

11/8/10
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
THE FALLS ROAD COMMUNITY
ASSOCIATION, HAROLD BURNS, JR., AND
ELLYN BROWN

CIVIL ACTION
NO: 03-C-10-006981

FOR JUDICIAL REVIEW OF THE OPINION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
JEFFERSON BUILDING -- ROOM 203
105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

IN THE MATTER OF :
MARYVALE PREPARATORY SCHOOL
(AKA WESTWICKE) -- LEGAL OWNERS/
PETITIONERS
SW/S FALLS ROAD, N/S GREENSIDE VALLEY
ROAD (11300 FALLS ROAD)
BROOKLANDVILLE, MD 21022

8TH ELECTION DISTRICT
2ND COUNCILMANIC DISTRICT

RE: AMENDED DEVELOPMENT PLAN
(PDM # VIII-651), PETITION FOR
SPECIAL HEARING, AND PETITION
FOR VARIANCE

BOARD OF APPEALS CASE NO.: 09-202-SPHA
AND CBA-10-013

* * * * *

**SUPPLEMENTAL RECORD OF PROCEEDINGS BEFORE
THE ZONING COMMISSIONER
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY**

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the
Petition for Judicial Review directed against it in this case, herewith transmits the record of
proceedings had in the above-entitled matter, consisting of the original papers on file in the

Department of Permits and Development Management and the Board of Appeals of Baltimore County:

**ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
OF BALTIMORE COUNTY**

No. 09-202-SPHA

February 4, 2009	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/relocated a storm water management outfall and confirmation of the number of parking spaces required for the school use, and Petition for Variance to permit a principal building to principal building setback of 29 ft in lieu of the required 70 ft, filed by Maryvale Preparatory School, through its attorney, Robert A. Hoffman, Esquire, and Venable, LLP.
February 18	Entry of Appearance filed by People's Counsel for Baltimore County.
July 9	Certificate of Publication in newspaper
July 7	Certificate of Posting.
July 20, 2009	ZAC Comments.

No: CBA-10-013

January 28, 2009	First Amended Material Change Development Plan checklist filed with the Department of Permits and Development Management.
July 1	County Agency comments pertaining to the First Amended Material Change Development.
July 8, 2009	State Highway Administration comments pertaining to the First Amended Material Change Development.

No.: 09-202-SPHA and CBA-10-013

July 23, 2009	Hearing held before the Zoning Commissioner/Hearing Officer, Day 1
August 4	Hearing held before the Zoning Commissioner/Hearing Officer, Day 2
August 11, 2009	Findings of Fact and Conclusions of Law issued by the Zoning Commissioner. Amended Development Plan was APPROVED; Petition for Special Hearing was GRANTED approving the amendments to all

prior approved plans and to amend the relief granted in Case No.: 06-128-SPH, including approval to add/relocated a storm water management outfall and confirmation of the number of parking spaces required for school use; Petition for Variance was GRANTED approving the principal building to principal building setback of 29 ft in lieu of the required 70 ft.

September 9, 2009	Notice of Appeal filed by Michael R. McCann, Esquire, on behalf of Harold H. Burns, Jr., and Falls Road Community Association, Appellants.
September 22	Petition in Support of Appeal filed by Michael R. McCann, Esquire, on behalf of Harold H. Burns, Jr., and Falls Road Community Association, Appellants.
October 29	Board convened for hearing, Day #1.
November 4, 2009	Board convened for hearing, Day #2
January 7, 2010	Board convened for hearing, Day #3.

Exhibits submitted at hearing (three days) before the Board of Appeals:

Petitioner's Exhibit No.

- 1a – Page 2 – Developers' Plan
- 1b – Page 3 – Developers' Plan
- 2 – Curriculum Vitae of Jim Carroll
- 3a – Photograph – Performing arts
- 3b – Photograph – Site Plan existing
- 3c – Photograph – The castle
- 3d – Photograph – The castle
- 3e – Photograph – Project site
- 3f – Photograph – Project site
- 3g – Photograph – Existing buildings
- 3h – Photograph – Proposed sites
- 3i – Photograph – Rendering of Performing Arts Building
- 3j – Photograph – Site Sections – West, South & North
- 3k – Photograph – Floor plans of Performing Arts Building
- 3l – Photograph – Exterior elevations of Performing Arts Building
- 3m – Photograph – West elevation of Building
- 3n – Photograph – Interior View
- 3o – Photograph – Full overall site plan
- 3p – Photograph – Same as 3a
- 3q – Photograph – Arial of site
- 4 – Curriculum Vitae of Michael Pieranunzi
- 5a – Zoning Commissioner's Order in Case No.: 06-128-SPHA
- 5b – Developers' site plan for Case No.: 06-128-SPHA

- 6 – Development Plan for 1995 case
- 7 – Development Plan for 1995 case
- 8 – Curriculum Vitae for John W. Ranocchia, Sr.
- 9a – Existing Storm Water Management Area Map
- 9b – Proposed Storm Water Management Area Map
- 10 – Outfall detail profile – MPS 11/30/09

Protestants' Exhibit No.

- 1 – 1994 Maryland Standards and Specifications for Soil Erosion and Sediment Control
- 2a – Rule 8 Resolutions – Board of Directors
- 2b – Rule 8 Resolutions - Designation
- 3 – Cumulative group of pictures of the property

February 4, 2010	Petitioner's Post Hearing Memorandum filed by Robert A. Hoffman, Esquire and Patricia A. Malone, Esquire of Venable, LLP, on behalf of Maryvale Preparatory School.
February 4	Protestants' Post Hearing Memorandum filed by Michael R. McCann, Esquire on behalf of Harold Burns, Jr., Ellyn Brown and Falls Road Community Association..
February 24	Board convened for Public deliberation.
May 7	Final Opinion and Order issued by the Board in which the Zoning Commissioner's August 11, 2009 Order approving the Amended Development Plan, granting the Petition for Special Hearing relief, and the Petition for Variance were AFFIRMED.
June 4	Petition for Judicial Review filed in the Circuit Court for Baltimore County by Michael R. McCann, Esquire, on behalf of Harold Burns, Jr., Ellyn Brown and Falls Road Community Association.
June 10	Copy of Petition for Judicial Review received from the Circuit Court for Baltimore County by the Board of Appeals.
June 11	Certificate of Compliance sent to all parties and interested persons.
August 9, 2010	Transcript of testimony before Board filed.
August 9, 2010	Record of Proceedings filed in the Circuit Court for Baltimore County.
November 5, 2010	Transcript of testimony before Hearing Officer provided to Board.

November 8, 2010 Supplemental Record of Proceedings filed in the Circuit Court for
Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said
Board acted are hereby forwarded to the Court, together with exhibits entered into evidence
before the Board.

Sunny Cannington

Sunny Cannington, Legal Secretary
County Board of Appeals
The Jefferson Building, Suite 203
105 W. Chesapeake Ave.
Towson, Maryland 21204
410-887-3180

c: Robert Hoffman, Esquire
Patsy Malone, Esquire
Christopher Mudd, Esquire
Sister Shawn Marie Maguire, Headmistress/Maryvale Preparatory School, Inc.
Michael J. Pieranunzi/Century Engineering
Jim Carroll/Design Collective
Mickey Cornelius/The Traffic Group, Inc.
Robert Sheesley/EcoSense, Inc.
Henry Leskinen/Eco-Science Professionals, Inc.
Michael McCann, Esquire
Harold H. Burns, Jr.
Marcia Goldberg, Falls Road Community Assoc.
Ellyn Brown
Office of People's Counsel
Timothy Kotroco, Director/PDM
Arnold F. "Pat" Keller, III, Director, Planning
William J. Wiseman, III, Zoning Commissioner
Colleen Kelly, Development Manager
W. Carl Richards, Zoning Review Office
Nancy C. West, Assistant County Attorney
John Beverungen, County Attorney

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

September 22, 2009

Via Hand Delivery

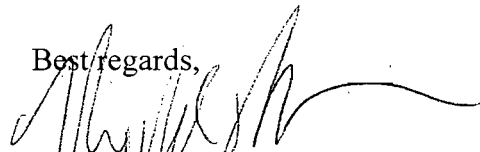
Theresa R. Shelton, Administrator
Baltimore County Board of Appeals
Suite 203, Jefferson Building
105 W. Chesapeake Avenue
Towson, MD 21204

Re: Zoning Commissioner Decision
Development Plan Hearing, Petitions for Special Hearing and Variance
Westwicke/Maryvale Preparatory School
Case Nos. VIII-651 & 2009-0202-SPHA

Dear Ms. Shelton:

Enclosed for filing in the above appeal, please find a copy of Appellants' petition in support of appeal. Thank you.

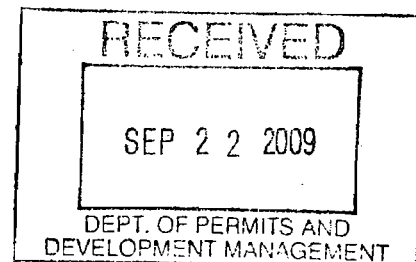
Best regards,



Michael R. McCann

Enclosure

cc: Timothy Kotroco, PDM
William Wiseman, Zoning Commissioner
Robert Hoffman, Esq.



9/9/09

**IN RE: DEVELOPMENT PLAN HEARING AND
PETITIONS FOR SPECIAL HEARING AND
VARIANCE**

S/W Falls Road (MD Rt. 25), N/S

Greenside Valley Road

(Westwicke/Maryvale Preparatory School)

8th Election District

2nd Council District

Maryvale Preparatory School, Inc.

Owner/Petitioner

BEFORE THE

ZONING COMMISSIONER

OF BALTIMORE COUNTY

Case Nos. VIII-651 &
2009-0202-SPHA

* * * * *

NOTICE OF APPEAL

The Falls Road Community Association and Harold H. Burns, Jr., hereby notice an appeal of the Zoning Commissioner's August 11, 2009 decision approving the development plan, granting special hearing relief, and granting a variance to Petitioner Maryvale Preparatory School, Inc. Pursuant to Rule 3 of the Rules of Practice and Procedure of the Board of Appeals, the addresses of appellants are:

Falls Road Community Association
P.O. Box 555
Brooklandville, MD 21022

Harold H. Burns, Jr.
5 Candlestick Drive
Lutherville, MD 21093

RECEIVED

SEP 09 2009

[Signature]

Respectfully submitted,

[Signature]

Michael R. McCann
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(410) 825-2150

Attorneys for Appellants

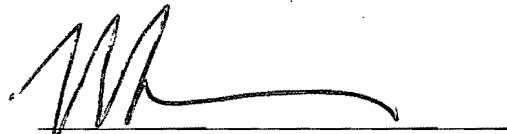
Dated: September 9, 2009

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 9th day of September 2009, a copy of the foregoing Notice of Appeal was mailed, first class, postage prepaid to:

Robert A. Hoffman, Esq.
Patsy Malone, Esq.
James A. Dunbar, Esq.
Venable, LLP
210 West Pennsylvania Avenue
Suite 500
Towson, Maryland 21204-5517

Attorneys for Developer


Michael R. McCann

5/7/10

**IN RE: DEVELOPMENT PLAN HEARING AND
PETITIONS FOR SPECIAL HEARING
AND VARIANCE**

SW/S Falls Road (MD Rt. 25), N/S
Greenside Valley Road

**(WESTWICKE/MARYVALE
PREPARATORY SCHOOL)**

8th Election District
2nd Council District

Maryvale Preparatory School, Inc.
Owner/Petitioner

BEFORE THE
BOARD OF APPEALS
FOR
BALTIMORE COUNTY

Case Nos: **CBA-10-013**
and **09-0202-SPHA**

* * * * *

OPINION

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

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

BACKGROUND

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

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

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

FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

APPELLANT'S ISSUES

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

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

TESTIMONY/EVIDENCE ON ISSUES

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

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

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

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

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

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

(e) *Actions by Board of Appeals.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There was no cross-examination of this witness.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thereafter, Protestants presented two (2) witnesses.

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

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

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

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

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

DECISION

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

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

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

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

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

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

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

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

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

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

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

Id. at 698.

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

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

Id. at 710.

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

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

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

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

ORDER

THEREFORE, IT IS THIS 7th day of May, 2010 by the
Board of Appeals of Baltimore County

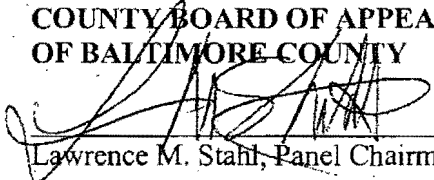
ORDERED that the Zoning Commissioner's August 11, 2009 Order APPROVING the four-paged redlined 1st Amended Development Plan for the WESTWICKE/MARYVALE PREPARATORY SCHOOL, be and is hereby **AFFIRMED**; and

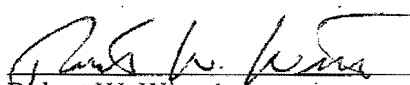
IT IS FURTHER ORDERED that the Zoning Commissioner's August 11, 2009 Order GRANTING of Petition for Special Hearing filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to amend all prior approved plans and to amend the relief granted in Case No. 06-128-SPHA, be and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

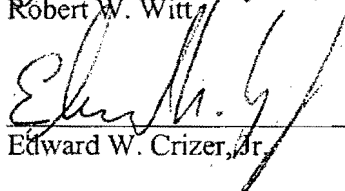
IT IS FURTHER ORDERED that the Zoning Commissioner's August 11, 2009 Order GRANTING the Petition for Variance seeking relief from Sections 1A01.3.B.3 and 102.2 of the B.C.Z.R., to allow a principal building to principal building setback of 29 feet in lieu of the required 70 feet, be and is hereby **AFFIRMED**.

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

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Lawrence M. Stahl, Panel Chairman


Robert W. Witt


Edward W. Crizer, Jr.

9/19/08

IN THE MATTER OF:
THE FALLS ROAD COMMUNITY
ASSOCIATION

FOR JUDICIAL REVIEW OF
THE DECISION OF THE
BALTIMORE COUNTY
BOARD OF APPEALS

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No. 03-C-07-12594

* * * * *

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on the Petition for Judicial Review filed by the Falls Road Community Association ("Association") and Harold Burns, Jr., ("Mr. Burns") (together, "Petitioners") on November 1, 2007. Petitioners are seeking review of the October 4, 2007 decision of the Baltimore County Board of Appeals ("The Board") to dismiss Petitioners' appeals of the Zoning Commissioner's decision ("Zoning Order") to grant a Petition for Special Hearing filed by Maryvale Preparatory School, Inc. ("Respondent"). A hearing on this matter was held on September 17, 2008. For the reasons set forth herein, the decision of the Board shall be affirmed.

BACKGROUND

In 2005, Respondent filed a Petition for Special Hearing with the Zoning Commissioner to amend a previous order issued in 1995. This Petition sought to amend the previous order by allowing Respondent to increase enrollment and increase the number of buildings on Respondent's campus. On January 10, 2006, the Zoning Commissioner issued the Zoning Order granting Respondent's Petition for Special Hearing.

Respondent then sought a separate form of relief, the approval from the Baltimore County Development Review Committee for a "limited exemption" from the Baltimore County Development Regulations to allow for the construction of new buildings on Respondent's campus. In a February 1, 2006 letter, the Baltimore County Director of Permits and Development Management approved Respondent's request ("Development Order").

Petitioners and several other parties appealed to the Board regarding both the Zoning Order (Case No. 06-128-SPHA) and the Development Order (Case No. CBA 06-006). The Board consolidated these appeals. On September 6, 2006, the Board held a hearing on all of the appeals. At the hearing, Mr. Burns stated that he was representing himself while Michael R. McCann, Esq. indicated that he was representing "[the Association], the Valleys Planning Council, Doug Carroll and Gary Gensler." T. 4:4; 4:7-9.

At the beginning of the September 6, 2006 hearing, the parties informed the Board that a resolution may have been reached and that the appeals regarding the Zoning Order were to be withdrawn. T. 5-11. Later in the hearing, however, an issue was raised off the record that the parties had not addressed. As a result of this issue, Petitioners requested an indefinite recess to address the issue. T. 17:15-21; 18:1-4. At no time did Petitioners revoke the withdrawal of their appeals.

Following the hearing, the parties did not reach an agreement. Over a year later, on September 27, 2007, Petitioners sent a letter to the Board stating that the parties failed to reach an agreement and requesting that the Board

schedule a hearing on the appeals concerning both the Zoning Order and the Development Order. In an October 2, 2007 letter, the Board advised Petitioners that all parties had withdrawn their appeals concerning the Zoning Order. On October 4, 2007, the Board issued an Order dismissing the appeals of the Zoning Order. (A hearing was later scheduled on the Development Order.)

On November 1, 2007, Petitioners filed a Petition for Judicial Review regarding the Board's decision to dismiss the appeals of the Zoning Order.

ISSUE

Petitioner presents one issue for review:

- (1) Did the Board err in dismissing Petitioners' appeals of the Zoning Order?

The Court's answer to this question is "No," and the Board's decision shall be affirmed.

STANDARD OF REVIEW

"A court's role in reviewing an administrative agency adjudicatory decision is narrow." *Board of Physician Quality Assurance v. Banks*, 354 Md. 54, 67 (1999) (citing *United Parcel Service, Inc. v. People's Counsel*, 336 Md. 569, 576 (1994)). The court is "limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *United Parcel Service, Inc.*, 336 Md. at 577; see also MD. ANN. CODE, STATE GOV'T ART. § 10-222(h).

"In applying the substantial evidence test, a reviewing court decides whether a reasoning mind could have reached the factual conclusion the

agency reached.” *Banks*, 354 Md. at 68 (quoting *Bulluck v. Pelham Wood Apts.*, 283 Md. 505, 512 (1978)). The court “must review the agency’s decision in the light most favorable to it; the agency’s decision is *prima facie* correct and presumed valid....” *CBS, Inc. v. Comptroller*, 319 Md. 687, 698 (1990) (quoting *Ramsey, Scarlett & Co. v. Comptroller*, 302 Md. 825, 834-35 (1985)). The court needs to defer to the fact-finding of the agency and the inferences drawn by the agency, as long as those inferences are supported by the record. *CBS, Inc.*, 319 Md. at 698. A reviewing court must not “substitute its own judgment for the expertise of those persons who constitute the administrative agency.” *United Parcel Service, Inc.*, 336 Md. at 576-77 (quoting *Bulluck*, 283 Md. at 513).

DISCUSSION

(1) Did the Board err in dismissing Petitioners’ appeals of the Zoning Order?

Petitioners both claim that they did not withdraw their appeals of the Zoning Order during the September 6, 2006 hearing. The record, however, does not support these assertions.

The transcript indicates that Petitioners both withdrew their appeals of the Zoning Order. At the beginning of the hearing, Robert A. Hoffman, Esq., on behalf of Respondents, stated that “Mr. McCann...and Mr. Burns, are ready to withdraw all of the appeals in the special exception case only, which is Case No. 06-128-SPHA....” T. 5:9-11.

At that time, Mr. McCann indicated to the Board that Petitioners were still concerned with an issue that had nothing to do with the Zoning Order. Based on this issue, Mr. McCann stated that, after the issue was considered further,

the Board would be notified and, if necessary, a hearing would be requested.

T. 6:14-21 - 7:1-15.

The transcript then reflects that Mr. McCann, on behalf of his clients, requested to withdraw the appeal of Case No. 06-128-SPHA only. T. 8:8-11.

Mr. McCann stated that he represented the Association, Valleys Planning Council, Gary Gensler, Lauri Stubb, Jack Shapiro, Carl Schramm, Lance Roth, Ellyn Brown, and Douglas Carroll. T. 8:21 - 9:1-19.

The Board discussed withdrawal and the consequences of withdrawal with Mr. Burns. T. 10-15. After this discussion, Mr. Burns indicated that, with the understanding that the stormwater management issue would be addressed in the appeal of the Development Order, he would withdraw his appeal of the Zoning Order. T. 15:21 - 16:1. Additionally, at the conclusion of the hearing, Mr. Burns stated, "I'm done. I'm out. I've dropped my appeal. That's over." T. 18:8-9.

Based on the testimony and the discussions that took place during the hearing, Mr. Hoffman, on behalf of Respondents, stated the following at the end of the hearing:

We are not going to pursue construction of any of the buildings or elements of the special exception plan.

I think that's really what we're saying now. You are withdrawing [sic] your appeal. *Now I have a [sic] approved special exception plan.* They want to make sure we are not going to build them until we've decided either we have resolved everything and, of course, we would build them with a building permit, or we are arguing again, and then we would get to do whatever we want to do.

T. 16:13-21 – 17:1 (emphasis added). Petitioners never objected to this characterization of the status of the case. See T.

Thus, there was substantial evidence in the record for the Board to determine that Petitioners had withdrawn their appeals of the Zoning Order. Both Mr. McCann, on behalf of the Association, and Mr. Burns explicitly withdrew their appeals on the record during the September 6, 2006 hearing. As a result, a reasoning mind could reach the factual conclusion the Board reached that the record was to remain open as to the appeals concerning the Development Order only. Accordingly, the decision of the Board to dismiss the Petitioners' appeals of the Zoning Order shall be affirmed.

CONCLUSION

For the reasons set forth herein, the decision of the Baltimore County Board of Appeals shall be affirmed. It is so ORDERED.

9/19/08
Date

Susan Souder
Judge Susan Souder

Copies sent to:

Michael McCann, Esq.
Michael R. McCann, P.A.
118 W. Pennsylvania Ave.
Towson, MD 21204

James A. Dunbar, Esq.
Christopher D. Mudd, Esq.
Venable, LLP
210 Allegheny Ave.
P.O. Box 5517
Towson, MD 21285-551

9/22/09

IN RE: DEVELOPMENT PLAN HEARING AND	*	BEFORE THE
PETITIONS FOR SPECIAL HEARING AND	*	COUNTY BOARD OF
VARIANCE	*	APPEALS
S/W Falls Road (MD Rt. 25), N/S	*	
Greenside Valley Road	*	
(Westwicke/Maryvale Preparatory School)	*	Case Nos. VIII-651 &
	*	2009-0202-SPHA
8 th Election District	*	
2 nd Council District	*	
	*	
Maryvale Preparatory School, Inc.	*	
<i>Owner/Petitioner</i>	*	

* * * * *

PETITION IN SUPPORT OF APPEAL

Appellants, Falls Road Community Association and Harold Burns, pursuant to section 32-4-281(b)(2) of the Baltimore County Code, submit this petition in support of their appeal of the August 11, 2009 Amended Development Plan Order of the Baltimore County Zoning Commissioner.

I. GROUND'S FOR THE APPEAL AND REASONS WHY THE HEARING OFFICER'S DECISION SHOULD BE REVERSED AND THIS CASE REMANDED

Appellants contend that the Hearing Officer erred in several respects in approving the Developer's amended development plan and granting the Developer's petition for special hearing. These errors include:

1. The Hearing Officer erred in denying Appellants' request for a postponement of the hearing, which was requested by counsel due to prior commitments in two other cases, as stated in correspondence and other documents submitted in evidence. (Am. Dev. Plan Order, pp. 11-12).
2. The Hearing Officer erred in denying Appellants' motion to dismiss by concluding he did not have the authority to determine whether the Developer complied with County Code provisions delineating the process for the review and approval of development plans. (See Protestants' Ex. 1). The

Developer did not comply with these County Code provisions, but rather initiated an incomplete and abbreviated review and approval process. (Am. Dev. Plan Order, pp. 12-15).

3. The Hearing Officer erred in determining that the County and the Developer complied with the County Code provisions that delineate the process for the review and approval of development plans by complying with Policy No. I.e. of the Policy Manual of the Department of Permits and Development Management. (Am. Dev. Plan Order, pp. 12-15).

4. The Hearing Officer erred in denying Appellants' second motion to dismiss by concluding that the Developer did not fail to comply with Policy No. VI of the Policy Manual of the Department of Permits and Development Management, entitled "Red-lined Development Plans." (Am. Dev. Plan Order, pp. 22-23).

5. The Hearing Officer erred in interpreting various provisions in the County Code (33-4-101 *et seq.*) and concluding that the proposed stormwater management facilities did not have to comply with current law governing stormwater management, namely the 2000 Maryland Stormwater Design Manual. (Am. Dev. Plan Order, pp. 16-21).

6. The Hearing Officer erred in granting the Developer's Petition for Special Hearing for the reasons stated above, and erred in concluding that the Developer satisfied the criteria in sections 502.1 and 1B01.3.A.7.b of the Zoning Regulations. (Am. Dev. Plan Order, pp. 23-25).

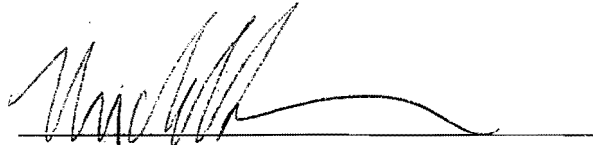
7. The Hearing Officer erred in finding that certain witnesses appeared and testified for the Developer when, in fact, they did not, namely Mickey Cornelius, Robert Sheesley, Henry Leskinan, and Robert Wirth. (Am. Dev. Plan Order, pp. 5-6).

II. RELIEF SOUGHT BY APPELLANT

Appellants request that the Board grant the following relief. First, the Board should find that there were legitimate reasons for Appellants' postponement request and that a postponement should have been granted, and reverse the Hearing Officer's denial of Appellants' request. Second, the Board should reverse the Hearing Officer's finding that he lacked authority to determine whether the amended development plan complied with the review and approval process delineated in the County Code. Third, the Board should reverse the Hearing Officer's finding that the Developer complied with Policy No. I.e. of the Policy Manual of the Department of Permits and Development Management. Fourth, the Board should reverse the Hearing Officer's finding that the Developer did not violate Policy No. VI of the Policy Manual of the Department of Permits and Development Management, entitled "Red-lined Development Plans." Fifth, the Board should reverse the Hearing Officer's finding that the proposed stormwater management facilities did not have to comply with current law governing stormwater management, namely the 2000 Maryland Stormwater Design Manual. Sixth, the Board, for these same reasons, should reverse the Hearing Officer's granting of the Developer's Petition for Special Hearing and finding that the Developer satisfied the criteria in sections 502.1 and 1B01.3.A.7.b of the Zoning Regulations. Seventh, the Board should find that Mickey Cornelius, Robert Sheesley, Henry Leskinen, and Robert Wirth did not, in fact, testify in favor of the amended development plan.

For these reasons, the Board should also remand this case to the Department of Permits and Development Management so that the amended development may proceed through the review and approval process delineated in the County Code, including the conduct of another Hearing Officer's hearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Michael R. McCann', written over a horizontal line.

Michael R. McCann
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(410) 825-2150

Attorneys for Appellants

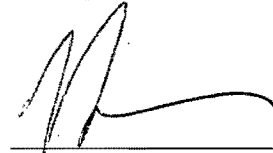
Dated: September 22, 2009

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 22nd day of September 2009, a copy of the foregoing Petition in Support of Notice of Appeal was mailed, first class, postage prepaid to:

Robert A. Hoffman, Esq.
Patsy Malone, Esq.
James A. Dunbar, Esq.
Venable, LLP
210 West Pennsylvania Avenue
Suite 500
Towson, Maryland 21204-5517

Attorneys for Developer

A handwritten signature in black ink, appearing to read 'Michael R. McCann', is written over a horizontal line.

Michael R. McCann

5/22/09

IN THE MATTER OF
MARYVALE SCHOOL AKA WESTWICKE
11300 FALLS ROAD
8th Election District
3rd Councilmanic District

RE: Appeal of PDM Material Change
Letter dated January 5, 2009
PDM No. VIII-651

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No.: CBA-09-003

* * * * *

OPINION

This matter has come before the Board of Appeals upon an appeal taken by Protestants to a letter dated January 5, 2009 from Walter T. Smith, Jr., Development Manager for Baltimore County Department of Permits and Development Management (herein referred to as "PDM") to Michael R. McCann, Esquire, Counsel for Falls Road Community Association and Harold Burns, Jr.

The Board convened for a hearing on May 12, 2009. Appearing on behalf of Petitioner, Maryvale School, was Robert A. Hoffman, Esquire and James Dunbar, Esquire. Nancy West, Assistant County Attorney, also appeared before the Board representing Baltimore County. Aforementioned Protestants were represented by Michael R. McCann, Esquire.

At the hearing, a preliminary motion was raised by Mr. Dunbar requesting that the Board dismiss Protestants' appeal. He stated that the matter was not yet ripe for an appeal, and that the letter of January 5, 2009 was not an appealable event. The parties presented oral argument and submitted several Court opinions to the Board for its review.

The Board has reviewed several cases in this matter. Petitioner believes that the matter of *Meadows of Greenspring Homeowners Association, Inc. v. Foxleigh Enterprises, Inc.*, 133 Md.App.510, 758 A.2d 611 (herein referred to as "Foxleigh") is controlling. The Foxleigh

matter is very much the same as the situation in this case. It ultimately concerns an administrative letter written to a party and the determination of whether or not that letter is an appealable event. The Court of Special Appeals made very clear in that decision that a letter only informing a party of its requirements for subsequent approval, does not, in and of itself, act as an appealable event. The Court found that such "instructions" as to the process by which a decision is made, is procedural in detail and is in no way a final decision amenable to appeal by any aggrieved party. The Board was also presented the case of *Beth Tfiloh Congregation of Baltimore City, Inc. v. Glyndon Community Association, Inc.*, 831 A.2d 97 (2003), (herein referred to as "Beth Tfiloh"). The Board reviewed Beth Tfiloh as it was a later dated case than Foxleigh. Although the fact pattern in the Beth Tfiloh matter was somewhat different than that raised here, the Court described the Foxleigh decision in detail and noted that Foxleigh did not concern the denial of an exemption and was not the final operative event which would then be subject to an appeal to the Board of Appeals.

Applying the case at bar to the case law reviewed, this Board finds unanimously that the letter of January 5, 2009 simply informed Mr. McCann as to the procedure to be imposed upon Petitioners as a result of a previous decision rendering their requested changes to the underlying development plan as "material". This is not the end of this matter, in fact, it was written as a response to a letter sent by Mr. McCann on December 8, 2008; without which it would never have been written at all. It is simply a description of how the County would proceed to a point at which an appealable decision might in fact be made. Once there has been a hearing as set forth in the procedures laid out in the January 5, 2009 letter, 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 followed was in fact lawful and appropriate. At that time, those questions could in fact be addressed.

However, at this time, the issue is clear. It is simply whether or not the January 5, 2009 letter rises to the occasion of an appealable incident. We unanimously find that it does not.

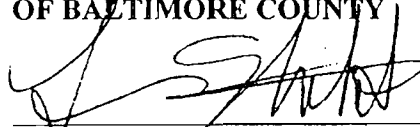
ORDER

THEREFORE, IT IS THIS 22nd day of May, 2009 by the
County Board of Appeals of Baltimore County

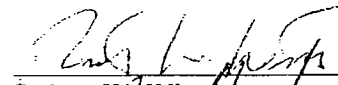
ORDERED that Petitioners' Motion to Dismiss be and the same is hereby
GRANTED.

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*.

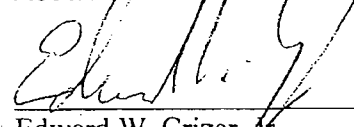
**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**



Lawrence M. Stahl, Panel Chair



Robert W. Witt



Edward W. Crizer, M.

8/11/09

**IN RE: DEVELOPMENT PLAN HEARING AND
PETITIONS FOR SPECIAL HEARING
AND VARIANCE**

SW/S Falls Road (MD Rt. 25), N/S
Greenside Valley Road
(WESTWICKE/MARYVALE
PREPARATORY SCHOOL)

8th Election District
2nd Council District

Maryvale Preparatory School, Inc.
Owner/Petitioner

BEFORE THE
ZONING COMMISSIONER
FOR
BALTIMORE COUNTY

**Case Nos. VIII-651 &
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

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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.

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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

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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

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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.

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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:

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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

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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.

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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

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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.

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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.

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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 facility 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 and CPV management, two, ten and one hundred 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.

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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."

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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 hearing.

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:

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Date 8-11-09
By [signature]

"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 in 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.

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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

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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.

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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 transport (in addition the school provides a bus for student transport) 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 that the proposed new facilities would be consistent with the spirit and intent of the current R.C.2 zoning classification

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By [Signature]

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

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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

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By [Signature]

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.

ORDER REVENUE FROM FINING
Date 8-11-09
By [Signature]

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.

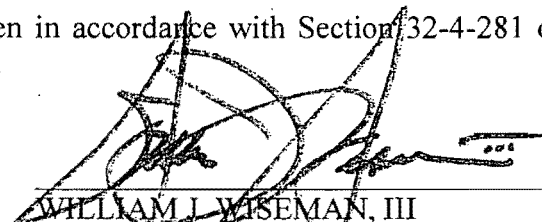
THEREFORE, IT IS ORDERED by this Zoning Commissioner/Hearing Officer for Baltimore County this 11th day of August 2009 that the four-paged redlined 1st Amended Development Plan for the **WESTWICKE/MARYVALE PREPARATORY SCHOOL**, identified herein as Developer's Exhibit 6A through 6D, be and is hereby 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

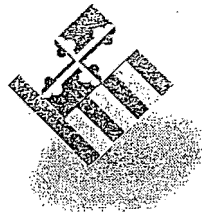
IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Sections 1A01.3.B.3 and 102.2 of the B.C.Z.R., to allow a principal building to principal building setback of 29 feet in lieu of the required 70 feet, in accordance with Baltimore County Exhibit 2 and Developer's Exhibit 6C, be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


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

APPROVED FOR FILING
date 8-11-09
iv



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

August 10, 2009

WILLIAM J. WISEMAN III
Zoning Commissioner

Robert A. Hoffman, Esquire
Patsy Malone, Esquire
Venable, LLP
210 West Pennsylvania Avenue
Suite 500
Towson, MD 21204

**RE: DEVELOPMENT PLAN HEARING AND PETITIONS FOR SPECIAL
HEARING AND VARIANCE**

SW/S Falls Road (MD Rt. 25), N/S Greenside Valley Road
(WESTWICKE/MARYVALE PREPARATORY SCHOOL)
8th Election District - 2nd Council District
Maryvale Preparatory School, Inc. - *Owner/Petitioner*
Case Nos. VIII-651 & 2009-0202-SPHA

Dear Counsel:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The development plan has been approved and the Petitions for Special Hearing and Variance have been granted, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Department of Permits and Development Management office at 887-3391.

Very truly yours,

A handwritten signature in black ink, appearing to read "W. J. Wiseman III", written over a horizontal line.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw

c: Sister Shawn Marie Maguire, Headmistress, Maryvale Preparatory School, Inc.,
11300 Falls Road, Brooklandville, MD 21022
Robert T. and Barbara Cawley, 25 Treadwell Court, Lutherville, MD 21093
Michael J. Pieranunzi, Century Engineering; 10710 Gilroy Road, Hunt Valley, MD 21031
John W. Ranocchia, Sr., Century Engineering; 10710 Gilroy Road, Hunt Valley, MD 21031
Jim Carroll, Design Collective, 1506 Labelle Avenue, Towson, MD 21204

7/16/09
IN RE: DEVELOPMENT PLAN HEARING & *
PETITIONS FOR SPECIAL HEARING *
AND VARIANCE *

(11300 Falls Road) *

8th Election District *
2nd Council District *

Maryvale Preparatory School, Inc. *
Developer/Petitioner *

BEFORE THE
ZONING COMMISSIONER

OF

BALTIMORE COUNTY

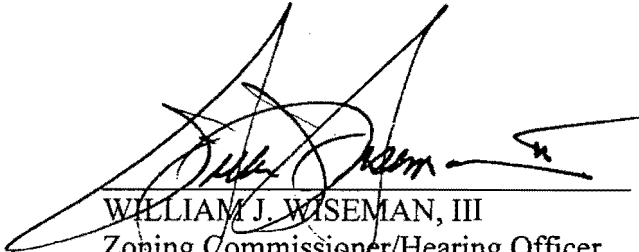
Case Nos. VIII-651 &
2009-0202-SPHA

* * * * *

ORDER ON MOTION FOR CONTINUANCE

Having considered the request for postponement of the scheduled hearing filed by Falls Road Community Association and Harold Burns, Jr. and responses thereto, it is the Order of this Commission that the previous denial issued by the Director of the Department of Permits and Development Management (DPDM), shall be Affirmed. The basis of the request is the longstanding depositions scheduled in a case pending before the Circuit Court of Baltimore City, which conflicts with the public hearing on the development plan and zoning petitions in the captioned case. The attendance at depositions must be considered, at best, as the normal practice of law and therefore does not constitute "extraordinary circumstances" and therefore will not be deemed satisfactory to the Director or Zoning Commissioner as specified in the Rules of Practice and Procedure contained in Appendix G of the Baltimore County Zoning Regulations (B.C.Z.R.).

Date: July 16, 2009


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

c: Counsel of Record

7/16/09

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

July 16, 2009

WILLIAM J. WISEMAN III
Zoning Commissioner

Robert A. Hoffman, Esquire
Venable, LLP
210 West Pennsylvania Avenue, Suite 500
Towson, MD 21204

Michael R. McCann, Esquire
Michael R. McCann, P.A.,
118 West Pennsylvania Avenue
Towson, MD 21204

RE: DEVELOPMENT PLAN HEARING & PETITIONS FOR SPECIAL HEARING
AND VARIANCE

(Maryvale Preparatory School, Inc.)

Case Nos. VIII-651 & 2009-0202-SPHA

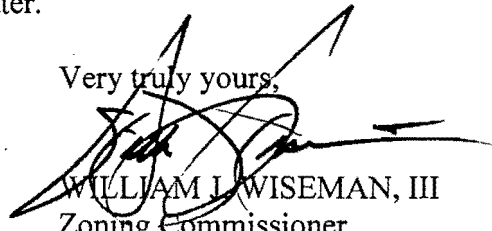
Dear Counsel:

In response to our conference call today in which we discussed the denial of the requested postponement (Order enclosed), I felt the following comments warranted.

In view of the fact that hearing date(s) for this project have been scheduled, public notice given through advertisement and posting, I must decline the Falls Road Community Association's request for postponement. It is also to be noted that all parties, including members of the community, have been aware of this project's progress. Moreover, Mr. Hoffman's client strongly objects to a continuance and the points in his letters are valid. In this regard, however, it should be mentioned that this case will not be concluded on the first hearing date and those that disfavor the project will be accorded an opportunity to present their testimony and evidence. While I appreciate the fact that Mr. McCann has a prior commitment that will prevent him from attending Thursday's hearing, it would be unfair to the Developer, its counsel, County agency representatives, as well as other interested citizens to postpone the hearing at this juncture.

Thank you for your understanding in this matter.

Very truly yours,



WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw

c: Timothy M. Kotroco, Director, Department of Permits and Development Management
Colleen Kelly, Project Manager, Department of Permits and Development Management



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 11300 Falls Road
which is presently zoned R.C. 2 and R.C. 5

(This petition **must** be filed in person, in the zoning office, in triplicate, with original signatures.)

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

(This box to be completed by planner)

SEE ATTACHED SHEET

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Robert A. Hoffman

Name - Type or Print

Robert A. Hoffman

Signature

Venable LLP

Company

210 Allegheny Avenue

410-494-6200

Address

Telephone No.

Towson

MD

21204

City

State

Zip Code

Legal Owner(s):

SEE ATTACHED SHEET

Name - Type or Print

Signature

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Representative to be Contacted:

Robert A. Hoffman

Name

210 Allegheny Avenue

410-494-6200

Address

Telephone No.

Towson

MD

21204

City

State

Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

Case No. 2009-0202 SPHA

REV 9/15/98

UNAVAILABLE FOR HEARING

Reviewed By

Date

2-4-09

UNDER RECEIVED FOR FILING

Date

8-11-09

By

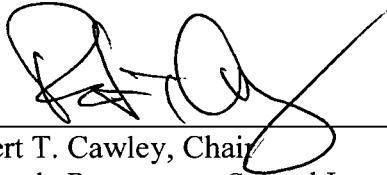
[Signature]

**Petition for Special Hearing
for Maryvale Preparatory School**

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 the school use.

**Petition for Variance and Special Hearing
for Maryvale Preparatory School**

Maryvale Preparatory School, Inc.

A handwritten signature in black ink, appearing to read 'R. Cawley', is written over a horizontal line.

Robert T. Cawley, Chair
Maryvale Preparatory School Inc.
Board of Trustees
11300 Falls Road
Brooklandville, Maryland 21022
(410) 339-5884



Petition for Variance

to the Zoning Commissioner of Baltimore County for the property

located at 11300 Falls Road

which is presently zoned R.C. 2 and R.C. 5

Deed Reference: 23481 / 298 Tax Account # 0820066828

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s)

SEE ATTACHED SHEET

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty.)

TO BE DETERMINED AT HEARING

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above Variance, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Robert A. Hoffman

Name - Type or Print

Signature
Venable LLP

Company

210 Allegheny Avenue

410-494-6200

Address

Telephone No.

Towson

MD

21204

City

State

Zip Code

Legal Owner(s):

SEE ATTACHED SHEET

Name - Type or Print

Signature

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Representative to be Contacted:

Robert A. Hoffman

Name

210 Allegheny Avenue

410-494-6200

Address

Telephone No.

Towson

MD

21204

City

State

Zip Code

Case No. 2009-0202 SPHA

Office Use Only

Estimated Length of Hearing
Unavailable For Hearing

REV 8/20/07

UNDER RECEIVED FOR FILING

Date 8-11-09

By [Signature]

Date 2-4-09

ZONING DESCRIPTION
MARYVALE PROPERTY
107.7667 ACRES +/-

Beginning for the description of a 107.7667 Acre more or less Parcel near a fallen Granite Stone found and being measured, as now surveyed, South 70 degrees 09 minutes East 360 feet more or less from the centerline intersection of Greenspring Valley Road and Greenspring Avenue, said point of beginning being at the beginning of the 4th or North 02 degree 48 minute East 134 feet 4 inch line of that parcel of land described in the Deed dated May 14, 1970, between Trinity College Preparatory School, Incorporated and The Baltimore Province of the Sisters of Notre Dame De Namur, Inc., recorded among the Land Records of Baltimore County, Maryland in Liber O.T.G. 5098 folio 248, running thence leaving said point of beginning, for part of the distance binding on all of said 4th line and for part of the distance binding on all of the 5th line of said Deed, in all,

- 1) North 03 degrees 29 minutes 44 seconds West 1317.79 feet to a Stone found, running thence binding on all of the 6th through the 42nd lines and part of the 43rd line of said Deed, the thirty eight following courses, as now surveyed,
- 2) North 06 degrees 13 minutes 11 seconds West 133.75 feet to a Stone found,
- 3) North 07 degrees 08 minutes 37 seconds West 608.81 feet to a Granite Stone found,
- 4) North 18 degrees 05 minutes 27 seconds West 73.98 feet,
- 5) North 10 degrees 29 minutes 33 seconds East 99.97 feet,
- 6) North 36 degrees 01 minutes 27 seconds West 94.97 feet,
- 7) North 24 degrees 41 minutes 27 seconds West 60.98 feet,
- 8) North 24 degrees 44 minutes 41 seconds West 8.99 feet,
- 9) North 61 degrees 40 minutes 41 seconds West 99.94 feet,
- 10) North 01 degrees 11 minutes 41 seconds West 239.86 feet,
- 11) North 48 degrees 28 minutes 19 seconds East 39.98 feet,
- 12) North 39 degrees 58 minutes 41 seconds West 47.97 feet,
- 13) North 59 degrees 25 minutes 41 seconds West 59.97 feet,
- 14) North 19 degrees 49 minutes 41 seconds West 99.94 feet,
- 15) North 19 degrees 47 minutes 43 seconds West 9.99 feet,
- 16) North 63 degrees 36 minutes 17 seconds East 51.30 feet,
- 17) North 06 degrees 23 minutes 43 seconds West 24.97 feet,
- 18) North 34 degrees 53 minutes 43 seconds West 149.84 feet,
- 19) North 43 degrees 23 minutes 43 seconds West 84.91 feet,
- 20) North 69 degrees 53 minutes 43 seconds West 59.94 feet,
- 21) North 28 degrees 53 minutes 43 seconds West 64.93 feet,
- 22) North 44 degrees 23 minutes 43 seconds West 119.87 feet,
- 23) North 15 degrees 06 minutes 17 seconds East 44.95 feet,
- 24) North 12 degrees 23 minutes 43 seconds West 89.90 feet,
- 25) North 70 degrees 53 minutes 43 seconds West 274.71 feet,
- 26) North 34 degrees 23 minutes 43 seconds West 49.95 feet,
- 27) North 06 degrees 23 minutes 43 seconds West 59.94 feet,

- 28) North 13 degrees 36 minutes 17 seconds East 74.92 feet,
29) North 51 degrees 23 minutes 43 seconds West 54.94 feet,
30) North 31 degrees 23 minutes 43 seconds West 49.95 feet,
31) North 31 degrees 36 minutes 17 seconds East 34.96 feet,
32) North 00 degrees 06 minutes 17 seconds East 159.83 feet,
33) North 22 degrees 23 minutes 43 seconds West 49.95 feet,
34) North 17 degrees 36 minutes 17 seconds East 49.95 feet,
35) North 06 degrees 23 minutes 43 seconds West 49.95 feet,
36) North 51 degrees 23 minutes 43 seconds West 54.94 feet,
37) North 06 degrees 23 minutes 43 seconds West 74.92 feet,
38) South 78 degrees 48 minutes 18 seconds East, passing over a Granite Stone found at distance of 20.00 feet, in all, as now surveyed, 140.07 feet to a stone found and
39) South 72 degrees 27 minutes 13 seconds East 4.36 feet to a point at the most northwestern corner of the outline of that parcel of land shown on the Plat entitled "Plat of WESTWICKE", dated March 29, 1996, recorded among the Land Records of Baltimore County, Maryland in Plat Book S.M. 68 folio 88, running thence binding on the western and southern outline of said "Plat of WESTWICKE", the seven following courses, as now surveyed,
40) South 11 degrees 46 minutes 50 seconds East 91.30 feet,
41) South 79 degrees 08 minutes 15 seconds East 285.35 feet,
42) South 19 degrees 55 minutes 51 seconds East 1012.50 feet,
43) South 23 degrees 02 minutes 18 seconds East 655.84 feet,
44) North 21 degrees 43 minutes 00 seconds East 546.34 feet,
45) North 47 degrees 05 minutes 31 seconds East 200.00 feet and
46) South 72 degrees 02 minutes 14 seconds East 1393.93 feet to the northwestern side of Parcel A, shown on said "Plat of WESTWICKE", running thence binding on said northwestern side of said Parcel A, the eight following courses, as now surveyed,
47) North 08 degrees 22 minutes 41 seconds East 294.63 feet,
48) Northeasterly by a tangent curve to the right, having a radius of 359.92 feet for a distance of 231.06 feet, said curve being subtended by a chord bearing North 26 degrees 46 minutes 11 seconds East 227.12 feet,
49) by a line tangent to said curve North 45 degrees 09 minutes 41 seconds East 154.96 feet,
50) Northeasterly by a tangent curve to the left, having a radius of 339.89 feet for a distance of 115.68 feet, said curve being subtended by a chord bearing North 35 degrees 24 minutes 41 seconds East 115.12 feet,
51) Northeasterly by a tangent reversing curve to the right, having a radius of 460.39 feet for a distance of 96.42 feet, said curve being subtended by a chord bearing North 31 degrees 39 minutes 41 seconds East 96.25 feet,
52) by a line tangent to said curve North 37 degrees 39 minutes 41 seconds East 185.20 feet,
53) Northeasterly by a tangent curve to the left, having a radius of 1189.66 feet for a distance of 124.58 feet, said curve being subtended by a chord bearing North 34 degrees 39 minutes 41 seconds East 124.52 feet and
54) by a line tangent to said curve North 31 degrees 39 minutes 41 seconds East 204.86 feet to a point on the southwestern side of the Highway Widening of Falls Road, shown on said Plat, running thence binding on said southwestern side of said Highway Widening and binding on the northeastern side of said Parcel A,

55) South 39 degrees 17 minutes 29 seconds East 63.48 feet to a 1" Pinched Pipe found, running thence leaving said southwestern side of said Highway Widening, binding on the southeastern side of said Parcel A and binding on part of the most southeastern outline of said "Plat of WESTWICKE", the nine following courses, as now surveyed,

56) South 31 degrees 39 minutes 41 seconds West 184.14 feet,

57) Southwesterly by a tangent curve to the right, having a radius of 1249.66 feet for a distance of 130.86 feet, said curve being subtended by a chord bearing South 34 degrees 39 minutes 41 seconds West 130.80 feet,

58) by a line tangent to said curve South 37 degrees 39 minutes 41 seconds West 185.20 feet,

59) Southwesterly by a tangent curve to the left, having a radius of 400.39 feet for a distance of 83.86 feet, said curve being subtended by a chord bearing South 31 degrees 39 minutes 41 seconds West 83.70 feet,

60) Southwesterly by a tangent reversing curve to the right, having a radius of 399.89 feet for a distance of 136.10 feet, said curve being subtended by a chord bearing South 35 degrees 24 minutes 41 seconds West 135.44 feet,

61) by a line tangent to said curve South 45 degrees 09 minutes 41 seconds West 154.96 feet,

62) Southwesterly by a tangent curve to the left, having a radius of 299.92 feet for a distance of 192.55 feet, said curve being subtended by a chord bearing South 26 degrees 46 minutes 11 seconds West 189.26 feet,

63) by a line tangent to said curve South 08 degrees 22 minutes 41 seconds West 368.06 feet and

64) South 06 degrees 06 minutes 41 seconds West 225.72 feet and to the beginning of the 68th line of said Deed (O.T.G. 5098 folio 248), running thence binding on all of said 68th line, binding on part of the southwestern side of said Parcel A and binding on part of the southern outline of said "Plat of WESTWICKE",

65) North 83 degrees 53 minutes 19 seconds West 10.00 feet, running thence leaving the outline of said "Plat of WESTWICKE", binding on all of the 69th through 74th lines and all of the 1st, 2nd and 3rd lines of said Deed (O.T.G. 5098 folio 248), the nine following courses, as now surveyed,

66) South 08 degrees 58 minutes 25 seconds West 200.25 feet,

67) South 83 degrees 53 minutes 19 seconds East 20.00 feet to a Granite Stone found,

68) South 06 degrees 06 minutes 45 seconds West 558.58 feet to a Granite Stone found,

69) South 86 degrees 07 minutes 45 seconds West 250.00 feet,

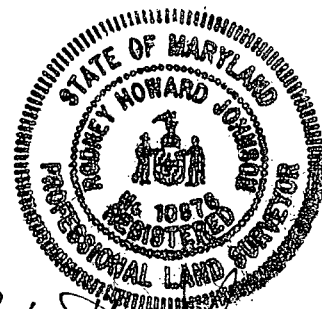
70) South 18 degrees 10 minutes 34 seconds West 1118.99 feet to a Granite Stone found,

71) South 01 degrees 56 minutes 19 seconds East 860.73 feet to a Granite Stone found,

72) North 60 degrees 32 minutes 53 seconds West 70.38 feet to a Stone found,

73) North 61 degrees 45 minutes 20 seconds West 740.74 feet and

74) South 84 degrees 24 minutes 40 seconds West 267.67 feet to the point of beginning.



Rodney H. Johnson
2/4/09

Containing 107.7667 Acres of land more or less

Being Part of that parcel of land described in the Deed dated May 14, 1970, between Trinity College Preparatory School, Incorporated and The Baltimore Province of the Sisters of Notre Dame De Namur, Inc., recorded among the Land Records of Baltimore County, Maryland in Liber O.T.G. 5098 folio 248.

OUR REF NUMBER	YOUR INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN	NET CHECK AMOUNT
		5/27/09 -	\$200.00			
		21441-213887 -	Maryvale Preparatory School/Land Use Issues			
		Baltimore County, Maryland				
		Filing fees				

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. **41551**

Date: June 2, 2009

PAID RECEIPT

BUSINESS ACTUAL TIME DRW
 6/02/2009 6/02/2009 11:05:59 1

REG MSD1 WALKIN JRIC JHR
 >> RECEIPT # 419236 6/02/2009 OFLN

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	206	0000		6150	1			200.00

Dept 5 528 ZONING VERIFICATION
 CR NO. 041551

Recpt Tot \$200.00
 \$200.00 CK \$0.00 CA
 Baltimore County, Maryland

Total: \$200.00

Rec From: Venable, Inc.

For: Revisions (Site Maps) case # 2009-0502-USA

DISTRIBUTION

WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

**CASHIER'S
 VALIDATION**

Michael R. McCann, P.A.

118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

September 9, 2009

Via Hand Delivery

Timothy M. Kotroco, Director
Baltimore County Department of
Permits and Development Management
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland, 21204

In Re: Zoning Commissioner Decision
Development Plan Hearing, Petitions for Special Hearing and Variance
Westwicke/Maryvale Preparatory School
Case Nos. VIII-651 & 2009-0202-SPHA

Dear Mr. Kotroco:

Enclosed please find a notice of appeal for filing in the above-referenced matter,
along with a check in the amount of \$325.00 for the filing fee.

Thank you for your attention to this matter.

Sincerely,



Michael R. McCann

Enclosures

cc: Baltimore County Board of Appeals (with enclosure)
Zoning Commissioner/Hearing Officer William J. Wiseman, III (with enclosure)
Robert A. Hoffman, Esq. (with enclosure)

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: #2009-0202-SPHA

11300 Falls Road

S/west side of Falls Road, 300 feet +/- n/west of Brooklandwood Road

8th Election District — 2nd Councilmanic District

Legal Owner(s): Maryvale Preparatory School, Inc.,
Robert Cawley, Chair

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 the school use. **Variance:** to permit a principal building to principal building setback of 29 feet in lieu of the required 70 feet.

Hearing: Thursday, July 23, 2009 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson 21204.

WILLIAM J. WISEMAN, III

Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at: (410) 887-3391.

JT 7/623 July 7

205144

CERTIFICATE OF PUBLICAT

7/9/, 2009

THIS IS TO CERTIFY, that the annexed advertisement w
in the following weekly newspaper published in Baltimore C
once in each of 1 successive weeks, the first publicatio
on 7/7/, 2009.

- ☒ The Jeffersonian
- ☐ Arbutus Times
- ☐ Catonsville Times
- ☐ Towson Times
- ☐ Owings Mills Times
- ☐ NE Booster/Reporter
- ☐ North County News

S. Wilkins

LEGAL ADVERTIS

CERTIFICATE OF POSTING

RE: Case No 2009-0202-SPHA

Petitioner/Developer CENTURY
ENGINEERING, MARKALE PREP

Date Of Hearing/Closing: 7/23/09

**Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue**

Attention:

Ladies and Gentlemen

This letter is to certify under penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property at GREENSPRING VALLEY ENTRANCE

This sign(s) were posted on July 7, 2009

Month, Day, Year

Sincerely,

Signature of Sign Poster and Date

Martin Ogle

60 Chelmsford Court

Baltimore, Md, 21220

443-629-3411



07/07/2009

TO: PATUXENT PUBLISHING COMPANY
Tuesday, July 7, 2009 Issue - Jeffersonian

Please forward billing to:
Patricia Malone
210 Allegheny Avenue
Towson, MD 21204

410-494-6200

CORRECTED NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2009-0202-SPHA

11300 Falls Road

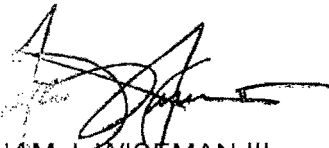
S/west side of Falls Road, 300 feet +/- n/west of Brooklandwood Road

8th Election District – 2nd Councilmanic District

Legal Owners: Maryvale Preparatory School, Inc., Robert Cawley, Chair

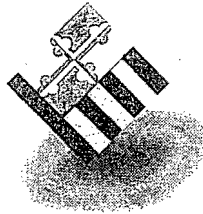
Special Hearing to amend all prior approved plans and to amend the relief granted in case no. 06-128-SPHA, including approval to add/relocate a storm water management outfall and confirmation of the number of parking spaces required for the school use. Variance to permit a principal building to principal building setback of 29 feet in lieu of the required 70 feet.

Hearing: Thursday, July 23, 2009 at 9:00 am. in Room 106, County Office Building,
111 West Chesapeake Avenue, Towson 21204



WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

June 10, 2009
TIMOTHY M. KOTROCO, *Director*
*Department of Permits and
Development Management*

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2009-0202-SPHA

11300 Falls Road

S/west side of Falls Road, 300 feet +/- n/west of Brooklandwood Road

8th Election District – 2nd Councilmanic District

Legal Owners: Maryvale Preparatory School, Inc., Robert Cawley, Chair

Special Hearing to amend all prior approved plans and to amend the relief granted in case no. 06-128-SPHA, including confirmation of the number of parking spaces required for the school use. Variance to permit a principal building to principal building setback of 29 feet in lieu of the required 70 feet.

Hearing: Thursday, July 23, 2009 at 9:00 am. in Room 106, County Office Building,
111 West Chesapeake Avenue, Towson 21204

A handwritten signature in black ink that reads "Timothy Kotroco".

Timothy Kotroco
Director

TK:klm

C: Robert Hoffman, 210 Allegheny Avenue, Towson 21204
Robert Cawley, Maryvale Prep. School, 11300 Falls Road, Brooklandville 21022

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WEDNESDAY, JULY 8, 2009.**
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

TO: PATUXENT PUBLISHING COMPANY
Tuesday, July 7, 2009 Issue - Jeffersonian

Please forward billing to:
Patricia Malone
210 Allegheny Avenue
Towson, MD 21204

410-494-6200

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2009-0202-SPHA

11300 Falls Road

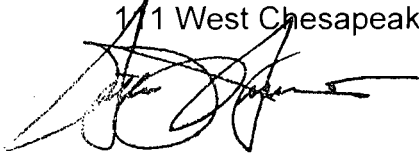
S/west side of Falls Road, 300 feet +/- n/west of Brooklandwood Road

8th Election District – 2nd Councilmanic District

Legal Owners: Maryvale Preparatory School, Inc., Robert Cawley, Chair

Special Hearing to amend all prior approved plans and to amend the relief granted in case no. 06-128-SPHA, including confirmation of the number of parking spaces required for the school use. Variance to permit a principal building to principal building setback of 29 feet in lieu of the required 70 feet.

Hearing: Thursday, July 23, 2009 at 9:00 am. in Room 106, County Office Building,
11 West Chesapeake Avenue, Towson 21204



WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

**DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW**

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

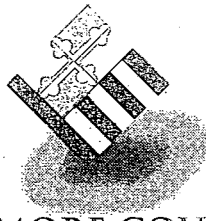
For Newspaper Advertising:

Item Number or Case Number: 2009-0202-SPHA
Petitioner: MARYVALE PREPARATORY SCHOOL INC.
Address or Location: 11300 FALLS ROAD

PLEASE FORWARD ADVERTISING BILL TO:

Name: PATRICIA A. MALONE
Address: 210 ALLEGHENY AVE
TOWSON, MD 21204

Telephone Number: 410-494-6200



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management

July 20, 2009

Robert A. Hoffman
Venable, LLP
210 W. Pennsylvania Avenue Ste. 500
Towson, MD 21204

Dear: Robert A. Hoffman

RE: Case Number 2009-0202-SPHA, 11300 Falls Rd

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on February 04, 2009. This letter is not an approval, but only a **NOTIFICATION**.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

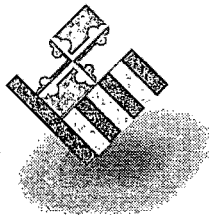
A handwritten signature in black ink, reading "W. Carl Richards, Jr." with a stylized flourish at the end.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:lnw

Enclosures

c: People's Counsel
Robert Cawley: Maryvale Preparatory School Inc.; 11300 Falls Rd.; Brooklandville, MD 21022



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

JOHN J. HOHMAN, *Chief*
Fire Department

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

February 11, 2009

ATTENTION: Zoning Review Planners

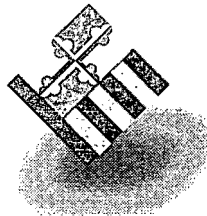
Distribution Meeting Of: February 9, 2009

Item Numbers 0202

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

Lieutenant Roland P Bosley Jr.
Fire Marshal's Office
410-887-4881 (C) 443-829-2946
MS-1102F

cc: File



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

JOHN J. HOHMAN, *Chief*
Fire Department

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

June 8, 2009

ATTENTION: Zoning Review Planners

Distribution Meeting Of: June 8.2009.

Item Numbers 0202

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

3. The site shall be made to comply with all applicable parts of the Baltimore County Fire Prevention Code prior to occupancy or beginning of operation.

Lieutenant Roland P Bosley Jr.
Fire Marshal's Office
410-887-4881 (C) 443-829-2946
MS-1102F

cc: File

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits &
Development Management

DATE: February 12, 2009

FROM: Dennis A. Kennedy, ^{DAK}Supervisor
Bureau of Development Plans
Review

SUBJECT: Zoning Advisory Committee Meeting
For February 16, 2009
Item Nos. 2009-0198, 0201, and 0202

The Bureau of Development Plans Review has reviewed the subject-zoning items, and we have no comments.

DAK:CEN:lrk
cc: File
ZAC-02162009-NO COMMENTS

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits &
Development Management

FROM: Dennis A. Kennedy, Supervisor
Bureau of Development Plans
Review

SUBJECT: Zoning Advisory Committee Meeting
For June 10, 2009
Item Nos. 2009-202, 288, 311, 312,
313, and 314

DATE: June 15, 2009

The Bureau of Development Plans Review has reviewed the subject-zoning items, and we have no comments.

DAK:CEN:dak
cc: File
ZAC-06152009 -NO COMMENTS



Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor

State Highway
Administration

John D. Porcari, Secretary
Neil J. Pedersen, Administrator

Maryland Department of Transportation

February 11, 2009

Ms. Kristen Matthews.
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 2009-0202-SPHA
MD 25 (Falls Road)
11300 Falls Road
Maryvale Preparatory School, Inc.
Special Hearing
Variance-

Dear Ms. Matthews:

We have reviewed the referenced plan and have no objection to approval, as a field inspection reveals that the existing access onto the property from MD 25 (Falls Road) appears adequate. No further review is necessary with regard to Maryvale Preparatory School, Inc. Case Number 2009-0202-SPHA.

Should you have any questions regarding this matter, please contact Michael Bailey at 410-545-5593 or 1-800-876-4742 extension 5593. Also, you may E-mail him at (mbailey@sha.state.md.us). Thank you for your attention.

Very truly yours,

for¹ Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/MB

Cc: Mr. Clark F. MacKenzie, Developer, Scottish Development Company, LLC
Mr. David Malkowski, District Engineer, SHA
Mr. Michael Pasquariello, Utility Engineer, SHA

My telephone number/toll-free number is _____
Maryland Relay Service for Impaired Hearing or Speech: 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone: 410.545.0300 • www.marylandroads.com





Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor

Beverley K. Swaim-Staley, Acting Secretary
Neil J. Pedersen, Administrator

Maryland Department of Transportation

June 16, 2009

Ms. Kristen Matthews.
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 2009-0202-SPHA
MD 25 (Falls Road)
11300 Falls Road
Maryvale Preparatory School, Inc.
Special Hearing
Variance-

Dear Ms. Matthews:

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Should you have any questions regarding this matter, please contact Michael Bailey at 410-545-5593 or 1-800-876-4742 extension 5593. Also, you may E-mail him at (mbailey@sha.state.md.us). Thank you for your attention.

Very truly yours,


Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/MB

Cc: Mr. Clark F. MacKenzie, Developer, Scottish Development Company, LLC
Mr. David Malkowski, District Engineer, SHA
Mr. Michael Pasquariello, Utility Engineer, SHA

My telephone number/toll-free number is _____
Maryland Relay Service for Impaired Hearing or Speech 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone 410.545.0300 • www.marylandroads.com

RE: PETITION FOR SPECIAL HEARING * BEFORE THE
AND VARIANCE *
11300 Falls Road; SW/S of Falls Road, * ZONING COMMISSIONER
300' NW of Brooklandwood Road *
8th Election and 2nd Councilmanic Districts * FOR
Legal Owner(s): Maryval Preparatory School, Inc *
Petitioner(s) * BALTIMORE COUNTY
* 09-202-SPHA

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent/ documentation filed in the case.

RECEIVED

FEB 18 2009

.....

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

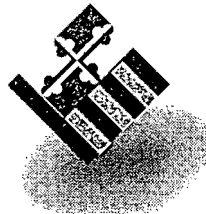
CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of February, 2009, a copy of the foregoing Entry of Appearance was mailed to Robert A Hoffman, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

WILLIAM J. WISEMAN III
Zoning Commissioner

July 1, 2009

Baltimore County Planning Board
Edward J. Gilliss, Chairman
c/o Baltimore County Office of Planning
The Jefferson Building
105 West Chesapeake Avenue, Suite 101
Towson, Maryland 21204

RE: Westwicke/Maryvale Preparatory School
1st Amended Development Plan
3rd Council District – 8th Election District
Case No. VIII-651

Ed
Dear Mr. Gilliss:

Baltimore County is currently reviewing Applicant Maryvale Preparatory School's Westwicke/Maryvale Preparatory School 1st Amended Development Plan. In response to a Planning Staff comment on the development plan, Maryvale has requested in writing that I refer the development plan to the Planning Board for consideration of the plan's involvement of a historic structure. The structure at issue is listed on the Baltimore County Final Landmarks List ("Wickcliffe," Castle at Maryvale, #336) and is located on the property.

Please consider this letter to be the referral required by Baltimore County Code Section 32-4-231(a)(3).

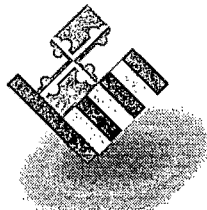
Very truly yours,

A handwritten signature in black ink, appearing to read "Bill", written over a horizontal line.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw

c: Patricia A. Malone, Esquire, Venable, LLP, 210 West Pennsylvania Avenue, Suite 500,
Towson, MD 21204
Arnold F. 'Pat' Keller, III, Director, Office of Planning



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management
October 6, 2009

Robert A. Hoffman, Esq.
Patsy Malone, Esq.
Venable, LLP
210 W. Pennsylvania Avenue, Ste. 500
Towson, MD 21204

Dear Counsel:

RE: Case 2009-0202-SPHA, Westwicke/Maryvale Preparatory School

Please be advised that an appeal of the above-referenced case was filed in this office on September 9, 2009 from Michael McCann on behalf of Harold Burnes, Jr., and the Falls Road Community Association. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to call the Board at 410-887-3180.

Sincerely,

A handwritten signature in black ink that reads "Timothy Kotroco".

Timothy Kotroco
Director

TK:klm

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Sister Shawn Marie Maguire, Headmistress, 11300 Falls Road, Brooklandville 21022
Mr. & Mrs. Cawley, 25 Treadwell Court, Lutherville 21093
Michael Pieranunzi, Century Engineering, 10710 Gilroy Road, Hunt Valley 21031
Jim Carroll, Design Collective, 1506 Labelle Avenue, Towson 21204
Michael McCann, 118 W. Pennsylvania Ave., Towson 21204

Mickey A. Cornelius, The Traffic Group, Inc., 9900 Frankin Square Drive, Suite H,
Baltimore, MD 21236
Robert W. Sheesley, Eco Sense, Inc., 8354 Chestnut Farm Lane, Ellicott City, MD 21043
Thomas R. Mills, Hydro-Terra, Inc., 3633 Cameron Court, Ellicott City, MD 21042
Henry Leskinen, Eco-Science Professionals, Inc., P.O. Box 5006, Glen Arm, MD 21057
Michael McCann, Esquire, 118 West Pennsylvania Avenue, Towson, MD 21204
Harold H. Burns, Jr., Esquire, 5 Candlestick Drive, Lutherville, MD 21093
Carl J. Schramm, 11055 Greenspring Avenue, Lutherville, MD 21093
Marcia W. Goldberg, Falls Rd. Community Assoc., 12165 Falls Road, Cockeysville, MD 21030
Marci P. Reihart, 16317 Lowe Road, Stewartstown, PA 17363
Libby Nagle, Maryvale Preparatory School, Inc., 11300 Falls Road, Brooklandville, MD 21022
Kelley Kilduff, 2304 Eastlake Road, Timonium, MD 21093
Jeanie Grant, 6 Hoban Court, Baltimore, MD 21236
Dolly Mersinger, P.O. Box 126, 5114 Mt. Carmel Road, Hampstead, MD 21074
A. Carroll Fackler, 210 West Seminary Avenue, Lutherville, MD 21093
Laura Hanna, 9602 Hickoryhurst Drive, Baltimore, MD 21236
Marsha Meyd, 14217 Green Road, Baldwin, MD 21013
Patricia Miller, 14313 Dairydale Road, Baldwin, MD 21013
Debera Ullrich, 9 Corner Court, #303, Timonium, MD 21093
Margaret J. White, Maryvale Preparatory School, Inc., 11300 Falls Rd.,
Brooklandville, MD 21022
Zachary Coyle, 4800 Coyle Road, #102, Owings Mills, MD 21117
Cathy Kellermann, 119 Tregarone Road, Lutherville, MD 21093
Helen Kennelly, 8 Valley Ridge Court, Timonium, MD 21093
Michael L. McWilliams, 2424 Old Bosley Road, Timonium, MD 21093
Eugene & Barbara Trainor, 5 Mansel Drive, Reisterstown, MD 21136
Eileen Grossman, 2212 Crest Road, Baltimore, MD 21209
Maria J. Kaczaniuk, 4513 White Marsh Road, Baltimore, MD 21237
Donna Bridickas, 8916 Avondale Road, Baltimore, MD 21234
Agnes F. Blee, SND & Ignes McBryan, 1531 Greenspring Valley Road, Stevenson, MD 21153
Dorothy Malone, SSND, 10331 H Malcolm Circle, Cockeysville, MD 21030
Anne Malone, 1421 Cheltenham Lane, Bel Air, MD 21014
Patricia Sterling, 5 Hunter Drive, Bel Air, MD 21014
Marion M. Connolly, 705 Dunkirk Road, Baltimore, MD 21212
Lisa Cohen, 2721 Mt. Carmel Road, Parkton, MD 21120
Sarah Butcher, 829 Warren Road, Cockeysville, MD 21030
Monica Graham, 615 Budleigh Circle, Timonium, MD 21093
Maureen Flynn, 10807 Falls Road, Lutherville, MD 21093
Noelle Hopper, 2835 Willow Lane, Ellicott City, MD 21043
Gerald Wright, 7843 Wendover Avenue, Parkville, MD 21234
Colleen Kelly, Project Manager, DPDM; DEPRM; DPR; LA; OP; R&P; Zoning Review, DPDM
People's Counsel; Case File

APPEAL

Petition for Special Hearing & Variance
11300 Falls Road
SW/S Falls Rd., (MD Rt. 25), N/S Greenside Valley Road
Westwicke/Maryvale Preparatory School – Legal Owners
8th Election District – 2nd Councilmanic District
Case No.: 2009-0202-SPHA

Petition for Special Hearing & Variance (February 4, 2009)

Zoning Description of Property

Notice of Zoning Hearing (June 22, 2009)

Certification of Publication (The Jeffersonian – July 7, 2009)

Certificate of Posting (July 7, 2009) by Martin Ogle

Entry of Appearance by People's Counsel (February 18, 2009)

Petitioner(s) Sign-In Sheet - None

Protestant(s) Sign-In Sheet - None

Citizen(s) Sign-In Sheet - None

Zoning Advisory Committee Comments

Petitioners' Exhibit

1st Amended Development Plan to accompany zoning petitions

Protestants' Exhibits - None

Miscellaneous (Not Marked as Exhibit)

1. Memorandum Opinion and Order (03-C-07-12594 – Falls Rd. Community Assoc)
2. Opinion (CBA-09-003 – Maryvale School)
3. Postponement Request from Michael McCann – 7/1/09 – Denied by Tim Kotroco
4. Request for Denial of Postponement Request – Patricia Malone – 7/1/09
5. Follow-up Letter from Robert Hoffman – 7/7/09
6. Additional Request for Postponement from Michael McCann – 7/13/09

Zoning Commissioner's Amended Development Plan Order (GRANTED – August 11, 2009)

Notice of Appeal received on September 9, 2009 from Michael McCann for Appellants

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Robert Hoffman, Patsy Malone, Venable
Michael McCann
See cover letter

date sent October 6, 2009, klm

Kristen Matthews - Fwd: Maryvale

From: Donald Rascoe
To: Matthews, Kristen
Date: 3/16/2009 4:30 PM
Subject: Fwd: Maryvale

20090202

Can you see me on this?

Donald T. Rascoe
 Deputy Director
 Department of Permits
 and Development Management

111 West Chesapeake Avenue
 Towson, Maryland 21204

410-887-3353 (work)
 410-887-5708(fax)

>>> "Malone, Patricia A." <PAMalone@Venable.com> Monday, March 16, 2009 12:20 PM >>>

Don:

On behalf of Maryvale, we had filed for zoning relief when we originally submitted the "materially amended" Development Plan. The plan stated that the hearing on the zoning relief would be combined with the HOH.

When we received a Notice of Assignment for a separate zoning hearing on March 23rd, we immediately called Kristen Matthews and informed her of the County's mistake in scheduling it in for hearing prior to the HOH. She said she understood and would take care of getting it corrected. Unfortunately, the notice was somehow published in the papers anyway at Maryvale's expense.

As if that is not enough, now, I see that the County's website lists this hearing as still being scheduled for March 23rd. Is there a way to get the notice off of the website or at least marking it as postponed? We are planning on showing up on the 23rd to let anyone know who comes of the error, but this just makes it even more likely that people will be misled into thinking there is a hearing on that date.

Can you help with this?

Patsy

Zoning Hearings - 11300 Falls Road

Location: 2nd Council District

Sub location: Jefferson Building, 105 West Chesapeake Avenue, Towson 21204

Date/Time: 03/23/2009 10:00 AM - 03/23/2009 11:00 AM

Description:

Variance to permit a principal building to principal building setback of 29 feet in lieu of the required 70 feet. Special hearing to amend all prior approved plans and to amend the relief granted in case no. 06-128-SPHA, including confirmation of the number of parking spaces required for the school use..

Contact: Kristen Matthews 410-887-3391

Donald Rascoe - Maryvale

From: "Malone, Patricia A." <PAMalone@Venable.com>
To: "Donald Rascoe" <drascoe@baltimorecountymd.gov>
Date: 6/9/2009 3:28 PM
Subject: Maryvale
CC: "Hoffman, Robert A." <RAHoffman@Venable.com>

Don:

We currently have an HOH date scheduled for Maryvale's Amended Development Plan for July 23, 2009. We are requesting that a total of four dates be scheduled for this hearing throughout the summer since we anticipate opposition from a neighboring property owner who is represented by Michael McCann and want to avoid any significant delays. Could we have an additional date in July and then two dates in early to mid August (prior to my vacation on August 21-28!)?

Thanks.
Patsy

Patricia A. Malone
Venable LLP
210 W. Pennsylvania Avenue
Suite 500
Towson, Maryland 21204
t. 410.494.6206
f. 410.821.0147
pamalone@venable.com

U.S. Treasury Circular 230 Notice: Any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (a) avoiding penalties that may be imposed Code or by any other applicable tax authority; or (b) promoting, marketing or recommending to another party any tax-related matter addressed herein. We provide disclosure on all outbound e-mails to assure compliance with new standards of professional practice, pursuant to which certain tax advice must satisfy requirem form and substance.

t 410.494.6365
f 410.821.0147
cdmudd@venable.com

May 28, 2009

HAND-DELIVERED

W. Carl Richards, Zoning Supervisor
Baltimore County Department of
Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: **REQUEST FOR RE-CIRCULATION OF PLANS**
Maryvale Preparatory School
11300 Falls Road
Case No. 2009-0202-SPHA
2nd Councilmanic District, 8th Election District

Dear Mr. Richards:

This firm represents Maryvale Preparatory School, Inc., legal owner of the above-referenced property. In February of this year, on behalf of Maryvale, we filed Petitions for Variance and Special Hearing and accompanying plans, requesting zoning relief in conjunction with proposed improvements to its campus. This relief was to be combined with the Hearing Officer's consideration and review of an amended development plan (Westwicke Development Plan, PDM VIII-651).

When we filed the zoning petitions and plans with your office, we anticipated that the amended development plan would be filed with Permits and Development Management (PDM) shortly thereafter. However, Maryvale decided to hold an informal community meeting on the proposed amendments to the development plan, and we asked the County to hold the zoning petitions until after that meeting was held. Since then, Maryvale has made some further revisions to the development plan, and it is ready to proceed forward with the processing of the amended development plan and the zoning case. Maryvale's engineers have submitted the amended development plan with PDM separately.

We are requesting that your office replace the zoning plans currently in the case file with the enclosed revised plans so that the zoning plans will be consistent with those development plans filed with PDM. We are also requesting that you re-circulate the revised plans to the appropriate County agencies for review at the combined Hearing Officer's Hearing/Petition for Variance and Special Hearing. I have enclosed a check in the amount of \$200.00 to cover the administrative costs associated with this request.

W. Carl Richards, Jr., Zoning Supervisor
May 28, 2009

If you have any questions or require any additional information, please contact me.
Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "C. D. Mudd", written over the printed name.

Christopher D. Mudd

CDM

cc: Robert A. Hoffman, Esquire

TO1DOCS1/CDM01//273677 v1

Patricia A. Malone
Of Counsel

t 410.494.6206
f 410.821.0147
pamalone@venable.com

July 1, 2009

HAND-DELIVERED

William J. Wiseman, III
Zoning Commissioner for Baltimore County
The Jefferson Building, Suite 103
105 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Westwicke/Maryvale Preparatory School
1st Amended Development Plan
PDM No. VIII-651
3rd Councilmanic District, 8th Election District

Dear Mr. Wiseman:

In its July 1, 2009, Development Plan Conference Comment, the Office of Planning indicated that, because the 100 acre+ Maryvale School property contains a structure included on the Baltimore County Final Landmarks List ("Wickcliffe" or "Castle at Maryvale," #336), Maryvale should request that the Hearing Officer refer the proposed amended development plan to the Planning Board for its consideration of the plan's "involvement" with the historic structure.

As reflected on the Westwicke/Maryvale Preparatory School 1st Amended Development Plan, currently being processed through Baltimore County, Maryvale seeks to construct two educational building to be used in conjunction with the existing private preparatory school for girls. The proposed construction will not impact the historic structure, and no reduction of the required setbacks to the historic structure has been requested.

Although we do not necessarily agree that the proposed development plan "involves" the historic structure, in an abundance of caution, we are asking that you refer the development plan to the Planning Board in compliance with Baltimore County Code Section 32-4-231(a)(3).

William J. Wiseman, III
July 1, 2009
Page 2

Please let me know if you require any additional information in order to make this referral.

Very truly yours,

A handwritten signature in black ink, appearing to be "Patricia A. Malone", written over a horizontal line.

Patricia A. Malone

PAM/bl

cc: Arnold F. "Pat" Keller, Director
Baltimore County Office of Planning

Robert A. Hoffman

t 410.494.6262
f 410.821.0147
rahoffman@venable.com

July 7, 2009

HAND-DELIVERED

William J. Wiseman, III
Zoning Commissioner for Baltimore County
The Jefferson Building, Suite 103
105 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Westwicke/Maryvale Preparatory School
1st Amended Development Plan
PDM No. VIII-651
3rd Councilmanic District, 8th Election District

Dear Mr. Wiseman:

This firm represents Maryvale Preparatory School, Inc. with regard to the above-referenced matter, which is scheduled for hearing before you on July 23, 2009. I am writing in opposition to the latest delay requested in Michael McCann's July 1, 2009 letter to you.

Maryvale first undertook efforts to add much-needed new buildings to its long-existing campus in 2005, when it filed for a refinement to its previously approved development plan and corresponding zoning relief. After the DRC approved the refinement and the Zoning Commissioner granted the zoning relief, Mr. McCann's clients (the "Appellants"), among others, appealed to the Board of Appeals. During the course of that appeal, the Appellants clearly agreed on the record during a Board hearing to withdraw their appeal of the zoning relief, while continuing with their DRC appeal. Notwithstanding Appellants' withdrawal of the zoning appeal, approximately one year later, they requested a hearing on that appeal. When the Board determined that the Appellants had, in fact, withdrawn the zoning appeal, the Appellants pursued the matter further to the Circuit Court. Having identified numerous instances in the Board's transcript where Appellants stated an intention to withdraw the zoning appeal, the Circuit Court affirmed the Board's dismissal. (A copy of the Circuit Court's opinion is enclosed). Not stopping there, Appellants then filed a motion for reconsideration, which the Circuit Court denied.

William J. Wiseman, III

July 7, 2009

Page 2

In the interim, the Board determined that Maryvale's proposed development constituted a material amendment to its development plan and required Maryvale to process its development plan in accordance with County policy. As Maryvale was preparing to submit its amended development plan, Mr. McCann wrote a letter to the Director of Permits and Development Management, inquiring how the County would process Maryvale's plan. After Walter Smith responded in writing explaining the "material amendment" process (which requires Maryvale to file an amended development plan, attend a Development Plan Conference, and appear at a Hearing Officer's Hearing on the plan), Appellants filed another appeal to the Board of Appeals, this one from Mr. Smith's "determination" as to process.

As we quickly advised Mr. McCann, the attempt to appeal Mr. Smith's letter is contrary to the Court of Special Appeals' opinion in *Meadows of Greenspring v. Foxleigh Enterprises*, 133 Md. App. 510 (2000), a case which is directly on point and which squarely holds that items such as Mr. Smith's letter are not appealable events. Appellants nevertheless pursued the appeal, and after a brief hearing before the Board of Appeals, the Board agreed that the Court of Special Appeals' ruling in *Foxleigh* controlled and promptly dismissed the appeal. (A copy of the Board's order is enclosed.) Despite the clear case law to the contrary, Appellants have again appealed this dismissal to the Circuit Court, where the case is currently pending.

Now, approximately one and one half weeks after notice of the Hearing Officer's Hearing date was first posted on the Maryvale property and one week after notices were mailed to Appellants, they have predictably requested a postponement, due to a conflict on Mr. McCann's schedule for a deposition in the *Cornblatt* case. This is the *second* time Appellants have requested a postponement in a proceeding against Maryvale using the exact same excuse. In May, the Board of Appeals granted Mr. McCann's request for a postponement in the appeal of Mr. Smith's letter, due to depositions in the *Cornblatt* case.

The reason we have taken the time to go through this extensive history for you is to demonstrate what already appears clear to Maryvale – delay is the Appellants' objective. They reveal their true intentions by requesting not just a temporary postponement for Mr. McCann's schedule conflict, but an indefinite postponement until their baseless Circuit Court appeal of Mr. Smith's letter has been finally litigated. As you know, such an appeal could take years, depending on whether Appellants seek review in the Court of Special Appeals and Court of Appeals.

William J. Wiseman, III
July 7, 2009
Page 3

Not only is there no basis for further delay, but granting Mr. McCann's request would impose a burden on Maryvale by delaying the school's ability to provide sufficient facilities and programs for its students. These burdens far outweigh any burden that would be experienced by Mr. McCann in having to reschedule his deposition. Therefore, we respectfully request that you deny Appellants' request for a postponement.

However, in the event you are inclined to grant the postponement request to accommodate Mr. McCann's scheduling conflict, we ask that you do so after opening the hearing on July 23rd and that you continue the matter to the soonest available date thereafter.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Robert A. Hoffman', with a long horizontal flourish extending to the right.

Robert A. Hoffman

RAH/cdm

cc: Michael R. McCann, Esquire
Jamie A. Dunbar

July 15, 2009

HAND-DELIVERED

Mr. Timothy M. Kotroco, Director
Baltimore County Department of Permits
and Development Management
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Westwicke/Maryvale Preparatory School
1st Amended Development Plan
PDM No. VIII-651
3rd Councilmanic District, 8th Election District

Dear Mr. Kotroco:

Having received Mr. McCann's July 13, 2009 letter in which he reiterates his request for postponement, we are writing on behalf of Maryvale to restate our strong objection to any delay. You denied his original request, and we ask that you reaffirm your denial.

As you are aware, Mr. McCann's initial request for postponement was on the basis of previously scheduled depositions in a different matter. Neither in that original request, nor in his latest request has he mentioned any attempt on his part to reschedule these depositions. As you know from your own experience, depositions are scheduled by the attorneys at their own convenience. Rather, Mr. McCann asks Maryvale, its attorneys, its consultants, its fact witnesses, and its supporters, not to mention the Zoning Commissioner, Baltimore County agency representatives, and the scheduled stenographer, all to change their schedule to accommodate him. He expects Maryvale to delay its hearing date, which has already been advertised and posted, in order to facilitate his ability to oppose its proposed development.

As we advised Mr. McCann, we have asked that three additional days in August be reserved for this hearing (August 4, August 5, and August 19). Based on our past experience with Mr. McCann and his clients, we anticipate needing each of those days, in addition to July 23rd, in order to put on our case and to defend against the number of arguments that we expect from the opponents.

Robert A. Hoffman

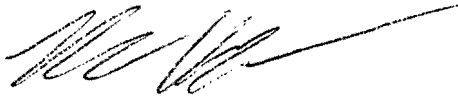
T 410-494-6262
F 410.821.0147
rahoffman@venable.com

*To Bill Wiseman:
Phase rule on
this request.
5 Business day
rule.
T-K.*

Mr. Timothy M. Kotroco, Director
July 15, 2009
Page 2

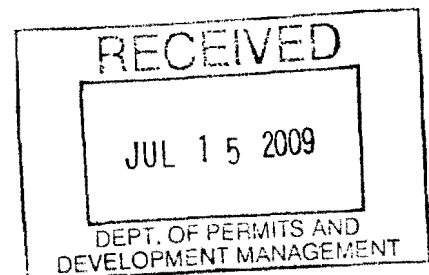
For these reasons, and for all of the reasons previously stated in my July 7, 2009 letter to Zoning Commissioner Wiseman, I ask that you deny Mr. McCann's request and, thereby, enable Maryvale to proceed to hearing on July 23, 2009.

Very truly yours,



Robert A. Hoffman

cc: James A. Dunbar, Esquire
Michael R. McCann, Esquire
William Wiseman, Zoning Commissioner



Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

July 1, 2009

William Wiseman
Zoning Commissioner of Baltimore County
Zoning Review Office
County Office Building
111 W. Chesapeake Avenue, Room 111
Towson, Maryland 21204

Re: HEARING OFFICER'S HEARING/PETITIONS FOR SPECIAL HEARING
AND VARIANCE

Hearing Date: July 23, 2009

11300 Falls Road

S/west side of Falls Road, 300 feet +/- n/west of Brooklandwood Road

Legal Owner(s): Maryvale Preparatory School, Inc.

Case No.: 2009-0202-SPHA

Dear Mr. Wiseman:

I write to request a postponement of the hearing in the above-referenced case, which is scheduled for July 23, 2009 at 9:00 a.m. I have longstanding depositions scheduled that entire day in the matter of *Cornblatt v. Meyers Construction, Inc.*, Circuit Court for Baltimore City, Case No. 24-C-08-005004.

Further, I ask that the case be postponed until the conclusion of an appeal currently pending in this matter in the Circuit Court for Baltimore County, Case No. 03-C-09-007336. That appeal presents the issue of whether the development plan in this case was required to follow the County's normal approval process or whether the abbreviated process that it in fact followed (without a concept plan, community input meeting, or the filing of concept plan comments) was proper.¹ If this case is not postponed and you proceed with the hearing, and if the Circuit Court subsequently rules

¹ The precise issue before the Circuit Court is whether the Board of Appeals properly dismissed my clients' appeal of Mr. Kotroco's determination that this development did not need follow the normal development plan review process.

Mr. William Wiseman

July 1, 2009

Page 2

in my clients' favor, then the hearing will have been conducted needlessly, the plan will have to re-processed, and a second development plan hearing will have to be held. In fact, the petitioner, for this same reason, previously asked for a postponement of the hearing for the very same reason when the same issue now before the Circuit Court was pending before the Board of Appeals. It makes eminent sense to await the decision of the Circuit Court before holding the hearing in this case.

Thank you for your consideration. Please contact me if you have any questions.

Best regards,

A handwritten signature in black ink, appearing to read "Michael R. McCann", with a stylized, cursive script.

Michael R. McCann

cc: Robert Hoffman, Esq.

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

July 13, 2009

Via Hand Delivery

Mr. Timothy M. Kotroco, Director
Baltimore County Government
Department of Permits and Development Management
County Office Building
111 West Chesapeake Avenue, Suite 105
Towson, Maryland 21204

Re: HEARING OFFICER'S HEARING/PETITIONS FOR SPECIAL HEARING
AND VARIANCE

Hearing Date: July 23, 2009

11300 Falls Road

S/west side of Falls Road, 300 feet +/- n/west of Brooklandwood Road

Legal Owner(s): Maryvale Preparatory School, Inc.

Case No.: 2009-0202-SPHA

Dear Mr. Kotroco:

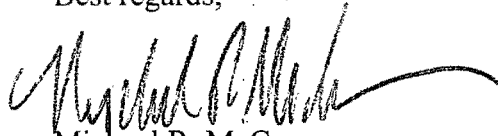
I did not receive any notice, but learned from the Zoning Review Office that my clients' request for a postponement of the above hearing date was denied. Since I find this denial highly unusual, I can only assume that the request was denied as a result of Mr. Hoffman's letter of July 7, 2009.

Mr. Hoffman's letter contended that the postponement should be denied for essentially two reasons: (i) my request for a postponement was a delay tactic, and (ii) the appeal pending before the Circuit Court lacks merit. Even if these contentions were accurate, which they are not, they are wholly irrelevant to the issue before you. The relative merits of our appeal, and whether anything my clients have done in the past was for the purpose of delay, are collateral matters that have nothing to do with an otherwise legitimate request for a postponement.

More importantly and to the point, I have learned from the Zoning Review office that there are additional dates - August 4, 5, and 19, 2009 - that are open and available, but have not been reserved for this hearing. I respectfully request that the July 23rd hearing be rescheduled to one or more of those dates. I simply cannot be there on July 23rd and the denial of this 12 day-plus extension will cause serious prejudice to my clients.

Thank you for your consideration.

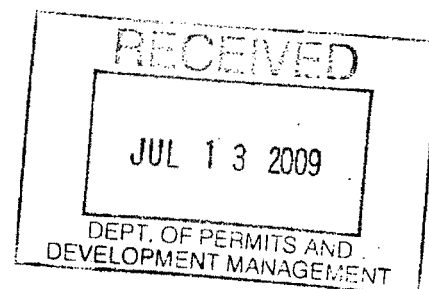
Best regards,

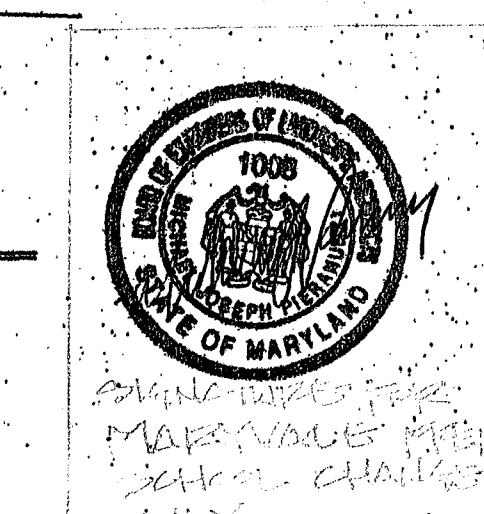
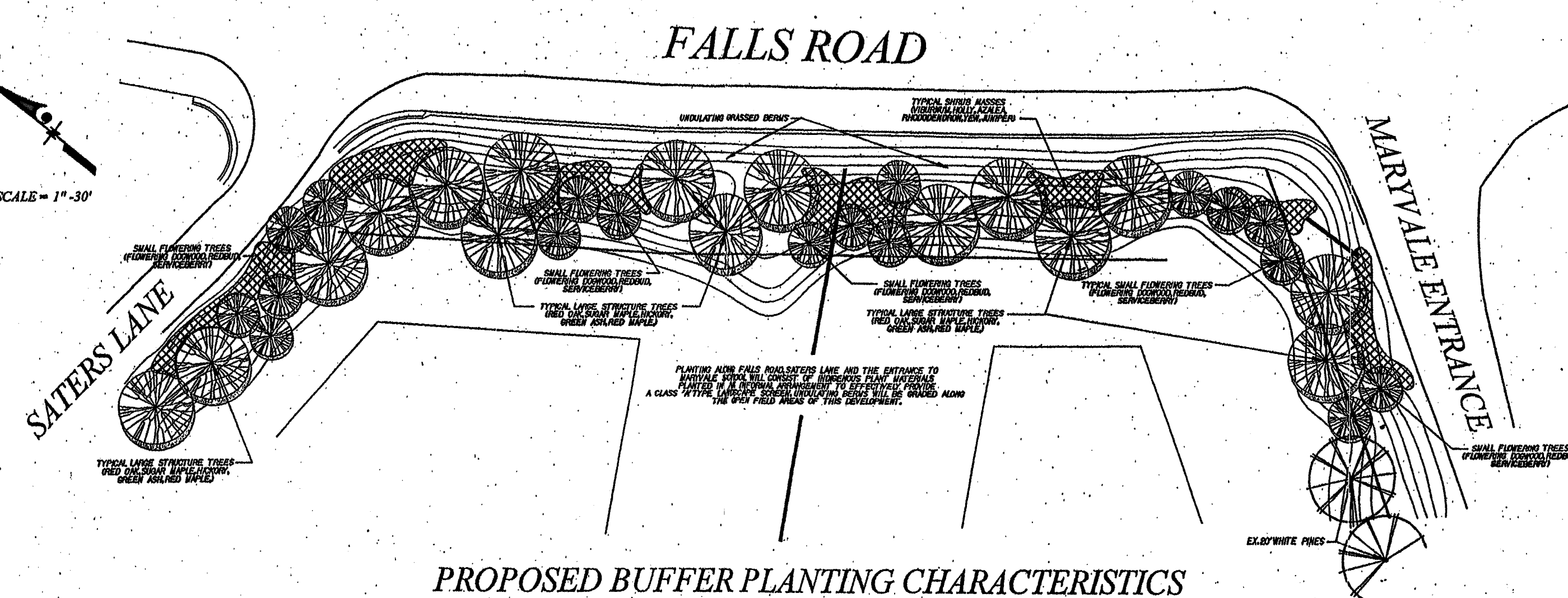
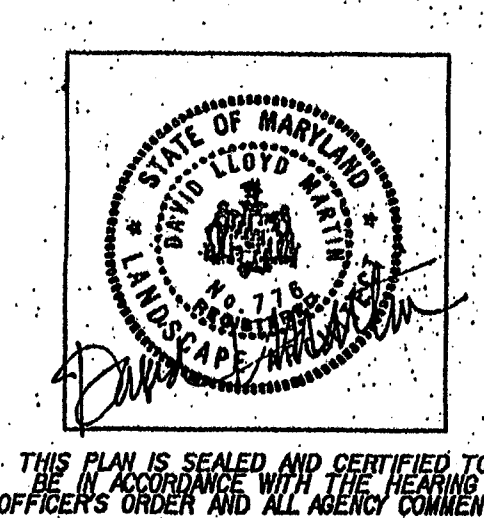


Michael R. McCann

Enclosures

cc: Robert Hoffman, Esq.
William Wiseman, Zoning Commissioner



[illegible][illegible][illegible]

DEVELOPMENT PLAN
&
SPECIAL EXCEPTION PLAT
WESTWICKE

Developer
SCOTTISH DEVELOPMENT CO., LLC
C/O MR. CLARK F. MCKENZIE
McKenzie, O'Conner, Piper & Flynn
2328 West Joppa Road
Suite 200
Lutherville, Maryland 21093
TAX ACCOUNT 908-28-06628
ZADM FILE # VII-651

Owner
BALTIMORE PROVINCE OF SISTERS OF NOTRE DAME deNAMUR
C/O Scott Barhight
Whiteford, Taylor, Preston
210 W. Pennsylvania Ave.
Suite 400
Towson, Maryland 21204

PLAN TO ACCOMPANY
HEARING OFFICER'S ORDER
DATE 04/28/05 BY [Signature]
PROJECT MANAGER


WILLIAM J. WHELAN
Zoning Commissioner
for Baltimore County

LAWRENCE E. SCHMIDT
Zoning Commissioner
San Pablo

CASE 06-128-SFHA: Petition for special hearing and variance to amend prior special exception case (Case Number 95-435-X) to increase the number of students and to expand the school facilities granted on January 1, 2006, with restrictions. (order on plan) Appeals to the County Board of Appeals (October 7, 2007) were dismissed, and the County Commission affirmed the decision.

1A. 0000000000 1A. 0000000000 1A. 0000000000

