

Circuit Court for Baltimore County
Case No. 03-C-16-009113

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 998

September Term, 2017

BOWLEYS QUARTERS COMMUNITY
ASSOCIATION, LLC, *et al.*

v.

GALLOWAY CREEK, LLC

Meredith,
Arthur,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: August 2, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In this long-running dispute involving a planned condominium development along Galloway Creek in the Bowleys Quarters community of eastern Baltimore County, the developer, Galloway Creek, LLC, has been persistent in the pursuit of final approval of its project, which was initially sought in 2008. Appellants, Bowleys Quarters Community Association, LLC, *et al*, have been equally persistent in their opposition to administrative approval of the proposed development.¹

This appeal comes from the Circuit Court for Baltimore County which, on Bowleys Quarters’s petition for judicial review, affirmed the decision of the Board of Appeals of Baltimore County which, in turn, had dismissed their appeal from the action of the Administrative Law Judge. Despite appellants having presented five “issues” for our review in their opening brief, the precise, and only, issue is whether a letter issued on May 6, 2011, by the ALJ, was a final and appealable decision.² The Board of Appeals ruled that

¹ For a more detailed review of the merits of the proceedings, see this Court’s unreported opinion in *Bowleys Quarters Community Association, LLC, et al v. Galloway Creek, LLC*, No. 741, Sept. Term, 2013 (Filed May 8, 2014).

² In their opening brief, appellants set out five “issues presented”:

1. The variation of Standards was a separate Issue until the Baltimore County Circuit Court combined the Application and the Variation of Standards into one *de novo* hearing. Whether the Galloway Creek PUD and the Variation of Standards consists of two (2) issues or if it was one issue.
2. The Stipulation ordered by the Circuit Court of Baltimore County called for a *de novo* hearing on both the Galloway Creek PUD and the Variation of Standards as one case in order to drop both individual appeals.

(continued)

it was not and dismissed appellants’s appeal therefrom. The Circuit Court, following a hearing on appellants’s petition for judicial review, affirmed the Board.

Because we are satisfied, after a complete review of the record of the proceedings below, that the Memorandum and Order filed by the Circuit Court for Baltimore County (Hon. Vicki Ballou-Watts), is thorough on both the facts and the law, we set forth that court’s findings of fact and conclusions of law and adopt the court’s opinion as our own.³

The circuit court wrote:

MEMORANDUM AND ORDER

Bowleys Quarters Community Association, LLC, Janet Walper, Ronald Walper, Kim Sullivan, Malcolm Wood, Joseph Hessian, Rose Hessian, and Steven Richardson filed a Petition for Judicial Review. Petitioner Allen Robertson filed a separate Petition....⁴ Galloway Creek, LLC ... filed an Answer to both Petitions.... Petitioners filed a Memorandum in Support of Petition for Judicial Review[;]... Petitioner Robertson filed a separate

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3. A misinterpretation of the Hearing Officer/ALJ being bound by the Planning Board’s decision on the Variation of Standards.
 4. The Decision by the ALJ Beverungen was a final decision, not interlocutory as suggested by Galloway Creek, LLC.
 5. The law requires administrative decisions effecting [sic] land use *must be heard* at some point.

(Emphasis in original).

Of those issues presented, only No. 4 addresses the focus of this appeal. The others, in our view, are subsumed within that issue.

³ We have, in some aspects, edited the court’s Memorandum for clarity and brevity, to amend citing errors, or to comport with this Court’s policy and style. We have made no substantive revisions to either the court’s findings or conclusions of law.

⁴ Robertson is not a party to this appeal.

Memorandum[;]... [and,] Respondent filed a Memorandum in Opposition[,],... to which Petitioners filed a Reply.... On May 1, 2017, the [parties presented oral argument on the record made before the administrative agency]....

For the reasons set forth herein, Decision Number CBA-11-031 issued by the Board of Appeals of Baltimore County and dated August 5, 2016 is **AFFIRMED**.

Standard of Review

When determining whether an agency’s factual findings violate [the code], the appropriate standard of review is the substantial evidence test from the record as a whole. [*Sadler v. Dimensions Healthcare Corp.*, 378 Md. 509, 529 (2003) (quoting *Jordan Towing, Inc. v. Hebbville Auto Repair, Inc.*, 369 Md. 439, 450-51 (2002))]. If reasoning minds could reasonably reach the conclusion reached by the agency from the facts in the record, then the agency’s findings are based on substantial evidence and the court has no power to reject that conclusion. [*Liberty Nursing Ctr., Inc. v. Dep’t Health & Mental Hygiene*, 330 Md. 433, 443 (1993) (citing *Snowden v. Mayor & City Council of Baltimore*, 224 Md. 443, 448 (1961))].

Judicial review of an administrative agency’s fact-finding is narrow and highly deferential. [*People’s Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 66 (2008) (citation omitted)]. An agency’s decision is “[prima facie] correct and presumed valid.” [*Opert v. Crim. Injuries Comp. Bd.*, 403 Md. 587, 609 (2008) (quoting *Md. Aviation Admin. v. Noland*, 386 Md. 556, 571 (2005))]. A court’s review of an administrative agency’s decision is not to “substitute its judgment for the [expertise] of those persons who constitute the administrative agency.” [*United Parcel v. People’s Counsel*, 336 Md. 569, 576-77 (1990) (quoting *Bulluck v. Pelham Wood Apts.*, 283 Md. 505, 513 (1978))]. Instead, a “degree of deference should often be accorded the position of the administrative agency” and the agency’s interpretation and application of the statute which the agency administers should be given “considerable weight by reviewing courts.” [*Opert*, 403 Md. at 594, 609 (citations omitted)].

However, when considering whether an agency erred as a matter of law, for example, when there is a challenge to a regulatory interpretation, a court, on judicial review, decides the correctness of the agency’s conclusions and may substitute the court’s judgment for the judgment of the agency. [*Spencer v. Md. State Bd. of Pharmacy*, 380 Md. 515, 528 (2004) (citing

Total Audio-Visual Sys., Inc. v. Dep’t of Labor, 360 Md. 387, 394 (2000)]. Even with conclusions of law, however, an agency’s interpretation of the statute it administers or its own regulations is entitled to some deference from the courts. [*Jordan Towing*, 369 Md. at 450 (citation omitted)].

The “substantial evidence test” also applies when there is a mixed question of law and fact. In other words, [when] the agency has correctly stated the law and the fact-finding is supported by the record but the question is whether the agency has applied the law to the facts correctly. *Charles County Dep’t of Social Servs. v. Vann*, [382 Md. 286, 296] (2004).

Therefore, the order of an administrative agency [will] be upheld on review if it is not premised upon an error of law and if the agency’s conclusions on questions of fact or on mixed questions of law and fact are supported by substantial evidence. *Kohli v. LOOC, Inc.*, [103 Md. App. 694, 711 (1995) (citation omitted)].

Lastly, when an administrative agency acts within its discretionary capacity, “... the courts owe a higher level of deference to functions specifically committed to the agency’s discretion than they do to an agency’s legal conclusions or factual findings.” [*Cty. Council of Prince George’s Cty. v. Zimmer Dev. Co.*, 444 Md. 490, 574 (2015) (quoting *Spencer*, 380 Md. at 529)]. As a result, when an agency acts in its discretionary capacity, the courts may only reverse if the agency decision is arbitrary and capricious. *Zimmer*, [444 Md. at 574 (citation omitted)].

Maryland Rule § 7-209 sets forth the scope of judicial review in connection with final decisions by the County Board. It states: “Unless otherwise provided by law, the court may dismiss the action for judicial review or may affirm, reverse, or modify the agency’s order or action, remand the action to the agency for further proceedings, or an appropriate combination of the above.” Maryland Rule § 7-209.

Factual and Procedural Background

In its written opinion, the Board of Appeals set forth the following procedural history:

March 9, 2008: Galloway filed an Application for Variation of Standards from Chesapeake Bay Critical Area Buffer.

- August 21, 2008: DEPRM (now knows [sic] as ‘EPS’) recommended granting the request for a Variation of Standards, with conditions.
- September 4, 2008: Planning Board meeting and public hearing to consider both proposed Planned United [sic] Development (“PUD”) and Variation of Standards Application[.]
- September 18, 2008: Planning Board vote approving Variation of Standards pursuant to BCC [§ 32-4-232(d)].
- September 26, 2008: Office of the Planning Letter to Hearing Officer advising that Planning Board approved Variation of Standards Application pursuant to BCC [§ 32-4-232(d)].
- October 2, 2008: Pursuant to BCC [§ 32-4-232(f)(1)], Hearing Officer incorporated the September 26, 2008 Office of Planning Letter into Hearing Officer’s Review and Approval Order which also approved PUD.
- October 10, 2008: Protestants appealed to the Board the Office of Planning Letter dated September 26, 2008 which was assigned Case No.: CBA-08-131.
- October 28, 2008: Protestants appealed Hearing Officer’s Review and Approval Letter dated October 2, 2008 which was assigned Case No.: CBA-08-136.
- April 15, 2009: Board of Appeals Opinion ... ruled on three (3) issues:
- a) Dismissed Case No.: CBA-08-131 ... as Board lacked jurisdiction to hear direct appeal of Planning Board’s September 18, 2008 approval of Variation of Standards or Office of Planning Letter to Hearing Officer dated September 26, 2008;
 - b) Denied the PUD in Case No.: CBA-08-136 based on insufficient record before Planning Board and lack of authority to remand PUD to Hearing Officer ...; and

c) Affirmed Hearing Officer Wiseman’s and Planning Board approval of Variation of Standards Application[.]

- May 7, 2009: Galloway filed Motion for Reconsideration of Denial of PUD requesting this Board remand in Case No.: CBA-08-136 to Hearing Officer with instructions to remand that case to Planning Board for further findings. No Motion for Reconsideration filed in Case No.: CBA-08-131.
- May 28, 2009: Protestants filed Answer to Motion for Reconsideration in Case No.: CBA-08-136.
- July 8, 2009: Galloway filed Amended Motion for Reconsideration along with Memorandum in Support thereof in Case No.: CBA-08-136.
- July 21, 2009: Protestants filed a Response to Amended Motion for Reconsideration in Case No.: CBA-08-136.
- August 26, 2009: Board of Appeals Ruling/Opinion on [Petitioners’s] Motion/Amended Motion for Reconsideration granting Galloway’s Motion for Reconsideration and remanding the PUD to the Hearing Officer ([Board’s] Opinion inadvertently also remanded Case No.: CBA-08-131 which had previously been dismissed).
- September 26, 2009: Protestants appeal to Circuit Court the Board’s Ruling/Opinion Remanding the PUD dated August 26, 2009.
- August 10, 2010: Stipulation of Parties filed in Circuit Court in which Parties agreed to have Circuit Court issue a Consent Order remanding the PUD case to the Board with instructions to remand the case to the Hearing Officer for a *de novo* review under new PUD process set forth in County Council Bill 5-10 which became effective on January 19, 2010.

Specifically, the Stipulation read:

1. The Circuit Court shall issue a Consent Order remanding the case back to the Board of Appeals with instructions to further remand this matter to the Hearing Officer to conduct a review consisting of a [de novo] evidentiary hearing on the merits of the PUD concept plan and any PUD development plan which may be filed by the Petitioners.

* * * *

6. The parties understand that the Planning Board's findings as to critical area variation of standards are binding on the Hearing Officer in his review of the development plan, and pursuant to Section 32-4-232(f)(1) must be incorporated in his decision; however, the parties agree that as part of the Hearing Officer's review of the PUD development plan he is required to consider the impact of any development and zoning modifications upon surrounding uses and why such modifications are in the public interest and also the impact of the PUD proposal on the public health, safety and general welfare[,] which has been commonly understood to include environmental impacts, and[,] therefore, he may consider the impact of any modification of standards granted by the Planning Board upon the health, safety and general welfare of the community as part of the consideration of the PUD development plan.

August 10, 2010: Circuit Court Consent Order entered which made two (2) rulings[:]

- 1) Confirmed that Case No. CBA-08-131 had previously been dismissed by this Board; that no Motion for Reconsideration was filed in Case No. CBA-08-131; that Case No. CBA-08-131 was inadvertently remanded to the Hearing Officer in the Board's August 26, 2009 Ruling/Opinion on Motion for Reconsideration; and that no further action would be taken on Case No. CBA-08-131; and
- 2) Confirmed by a review of the pleadings, that Galloway's Motion for Reconsideration was filed only for Case No. CBA-08-136, and that pursuant to Bill 05-10 (which changed the hearing review process and standard of review for PUDs by eliminating the Planning Board from review and substituting review by the Hearing Officer), Case No. CBA-08-136 would be remanded to the Hearing Officer for a *de novo* evidentiary hearing on the PUD Concept and Development Plans.

November 23, 2010: In anticipation of the *de novo* hearing on the PUD before the Hearing Officer/ALJ which was scheduled for January 21, 2011, Galloway's Engineers (Matis, Warfield) reiterate in writing to Dept. of Permits and Development Management that the Planning Board approved the Variation of Standards on September 18, 2009.

December 29, 2010: In anticipation of the *de novo* hearing on the PUD before the Hearing Officer/ALJ scheduled for January 21, 2011, Office of Planning Final Report was sent to ALJ reciting the Planning Board's approval of September 18, 2008, of the Variation of Standards Request.

April 18, 2011: ALJ Beverungun [sic] sent a letter to Counsel acknowledging the Planning Board determined the Variation of Standards issue on September 18, 2008, that it was binding, and should be incorporated into the Final Order, but then stated that he intended to send a letter to Planning Board to refer the Variation of

Standards issue as it was the “safest route to go” given an inevitable appeal.

April 18, 2011: Letter from ALJ to Planning Board Chair referring the Variation of Standards issue pursuant to [BCC § 32-4-231].

April 25, 2011: Letter from [Protestants’s] Counsel to Planning Board Chair request a 2-day, “trial-like hearing” before the Planning Board including the right to summons witnesses, present expert testimony, and cross examine witnesses from DEPRM.

May 6, 2011: Letter from ALJ to Counsel for Parties rescinding the referral to Planning Board acknowledging that the State of Maryland Critical Area Commission granted the variance and that, although the PUD law changed, the CBCA variance law did not change the Planning Board’s authority to decide Variation of Standards and the binding nature of the same on the ALJ[.]

May 25, 2011: Protestants appeal to the Board of Appeals the May 6, 2011 ALJ letter rescinding the referral to the Planning Board.

In the Matter of Galloway Creek, CBA-11-031, at 2-6 (August 5, 2016) (Opinion).

November 10, 2015: Galloway Creek, LLC filed a Motion to Dismiss [Protestants’s] appeal to the Board of Appeals the May 6, 2011 ALJ letter rescinding the referral to the Planning Board.

March 29, 2016: Oral argument on Galloway Creek’s Motion to Dismiss before the County Board of Appeals.

August 5, 2016: The County Board of Appeals (“CBA”) issued an Opinion and Order granting Galloway Creek’s Motion to Dismiss. The CBA found that the September 18, 2008 Planning Board’s decision to grant the Variation of Standards is binding on the Hearing Officer and the

CBA, and that the CBA does not have jurisdiction to hold a *de novo* hearing on the Variation of Standards. In addition, the CBA found that a second Planning Board meeting was not warranted as the evidence showed that the Protestants had the opportunity to present their comments on the Variation of Standards issue at the September 4, 2008 public meeting.

In the alternative, the CBA found that the Motion to Dismiss should be granted because the Board decided the Variation of Standards issue in their Opinion dated April 15, 2009 where they dismissed the [Protestants's] appeal in Case No.: CBA-08-131 and affirming ALJ Wiseman's' [sic] grant of the Variation of Standards. The Protestants did not appeal this grant and the decision is final.

September 2, 2016: Petitions for Judicial Review of the CBA's Opinion and Order filed.

May 1, 2017: Oral argument in the Circuit Court for Baltimore County on the Petitions for Judicial Review.

On review, Petitioners raised the following issues:

- 1) Whether the Board of Appeals failed to treat the PUD and Variation of Standards as two (2) separate issues by mistaking the PUD Hearing for the Variation of Standards Hearing.
- 2) Whether the Stipulation ordered by the Circuit Court of Baltimore County called for a *de novo* hearing on both the Galloway Creek PUD and the Variation of Standards.
- 3) Whether the Board of Appeals misinterpreted how the Hearing Officer is bound by the Planning Board's decision on the Variation of Standards.
- 4) Whether the May 6, 2011 decision by ALJ Beverungen was a final decision.

- 5) Whether the Variation of Standards was heard and addressed by administrative agencies.^[5]

* * *

Although Petitioners raised [five (5)] separate issues, the County Board of Appeals ruling granted Respondent’s Motion to Dismiss [Petitioners’s] appeal to the [Board]. Therefore, this Court must review whether the CBA erred in granting Respondent’s Motion to Dismiss the appeal of ALJ’s letter dated May 6, 2011[,] rescinding [the] earlier referral of the Variation of Standards issue back to the Planning Board.

DISCUSSION

In 2007, Respondent Galloway began the process for obtaining approval of nearly fifteen (15) acres of split zoned property. The proposed development would include a 36 unit condominium and 36 boat slips.... In order to obtain approval, Respondent sought and obtained a resolution from the Baltimore County Council which made the Respondent’s Planned Unit Development proposal “eligible for county review” pursuant to BCC § 32-4-242(d).

As part of the approval process, Respondent submitted the required Concept Plan and Pattern Book to the Baltimore County Department of Permits Approvals and Inspections. After the various county agencies reviewed the Concept Plan and made recommendations, the Respondent made certain revisions and submitted its revised PUD development plan to the County Planning Board for approval.

During the PUD process, the Respondent also filed an application for approval of a “variation of standards” seeking to ease the regulations regarding buffer areas on the waterfront. That application was filed with Baltimore County on May 9, 2008. The “variation of standards” application was subsequently reviewed and recommended for approval by the County Department of Environmental Protection and Sustainability (“EPS”), formerly known as the Department of Environment and Resource Management (“DEPRM”).

⁵ Robertson adopted each of the issues as his own and further challenged the refusal of several Board members to recuse themselves from the proceedings. As we have noted, Robertson is not a party to this appeal.

On September 4, 2008, the Baltimore County Planning Board met and conducted a public hearing on Respondent’s proposed PUD **and** the Variation of Standards application.... During the public hearing, the Planning Board received, *inter alia*, DEPRM’s “Chesapeake Bay Critical Area Variation of Standards Staff Report” dated September 4, 2008.... In the report, DEPRM recommended that the requested variation of standards be granted, subject to several conditions.

During the same public hearing, the minutes reflect that Respondent’s then counsel ... gave a powerpoint presentation addressing the PUD application, the Variation of Critical Area Standards, the Request for Modification of Standards and other issues. Pat Farr, DEPRM’s representative, also appeared, described the review process and the County’s approval and recommendations.

Co-Petitioner Allen Robertson, who was then President of the Bowleys Quarters Community Association, spoke in opposition of the proposed PUD and discussed the negative impact the project would have on the Chesapeake Bay, and articulated many other concerns.... The president of Bowleys Quarters Improvement Association spoke in support of the development.... In addition, several individual homeowners spoke both for and against approval of the PUD. The record reflects that both associations submitted written comments

When the Planning Board met again on September 18, 2008, the Respondent’s Application for Planned Unit Development and the Request for Variation of Standards were both listed on the agenda.

After a motion to approve the PUD, lengthy discussion and a unanimous vote, the PUD was approved. The Planning Board next addressed the Application for the Variation of Standards and the staff’s recommendations. A motion to approve same was properly seconded and passed.

The Office of Planning issued a Letter dated September 26, 2008 to the Hearing Officer advising of the Planning Board’s approval of Respondent’s Application for Variation of Standards, the Hearing Officer incorporated that Letter into his review and issued an Approval order for: (1) The Variation of Standards, and (2) the PUD, pursuant to BCC § 32-4-232 (f)(1).

Dissatisfied with the two aforementioned approvals, the Petitioners noted an appeal of the [May 6, 2011] Letter regarding the Planning Board’s approval of the Variation of Standards in Case No. CBA-08-131. That appeal was filed to the County Board of Appeal[s] on October 10, 2008.

On October 28, 2008, Petitioners filed a separate appeal of the Hearing Officer’s Review and Approval Order. (Case No. CBA-08-136).

On April 15, 2009, the CBA issued an Opinion which affirmed the Hearing Officer and Planning Board’s approval of the Variation of Standards Application. The Opinion also dismissed Case No. CBA-08-131 due to a lack of jurisdiction to hear a direct appeal of the Planning Board’s September 18, 2008 approval of the Variation of Standards or the September 26, 2008 Office of the Planning Letter to the Hearing Officer. **Petitioners did not appeal the grant of the Variation of Standards nor the dismissal of Case No. CBA-08-131.**

In Case No. CBA-08-136, the April 15, 2009 CBA Opinion denied the PUD Application on the basis of an insufficient record. Galloway Creek then filed a Motion for Reconsideration of the denial to the CBA, which was granted on August 26, 2009. The Board remanded Case No. CBA-08-136 to the Hearing Officer, but inadvertently also remanded CBA-08-131.

Despite the inadvertent remand, both cases were addressed on [Petitioners’s] appeal to the Circuit Court for Baltimore County in a Stipulation signed by the parties and a Consent Order signed by Judge Ruth Jakubowski. The Consent Order, dated August 10, 2010, stated:

“The Court agrees with counsel that the Order issued by the County Board of Appeals on April 15, 2009 in Case No. CBA-08-131 should never have been reconsidered by the Board of Appeals and, further, that the County Board of Appeals April 15, 2009 Order issued in Case No. CBA-08-131 and dismissing the appeal was a final Order in that matter.”

Specifically, the Court ordered “[t]hat Case No. CBA-08-131 has been dismissed with no further action to be taken thereon[.]”

In addition, paragraph 6 of the Stipulation clearly states:

“That parties understand that the Planning Board’s findings as to critical area variation standards are binding on the Hearing

Officer in his review of the development plan, and pursuant to Section 32-4-232(f)(1) must be incorporated in his decision; however ... he may consider the impact of any modification of standards granted by the Planning Board upon the health, safety and general welfare of the community as part of the consideration of the PUD development plan.”

The Consent Order did remand Case No. CBA-08-136 “to the County Board of Appeals with instructions to remand to the Baltimore County Hearing Officer to conduct a *de novo* evidentiary administrative hearing as part of his review of the proposed PUD Concept Plan and Development Plan[.]” However, as the Stipulation and Consent Order indicate, although the Hearing Officer on remand was permitted to “consider the impact of any modification of standards *granted by the Planning Board* upon the health, safety and general welfare of the community [emphasis added],” **the *de novo* hearing would be solely on the PUD approval.**

Upon remand, the ALJ initially wrote a letter to counsel dated April 18, 2011[,] indicating that although the [parties’s] Stipulation makes it clear that the Variation of Standards are binding on the Hearing Officer, he would still refer the Variation of Standards issue to the Planning Board since he believed an appeal was “likely to follow.”

The Hearing Officer then sent a subsequent letter on May 6, 2011[,] stating that he had reconsidered his initial decision to refer the Variation of Standards issue back to the Planning Board. He specifically found that such referral “would be an exercise in futility.” It is this letter that is the subject of [Petitioners’s] current appeal.

Petitioners contend they were entitled to a *de novo* hearing on both the PUD Application and the Variation of Standards issue. However, the Stipulation of the parties and the Circuit Court Consent Order make clear that the Hearing Officer was bound by the Planning Board’s findings as to the Variation of Standards, and as a result Case No. CBA-08-131 was improperly appealed and should never have been considered.

The Baltimore County Code (“BCC”) provides that the Planning Board is the authority that reviews and makes a final decision on a Variation of Standards application that is referred by the Hearing Officer. [(BCC § 32-4-231)]. The code also states that the Planning Board “shall review a referred plan at its next scheduled meeting.” [(BCC § 32-4-231(b))]. The Planning Board shall also consider oral and written comments from the

applicant, a person, or an agency. [(BCC § 32-4-232(a)(2))]. The Planning Board then must file a written decision within 45 days after referral which includes the reasons for the decision and specific findings of fact. [(BCC § 32-4-232(d))]. Finally, [BCC § 32-4-232(f)(1)] specifically states that “a decision of the Planning Board on an issue referred under § 32-4-231 of this subtitle is binding upon the Hearing Officer and shall be incorporated as part of the Hearing Officer’s final action on a plan.”

In addition, as a procedural matter, the CBA was correct in granting Respondent’s Motion to Dismiss [Petitioners’s] “appeal” of the ALJ’s May 6, 2011 letter because that letter was not a final order. The ALJ’s decision to not remand the Variation of Standards issue to the Planning Board for a second time was, at best, interlocutory in nature and cannot be appealed.

For the aforementioned reasons, this Court finds that the CBA did not err in granting Respondent’s Motion to Dismiss.

* * *

CONCLUSION

After a review of the record as whole, this Court finds that there is substantial evidence to support the decision of the Board of Appeals to grant Respondent’s Motion to Dismiss and there is no error as a matter of law.... Decision Number CBA-11-031 of the County Board of Appeals dated August 5, 2016 be and it is hereby **AFFIRMED**.

(Emphasis in original) (Internal record references omitted).

We adopt the Memorandum and Order of the Circuit Court as the opinion of this Court, and affirm.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED;
COSTS ASSESSED TO APPELLANTS.**