

IN RE: DEVELOPMENT PLAN HEARING AND	*	BEFORE THE
PETITIONS FOR SPECIAL HEARING		
AND VARIANCE	*	ZONING COMMISSIONER
SW/S Falls Road (MD Rt. 25), N/S		
Greenside Valley Road	*	FOR
(WESTWICKE/MARYVALE		
PREPARATORY SCHOOL)	*	BALTIMORE COUNTY
8 th Election District	*	
2 nd Council District		
	*	
Maryvale Preparatory School, Inc.		Case Nos. VIII-651 and
<i>Owner/Petitioner</i>	*	2009-0202-SPHA

* * * * *

AMENDED DEVELOPMENT PLAN ORDER

This matter returns before this Hearing Officer/Zoning Commissioner for continued proceedings on a request for a material amendment to the Development Plan previously approved by this Commission on August 17, 1995. Section 32-4-230 of the Baltimore County Code (B.C.C.) provides for a combined public hearing that permits an applicant to request development plan approval and zoning relief through a single public hearing. Pursuant to the development review regulations codified in Article 32, Title 4 thereof, Maryvale seeks approval of a four paged redlined Amended Development Plan prepared by Century Engineering that provides for two new school buildings (a humanities/performing arts building and a media center to be built at a later date) and the addition of athletic fields and related storm water management improvements. In addition, special hearing relief is requested under 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.¹ Finally, variance relief is requested 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. The proposed improvements and relief requested are more particularly described on the redlined 1st Amended Development Plan and architectural drawings, which were approved by the Baltimore County Planning Board submitted into evidence and marked as Developer's Exhibit 6A through 6D and Baltimore County Exhibit 2.

INTRODUCTION

By way of background, this matter has had numerous stops and starts through the development process, which generally sets forth a series of steps or stages through which a development plan (including amendments) must proceed for review by Baltimore County.² An appreciation of the properties past history and use is relevant and is briefly outlined below.

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 situated in the R.C.5 zoning classification. 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 the 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"

¹ To the extent applicable, the findings and conclusions set forth in prior Orders VIII-651, 95-435-X and 06-128-SPHA are adopted by reference and incorporated herein.

² Chief Judge Wilner speaking for the Court of Special Appeals, observed that: "{t}he development process (in Baltimore County) is indeed an 'ongoing process', and the hearing officer's affirmation of the plan is just the first step". See *Monkton Preservation Association v. Gaylord Brooks*, 107 Md. App. 573 (1995).

built in 1916 with its 65 rooms and great hall for a chapel, library, offices and classrooms.³ 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.

As to the record of the Westwicke/Maryvale plan 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 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, subject to certain restrictions.

On November 29, 2005, Maryvale next sought a refinement of the previously approved development plan 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 my Order on 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

³ This structure is listed on the Baltimore County Final Landmarks List as No. 336. In accordance with B.C.C. Sections 32-4-231(a)(3) and 32-4-232, the 1st Amended Development Plan at issue was reviewed by the Planning Board on July 16, 2009. By unanimous vote, the members approved the plan.

refinement, the Falls Road Community Association and Harold Burns, Jr. appealed to the County Board of Appeals (CBA). The CBA 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 the Board of Appeals, this time requesting review of Mr. Smith's "determination" as to the process. The CBA relying on the Court of Special Appeals Opinion in *Meadows of Greenspring v. Foxleigh Enterprises*, 133 Md. App. 510 (2000) dismissed the appellant's 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.

Maryvale, realizing that an appeal could take years, depending on whether appellants seek review in the Court of Special Appeals and Court of Appeals, elected to proceed pursuant to B.C.C. Section 32-4-262, 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.

Maryvale next scheduled a second Community Input Meeting (CIM) on the current plan before this Hearing Officer, which was convened on March 4, 2009 at the Maryvale Preparatory

School. *See* Developer's Exhibit 3. Subsequently, the 1st Amended Development Plan was submitted and a Development Plan Conference conducted on July 1, 2009. 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. That having been stated, this Opinion and Order will take into consideration the new evidence and testimony received at the Hearing Officer's Hearing which was conducted over two (2) days namely July 23, 2009 and August 4, 2009. The Hearing Officer solicits testimony from the Developer, representatives of reviewing County agencies, neighbors and interested individuals from the community. Issues and concerns are initially identified during an informal phase of the hearing, after which testimony on those issues is then presented in detail. The Hearing Officer is required to issue a written decision within fifteen (15) days of the closing date of the proceedings. As required, this written decision follows.

Appearing on one or more hearing dates on behalf of this project were Sister Shawn Marie Maguire, Maryvale's Headmistress, and Robert T. Cawley, Chair of Maryvale's Board of Trustees, representatives of Maryvale School, along with numerous other individuals as noted on the sign-in sheets circulated at the hearing; and Robert A. Hoffman, Esquire and Patricia A. Malone, Esquire, with Venable, LLP, attorneys for the Owner/Petitioner. Counsel for Maryvale produced as expert witnesses Michael J. Pieranunzi, a Registered Landscape Architect who prepared the amended development plan(s) and is in charge of land development for Century Engineering; John W. Ranocchia, Sr., a civil engineer who designed the storm water management facilities; Jim Carroll, an architect with Design Collective in charge of the building designs and their development; Mickey A. Cornelius, a traffic engineer with The Traffic Group, Inc.; Robert W. Sheesley, an environmental consultant with Eco Sense, Inc.; Thomas R. Mills, a

licensed engineer and geologist with Hydro-Terra, Inc., and Henry Leskinen, an ecologist with Eco-Science Professionals, Inc.

The requested approval of the proposed material amendment to the development plan was contested. The opponents are generally residents of the area and include Harold H. Burns, Jr., Esquire, Carl J. Schramm and Marcia W. Goldberg, an officer of the Falls Road Community Association. Michael McCann, Esquire represented the Association and Harold Burns. Numerous representatives of the various Baltimore County agencies who reviewed the plan attended the hearing, including the following individuals from the Department of Permits and Development Management (DPDM): Colleen M. Kelly, Project Manager; Dennis A. Kennedy, P.E., Development Plans Review; Ronald V. Goodwin, Land Acquisition; and Joseph C. Merrey, Zoning Review. Also appearing on behalf of the County were Curtis Murray, Office of Planning; David V. Lykens, Lee A. Dregier, P.E., and Robert (Al) Wirth, P.E., Department of Environmental Protection and Resource Management (DEPRM), and Jan Cook, Department of Recreation and Parks. Finally, written development plan comments were received from Steven D. Foster and Michael P. Bailey, on behalf of the Maryland State Highway Administration (SHA) and Lt. Roland Bosley, Jr., Baltimore County Fire Marshal's Office. These and other agency comments are contained within the case file.

An examination of the site plan indicates that the Maryvale School campus is approximately 107 acres, zoned R.C.2 (105.84 acres) and R.C.5 (1.93 acres) located between Falls Road and Greenspring Valley Road in Brooklandville. The property is also known as Lot 2A of the Westwicke subdivision with access to the site from a private drive to the north from Falls Road and a private driveway from the south to Greenspring Valley Road. The Petitions referenced above seeking zoning relief and to amend the site plan are to accommodate proposed

improvements. The exiting buildings are labeled as Maguire/Rodriguez Center, Castle, lower school and maintenance buildings. There is an existing ball field north of the school and an existing above ground stormwater management facility that serves the existing Westwicke Community. Maryvale proposes an enlargement of the existing campus positioned centrally on the northeastern portion of Lot 2A on about 30 of the 107 acres. Most of the remaining 77 acres are in a conservation easement with the Maryland Environmental Trust and contain environmental features i.e., streams, steep slopes, forest buffers, wetlands and woods.

The material amendment changes to the plan include improvements to only the Maryvale portion of the original Development Plan. The school is proposing construction of a 19,500 square foot *Performing Arts Center*⁴ and a 10,500 square foot *Media Center*. The existing school building(s) square footage equals 56,949 square feet – the new total will equal 86,949 square feet. The performing arts center will be located on the central axis of the “Castle Greene”, next to Maguire Hall. The media center is located on the axis of the existing Rodriguez Center. A new parent drop-off loop road and a 89 space parking lot are proposed north of the performing arts center. In the existing parking lot, 23 spaces will be added by restriping and 27 spaces will be removed on the southeastern portion of the lot. The new parking space total will be 272 spaces. The fields will be improved with a 400 meter track and field, practice fields and softball field.

The existing stormwater management facility and its outfall serving Westwicke will be removed and replaced in-kind. The plan proposed SWM facility 1 (underground), SWM facility 2 (above ground) and SWM facility 3 (underground). SWM 1 and 2 will outfall to the outfall

⁴ This building is also referred to as the “Humanities Building” on the architectural renderings prepared by Design Collective.

approved on the original Development Plan. SWM 3 will outfall to a proposed outfall located adjacent to and existing wetland buffer, west of the proposed performing arts building.

There was an extensive volume of testimony and evidence offered in this case over the two hearing days. Due to the limitations of time and space, it is impossible to repeat all of the testimony offered. Additionally, there were numerous documents, plats, photographs, regulations, and other exhibits entered into the record of the case. Testimony and evidence offered by both sides as well as the issues raised and arguments advanced were recorded by Paula J. Eliopoulos, with Gore Brothers Reporting.

STANDARD OF REVIEW

A brief comment is in order about the standard of review that the Hearing Officer must apply in this case. As noted in a prior opinion issued by this office, the development review regulations establish the “rules of the game” insofar as development in Baltimore County. The Developer may argue that these rules are too strict while the community may contend that they are not strict enough. Regardless, they are what they are. If the Developer meets the regulations, approval of the plan must follow. Moreover, if the community can show that the plan should be changed to appropriately mitigate an anticipated negative impact upon the locale, then a restriction/condition to the plan may be imposed.

Pursuant to Sections 32-4-227 and 228 of the Baltimore County Code, which regulates the conduct at the Hearing Officer's Hearing, I am first required to identify any unresolved agency comments or issues. The issues and concerns raised at the hearing are addressed as follows:

DEVELOPER'S ISSUES

Mr. Hoffman, on behalf of Maryvale Preparatory School, Inc., stated that the redlined development plan met all regulations and requirements for development in Baltimore County. Mr. Pieranuzi briefly reviewed the redlined changes made to Developer's Exhibits 6A through 6D and described these exhibits as: 6A - being the original Westwicke plan, 6B – the 1st Amended Development Plan delineating the Maryvale property, 6C – a close-up or zoomed version of 6B – providing more detail, and 6D – the Landscape Plan.

COUNTY ISSUES

The County agency representatives who were present corroborated Mr. Hoffman's comments. It should be noted at this juncture that the role of each reviewing County agency in the development review and approval process is to perform an independent and thorough review of the development plan as it pertains to its specific area of concern and expertise. The agencies specifically comment on whether the plan complies with all applicable Federal, State, and/or County laws and regulations pertaining to development and related issues. In addition, these agencies carry out this role throughout the entire development plan and approval process, which includes providing input to the Hearing Officer either in writing or in person at the hearing. It should also be noted that continued review of the plan is undertaken after the Hearing Officer's Hearing during the Phase II review of the project. This continues until a plat is recorded in the Land Records of Baltimore County and permits are issued for construction. In this case, each of the representatives indicated that there were no outstanding or unresolved comments and recommended plan approval. I have summarized their responses below:

Office of Planning: Curtis Murray appeared on behalf of the Office of Planning and indicated that there were no unresolved issues and that his office recommends approval of the

redlined development plan. Mr. Murray further noted that the main structure of the campus, the ‘Castle,’ was a registered landmark and that the architectural renderings had been reviewed and approved.⁵ *See* Baltimore County Exhibit 2.

Department of Recreation and Parks: Jan Cook, appearing on behalf of the Department of Recreation and Parks, testified that his office had no open issues regarding the subject property and further noted that pursuant to Baltimore County Code (B.C.C.) Section 32-6-108 schools and specifically the subject property, do not have open space requirements. Mr. Cook further noted that prior to 2000, the open space requirements only applied to D.R. zones.

Office of Zoning Review: Joseph C. Merrey appeared as the representative of the Zoning Review Office and indicated that his office recommended approval of the redlined development plan. There had been a prior concern as to whether the proposed addition would increase enrollment at Maryvale. However, Mr. Merrey noted that due to a previous condition in a prior zoning case, the enrollment of Maryvale Preparatory is not to exceed 425 students.⁶ *See* Baltimore County Exhibit 3.

Bureau of Plans Review: Dennis A. Kennedy, P.E. appeared on behalf of the Bureau of Plans Review, which reviews plans for the Department of Public Works. Mr. Kennedy confirmed that the Developer’s redlined development plan met all of his department’s requirements and comments and that his department subsequently recommended approval. However, Mr. Kennedy indicated that the County recommended a dedication of a portion of the property as a right-of-way to be considered by the Hearing Officer. *See* Baltimore County Exhibit 1. Subsequent to this

⁵ The Wickliffe family built the ‘castle,’ the primary structure of Maryvale, in 1916 and the subject property was originally part of Brooklandwood owned by Charles Carroll. The Maryvale ‘castle’ is registered on the Maryland Historic Trust’s Inventory of Historic Properties (BA-1602) and the Baltimore County Final Landmarks List (Number 336).

⁶ This office’s Order in case number 06-12-SPHA stated that the maximum enrollment of Maryvale Preparatory shall not exceed 425 students without an additional Petition for Special Hearing to amend the Order of that case.

recommendation, Mr. Rob Hoffman, Esquire, attorney for the Developer, submitted into evidence as Developer's Exhibit 9 letters indicating that this issue had been considered and resolved in 1995, thus re-considering this issue is not necessary.

Bureau of Land Acquisition: Ronald V. Goodwin, on behalf of the Bureau of Land Acquisition, appeared and testified that the redlined development plan met all of his agency's concerns and should be approved. Mr. Goodwin did second Mr. Kennedy's recommendation of a dedication of a right of way, however as noted above, this issue had already been considered and resolved in 1995.

Department of Environmental Protection and Resource Management (DEPRM): On behalf of DEPRM, David V. Lykens confirmed that his agency extensively reviewed the development plan regarding environmental constraints, floodplains, storm water management and ground water management. Mr. Lykens further noted that the plan adequately addressed his agency's comments, thus his department recommends approval of the amended plan.

PROTESTANTS' ISSUES

Prior to receiving testimony on issues that concerned the Protestants who were present, Michael McCann raised a preliminary Motion that was based on two principles. First, Mr. McCann renewed his previously denied request for postponement, which was premised on a scheduling conflict that could have potentially prevented his appearance at the July 23 hearing. The Director of DPDM originally denied this Motion, and Mr. McCann requested reconsideration of the denial via a letter dated July 13, 2009. Following a phone conference with both attorneys and this Hearing Officer, Mr. McCann's request for reconsideration was denied via an Order dated July 16, 2009. For a third time, this request for postponement was raised at the July 23 public hearing. Mr. McCann stated that his prior conflicts (a scheduled deposition

and District Court trial)⁷ had both been postponed so that he could appear at the public hearing in this case. Mr. McCann appeared at the hearing and was well prepared to raise preliminary motions, present numerous exhibits, and conduct lengthy cross examinations of the Maryvale's witnesses.

Mr. McCann steadfastly requested a continuance and he again requested that he not be asked to put on his own case until the August 4 hearing date. Mr. McCann candidly admitted that he was unprepared to go forward at the July 23 hearing, due to the fact that he expected the hearing to be postponed. In the interest of judicial economy, Maryvale's attorneys agreed to present their case for zoning relief at the July 23 hearing and permitted Mr. McCann to wait until August 4 to present his case in opposition to the Amended Development Plan. All in all, Mr. McCann's third request for postponement was essentially granted in part, as he was not required to present the Protestants' case at the July 23 hearing.

The second principle on which Mr. McCann based his preliminary Motion to Dismiss concerned the procedure by which this development plan was processed by the County and Maryvale's representatives. As previously mentioned, in case number CBA-06-006, the Board of Appeals determined that the changes proposed in this amended development plan constituted a material change, rather than a refinement to the previously approved development plan. On December 8, 2008, Mr. McCann wrote a letter to the Director of PDM requesting an explanation of how the Amended Development Plan would be processed in light of the Board's decision. By letter dated January 5, 2009, Walter T. Smith, Jr., Development Manager for PDM, instructed Mr. McCann that the Developers would be required to file an amended plan, attend a Development Plan Conference, and appear at a Hearing Officer's Hearing on the plan. Mr. McCann then attempted to appeal Mr. Smith's letter to the Board of Appeals, but the Board

⁷ See Protestants Exhibits 16 and 17

dismissed the attempted appeal on the basis that Mr. Smith's letter did not constitute a final, appealable administrative event. *See* CBA-09-003, *citing Meadows of Greenspring v. Foxleigh Enterprises, supra* (this opinion is attached hereto as tab 4 of Protestants' Exhibit 1).⁸ The Board did indicate in that opinion that after there has been a Hearing Officer's Hearing on the amended development plan in this case:

“Protestants would still have the opportunity to appeal the Hearing Officer's decision and could raise any and all issues as to whether or not the procedure was in fact lawful and appropriate. At that time, those questions could in fact be addressed.”

Id. at pp. 2-3.

Mr. McCann took this language to mean that the Hearing Officer's Hearing was the appropriate venue to dispute the procedure by which the County and Maryvale processed this amended development plan. Citing various principles outlined in Article 32, Title 4 of the Baltimore County Code, Mr. McCann argued that once the Board of Appeals determined that this project was a material change, the Petitioners were required under the Code to re-submit this Amended Plan through all of the steps outlined in Article 32, Title 4 of the County Code (namely, an additional Concept Plan Conference, Community Input Meeting, and Development Plan Conference). While these formal steps had all been completed as part of the original development plan, Mr. McCann argued that it was improper to forego an additional, formal Community Input Meeting to address the changes proposed in this development plan.⁹

⁸ Mr. McCann submitted a tabbed binder containing a series of documents including the text of various sections of the B.C.C. This binder was marked and accepted into evidence as Protestants' Exhibit 1.

⁹ Mr. McCann argued that the March 4, 2009 Community Input Meeting was informal, and therefore did not meet the requirements of Article 32 of the B.C.C. *See* Developer's Exhibit 3.

On behalf of Maryvale, Mr. Hoffman countered by citing Policy No. I.e., page 2, of PDM's policy manual, entitled "Changes to Approved Development Plans", which states in relevant part as follows:

"If the change is determined to be material, then the matter shall be referred to the Department of Permits and Development Management (PDM) for the scheduling of a public hearing before the zoning commissioner to amend the plan."

See Developer's Exhibit 2.

Mr. Hoffman argued that the PDM policy manual provides the clearest explanation of the procedure for the situation in the case at hand, and that Maryvale, and the County, followed this procedure by setting this hearing in before the Zoning Commissioner/Hearing Officer. In response, Mr. McCann stated that the PDM policy manual contradicts the B.C.C., and that PDM has no authority to issue policies that conflict with the procedures outlined in Article 32, Title 4 of the B.C.C.

After considering all of the parties' arguments, I determined that the Motion to Dismiss should be denied. Initially, I disagree with Mr. McCann's assertion that the appropriate venue for raising this procedural argument is the Hearing Officer's Hearing. The Board clearly stated that the Protestants would have the ability to file an appeal of this Hearing Officer's decision, and that they would have an opportunity to raise any and all issues as to whether or not the procedure was in fact lawful and appropriate at that time. *See* tab 4 of Protestant's Exhibit 1, pp. 2-3. As the parties are well aware, the Zoning Commissioner/Hearing Officer is a creature of statute charged with a limited, specific role in the development process. The Hearing Officer "shall grant approval of a development plan that complies with these development regulations and applicable policies, rules and regulations." *See* Section 32-4-229 of the B.C.C. The B.C.C. does not provide any authority for the Hearing Officer to make a legal determination as to

whether PDM exceeded their authority in developing a policy manual. Rather, the Hearing Officer is bound by statute to approve a plan that complies with applicable policies.

It is undisputed that the County and Maryvale complied with Policy No. I.e. of PDM's policy manual by setting the amended development plan in for a public hearing before this Hearing Officer.¹⁰ The citizens had a realistic opportunity to be heard which satisfies procedural due process of law concerns. Accordingly, the Motion to Dismiss was denied and the hearing proceeded as scheduled on July 23.

In addition to the aforementioned procedural protests, Mr. McCann indicated that the Protestants objected to the proposed storm water management system. Specifically, Mr. McCann asserted that it was the Protestants contention that all storm water management facilities located on Maryvale's property must comply with the current Storm Water Management regulations as updated in the year 2000. Mr. McCann further questioned the suitability of the proposed storm water management outfalls.

TESTIMONY AND EVIDENCE

Moving next to the more formal portion of the hearing, the Developer called as an expert witness Mr. Michael Pieranunzi, RLA, with Century Engineering, who prepared the development and landscape plans for the subject property and presented an overview of the amended plan. Mr. Pieranunzi confirmed his familiarity with the laws and regulations pertaining to residential and commercial development, particularly in Baltimore County, and was offered as an expert in land development and the necessary zoning and land use regulations and policies in

¹⁰ See development projects for Greenfield LLC (II-640), Greenhouse Place (XI-800) Satters Woods (VIII-650), Brighton Court (X-429), Randallstown Cooperative Housing Phase 3 (II-615) and Run Crossing (IV-616) involving material changes processed in the exact same manner

Baltimore County.¹¹ The amended development plan, marked and accepted into evidence as Developer's Exhibit 6A-D, focuses primarily on the 107 acres, mainly zoned R.C.2 and improved with buildings associated with Maryvale Preparatory School, Inc., a college preparatory school for girls grades 6-12.¹² This property, as earlier noted, is located between Falls Road and Greenspring Valley Road in the Greenspring Valley area of Baltimore County, and is further identified as Lot 2A of the "Westwicke subdivision." *See* Protestant's Exhibit 14. Mr. Pieranunzi indicated that the Maryvale amended development proposes the addition of two buildings to the Maryvale campus: a fine arts center, consisting of 19,500 square feet, and a media center, consisting of 10,500 square feet. *See* Developer's Exhibit 6B. The addition of these two buildings to the campus would create a building area of 2 acres, out of the 107 acres, which make up the subject property.

Following his presentation of the development plan, Mr. Pieranunzi testified that based on his professional knowledge and experience, it was his opinion that the amended plan marked and accepted into evidence as Developer's Exhibit 6A-D fully complies with the development regulations contained in the B.C.C. and all applicable policies, rules, and regulations. Mr. Pieranunzi confirmed that all of the pertinent Baltimore County agencies had reviewed and approved the Amended Development Plan.

In order to present the storm water management aspects of the plan, Mr. Hoffman called John W. Ranocchia, Sr., a professional engineer with Century Engineering, who served as the storm water management 'foreman' for the amended development plan. Mr. Ranocchia was offered and accepted as an expert in storm water management and the associated regulations for

¹¹ Mr. Pieranunzi's resume was submitted and accepted into evidence as Developer's Exhibit 5.

¹² The Sisters of Notre Dame de namur purchased the subject property and opened Maryvale Preparatory School in 1945.

development in Baltimore County.¹³ Mr. Ranocchia noted that the proposed storm water management plan for Maryvale was designed to minimize disturbance of the surrounding environment and had been approved by DEPRM. Further, Mr. Ranocchia opined that the proposed storm water management plan improves existing conditions and adequately provides for the efficient and successful management of storm water on the subject property.

Mr. Ranocchia indicated that the existing extended detention pond in the northeast corner of the site serving the Westwicke Subdivision, "SWM 1," would be replaced with an underground vault designed in accordance with the then applicable Storm Water Management regulations of 1984 that were in effect in 1995, the year in which the Westwicke plan was approved. These regulations required that the facility be designed to provide water quality for the first 0.5 inches of runoff from impervious surfaces as well as peak management of the two year, ten year and one hundred year storms. The underground vault will be placed in the same vicinity as the existing pond that will provide the same level of water quality as currently being provided (pre 2000 regulations) and piping the runoff in excess of the first 0.5 inches of rainfall to the proposed surface detention facility to be constructed as part of the project shown as SWM #2 on Exhibit 6C. The outfall from the underground extended detention water quality facility will also be piped to the proposed new surface pond, which will be an extended detention pond, thereby actually providing an additional level of water quality treatment for the Westwicke drainage. The new Maryvale surface facility will also provide peak management of the Westwicke drainage using the design requirements of the 2000 Maryland Stormwater Design Manual. The 2000 regulations require peak management of the one year storm. Mr. Ranocchia stated the volume of runoff related to this management is called the "Channel Protection Volume" or CPV because research indicated that the one year storm contributed to stream

¹³ Mr. Ranocchia's resume was submitted and accepted into evidence as Developer's Exhibit 7.

erosion much more frequently than the two year storm. By providing CPV Management for the Westwicke drainage, which is not presently provided in the existing facility, a significant positive is achieved for protecting against stream erosion downstream. In addition, the two, ten and one hundred year storms will be managed for Westwicke as currently provided.

All of the improvements for the Maryvale's drainage areas will have quality and quantity management provided by the proposed surface sand filter and extended detention facility designed using the 2000 SWM regulations. The "Preliminary Stormwater Management Design Report" dated July 14, 2009, indicates significant reductions in the two, ten and one-hundred year runoff rates from the existing to proposed. A third water quality and quantity management will be provided to meet the 2000 SWM regulations by constructing an underground sand filter vault and an underground detention facility (SWM 3). In addition to water quality management facility and CPV management, two, ten and 100 year management are also provided. This facility will be located downstream from the stone wall located to the west of the proposed performing arts building. Currently, a large portion of the runoff in drainage area B passes through a "window" in the stone wall which has resulted in significant erosion directly downstream of the stone wall. Under the proposed development, most of this existing drainage will be passed through the underground SWM system and will outfall downstream of the wall. A gabion lined distilling basin will be constructed with the intent to minimize the discharge velocity and also, the disturbance within the forest buffer. Mr. Ranocchia opined that the proposed storm water management plan would substantially decrease the occurrence of erosion on the subject property. Further, SWM 2 and 3 were designed in accordance with the 2000 storm water management regulations and subsequently meet these standards.

Mr. McCann questioned the reasoning behind Mr. Ranocchia's decision to design "SWM 1" in accordance with the pre-2000 storm water management standards. Mr. Ranocchia asserted that DEPRM stated because proposed SWM 1, an underground vault, replaces an existing storm water management facility approved and built pre-2000 and serving the same property, Westwicke Subdivision, this facility need only comply with the pre-2000 storm water management standards. Further, Mr. McCann questioned Mr. Ranocchia as to whether the comments and suggestions of Daniel J. O'Leary, P.E. were taken into consideration in the design of the proposed storm water management plan. Mr. Ranocchia replied that the suggestions of Mr. O'Leary were taken into account to the extent possible.

Upon the conclusion of Mr. Ranocchia's testimony, the Developer rested its case with regard to the amended material plan. As previously stated, Mr. McCann candidly admitted as the July 23 hearing that he was not prepared to present the Protestants' case at this time. Thus, when the hearing re-convened on August 4, the Protestants, Mr. Burns and the Falls Road Community Association, through their attorney, Mr. McCann, proceeded to present their case in opposition to the amended plan.

The Protestants first called to the stand Lee A. Dreiger, a professional engineer with the Storm Water Management division of DEPRM. The brunt of Mr. McCann's questions were aimed to poke holes in the reasoning behind DEPRM's decision to permit SWM facility 1 to adhere to the less stringent standards articulated in the prior iteration of the Design Manual before it was updated in 2000. Mr. McCann cited Section 33-4-104(a)(2) of the B.C.C., which states that stormwater management measures for any development or redevelopment shall be consistent with the Design Manual. The "Design Manual" is defined in Section 33-4-101(h) of the B.C.C. to mean the "2000 Maryland Stormwater Design Manual, Volumes I and II."

Accordingly, Mr. McCann questioned the County's decision to permit SWM facility 1 to adhere to the less stringent regulations contained in the 1984 version of the Design Manual. The Protestants and Mr. McCann produced no further witnesses at the hear.

On cross-examination, Mr. Hoffman presented Mr. Dreiger with Section 33-4-114(b)(1) of the B.C.C., which states as follows:

“Any site with a stormwater management plan approved by the Department before July 2, 2001 shall be governed by the stormwater management regulations in effect at the time of the approval, provided a stormwater management permit is issued before July 1, 2003.”

Id.

Mr. Dreiger confirmed, and it is undisputed, that SWM 1 currently serves the Westwicke Subdivision and was previously approved in 1995, prior to July 1, 2003. Accordingly, Mr. Dreiger testified that the County followed the language in the Code that directs DEPRM to review the stormwater management facility under the 1984 version of the regulations rather than the 2000 version. According to Mr. Dreiger, this is the procedure routinely followed by DEPRM. Mr. Dreiger explained that the other two proposed stormwater management facilities that will serve Maryvale are being held to the 2000 standards because they were not previously approved as part of the 1995 Development Plan. Indeed, the two additional facilities are a portion of the material amendment that is at stake in this hearing.

Mr. McCann continued to press his opposition to Mr. Dreiger's analysis by arguing that Section 33-4-114(b) of the B.C.C. does not apply to the case at hand because that section refers to the term “any site” and Mr. McCann argued that the Maryvale portion of the property was not a portion of the “site” developed as part of the 1995 development plan. Site is defined in Section 33-4-101(dd) of the B.C.C. as follows:

“For development, any tract, lot, or parcel of land, or combination of tracts, lots, or parcels of land, that are in one ownership, or are contiguous and in diverse ownership, where development is to be done as part of a unit, subdivision, or project.”

In furtherance of his argument that the Maryvale portion of the property was not a portion of the “site” previously developed, Mr. McCann cited the definition of “development” contained Section 33-4-101(j) of the B.C.C.:

“ *Development* means to change the stormwater runoff characteristics of a parcel of land in conjunction with residential, commercial, industrial, institutional, or governmental construction or alteration.”

Since the prior development plan primarily concerned the Westwicke portion of the property, Mr. McCann argued that Section 33-4-114(b) of the B.C.C. should not enable Maryvale to skirt the more stringent regulations as articulated in the 2000 Design Manual. For the following reasons, I disagree with Mr. McCann’s analysis.

Initially, I find that Mr. McCann suggests an unreasonably narrow interpretation of the word “site”. The Maryvale/Westwicke property is a contiguous tract of land that was owned by a single owner at the time of the 1995 development plan approval. The entire tract falls squarely within the definition of “site” contained in Section 33-4-101(dd) of the B.C.C. Accordingly, I disagree with Mr. McCann’s assertion that Section 34-4-114(b) does not apply to SMW 1 on the proposed development plan. Most importantly, Mr. Dreiger testified that the two additional proposed facilities that were not contained in the 1995 development plan are in fact being held to the stricter standards contained in the 2000 Design Manual. If Maryvale had attempted to argue that all three SWM facilities should be governed by the prior standards, Mr. McCann’s reasoning may have been persuasive. However, given that SWM 1 was approved prior to July 2, 2001, I find that DEPRM acted appropriately in permitting SMW 1 to comply with the standards in place at the time the facility was originally approved.

On behalf of the Protestants, Mr. McCann raised one additional argument with regard to the procedure by which Maryvale processed this amended development plan. A common theme asserted by Mr. McCann throughout the hearing was that the Protestants were deprived of a fair opportunity to prepare for the hearing on this plan. This argument was initially asserted as part of a request for postponement, which Mr. McCann raised three separate times. Mr. McCann then raised a procedural Motion to Dismiss at the outset of the public hearing, which was denied for the reasons previously stated in this Order. Near the conclusion of the formal portion of the hearing, Mr. McCann again argued that the procedure used to review this plan was improper, this time citing PDM's Policy Manual No. VI entitled "Red-lined Development Plans."

Policy VI provides a series of incremental time periods by which a developer must process a red-lined development plan. Mr. McCann tied this Policy into his assertion that there is an unwritten rule requiring all communication between County agencies and developers or community members to cease for five days prior to the Hearing Officer's Hearing. Mr. McCann even produced a calendar to present to Mr. Dreiger to demonstrate that DEPRM received the final version of the proposed stormwater management plan approximately one week prior to the public hearing. Mr. McCann attempted to expose some sort of impropriety on the part of Maryvale and its consultants in continuing to update and process their development plan so close to the five-day period of silence that precedes a public hearing.

I have little difficulty in determining that Mr. McCann's procedural argument was a non-issue, and that the community had a full and fair opportunity to be heard and to respond to the amended plan. It must be noted that this Hearing Officer went above and beyond in permitting Mr. McCann to reserve his entire case in opposition to the development plan until a second hearing was held on August 4. Many members of the community appeared at the July 23

hearing, and it inconvenienced a number of people to extend this hearing to a second date solely so that Mr. McCann could better prepare for his case. After denying his request for postponement three separate times, Mr. McCann was permitted the indulgence of an almost two-week extension to prepare his case. Thus, any argument that the hearing prevented the Protestants from voicing their opposition to the amended plan is without merit. Based upon the length of this case, which dates back almost fifteen years to 1995 and has been heard several times by the Zoning Commissioner and Board of Appeals, and the procedure which was followed in processing the amended development plan, I am convinced that the Protestants were provided with a sufficient opportunity to hear and be heard with regard to the amended development plan. The Protestants argued that the repeated shifting and redlining of this plan essentially prejudiced them and that the Hearing Officer's Hearing should not permit a Developer to amend a request "on the run".

I find that Maryvale provided strong and substantial evidence that the amended plan fully complies with the requirements and standards for development in Baltimore County. Thus, the four page amended development plan with its redlined changes should be approved, subject to the ongoing review process mandated by Phase II of the review process.

ZONING RELIEF

In addition to a material amendment to the development plan previously approved, Maryvale also filed two zoning petitions requesting certain relief. The first was a Petition for Special Hearing 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.

During the hearing, in support of the requested relief, Maryvale presented the testimony of several witnesses to prove that the requested relief was warranted and that the proposed changes to the approved plans would not create any adverse impact on the surrounding properties and, thus, meets the requirements of B.C.Z.R. Sections 1B01.3.A.7.b and 502.1. As explained above, the new school buildings and ball fields will allow Maryvale School to significantly upgrade and modernize its campus in order to meet the needs of its students. Many other private institutions in Baltimore County now offer similar facilities as that proposed by Maryvale.

Sister Shawn Marie Maguire, Maryvale's Headmistress during the last 28 years, offered testimony that the new buildings would be an upgrade to the existing facilities and would not be for the purpose of expanding student enrollment in a significant manner. Rather, the upgrades are required to provide adequate facilities even for the current student population. Sister Shawn Maguire aspires to providing the optimum environment for a college preparatory school. She also confirmed that the proposed parking shown on the plan (272 spaces) is necessary and sufficient to meet the needs of the school. The school's official hours are from 8:10 AM to 3:00 PM. Most students use car pools for transport¹⁴ arriving at 7:30 AM and can stay until 6:00 PM or 9:00 PM depending on activities. The school's current student enrollment is 380 with an association of 72 facility members. Sister Shawn stated that as many as 100 students may drive vehicles to school leaving over 100 spaces available for friends and visitors. Most students leave the campus after normal school hours (3:00 PM) availing these spaces for those visitors drawn to the school's athletic activities. Finally, Mr. Pieranunzi, an expert land planner, offered testimony

¹⁴ In addition, the school provides a school bus for student transportation needs.

that the proposed new facilities would be consistent with the spirit and intent of the current R.C.2 zoning classification and would not intensify the existing use of the property or cause any adverse impact to the health, safety, or general welfare of the surrounding community.

I am persuaded that the Petition for Special Hearing should be granted. I have reviewed the criteria stated in B.C.Z.R. Section 502.1 and find that Maryvale has satisfied each criteria outlined in that section. In addition, I find that the relocation of the storm water management outfall and installation of the additional parking areas to serve the school campus and its student body in locations shown on Developer's Exhibit 6C, are appropriate and should be approved.

In addition to the Petition for Special Hearing, a Petition for Variance was filed seeking relief from B.C.Z.R. Sections 1A01.3.B.3 and 102.2 to permit a principal building to principal building setback of 29 feet in lieu of the required 70 feet. The requested variance relief pertains to the new Humanities/Performing Arts Building and the Maguire Hall school building. Testimony was received from Jim Carroll, a licensed architect with Design Collective, regarding the inter-related student functions that will take place between the historic Castle and the new Performing Arts Building. Placement of the Performing Arts building is limited by the physical features of the site, which include forest buffer easement areas and steep slopes to the west, existing structures and roadways to the south and east as illustrated on the architectural renderings submitted to the County Planning Board. *See* Baltimore County Exhibit 2. Mr. Carroll testified as to the efforts taken to preserve and respect the historic "Wickcliffe Castle at Maryvale" as the dominant feature of the school campus. Any efforts to connect the two buildings to obviate the need for a variance would distort the image and views of the Castle. Mr. Carroll's testimony in support of this request is persuasive as pointed out by the Office of Planning in its Zoning Advisory Committee (ZAC) comment that stated: "The Office of

Planning recognizes this variance is internal in nature to the site and essentially only affects Maryvale's own buildings. Nonetheless, by locating the proposed fine arts building closer to Maquire Hall, it will be located further from the neighboring property owners." From both an architectural and planning perspective, Mr. Carroll testified that the proposed location of the performing arts building is superior. Mr. McCann did not raise any questions and posed no opposition to the request for variance.

I am persuaded that the variance should be granted. In my judgment, Maryvale has demonstrated that the requirements of B.C.Z.R. Section 307.1, as has been construed in *Cromwell v. Ward*, 102 Md. App. 691 (1995), are satisfied. Particularly, I find that special circumstances exist based on the physical features of the property, the location of existing structures, and the school's program requirements regarding accessibility. A practical difficulty will result if strict compliance with the setback requirements applicable to the R.C.2 zone is required. Requiring a 70-foot building to building setback is unnecessarily burdensome. The setback for which the variance is sought is internal to the Maryvale Preparatory School campus and a reduction of this setback will not result in any adverse impacts to neighboring properties. The buildings are grouped together in the middle of the campus and are well away from any outside property boundaries.

CONCLUSION

After due consideration of all of the testimony, evidence, and motions presented, I am persuaded to approve the amended development plan. While I am appreciative of the fact that the Protestant's have taken a vested interest in the development of Maryvale Preparatory School, I am not persuaded by the arguments they have made with regard to the proposed development. As set forth earlier under *Standard of Review*, the Baltimore County Code (B.C.C.) clearly

provides that the “Hearing Officer *shall* grant approval of a development plan that complies with these Development Regulations and applicable policies, rules, and regulations.” B.C.C. Section 32-4-229. Therefore, if the County agencies identify no specific deficiency or issue before the Hearing Officer, the development plan is presumed to be in compliance with the Development Regulations, and the burden is then on a Protestant to rebut that presumption. *See generally People’s Counsel for Baltimore County v. Elm Street Development, Inc.*, 172 Md. App. 690 (2007); *Mossburg v. Montgomery County*, 107 Md. App. 1 (1995); *see also* B.C.C. Section 32-4-227(e)(2).

With the testimony of Messrs. Pieranunzi and Ranocchia and the concurrence of the pertinent County and State agencies that the amended development plan meets all the necessary County codes and regulations, Maryvale satisfied its burden of proof with regard to approval of its amended development plan. Therefore, Maryvale is entitled to approval of the plan unless the Protestant via an expert or other witness is able to point to a specific failure of the development plan to comply with the applicable regulations. The Protestants did not present any expert witness or other evidence to prove that the amended plan did not comply with the applicable regulations in contradiction of the testimony produced by Maryvale and corroborated by the County reviewing agencies. While the Protestant may have expressed dismay with the decisions of the relevant Baltimore County agencies, I am reluctant to invalidate the testimony of those learned in their respective fields without the presentation of authoritative evidence or testimony to the contrary. Thus, because the plan meets all necessary regulations and standards according to the witnesses and testimony presented at the hearing and is without unresolved or outstanding issues that would prevent development plan approval, I find that the amended development plan marked and accepted into evidence as Developer’s Exhibit 6A-D should and is hereby approved.

Pursuant to the zoning and development plan regulations contained in the B.C.Z.R. and Permits and Development Management Policy Manual, the advertising of the property and public hearing held thereon, the Material Change Plan shall be approved consistent with the comments contained herein, and the Petitions for Special Hearing and Variance granted.

THEREFORE, IT IS ORDERED by this Zoning Commissioner/Hearing Officer for Baltimore County this 11th day of August 2009 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.

Any appeal of this decision must be taken in accordance with Section 32-4-281 of the Baltimore County Code.

WJW:dlw

____SIGNED_____
WILLIAM J. WISEMAN, III
Zoning Commissioner/Hearing Officer
for Baltimore County