



## Board of Appeals of Baltimore County

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SECOND FLOOR, SUITE 203  
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March 4, 2016

Peter M. Zimmerman, Esquire  
People's Counsel for Baltimore County  
The Jefferson Building, Suite 204  
105 West Chesapeake Avenue  
Towson, Maryland 21204

RE: *In the Matter of: Richard Folio – Legal Owner*  
Case No.: 14-185-A

Dear Mr. Zimmerman:

We are in receipt of your letter dated February 23, 2016 requesting clarification and technical correction of the title of Panel Member Belt's Dissent issued February 22, 2016 with the Majority Opinion.

Pursuant to the Board's Rules of Practice and Procedure, Rule 11 states: "*Revisory power of the board.* Within thirty (30) days after the entry of an order, the board shall have revisory power and control over the order in the event of fraud, mistake or irregularity."

Enclosed please find the Concurring In The Result But Dissent As To Uniqueness in the above referenced matter.

Please be advised that Panel Member Belt's position and written decision have not changed other than in title. The issuance of this correction shall not affect the appeal period or process in any way.

Pease do not hesitate to contact me with any questions.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington".

Krysundra "Sunny" Cannington  
Administrator

### Enclosure

c: Lawrence E. Schmidt, Esquire  
Donna Ward  
S. Glenn Elseroad  
George Neubeck  
Michael L. Snyder, Esquire  
Kenneth Wells  
Arnold Jablon, Director/PAI  
Lawrence M. Stahl, Managing Administrative Law Judge  
Nancy West, Assistant County Attorney

Richard M. Folio  
Vicki Locklear  
Frank and Donna Valentine  
Paul E. Joyce  
C. Robert Holtz  
George Harman  
Andrea Van Arsdale, Director/Department of Planning  
Michael Field, County Attorney/Office of Law

IN THE MATTER OF  
RICHARD M. FOLIO,  
Legal Owner/Petitioner  
6200 Glen Falls Road  
Reisterstown, MD 21136

\* BEFORE THE  
\* BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* Case No. 14-185-A

Re: Petition for Variance for Pool House  
In Front Yard in lieu of Side Yard

\* \* \* \* \*

**CONCURRING IN THE RESULT BUT DISSENT AS TO UNIQUENESS <sup>1</sup>**

As stated by the majority opinion in this matter, the Board is guided by the holding provided by the Court of Special Appeals in *Cromwell v. Ward*, 102 Md. App. 691 (1995). In requiring a finding of "uniqueness," the Court of Special Appeals in *Cromwell* referred to the definition of "uniqueness" provided in *North v. St. Mary's County*, 99 Md. App. 502, 514 (1993):

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. In respect to structures, it would relate to such characteristics as unusual architectural aspects in bearing or parting walls.

*Cromwell* at 710.

As also noted on the majority opinion, when comparing the property at issue with other properties to determine 'uniqueness,' the terms 'area', 'neighborhood' and district have all been used interchangeably. (*Easter v. Mayor & City Council*, 195 Md. 395, 400 (1950) citing *Rathkopf, Zoning, 2d Ed.*, p. 215); *Marino v. City of Baltimore*, 215 Md. 206, 219 (1957); *Chesley v. Annapolis*, 933

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<sup>1</sup> The 'Dissent' issued on February 22, 2016 was inadvertently titled incorrectly. This Concurring Opinion is identical to the Dissent other than it corrects the title.

A.2d 475, 176 Md. App. 413 (Md. App., 2007). However, I am not convinced the term “area” is confined to one’s immediate neighbors, nor do I interpret the law to imply that if two neighbors share a topographical characteristic, that such a characteristic cannot be considered “unique” when employing the *Cromwell* analysis. In *Umerly v. People’s Counsel for Baltimore County*, 108 Md. App. 497 (1996) in commenting on the Board of Appeals failure to make an evidentiary finding regarding “uniqueness”, the Court of Special Appeals described “uniqueness” as when the “peculiarity of the property causes the zoning provision to have a disproportionate effect on the property.” *Id. at 506*

While testimony was given that other lots in close proximity to the Petitioner’s property shared the same steep slopes noted by the Petitioner, properties as near as directly across the street, did not. Consequently, I dissent in the majorities finding that the subject property is not “unique”. However, I concur with the majorities finding regarding a lack of “practical difficulty”, and consequently, concur with the majority’s final decision denying the requested variance relief.

February 22, 2016  
Date

  
Andrew M. Belt