

IN THE MATTER OF
 THE APPLICATION OF
ERICKSON RETIREMENT COMMUNITIES,
 LLC, PETITIONERS FOR VARIANCE ON
 PROPERTY LOCATED ON THE NE/S
 MAIDEN CHOICE LANE, 1277' NE OF C/L
 WILLOW AVENUE (703 MAIDEN CHOICE
 LANE 1ST ELECTION DISTRICT
 1ST COUNCILMANIC DISTRICT
 3RD COUNCILMANIC DISTRICT
 AND

BEFORE THE
 COUNTY BOARD OF APPEALS

OF
 BALTIMORE COUNTY

Case No. 05-621-A

AND

Case No. CBA-05-143

IN THE MATTER OF
CHARLESTOWN RETIREMENT
COMMUNITY / DRC NO. 081505 B
 709 MAIDEN CHOICE LANE
 RE: APPROVAL OF CRG PLAN
 REFINEMENT /PDM I-225

* * * * *

OPINION

These matters come before the Board in a combined hearing on two separate appeals filed by the Office of People’s Counsel. The first appeal in Case No. CBA-05-143 is an appeal from a letter of Timothy Kotroco, Director of the Department of Permits and Development Management (PDM) designating the proposed CRG Plan, dated August 31, 2005, as a refinement to a County Review Group (CRG) Plan for the Charlestown Retirement Community which was originally approved May 24, 1984. The second is an appeal from the granting of variances for required setbacks as contained in the *Baltimore County Zoning Regulations (BCZR)* which were granted with restrictions by the Zoning Commissioner in a decision dated August 12, 2005 and subsequently modified in an order on a Motion for Reconsideration dated October 3, 2005.

A hearing was held before the Board on April 5, June 14, August 2, and December 12, 2006. Petitioner, Charlestown Retirement and Health Services Corp., was represented by Lawrence E. Schmidt, Esquire. People’s Counsel Peter M. Zimmerman was the Appellant

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/Protestant. Briefs were filed on February 1, 2007, and a public deliberation was held on February 15, 2007.

Background

Charlestown Retirement Community is a large complex catering to senior citizens. It has evolved from the old St. Charles College which was a preparatory school for Catholic priests during the early 1900s. St. Charles College Associates was originally formed by John Erickson to construct Charlestown Retirement Community. Mr. Erickson obtained special exception and variance relief for the entire 90+ acre Charlestown Community based on the presence and preservation of various structures on the St. Charles College campus. In 1991 the Zoning Commissioner approved a request for special exception with a density bonus for 1437 density units (various bedroom units count as different density units), the equivalent of D.R. 16 density, despite the lower density zone on the property. BCZR 432 at that time allowed a density bonus for properties with existing historical or institutional buildings. The special exception was approved based on the existing St. Charles College buildings which had been designated as comprising a National Register Historic District. The Petitioner also received variances for the height and length of its senior housing residences. These were not contested.

At the time of the decision in Case No. 91-351-SPHXA referred to above, the 3.1-acre site in question in the present case was part of the St. Charles College Associates property. In 1996 St. Charles College Associates asked the County Council to rezone the 3.1-acre property to become an OR-2 zone. The letter from the company's attorney at the time, requesting the revised zoning, indicated that the office building had been recycled from an older carriage building, formerly part of St. Charles Minor Seminary, the forerunner of Charlestown. Administrative and staff activities occurring within the converted stone building do not

exclusively serve Charlestown but also support other senior campus living communities. There was no indication at the time that there the company contemplated building an addition to the stone administration building.

In 1997, St. Charles College Associates, by Senior Campus Living, LLC, asked for an amendment to its special exception in order to substitute and trade another 3.1 acres for the subject property, described in the decision for the first time as "Lot 2," insofar as that acreage was necessary to maintain support for the density bonus granted in 1991.

The variance relief was requested from § 206.4.C.1 of the BCZR at that time, to permit a western lot line setback of 38 feet and a northern lot line setback of 62 feet in lieu of the required 80 feet for each lot line for the administration building, which was the old stone house. The then Zoning Commissioner, Timothy Kotroco, granted the special hearing, special exception, and variance stating that the replacement of Lot 2 by the addition of 3.16 acres on the north end of the existing special exception area, which consisted primarily of a stormwater management area, would in no way affect the density. In addition, he stated:

As for the requested variances, it is to be noted that they are internal only and artificial in nature, given that a lot line cannot be discerned on the ground and the buildings are located as they are, with no new construction planned or proposed. In fact, the boundary of Lot 2 follows the access road and consists of landscaped areas, parking lots, a 2-story carriage house, formerly used as an administration building, and a 2.5 story residence. Furthermore, it is evident from the photographs and materials offered at the hearing that the former administration building, sometime called the Carriage House, has been restored and upgraded by its recycled use as part of Charlestown.

On January 14, 1998, St. Charles College Associates transferred title to the 3.1-acre "Lot 2" parcel to Senior Campus Living, LLC. Senior Campus Living has become Erickson Retirement Communities, LLC. It is a developer and manager of retirement communities throughout the United States. It has a separate Board of Directors from St. Charles College Associates, and does not perform the day-to-day operation of the Charlestown Community.

On May 24, 2005, Petitioner filed a Petition for Variance requesting relief from the BCZR as follows:

1. From § 206.4.C.1 to permit lot line setbacks 39 feet, 65 feet, and 68 feet, respectively, in lieu of the required 78 feet, for an existing office building and proposed expansion thereto;
2. From § 206.4.C.4 and 1B01.2.C.1(a) to permit front yard setbacks of 9 feet each in lieu of the required 25 feet for the proposed garages, a side yard setback of 8 feet in lieu of the required 20 feet, and a rear yard setback of 12 feet in lieu of the required 50 feet for one of the proposed garages, and a street right-of-way setback of 29 feet in lieu of 35 feet for the proposed office building addition as amended;
3. And from § 409.6.A.2 to permit 153 off-street parking spaces in lieu of the required 183;
4. And for such other and further zoning relief as the Zoning Commissioner may require.

It should be noted that before the Board, the Petitioner withdrew the request for variances for off-street parking spaces, indicating that it intended to construct approximately 200 spaces in the new garage.

The subject property in question is located on the northeast side of Maiden Choice Lane, just east of Willow Avenue in Catonsville. The property contains approximately 3.1 acres, zoned O.R.-2 and is part of the overall campus that contains the Charlestown Retirement Community. That community is located on a differently owned adjacent parcel of approximately 100 acres in area and contains residential tower buildings and supporting infrastructure. The subject property is owned by Erickson Retirement Communities, LLC, a business entity that

develops and facilitates the operation of elderly housing facilities across the State. Charlestown Retirement Community is one of the facilities developed by Erickson.

The subject 3.1-acre parcel is located immediately adjacent to Maiden Choice Lane and is improved with an existing building known as The Carriage House, aka "the stone building." This is an older building that has been converted to office use to house administrative and business offices for Erickson Retirement Communities, LLC. In addition to the stone house /Carriage House, there is a 2 ½ story structure known as the Frederick House. This is an old farmhouse that dates back prior to 1850. It is currently used for storage and housing for a maintenance person. Both structures are included in the National Historic District which also includes the Chapel and other structures which were formerly St. Charles College.

The Petitioner proposes an addition to the Carriage House in order to provide additional office space for Erickson LLC. The existing building is approximately 17,000 sq. ft. in area and the proposed expansion would provide an additional 40,000 sq. ft. of office space. The Petitioner proposes to add a detached garage to the office addition, which would add another 40,000 sq. ft. of structure in the area. The addition of the garage would necessitate the demolition of the Frederick House. In his decision of August 12, 2005, the Zoning Commissioner granted the variances with the following restrictions:

1. ***
- 2) As more fully set out in the Zoning Advisory Committee comment from the Baltimore County Office of Planning, dated July 15, 2005, the Petitioner's plans for the razing of the Frederick House structure shall be submitted to the Baltimore County Landmarks Preservation Commission for review.
- 3) Prior to the issuance of any building permit, the Petitioner shall submit to the Office of Planning for review the following: a) elevation drawings that show the exterior design, colors and materials of the proposed parking structures and office building addition; b) a plan that shows the location and design of any lights to be used on the top deck of the parking structures and all other outside

lights to be used on the subject property; and, c) a plan showing the proposed landscape screening along Maiden Choice Lane.

In response to the Motion for Reconsideration, the Zoning Commissioner, by Order dated October 3, 2005, amended his Order to state that it would require review "and approval" of the elevation drawings and plans submitted to the Office of Planning.

As a result of the Zoning Commissioner's August 12, 2005 decision, Petitioner presented the issue at a meeting of the Landmarks Preservation Commission (LPC) on September 8, 2005.

On September 12, 2005, Vicki Nevy, secretary/administrator for the LPC, sent a letter to the Zoning Commissioner affirming the LPC's approval of the Petitioner's proposals which included construction of an addition to the "Stone House" and demolition of the "Frederick House."

On July 25, 2005, the Petitioner filed an Application to the Development Review Committee (DRC) of the Department of Permits and Development Management to approve the expansion of the stone house with an additional office building and garage and also the addition of an accessory building for a data center for Charlestown Village as a refinement to the original CRG Plan for the Charlestown Retirement Community.

On September 28, 2005, Timothy Kotroco, Director of PDM, sent a letter to Daft McCune Walker, Inc., the representatives of Petitioner, indicating that the DRC had determined that the project met the requirements of a refinement to the CRG Plan under § 32-4-106(b)(2).

He adopted the determination and recommendations of the DRC.

Issues

People's Counsel has set forth in his Memorandum four issues which he contends need to be resolved in this matter. These issues are as follows:

- 1) Is there any justification for the major setback variances?

2) Should the petition be disqualified in any event because it is defective since Petitioner failed to make the necessary request to amend the special exception and development plan approved in earlier cases, including 91-351-SPHXA and 98-71-XSPHA?

3) Is the petition disqualified on the ground of defectiveness because Petitioner failed to make the required request for waiver from the historic preservation requirements and has tried to circumvent the process with a purported *ex parte* waiver from Deputy Planning Director Long?

4) Is there any justification for PDM /DRC approval of a "refinement" to the original CRG Plan?

Decision

The Board will deal with each of the above issues separately.

1) Is there any justification of the major setback variances?

The law regarding variance requests in Baltimore County is well-settled. Section 307 of the BCZR 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....

The Court of Special Appeals in *Cromwell v. Ward*, 102 Md.App. 691 (1995) gave particular guidance in this area. The Court stated:

...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.

The Court went on further to distinguish the finding of "uniqueness" 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.

Petitioner's expert, Mitchell Kellman of Daft McCune Walker, testified with respect to the uniqueness of the property in question. He stated that the property was historic; being situated in the St. Charles College Historic District and two historic structures currently sit on the property, the Stone House and the Frederick House. In addition, he felt that the property had a very unusual shape, being wider on one side and then narrowing significantly, moving northwest to southeast. Thirdly, he felt that the property was very small for the O.R.-2 zone. And finally he felt that the topography on the property contains a large hill coming off the site toward Maiden Choice Lane.

The expert provided by People's Counsel, Mr. Jack Dillon, testified as to his evaluation of the property. He recognized the historic structures but observed that this was not a source of difficulty. Erickson already enjoyed the productive office use of the stone building and the farm house. It was Mr. Dillon's opinion that the proposed expansion was yet another stage in the overall development of the St. Charles College property and that the particular 3.1 acres in question were not unique from the standpoint of the remaining part of the property.

The Board credits the testimony of Mr. Dillon in this matter. Mr. Kellman cites, as part of this property's uniqueness, the fact that there are two historic structures on the property. Petitioner does not request any variance in order to preserve both of the historic structures; in fact, it proposes to demolish one of the structures in order to construct the parking garage

attached to the expanded office building. There are additional historic structures on the remaining 100+ acres of the Charlestown property, including the Chapel and various dormitories which have been converted to unique living units for the residents of Charlestown. In addition, the smallness of the O.R.-2 property only emphasizes the fact that Petitioner wishes to put a 40,000 sq. ft. modern office building plus another 40,000 sq. ft. garage attached to the historic Stone House. In the opinion of the Board, this would overcrowd the land. The Board does not consider the property to be unique. With respect to the hill on the property and the shape of the property, there are hills adjacent to the property on Charlestown's 100-acre campus and winding roads through the campus which, if used as boundaries, would establish other unusual pieces of property.

Even if the property is considered to be unique, the second step in the process, the determination of whether practical difficulty or unreasonable hardship will result from the disproportionate impact of the ordinance caused by the property's uniqueness, must be determined.

As set forth by the Court of Special Appeals in *Montgomery County v. Rotwein*, 169 Md.App. 716 (2006), practical difficulty must not be the result of the applicant's own actions.

As stated at page 730:

That means that an applicant must show more than simply that the building "would be suitable or desirable or could do no harm or would be convenient for or profitable to its owner." *Kennerly v. Mayor & City Council of Baltimore*, 247 Md. 601, 606-07, 233 A.2d 800 (1967). He or she must demonstrate that the application of the ordinance to the unique characteristics of the land would cause "peculiar or unusual practical difficulties" that justify the variance requested *Cromwell*, 102 Md.App. at 706, 651 A.2d 424. Furthermore, and of particular relevance to this case, as it formed the basis of the Board's decision, the "peculiar or unusual practical difficulties" must not be the result of the applicant's own actions. *See id.*

In 1996, the Petitioner changed the zoning of the property during the Comprehensive Zoning Map Process to OR-2. In 1998, the Petitioner spun off the 3.1-acre parcel in question from St. Charles College Associates' Holding to Senior Campus Living, LLC. While at the time it obtained the rezoning, it made no mention of adding an addition to the Stone House for an office building, the fact that it was aware of the size and shape of the property and evidently contemplated such a building makes it a victim of its own actions. Furthermore, as testified to by Mr. Dillon, Petitioner could explore other locations for additional office use, either off-site or on the Charlestown campus. A portion of the Charlestown Property is zoned O.R.-2. Mr. Dillon also identified an open area in the Ring Road on the Charlestown property. It was also brought out that Erickson has leased 10,000 sq. ft. of office space in the adjacent shopping center on Maiden Choice Lane and is constructing a large office building, over 110,000 sq. ft., at the University of Maryland, Baltimore County Research and Technological Park for its Information and Technology Department.

Therefore, the Board finds that there is no practical difficulty by denying the variances requested by Petitioner.

In addition, as stated above, the Board has credited the testimony of Mr. Dillon that the proposed building and parking garage would overcrowd the property in question, covering about 80,000 sq. ft. of land area. In addition, several citizens, especially Sister Pauline Kelly of the Little Sisters of Mercy who occupy the property adjacent to Charlestown, and Edith Robinson, a neighbor, testified credibly about the problematic visual and traffic problems on Maiden Choice Lane. They felt that the additional 100 employees to be employed in the new office building would create at least 200 more trips into and out of the property on a lane or street (Maiden Choice Lane) which is already crowded. Sister Kelly indicated that at the present time it is very

difficult to get out of the driveway to her facility, and both individuals felt that the height of the building proposed by Petitioner would block any enjoyable aspect of the historic Charlestown Chapel and other buildings from any individual who had passed the entrance to the Charlestown property on Maiden Choice Lane. In addition, they felt that the destruction of the Frederick House, one of the oldest homes in Baltimore County, would be detrimental to the historic preservation of the County.

2) Should the petition be disqualified because it is defective since the Petitioner did not make the necessary request to amend the special exception and development plan approved in earlier cases, including 91-351-SPHXA and 98-71-XSPHA?

If the property in question is viewed as a separate piece of property from the remaining part of the Charlestown property, then it does not appear that it was necessary to amend the special exception and development plan approved in earlier cases. However, the Board finds that this issue is moot because of the fact that the Board has denied the variances requested in order to construct the building in question.

3) Is the petition disqualified on the ground of defectiveness because the Petitioner failed to make the properly required request for waiver from the historic preservation requirements and has tried to circumvent the process with a purported *ex parte* waiver from Deputy Planning Director Long?

While the Board feels that a full and complete hearing before the Baltimore County Landmark Preservation Commission (LPC) was never held in this matter, since none of the neighbors /protestants had an opportunity to appear before the LPC, the Board does not feel that it is necessary to rule on this situation at this time since the Board has denied the variances requested by Petitioner. At such time as the Petitioner might desire to demolish the Frederick House on the property, the Board feels that the Petitioner must comply with § 32-4-416 of the

Baltimore County Code (BCC) and request a special hearing for the demolition permit. Such a hearing requires a posting of the property and adequate notice to surrounding neighborhoods in order to appear before the LPC.

4) Was there justification for PDM /DRC approval of a "refinement" ?

In an Application to the DRC for the refinement of the Charlestown Plan Petitioner appears to have included the 3.1 acres as part of the overall 100+ acres of the Charlestown campus. Thus, the DRC has evidently considered the construction of the building as an addition to the Stone House and as part of a refinement of the overall Charlestown Plan. Subsequently, Petitioner came before the Zoning Commissioner and the Board and requested variances on the basis that the 3.1-acre piece of property was unique and was not part of the overall Charlestown campus.

In the opinion of the Board, if it is determined that the 3.1 acres is considered to be part of the overall campus of Charlestown, the construction of a 40,000 sq. ft. office building, with an additional 40,000 sq. ft. parking garage attached, and the construction of an additional data center building, is more than a refinement. If the property is separate from the Charlestown campus, it should not have come before the DRC as a refinement of the original plan. The Board will therefore reverse the decision of the Director of PDM adopting the determination of the DRC that the project meets the requirement of a refinement to the CRG Plan under § 32-4-106(b)(2) of the BCC.

ORDER

THEREFORE, IT IS THIS 6th day of April, 2007 by the
County Board of Appeals of Baltimore County

ORDERED that the Petitioner's request for lot line setbacks of 39 feet, 65 feet, and 68 feet (respectively) in lieu of 78 feet for the existing office building and proposed expansion from §

206.4.C.1 of the Baltimore County Zoning Regulations (BCZR) (Case No. 05-621-A) be and the same is **DENIED**; and it is further

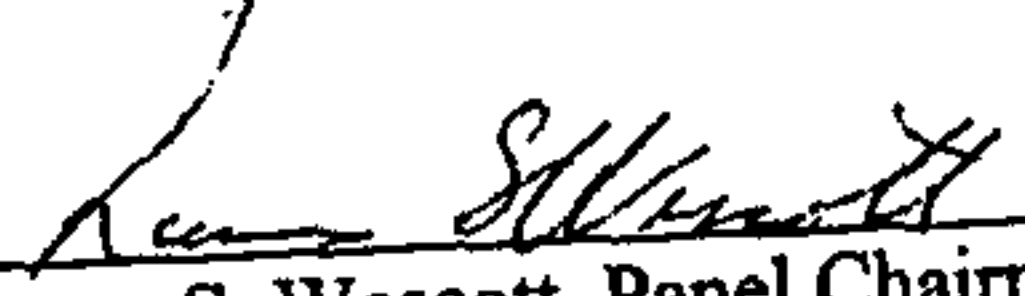
ORDERED that the front yard setbacks of 9 feet each in lieu of 25 feet for the proposed garage, a side yard setback of 8 feet in lieu of 20 feet, and a rear yard setback of 12 feet in lieu of 50 feet for the proposed garage and a street right-of-way setback of 29 feet in lieu of 35 feet for the proposed office building addition in accordance with § 206.4.C.4 and 1B01.2.C.1 (Case No. 05-621-A) be and the same is hereby **DENIED**, and it is further


ORDERED in Case No. CBA-05-143 that the decision of the Director of the Department of Permits and Development Management affirming the determination of the Development Review Committee that the construction of the office building and garage herein meets the requirements of a refinement to a CRG Plan under § 32-4-106(b)(2) be and is hereby **REVERSED**; and it is further

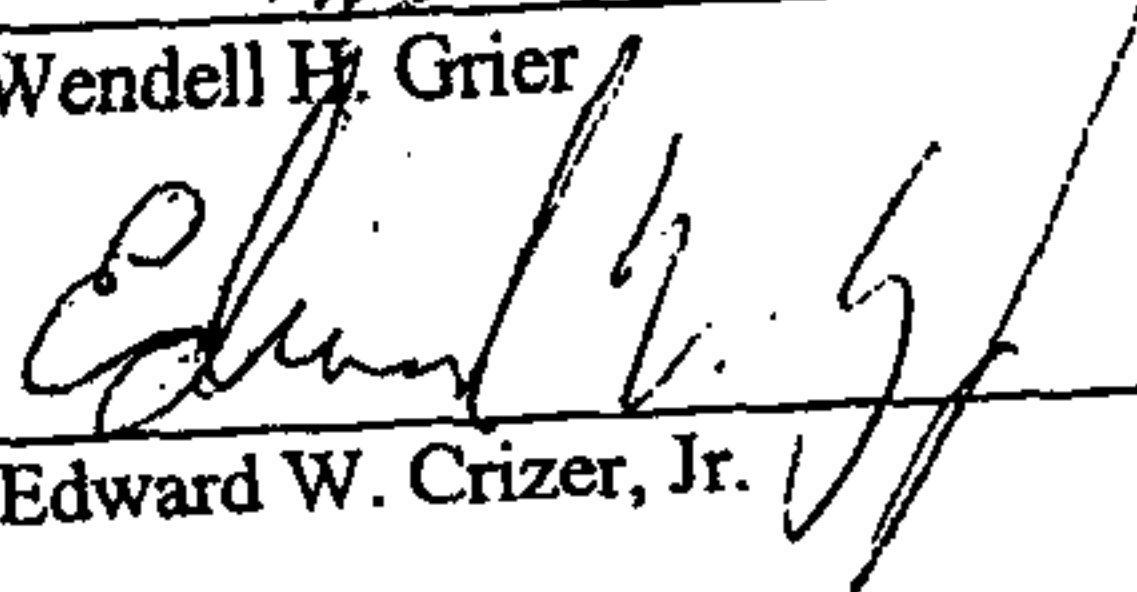
ORDERED that Developer's request for a refinement to the original CRG Plan under § 32-4-106(b)(2) be and is hereby **DENIED**.

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*.

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Lawrence S. Wescott, Panel Chairman


Wendell H. Grier


Edward W. Crizer, Jr.

RE: PETITION FOR VARIANCE	*	BEFORE THE
NE/S Maiden Choice Lane, 1277' NE of the c/l		
Willow Avenue	*	ZONING COMMISSIONER
(703 Maiden Choice Lane)		
1 st Election District	*	BALTIMORE COUNTY
1 st Council Districts		
	*	Case No. 05-621-A
Erickson Retirement Communities, LLC		
Petitioners	*	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owner of the subject property, Erickson Retirement Communities, LLC, through Wayne M. Rush, PE, Vice President. The Property is located at 703 Maiden Choice Lane in the Catonsville Community of southwestern Baltimore County. The Petitioners seek relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: 1) From Section 206.4.C.1 to permit lot line setbacks of 39 feet, 65 feet and 68 feet (respectively) in lieu of the required 78 feet for an existing office building and proposed expansion thereto; 2) From Sections 206.4.C.4 and 1B01.2.C.1.(a) to permit front yard setbacks of 9 feet each in lieu of the required 25 feet for the proposed garages, a side yard setback of 8 feet in lieu of the required 20 feet and a rear yard setback of 12 feet in lieu of the required 50 feet for one of the proposed garages, and a street right of way setback of 29 feet in lieu of 35 feet for the proposed office building addition (as amended); and, 3) From Section 409.6.A.2 to permit 153 off-street parking spaces in lieu of the required 183; and, 4) For such other and further zoning variance relief as the Zoning Commissioner may require. The subject property and requested relief are particularly shown on the two-page plat accompanying the Petition for Variance, a copy of which was submitted into evidence and marked as Petitioner's Exhibits 1A and 1B.

Appearing at the requisite public hearing on behalf of the Petitioners were Wayne M. Rush, Vice President of Erickson Retirement Communities, LLC, and Mitch Kellman and Greg Reed, of Daft McCune Walker, Inc., the land planners/surveyors/engineers who prepared the site plan. Also present were Mickey Cornelius, a traffic expert from The Traffic Group, Inc., and Faith Nevins, an architect with the firm of Marks, Thomas and Associates. Also appearing in support of the request was Helga Weschki of Baltimore County's Office of Economic Development. The Petitioner was represented by Lawrence E. Schmidt, Esquire and Sebastian A. Cross, Esquire. Several residents of the existing Charlestown Retirement Community also appeared at the hearing as interested persons, including Richard Sleeper, Sara Janet Shaw, Robert W. Donaldson and Karline Tierny. Also present was Jeff Machiran, representing the Maiden Choice Medical Center. That facility is located across Maiden Choice Lane from the subject property.

The subject property under consideration is located on the northeast side of Maiden Choice Lane, just east of Willow Avenue in Catonsville. The property contains approximately 3.1 acres in area, zoned OR-2, and is part of the overall campus that contains the Charlestown Retirement Community. That community is located on a differently owned adjacent parcel of approximately 100 acres in area, and contains the residential tower buildings and supporting infrastructure. The subject property is owned by Erickson Retirement Communities, LLC, a business entity that develops and facilitates the operation of elderly housing facilities across the United States. The Charlestown Retirement Community is one such facility developed by Erickson Retirement Communities, LLC. In addition to the Charlestown site, Erickson Retirement Communities, LLC operates approximately 12 other elderly housing facilities nationwide and provides housing for nearly 10,000 elderly residents.

The subject Petition relates to existing and proposed development on the subject 3.1-acre tract and was filed and heard contemporaneously with companion Case No. 05-620-SPHX. In that matter, certain relief was requested for a proposed Data Center Building on the Charlestown Retirement Community property. The subject 3.1-acre parcel is located immediately adjacent to Maiden Choice Lane and is improved with an existing building known as Carriage House (a/k/a the "Stone Building"). This is an older building that has been converted to office use to house administrative and business offices for Erickson Retirement Communities, LLC.

As more particularly shown on the plan, the Petitioner proposes an addition to the Carriage House in order to provide additional office space for the property owner. The existing building is approximately 17,000 sq.ft. in area and the proposed expansion will provide an additional 40,000 sq.ft. of office space. In addition to the expansion of the office building, the Petitioner proposes three integrated parking garage structures to provide parking for the administrative offices. These garages will be built into the grade of the property in order to reduce visibility and are designed to provide an ease of vehicular access to/from the lot and proposed office building. The garages are designed to be of limited height so as to reduce visibility. As more particularly shown on the plan, access to the garages is from the internal road system within the Charlestown campus and there is no new curb cut proposed from Maiden Choice Lane. Therefore, the impact of this proposed construction on properties across Maiden Choice Lane will be limited.

The subject property is on that part of the Charlestown campus that has been designated as being within a National Registry Historic District. This portion of the property at one time served as the campus of St. Charles College. The Carriage House/Stone Building is a contributing structure to the Historic District. A second existing building on the property (known

as the Frederick Building) will be razed to provide space for the addition to the Stone Building/Carriage House. The proposed addition has been designed to reflect and be compatible with the historic character of the property and existing improvements. A series of exhibits were introduced at the hearing which show the careful attention that has been paid to the design of the addition to ensure compatibility. Further, testimony was offered by Faith Nevins, an architect who designed the building addition. She testified that the style, construction and building materials proposed for the office addition had been thoughtfully prepared to ensure compatibility. Finally, consistent with the Zoning Advisory Committee (ZAC) comment from the Office of Planning, the property owners are aware that razing the Frederick Building and constructing the proposed improvements will require approval from Baltimore County's Landmarks Preservation Commission.

Two series of variances are requested as they relate to setbacks. The first of these variances are for the existing office building and proposed addition thereto. The requested variances to allow setbacks of 39 feet and 65 feet to a property line are for the existing building and are sought to legitimize an existing situation. The variance to allow a setback of 68 feet to a property line is for the proposed addition. All three of these property line setback requests were measured to an internal lot line that separates the 3.1-acre parcel from the larger Charlestown Retirement Community tract. That is, these variances are not measured to an adjacent property owned by an individual or entity not affiliated with the retirement community. The second set of setback variances relates to the proposed parking garages and the office building addition. In this regard, the Petitioner amended its request in open hearing to include a variance to allow a street right-of-way setback of 29 feet in lieu of the required 35 feet for the proposed office building addition. In addition, relief is requested to allow street right-of-way setbacks of 9 feet each for

the proposed parking garages, which will be located much closer to the street. These setbacks are measured towards Maiden Choice Lane. Although these setbacks are towards the public road, renderings submitted at the hearing show that the parking facilities will be built into grade to decrease visibility and will be landscaped. These features will buffer the visual impact of the proposed garages. As noted in the ZAC comment from the Office of Planning, construction facing Maiden Choice Lane will be designed to reduce visibility and to be aesthetically pleasing. The other variance requests are to permit an 8-foot side and 12-foot rear setback for the proposed garage that will be located in the southeastern portion of the site. These two variances are measured to the internal lot line adjacent to the affiliated Charlestown tract.

As to these setback variance requests, I am persuaded that relief should be granted. In this case, I easily find that the property is unique. Specifically, the shape of the parcel is distinctive and drives the need for setback variances. In addition to the property's unusual configuration, the presence of the existing building, as well as the historic character of the lot, are factors that justify the layout that the property owner has chosen.

I also find that the Petitioner has demonstrated a practical difficulty would be sustained if relief were denied. As noted above, the unusual shape of the property would render conformance with the regulations unduly burdensome. Strict adherence to the setback requirements would prohibit reasonable use of this property. Finally, relief can be granted in such a manner so as not to be detrimental to other adjacent properties. As noted above, the site of the proposed improvements has been designed to be compatible with the historic nature of the property. Additionally, the property owner has chosen to take advantage of the grades to minimize impact and install a landscape buffer along Maiden Choice Lane.

The final variance requested relates to the proposed number of parking spaces. Mr. Rush and Mr. Cornelius offered testimony in support of this request. They indicated that the number of spaces proposed was sufficient to accommodate the office building and addition thereto. This building will serve only the employees of Erickson and not be publicly rented. Additionally, given the character of the lot and neighborhood, there is no likelihood that traffic will spill over into adjacent neighborhoods or the retirement community lot. In my judgment, the Petitioner presented compelling testimony to justify the grant of variance relief pursuant to Section 307 of the BCZR.

The testimony and evidence summarized above was presented by the Petitioner's witnesses through their direct testimony and a proffer by counsel. Interested individuals who appeared at the hearing who reside in the adjacent Charlestown Retirement Community did not voice any opposition to the proposal and there were no adverse ZAC comments. Additionally, the single neighbor who appeared at the hearing from across Maiden Choice Lane (Jeff Machiran) did not voice any opposition to the request.


Pursuant to the posting of the properties required by law, and public hearing on this Petition held, for the reasons set forth above, the Petition for Variance shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County, this 12th day of August, 2005, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: 1) From Section 206.4.C.1 to permit lot line setbacks of 39 feet, 65 feet and 68 feet (respectively) in lieu of the required 78 feet for an existing office building and proposed expansion thereto; 2) From Sections 206.4.C.4 and 1B01.2.C.1.(a) to permit front yard setbacks of 9 feet each in lieu of the required 25 feet for both garages, a side yard setback of 8 feet in lieu of the required 20 feet and a rear yard setback of 12

feet in lieu of the required 50 feet for one of the proposed garages, and a street right of way setback of 29 feet in lieu of 35 feet for the proposed office building addition (as amended); and, 3) From Section 409.6.A.2 to permit 153 off-street parking spaces in lieu of the required 183; in accordance with Petitioner's Exhibits 1A and 1B, be and is hereby GRANTED, subject to the following restrictions:

- 1) In accordance with the applicable provisions of law, any appeal from this Order shall be filed within thirty (30) days of the date of this Order.
- 2) As more fully set out in the Zoning Advisory Committee comment from the Baltimore County Office of Planning, dated July 15, 2005, the Petitioner's plans for the razing of the Frederick House structure shall be submitted to the Baltimore County Landmarks preservation Commission for review.
- 3) Prior to the issuance of any building permit, the Petitioner shall submit to the Office of Planning for review the following: a) elevation drawings that show the exterior design, colors and materials of the proposed parking structures and office building addition; b) a plan that shows the location and design of any lights to be used on the top deck of the parking structures and all other outside lights to be used on the subject property; and, c) a plan showing the proposed landscape screening along Maiden Choice Lane.
- 4) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order

WJW:bjs


WILLIAM J. WISEMAN, III
Zoning Commissioner of
Baltimore County