Hearing on the plan. Mr. McCann's clients filed yet another appeal

to this Board, requesting review of Mr. Smith's "determination" as to the process. The Board, relying on the Court of Special Appeals Opinion in *Meadows of Greenspring v. Foxleigh Enterprises*, 133 Md. App. 510 (2000) dismissed the appeal. See CBA Case No. 09-003. Appellants have appealed this dismissal and Order to the Circuit Court for Baltimore County, where the case is currently pending.

Petitioner filed a revised Forest Buffer request. Jonas Jacobson, Director of the Department of Environmental Protection & Resource Management (DEPRM), in a Decision Letter dated July 1, 2009, granted the revised Forest Buffer Variance request, in accordance with Section 33-3-106(a(4)). That decision was appealed by the Protestants herein and this Board affirmed his determination in case CBA-10-010. That decision has also been appealed to the Circuit Court for Baltimore County by the Protestants.

Maryvale elected to proceed pursuant to B.C.C. Section 32-4-262, with the Special Hearing and Variance request of the instant matter (while the cases are pending in the Upper Courts), which addresses amendments to development plans and requires material amendments to be viewed in the same manner as the original plan and for compliance with current law and the development regulations.

The property, as required, was posted and scheduled for another public hearing before the Hearing Officer in accordance with B.C.C. Sections 32-4-227 et seq. The Hearing Officer's Hearing was conducted over two (2) days, July 23, 2009 and August 4, 2009.

On August 11, 2009 the Zoning Commissioner ORDERED as follows:

That the four-paged redlined 1st Amended Development Plan for the **WESTWICKE/MARYVALE PREPARATORY SCHOOL**, identified herein as Developer's Exhibit 6A through 6D, be and is hereby APPROVED; and

IT IS FURTHER ORDERED that the Petition for Special Hearing filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to amend all prior approved plans and to amend the relief granted in Case No. 06-128-SPHA, including approval to add/relocate a storm water management outfall and confirmation of the number of parking spaces required for school use, in accordance with Developer's Exhibit 6A through 6D, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Sections 1A01.3.B.3 and 102.2 of the B.C.Z.R., to allow a principal building to principal building setback of 29 feet in lieu of the required 70 feet, in accordance with Baltimore County Exhibit 2 and Developer's Exhibit 6C, be and is hereby GRANTED.

It is from the Zoning Commissioners Order dated August 11, 2009 that the instant appeal is taken.

APPELLANT'S ISSUES

1. The Hearing Officer erred in denying Appellant's Motion to Dismiss on the basis that the process failed to meet technical requirements of the code;
2. The Hearing Officer erred in the process in the on the record appeal review and approval of amended development plans;
3. The Hearing Officer erred in granting the Developer's Petition for Special Hearing to amend all prior approved plans and to amend the relief granted in Case No. 06-128-SPHA, to include the relocated storm water management outfall and confirmation of the number of parking spaces required for the school use; and

4. The Hearing Officer erred in granting the Developer's Petition for Variance to permit a principal building to principal building setback of 29 feet in lieu of the required 70 feet.

TESTIMONY/EVIDENCE ON ISSUES

1. The Hearing Officer erred in denying Appellant's Motion to Dismiss on the basis that the process failed to meet technical requirements of the code.

The Board believes that the Protestant's objections, technical in nature, are not sufficient to warrant a granting of the Motion to Dismiss. The Board was satisfied, as a practical matter, that the appeal filings of Appellant were appropriate, and filed within acceptable time frames, and according to the instructions of PDM. The appropriate cases were noted, were directed to Mr. Kotroco and filed at the Zoning Commissioner's Office of PDM. Copies were forwarded to the Board and opposing Counsel. The Board feels that the location of the PDM filing the supplement and of an incorrect filing fee was insufficient to justify dismissal at this administrative and Board level.

2. The Hearing Officer erred in the process in the on the record appeal review and approval of amended development plans.

The standard of review in this case is set out in the Baltimore County Zoning Regulations (BCZR) § 500.6 , which states in pertinent part:

"... the Zoning Commissioner shall have the power, upon notice to the parties in interest, to conduct hearings involving any violation or alleged violation or noncompliance with any zoning regulations, or the proper interpretation thereof, and to pass his order thereon, subject to the right of appeal to the County Board of Appeals as hereinafter provided.

Moreover, the standard for appeal before the Board of Appeals of an action of the Hearing Officer regarding a Development Plan appears in §32-4-281 of the *Baltimore County Code* (BCC). It includes as follows:

(e) *Actions by Board of Appeals.*

(1) In a proceeding under this section, the Board of Appeals may:

- (i) Remand the case to the Hearing Officer;
- (ii) Affirm the decision of the Hearing Officer; or
- (iii) Reverse or modify the decision of the Hearing Officer if the decision:
 - 1. Exceeds the statutory authority or jurisdiction of the Hearing Officer;
 - 2. Results from an unlawful procedure;
 - 3. Is affected by any other error of law;
 - 4. Is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
 - 5. Is arbitrary or capricious.

(2) Notwithstanding any provisions to the contrary, if the Hearing Officer fails to comply with the requirements of § 32-4-229(a) of this subtitle and an appeal is filed under § 32-4-229(a) of this subtitle, the Board of Appeals may impose original conditions as are otherwise set out in § 32-4-229(c) and (d) of this subtitle.

Turning our attention to section (e) of the Statute, this Board finds that the process and decision of the Hearing Officer did not exceed his statutory authority or jurisdiction and did not result from an unlawful procedure. In fact, the Board found that in all manner and respect, the Hearing Officer extended himself to ensure that all proprieties were followed and that both sides were given ample opportunity to present their arguments and evidence.

A review of the record reveals clearly that the Hearing Officer at all times made successful attempts at correcting concerns, including but not limited to the action taken by him in granting extensions to the Protestant's and in all manner succeeding in allowing both sides to fully be heard on all issues.

The Board did not find that there was any other error of law to be ascribed to the Hearing Officer; rather, after a review of the evidence before the Hearing Officer, the Board finds unanimously, that the decision he made was, in fact, supported by competent material and substantial evidence presented before him.

Finally, the Board determines unanimously that having proceeded in the appropriate manner and having given all sides their opportunity to be heard and basing his decision upon information received at the hearing, his decision was neither arbitrary nor capricious.

3. The Hearing Officer erred in granting the Developer's Petition for Special Hearing to amend all prior approved plans and to amend the relief granted in Case No. 06-128-SPHA, to include the relocated a storm water management outfall and confirmation of the number of parking spaces required for the school use; and

4. The Hearing Officer erred in granting the Developer's Petition for Variance to permit a principal building to principal building setback of 29 feet in lieu of the required 70 feet.

The above matters having been heard by argument only, the parties then presented various witnesses on the subject of the granting of the Special Hearing and the requested Variance relief.

The first witness to testify was Sister Shawn Marie Maguire, Maryvale's Headmistress during the last 29 years. She is responsible for the overall operation of the school, including issues relating to the student, faculty and general administration. She described the castle, which is the main structure of the school, as the original building

which has been redone and improved over the years. She described how the school was originally an all girl boarding school and has changed over the years.

She described the proposed Humanities Building, which will specialize in the performing arts and discussed its use by the student body. She was asked about the parking facilities, as they presently exist and she explained that there are 187 parking spaces at this time and that the school wished to add another 85 for a total of 272 spaces. She noted that staff, visitors and students share approximately 100 –125 parking spaces; that the bulk of the children came in at approximately 7:50 a.m. and that there is one (1) bus which delivers students. All personnel are in their desired locations by 8:00 a.m. The 272 requested parking spaces would be a great help to students, visitors, staff, after school activities and evening events; opined the Sister, noting that most students come to the school by driving, or by car pool and some stay in the afternoon for activities, as well as coaches and spectators. The additional 85 requested spaces will help carry on the special activities as well as the day to day flow of parking. She hopes that this will also resolve any issues that may exist in the surrounding community regarding the use of local streets for overflow parking by both students and visitors.

She was asked to address issues relating to the location of the new structures on the campus. She testified that she is concerned about the safety of the students, both as to the parking areas as well as the ability to walk between buildings. She noted that this concern was one of the reasons they wished to move the parking on the campus to the new location, and to keep the buildings together; thereby allowing for greater safety and security for the primarily female student body.

There was no cross-examination of this witness.

The next witness to appear on behalf of Petitioners was Mr. Jim Carroll. Mr. Carroll is an Architect employed by Design Collectives, Inc., and was accepted by agreement of Counsel as an expert in architecture and site design. Mr. Carroll stated that he had been on the Board of Maryvale for six (6) years and was in charge of the project to construct the new Fine Arts Building. He described the uses of the building which would be for classrooms, a lobby, music rooms, as well as attached technical needs and a computer lab for use by the students. He presented an extensive power point presentation, providing the Board with numerous views of the site in question, as well as the existing buildings, properties and views presented of the subject site.

He then described the surrounding area and pointed to portions of the site, to its west side, which is wooded, as well as, the forest buffers and conservation zones, which already exist upon the property. He opined that he did not want to connect the buildings (although under statue, that configuration could be done without any further need for approval) so that the students, visitors and faculty would not lose the view of the castle representing, as it does, the long history of the institution. He testified that the composition of the site, emphasizing the castle and buildings existing and to be constructed, would aid and enhance camera security and safety. He noted that the 29 foot requirement is purely a zoning question and not related to a building code issue in any way.

Finally, he noted that there were serious issues related to the desire to provide safety and security to the students, and that the positioning of the buildings would allow for those concerns to be addressed, while not destroying the view, history and beauty of the property.

He was briefly cross-examined, during which he explained in greater detail the easements and buffers inherent in the property as it now exists, as well as the existing buildings and parking lot configurations. He stated that the parking lots would stay the same and that there would be no further expansion of them.

Under re-direct by Mr. Hoffman, it was developed that the castle is on the Landmarks list and that, in fact, some of the parking spaces that could have been placed on the property will be removed, and the facility re-striped for use.

The next witness to appear on behalf of Petitioner's was Michael Pieranunzi. Mr. Pieranunzi is employed by Century Engineering and is a Registered Landscape Architect. He prepared and signed the plans presented in this case. After *Voir Dire*, he was accepted as an expert in landscape architecture and site design. He described his preparation of the plan to accompany the requests herein, describing the site as 107 acres +/- superimposed over an R.C. 2 zone. He further described the floodplain, easements, forest buffers and other environmental constraints west and south of the site, as well as the extent of the Maryland Environmental Trust easement which takes up approximately one-half (1/2) of the available acreage.

Moreover, he noted that the Maryland Environmental Trust easement is unique in an R.C. 2 zone and especially in a institutional project such as this one. He further described the floodplain easements and the steep slopes and other physical constraints of the property, as well as parking areas that now exist, per earlier agreements. Overall, he explained that out of 107 acres total in this site, only thirty (30) are unencumbered.

He addressed issues related to the castle. He described it as being part of the Maryland Historical Trust and also on the County Landmark List. He noted that the siting idea of the project was to join the castle with the new performing arts center and existing buildings, to give a

"campus feel" to the area. In his mind, the very closeness of the proposed buildings enhanced the safety of the student as well as improving the ease of use of the property, by allowing shorter time for students to move around the campus.

Additionally, he noted from a purely aesthetic point of view, that the placement of the buildings, as suggested in the plan would allow the students, faculty, and visitors to fully appreciate the architectural and other beauties of the buildings. This would not occur if a connection between the buildings was constructed or if the setbacks required under the law were followed to the letter.

In particular, Mr. Pieranunzi testified that locating the proposed building closer to McGuire Hall actually places the building further from the western property line and will also have less of an impact on the forest buffer. Accordingly, from Mr. Pieranunzi, from a land planning prospective, the purpose of the setback requirements is to ensure that buildings remain a certain separation from an external property line; and that, in effect, the granting of the variance is consistent with the spirit and intent of the setback regulations because, by keeping the campus buildings closer to each other, they will actually be further away from the external property lines. He then said that the current case has actually less parking requested and removes the maintenance shed that was part of the prior Order.

Moreover, storm water management facility number three, now has it's outfall moved and emptying into the forest buffer. Otherwise, he noted that both plans were the same. He then addressed himself to the criteria set forth in Section 502.1 of the Baltimore County Zoning Regulations (BCZR). Specifically, he opined that it would not be detrimental to the health, safety or general welfare of the locality involved, due to the limited nature of the changes in the amended plan. He noted that he was not aware of any agricultural uses in close proximity to the

subject property and that as a result, the outfall would not have an adverse effect on agricultural use. He also opined that there was no danger generated by the requested changes that would create a potential hazard from fire, panic or other danger because "the existing school campus and all the proposed elements are internal to the campus". He did not believe that the proposed changes would create any congestion in roads, streets or alleys because "they are all private driveways that serve this campus". He believed that the proposed changes will not overcrowd the land and cause an undue concentration in population, because the development is of necessity limited to a thirty +/- acre portion of the total site. He did not believe that the proposed changes would interfere with adequate provisions for schools, parks, waters, sewage, transportation or other public requirements or conveniences or improvements; as the campus is already existing and, as confined, is not relative in location to other items that could be effected adversely. He stated clearly that the proposed changes will not interfere with adequate light and air and that the proposed changes would not be inconsistent with the purposes of the property's zoning and classifications; or in any other way inconsistent with the spirit and intent of the regulations, noting that the school exists and that these proposed uses are uses that will be used solely for the school. He related that the proposed changes will not be inconsistent with the impermeable surface or vegetative retention provisions of the zoning regulations because the plan would comply with all appropriate County regulations concerning existing and future vegetation.

Finally, he testified that the proposed changes will not be detrimental to the environmental and natural resources of the site in the vicinity, including forests, streams, wetlands, aquifers and floodplains. The very reason he noted, for these requests, was to construct the building and enact changes to the approved Development Plan that would be in harmony to those and responsive to those already existing factors on the site.

The next witness to appear was Mr. John W. Ranocchia, Sr., a Licensed Professional Engineer, employed by Century Engineering and is specifically involved in the design and construction of storm water management facilities. After *Voir Dire*, he was accepted as an expert professional engineer with special expertise in storm water management. The witness then proceeded to offer in detail the definition of a storm water management process, including all of its different facets of control, maintenance and quality of runoff. He described in great detail the storm water management plan as it related to the instant site. He described the particular method as a "gabion structure" and then proceeded to offer testimony regarding whether or not the addition of this out fall in the location suggested will have an adverse impact on the surrounding properties; which he concluded it would not..

Utilizing many of the facets existing in the criteria of Section 502.1, addressed by the previous witness, this expert also came to the conclusion that the out fall storm water management plan being suggested, will in no way adversely affect any of the surrounding property and would, in fact, improve the storm water management in the immediate area. He testified on cross-examination that the project met all standards and County regulations and that in any event, at this point in time, only a concept of the storm water management plan was provided to the County and the Hearing Officer. Once the Amended Development Plan is approved, then specific designs will be prepared that the County will have to approve before final construction.

Thereafter, Protestants presented two (2) witnesses.

The first was Marcia Goldberg, who lives approximately 2.1 miles from the north of Maryvale Road on Falls Road. She has been a Board Member and Secretary of the Falls Road Community Association, but appeared before this Board on her own behalf. This witness was

concerned that the proposed campus improvements would increase the amount of traffic on surrounding streets; however, she did note that the number of parking spaces proposed in the Petitioner's amended plan is actually being reduced from the prior approved plan.

She stated her concerns about the storm water management and possible erosion, but did acknowledge that she was not familiar with the area of storm water management facility number three.

She was adamant that all procedures be followed and that all applicable County regulations, as to procedure and result, be followed to the letter.

The final witness for the Protestants was Mr. Harold Burns. Mr. Burns owns property contiguous to Maryvale on its western side and actually attended the school in childhood. He discussed at length the beauties of the property and his frequent contact with both the personnel and activities of the school. He related his many walks and travels around the property and generally evidenced his concern that the proposed development might in fact, visit around the surrounding area, including the erosion disturbance from the proposed outfall pipe, as well its construction.

DECISION

It should be noted that none of the witnesses presented on behalf of the Protestants addressed themselves to any of the technical or procedural issues upon which witnesses for the Petitioner offered testimony and evidence. As such, there was no testimony on behalf of the Protestants in contradiction of those items, statements and/or exhibits presented by the various experts and witnesses who testified on behalf of Petitioner's cause.

Petitioner has asked for a Special Hearing to accept and amend all prior plans, approve the storm water management system on the subject site and amend its parking arrangements. The Petitioner presented expert witnesses as to all issues presented in the Special Hearing request and properly utilized the Special Exception criteria contained in Section 502.1 of the BCZR for use in the Special Hearing request. The Special Exception criteria allows witnesses to provide information on the impact on the subject property, surrounding community, traffic and environment that any of the requested relief would have. With regard to the storm water management, the Board determined that the requested relief would in fact, be an improvement to what already exists. The request, based upon the expert testimony presented, clearly met all of the criteria requirements set out in Section 502.1. The Board notes that the Petitioner presented expert witnesses to testify on the numerous issues related herein, while the Protestants presented no expert testimony and relied solely on community witnesses.

Accordingly, the Board unanimously finds that the Special Hearing Request should be granted.

Turning to the issue of the Request for Variance, the Board cogitated on the following: Section 307.1 of the Baltimore County Zoning Regulations states, in pertinent part, as follows:

"...(T)he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area...regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare...."; and

McLean v. Soley, 270 Md. 216, 1973, established the following criteria for determining practical difficulty or unreasonable hardship:

"1) Whether compliance with the strict letter of the restrictions governing various variances would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

"2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

"3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured." *McLean v. Soley*, 270 Md. 216, 1973

and wherein the Court states in its decision of *Cromwell v. Ward*, 102 Md.App. 691, 651 A.2d 424 (1995)

...The Baltimore County ordinance requires "conditions ...peculiar to the land...and...practical difficulty...." Both must exist. ...However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when the uniqueness is first established that we then concern ourselves with the practical difficulties...."

Id. at 698.

In requiring a pre-requisite finding of "uniqueness", the Court defined the term and stated:

In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions....

Id. at 710.

The Board has determined that based upon the testimony of all witness and the physical layout of the subject site, that it is indeed unique. It is subject to forest conversation easements, wetland requirements, forest buffers, limitations imposed by the Historic Trust and topographically contains steep slopes and other physical impediments. As a result, the uncontradicted testimony is that only approximately one-third (1/3) of the total site of some one hundred seven (107) acres is in fact, "unencumbered". The property clearly is that which was contemplated when both the various standards within the BCZR and *Cromwell* were written.

The Board also feels that it is clear that practical difficulty does in fact exist. To utilize the property without the benefit of the requested Variance, would cause the intrusion of the proposed building into the already existing forest buffer. Additionally, there would be ascetic and other difficulties related to the Historical Trust, as well as numerous safety considerations of all those who would use the facility.

Accordingly, the Board has unanimously determined to grant the requested Variance.

After thorough review of the facts, testimony, and law in the matter, and for all of the above reasons and comments, this Board unanimously has determined to GRANT the relief sought in Case CBA-10-013 and 09-202-SPHA requested by Petitioner.

ORDER

THEREFORE, IT IS THIS 7th day of May, 2010 by the

Board of Appeals of Baltimore County

ORDERED that the Zoning Commissioner's August 11, 2009 Order APPROVING the four-paged redlined 1st Amended Development Plan for the WESTWICKE/MARYVALE PREPARATORY SCHOOL, be and is hereby **AFFIRMED**; and

IT IS FURTHER ORDERED that the Zoning Commissioner's August 11, 2009 Order GRANTING of Petition for Special Hearing filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to amend all prior approved plans and to amend the relief granted in Case No. 06-128-SPHA, be and is hereby **AFFIRMED**; and

IT IS FURTHER ORDERED that the Zoning Commissioner's August 11, 2009 Order GRANTING the Petition for Variance seeking relief from Sections 1A01.3.B.3 and 102.2 of the B.C.Z.R., to allow a principal building to principal building setback of 29 feet in lieu of the required 70 feet, be and is hereby **AFFIRMED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

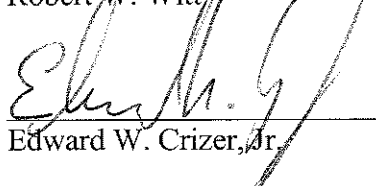
**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**



Lawrence M. Stahl, Panel Chairman



Robert W. Witt



Edward W. Crizer, Jr.