

IN RE: <b>PETITION FOR VARIANCE</b>	*	BEFORE THE
E/S Middle Road, 120' S c/line of	*	ZONING COMMISSIONER
Bengies Road	*	
<b>(905 Middle Road)</b>	*	OF
15 <sup>th</sup> Election District	*	
6 <sup>th</sup> Council District	*	BALTIMORE COUNTY
Michelle Girton, <i>Legal Owner</i>	*	
Castle Rock Homes, LLC,	*	<b>Case No. 08-315-A</b>
<i>Contract Purchaser</i>	*	
Petitioners	*	

\* \* \* \* \*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the legal owner of the subject property, Michelle Girton, and the contract purchaser, Castle Rock Homes, LLC, by and through their attorney, Deborah C. Dopkin, Esquire. As originally filed, the Petitioners requested variance relief from Sections 1B02.3.C.1 and 4A03.4.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a lot width of 50 feet in lieu of the required 70 feet and to permit a minimum sum of side yard widths of as little as 20 feet in lieu of the required 25 feet. At the outset of the hearing, however, counsel for Petitioners amended the Variance petition by eliminating the request *to permit a minimum sum of side yard widths of as little as 20 feet in lieu of the required 25 feet*. The subject property and requested relief are more particularly described on the amended redlined site plan submitted which was accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the request were Frank Scarfield, Jr., managing member of Castle Rock Homes, LLC, on behalf of the property owner, Donald E. Hicks, P.E., with Hicks Engineering Associates, Inc., the consultant who prepared the site plan for this property, and Deborah C. Dopkin, Esquire, attorney for Petitioners. Appearing as an

interested citizen was the adjacent property owner, Lawrence Sweringen, 909 Middle Road. There were no Protestants present.

Testimony and evidence offered revealed that the subject property is essentially a rectangular shaped water-oriented (700 feet east of Frog Mortar Creek) parcel, located on the east side of Middle Road just south of Bengies Road in Middle River. The property actually widens from 50 feet at its frontage on Middle Road to over 60 feet wide at the rear property line. The property contains a gross area of 11,880 square feet (0.278 acres), more or less, zoned D.R.3.5 and is presently an unimproved flat lot that is wooded and within the Martin State Airport Restriction area. The property is also known as Lot 85 on the subdivision plat of “Revolea Beach” which was recorded in the Land Records of Baltimore County in June 1920, well prior to the adoption of the zoning regulations. As such, the property is undersized and cannot meet current lot width requirements, however, is served by public water and sewer. Mr. Hicks, by moving the front of the building envelope 12 feet further back on the lot and to the east, was able to meet side yard setback requirements. Testimony indicated that the Petitioner (Frank Scarfield) has resided in the area for many years and his company has built numerous homes in the Bowleys Quarters area. Michelle Girton obtained the property in 1991 and is interested in now selling it to Castle Rock Homes, LLC, who comes before me seeking relief as set forth above to permit development of the property with a new two-story, single-family dwelling.

As noted, Mr. Scarfield testified that he and Castle Rock Homes, LLC have over thirty (30) years of home building experience and knows the area intimately. He described the proposed house and indicated that its design would be in keeping with the character of other newer homes in the community. *See* architectural drawings (Petitioners’ Exhibit 4) and

photographs (Petitioners' Exhibit 5). As shown on the site plan, the proposed house will be a two-story structure, 28' wide x 44' deep with a large 26' wide front porch. In addition, a driveway and garage will provide off-street parking for several vehicles. Side yard setbacks of 10 feet to the south and 15 feet north side, adjacent to the Sweringen and McKeever properties will be provided, and the house will be situated 44 feet from the edge of Middle Road. A review of the site plan shows that these setbacks are consistent with other development in the neighborhood. In sum, the petition will be granted to permit the proposed development. The property meets area requirements and does not need variances for the construction of the dwelling. This has been a lot of record since 1920 and will have its own separate utility connections. The now vacant lot has never been utilized as yard space for any other lot on Middle Road (*See* Title Abstract received as Petitioners' Exhibit 7).

Ms. Dopkin points to B.C.Z.R. Section 4A03.4B.1 & 3 which states:

“A building permit may be issued for the construction of a dwelling on an undersized lot subject to the following conditions:

The owner of the lot does not own sufficient adjoining land that if combined with the adjoining land would allow the property owner to conform to the current zoning requirements.”

In this case, the proposed dwelling will be compatible with the neighborhood and subject to further architectural review by the Office of Planning. As the Office of Planning is one of the signatory departments for building permit approval, the Petitioner must comply with the Office of Planning's recommendations regarding the architectural styling of the proposed dwelling to ensure compatibility with the surrounding neighborhood. Moreover, due to the property's water-oriented location and its location within a floodplain, the proposed construction shall comply with Chesapeake Bay Critical Area regulations and Federal flood

insurance requirements as set forth in the attached comments submitted by the Department of Environmental Protection and Resource Management (DEPRM) and the Development Plans Review Division. In my view, the relief requested will not result in any detriment to the health, safety and general welfare of the surrounding locale and shall therefore be granted.

As noted above, Mr. Sweringen appeared not in opposition to the proposed improvements but out of concern of the wetlands that virtually surround this area. He testified that he had a difficult time due to these environmental constraints in locating his home on adjacent Lots 83 and 84. He was required to scale back the size of his home and obtain variance relief from Sections 1B02.3.C.1 and 303.1 of the B.C.Z.R. in order to develop his property. *See* Zoning Case No. 04-028-A. He delineated the wetlands on Petitioners' Exhibit 1 and pointed to areas in his rear yard where water ponds on the property after rain events. A copy of the Zoning Advisory Committee (ZAC) comment from DEPRM, dated February 14, 2008, regarding the instant proposal was reviewed by Mr. Sweringen and states in pertinent part, "No impacts are permitted to wetlands and associated buffers . . .". Additionally, Messrs. Hicks and Scarfield addressed mitigation efforts that can be incorporated in the site's grading and a General Note 5 was added to the site plan stating, "To the extent possible, and as allowed by DEPRM, surface water will be managed and directed to the rear, or northeasterly portion of the property".

Pursuant to the advertisement, posting of the property, and public hearing held on this Petition held, and for the reasons set forth herein, the variance relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County, on this 19<sup>th</sup> day of March 2008, that the Petition for Variance seeking relief from Sections 1B02.3.C.1 and 4A03.4.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit

a lot width of 50 feet in lieu of the required 70 feet, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED, and

IT IS FURTHER ORDERED, that that portion of the petition requesting approval of a minimum sum of side yard widths of as little as 20 feet in lieu of the required 25 feet, shall be hereby DISMISSED AS MOOT.

IT IS FURTHER ORDERED, for the reasons stated above that this decision is subject to the following conditions precedent to the relief granted:

1. Petitioners may apply for building permits and be granted the same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
2. Compliance with the ZAC comments submitted by DEPRM and the Bureau of Development Plans Review relative to the Chesapeake Bay Critical Areas regulations and all other appropriate environmental, floodplain, and B.O.C.A. regulations for the protection of water quality, streams, wetlands, and floodplains. Copies of those comments have been attached hereto and are made a part hereof.
3. The Petitioners shall submit building elevation drawings of the proposed dwelling to the Office of Planning for review and approval prior to the issuance of any permit.
4. When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

Any appeal of this decision must be taken must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

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SIGNED  
WILLIAM J. WISEMAN, III  
Zoning Commissioner  
for Baltimore County