



## Board of Appeals of Baltimore County

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November 1, 2011

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Edward C. Covahey, Jr.  
Covahey, Boozer, Devan & Dore, P.A.  
614 Bosley Avenue  
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RE: *In the Matter of: Charles and Ingrid Castronovo – Legal Owners/Petitioners*  
Case No.: 11-222-A

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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*, with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in black ink that reads "Theresa Shelton/kc".

Theresa R. Shelton  
Administrator

TRS/klc  
Enclosure  
Duplicate Original Cover Letter

c: Charles and Ingrid Castronovo  
Paul Godwin  
Jacqueline Hogarth  
Louis Workmeister  
Jeanne Walsh  
Office of People's Counsel  
John Beverungen, Administrative Law Judge  
Lawrence M. Stahl, Managing Administrative Law Judge  
Arnold Jablon, Director/PAI  
Andrea Van Arsdale, Director/Department of Planning  
Michael E. Field, County Attorney  
Nancy C. West, Assistant County Attorney

**IN RE: PETITION FOR VARIANCE**  
S/side of Shore Road, 892 feet east of the  
centerline of Riverside Blvd.

\* BEFORE THE  
\* BOARD OF APPEALS  
\* FOR  
\* BALTIMORE COUNTY  
\*  
\* **Case No.: 2011-0222-A**

**1501 Shore Road**

15<sup>th</sup> Election District  
6<sup>th</sup> Councilmanic District

Charles & Ingrid Castronovo  
*Petitioners*

\* \* \* \* \*

**OPINION & ORDER**

This matter comes before the County Board of Appeals of Baltimore County (hereinafter “Board”) for consideration of the appeal of the Findings of Fact and Conclusions of Law and Order of Administrative Law Judge Beverungen dated March 29, 2011. Therein, Administrative Law Judge John E. Beverungen granted in part, and denied in part, a Petition for Variance filed by the Legal Owners/Petitioners, Charles & Ingrid Castronovo. The Petition for Variance sought relief as follows: from Section 400.1 of the Baltimore County Zoning Regulations (“BCZR”) to permit an accessory structure (detached garage) to be located in the front yard in lieu of the required rear yard; from Section 400.3 of the BCZR to permit a garage with a height of 18-feet +/- in lieu of the maximum 15-feet; from Section 400.1 of the BCZR to permit an accessory structure (shed) to be located in the side yard in lieu of the rear yard and (as amended) with a setback of 0-feet in lieu of the required 2½-feet; and for such other and further relief as the nature of their cause may require. The subject property and requested relief are more fully described on the site plan of the subject property which was received into evidence and is part of the Administrative Law Judge’s file.

In accordance with Baltimore County Charter, Section 603, the Board conducted a de novo public hearing on the subject petition. Appearing at the public hearing in support of the variance request were Petitioners Charles & Ingrid Castronovo, by their lawyer Lawrence E.

Schmidt, Esquire of Smith, Gildea & Schmidt, LLC. Also appearing in support of the request was Paul Godwin and his attorney Edward C. Covahey, Jr., Esquire of Covahey, Boozer, Devan & Dore, P.A. Mr. Godwin owns and resides at the property known as 1492 Shore Road, which is immediately adjacent to the subject property. Pursuant to the request and agreement of the parties, a proffer of the relevant evidence was presented by Mr. Schmidt as to the necessary facts relating to the Petition. Mr. Covahey concurred that the proffer was accurate and that the information presented was agreed to by both parties.

The property in question (known as 1501 Shore Road) is irregular in shape and is approximately 23,030 square feet in area. It is a water front property located on Middle River. The property is zoned DR 5.5 and located thereon is a single-family detached dwelling, swimming pool, detached garage and shed. It is the garage and shed that are the structures that are at issue in this case. Further testimony and evidence proffered was that the subject property is located in the Wilson Point community of eastern Baltimore County and is served by public water and sewer. The Petitioners purchased the property in 2006 from the prior owners, Michael and Geraldine Forti. The current owners/Petitioners have made no changes to the property since they purchased it as the improvements on this property were in place at the time of their acquisition.

A threshold issue to be determined for the purposes of this case relates to which side of the Petitioners property constitutes the front yard. In BCZR Section 101.1, the front yard is defined as that area of a property located between the building and the front property line. In most cases, the front yard is considered that portion of the ground on a lot between the principal building and the public street on which the property is located. However, water front property (such as the subject property) presents a unique factor in that many homes are oriented towards the water and frequently the water side of those lots is considered the front yard. Recently, in

*Swoboda v. Wilder*, 173 Md.App. 615 (2007), the Court of Special Appeals held that identification of the front of a property should consider a variety of physical characteristics of the property and improvements thereon, including the location of the improvements in relation to one another, their exterior appearance, interior layout and entry point into the dwelling. These same factors and principles were articulated by the Court of Appeals in addressing this issue many years ago in *City of Baltimore v. Swinski* 235 Md. 262 (1964).

Petitioners presented proffered testimony and evidence establishing that the main entrance to the dwelling is facing Shore Road. Photographs which are part of the file show that the main entrance to the home faces the Shore Road side and this portion of the property is elaborately landscaped. There are double doors on that entrance which lead to a porch with a pitched roof supported by large white columns. Moreover, it is indicated that it is this location from which the Castronovos receive mail and visitors and that the interior layout of the dwelling is such that when entering from that side, an individual enters a hallway/atrium area leading to a living room, which is commonly found at the front entrance of many single-family dwellings. The Board therefore finds, as did the Administrative Law Judge, that the front yard of the subject property is that area between the dwelling and Shore Road. Based upon this conclusion, the rear yard of the property is consequently determined to be that area between the dwelling and the water.

BCZR Section 400.1 requires accessory structures in residential zones to be located in the rear yard. Although the swimming pool (defined as an accessory structure) is properly located in the rear yard, the garage is located in the front yard and thus a variance is required. Additionally, the garage measures to a height of 18-feet at its highest point and thus variance relief is required in lieu of the maximum permitted 15-foot height limitation. Further proffered testimony and evidence presented was that the variances requested in this case meet the requirements of

Cromwell vs. Ward, 307 Md.App. 1 (1991). As it is well settled, that case imposes a two part test upon the consideration of any variance. First, the property owner/petitioner must establish that the property in question is unique and that such uniqueness generates the variance requested. In this case, the water front character of the property is one such factor which makes this site unique. More importantly, the shape and configuration of the property is also a unique characteristic. In this regard, agreed testimony was that the property is irregularly shaped and sized and unlike any others in the immediate community. Additionally, the property is sloped and it was indicated that it sits at or above the highest point of any property within the Wilson Point community. Finally, the imposition of the Chesapeake Bay Critical Area regulations imposes unique site constraints on the use and development of the property. In fact, the Department of Environmental Protection and Sustainability has advised the Petitioners, in writing, that additional impervious surface on the property is not permitted under those regulations. Based upon all these factors, the Board concludes that the property meets the uniqueness test under the Cromwell standard.

Turning to the second requirement, Cromwell requires that in order for variance relief to be granted, a practical difficulty or hardship would be experienced by the petitioner if strict adherence to the regulations were required. In this regard, a denial of the petition causes a practical difficulty in that a reasonable and permitted use of the property would not be allowed. Clearly, a garage cannot be located in the rear yard given the narrowness of the lot. Simply stated the property is not wide enough to accommodate a driveway next to the dwelling and leading to the rear yard. Moreover, the introduction of additional impervious surface caused by the construction of the driveway would be contrary to the spirit and intent of the Chesapeake Bay Critical Area regulations. The garage height is justified so that the building will match the architectural style of the dwelling and reduce the size of the building footprint. For all these

reasons, the Board finds that practical difficulty would result and the variance requested will therefore be granted as to the garage.

The second variance sought relates to the storage shed. This shed is in the side yard, between the subject dwelling and the side property line which borders the Godwin property. At the hearing before the Administrative Law Judge, Mr. Godwin testified in opposition to this request. However, in the interim between the time of that hearing and the public hearing before this Board, the parties resolved their differences over this issue and others related to their common properties. Mr. Godwin, through counsel, indicated that he had no objection to the variances required for the shed. It was indicated that the shed has been modified (trimmed) since the case was heard before the Administrative Law Judge and that a previous issues regarding the location of the shed intruding over the property line and onto the Godwin property had been resolved.

Having determined that the property is unique in considering the variances for the garage, that finding is also made as it relates to the shed for those same reasons. Moreover, the Board concludes that a practical difficulty or hardship would be experienced by the Petitioner if relief were denied for the shed. Based upon the proffered testimony and evidence presented, the agreement of the parties and arguments of counsel, the Board unanimously finds that the variance with respect to the detached garage and shed can be granted in harmony with the spirit and intent of the BCZR and in such a manner without detrimental impact the public health, safety and general welfare. The parties jointly aver that the requirements of Cromwell have been met and the granting of the variances appropriate as aforesaid.

Pursuant to the advertisement, posting of the property and public hearing on this petition held, and after considering the proffered testimony and evidence offered and arguments of counsel, the Board unanimously finds that the Petition for Variance (as amended), should be GRANTED.

**ORDER**

Therefore, it is this 15<sup>th</sup> day of November, 2011, ORDERED, by the Board of Appeals of Baltimore County, as follows:

1. A Variance from Section 400.1 of the Baltimore County Zoning Regulations to permit an accessory structure (detached garage) to be located in the front yard in lieu of the required rear yard; and

2. A Variance from Section 400.3 of the Baltimore County Zoning Regulations to permit a garage with a height of 18-feet +/- in lieu of the maximum permitted 15-feet; and

3. A Variance from Section 400.1 of the Baltimore County Zoning Regulations to permit an accessory structure (shed) to be located in the side yard in lieu of the required rear yard with a setback of a total of 0-feet; be and are all hereby GRANTED, subject to the following restrictions:

1. The Petitioners or subsequent owners shall not convert the detached garage into a separate dwelling unit or apartment. The structure shall not contain any sleeping quarters, living area or working kitchen unless an in law apartment is approved by Baltimore County in accordance with the applicable provisions of the BCZR. A water line to the garage is existing and permitted in order to provide a sink/toilet.

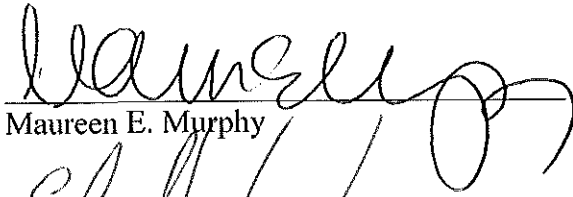
2. The Petitioners and all subsequent property owners are required to adhere to all applicable requirements of the Baltimore County Zoning Regulations as well as Baltimore

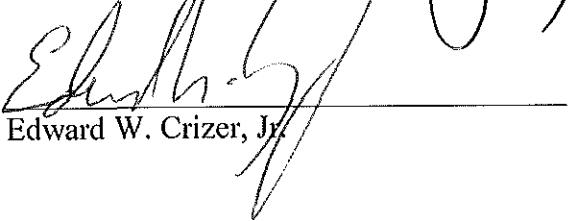
County's environmental regulations, including those regulations intended to protect the Chesapeake Bay Critical Area related thereto.

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*.

**BOARD OF APPEALS  
OF BALTIMORE COUNTY**

  
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Wendell H. Grier, Panel Chairman

  
\_\_\_\_\_  
Maureen E. Murphy

  
\_\_\_\_\_  
Edward W. Crizer, Jr.