

IN RE: <b>PETITIONS FOR VARIANCE</b>	*	BEFORE THE
NE/S Third Road, 130' & 180' S of	*	ZONING COMMISSIONER
Elm Road	*	OF
<b>(1305 &amp; 1307 Third Road)</b>	*	BALTIMORE COUNTY
15 <sup>th</sup> Election District	*	<b>Case Nos. 2011-0042-A &amp;</b>
6 <sup>th</sup> Council District	*	<b>2011-0043-A</b>
Scott Copinger & Barbara Prichard		
Petitioners		

\* \* \* \* \*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

These matters come before this Zoning Commissioner for consideration of Petitions for Variance filed by the owners of the subject adjacent properties, Scott Copinger and Barbara Prichard. Since the properties were at one time under common ownership and are adjacent to one another, the two (2) cases were heard contemporaneously. In both cases, the Petitioners seek relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a lot width(s) of 50 feet and an area of 5,150 square feet in lieu of the required 55 feet and 6,000 square feet as required in the D.R.5.5 zone. The subject properties and requested relief are more particularly shown on the site plan submitted in each case and marked into evidence as Petitioners' Exhibits 1, respectively.

Appearing at the requisite public hearing on behalf of the Petitions were Scott Copinger<sup>1</sup> and Ben Battaglia, a home builder and managing member of Battaliga Homes, LLC. There were no Protestants or other interested persons in attendance nor were there any adverse Zoning Advisory Committee (ZAC) comments received from any of the County reviewing agencies.

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<sup>1</sup> Scott Copinger provided the undersigned Zoning Commissioner a General Power of Attorney appointing him as the "attorney-in-fact" and authorizing him (Copinger) to handle Ms. Prichard's affairs. See Petitioners' Exhibit 3 – Case No. 2011-0043-A.

Testimony indicated that the subject properties, known as 1305 and 1307 Third Road, are each 50' wide x 103' deep consisting of area(s) of 0.12 acres or 5,150 square feet, zoned D.R.5.5 and located within the Chesapeake Bay Critical Area (CBCA) near Wilson Point Road and two (2) blocks from Middle River's Dark Head Cove. Vehicular access is by way of Third Road. These two (2) properties are also known as Lots 93 and 94 of the Stansbury Manor subdivision which was recorded in the land records in 1946. Neither lot meets the lot width nor lot area of the D.R.5.5 zone. Mr. Copinger opined that variances are not required of either of these dimensions because the proposed home at 1305 Third Road is a replacement house<sup>2</sup> and the existing one-story home owned by Barbara Prichard at 1307 Third Road was built in 1942 and has not changed in size or location in its 68-year duration. Mr. Copinger indicated he wants to have his vacant lot developed with a new two-story colonial home 22' wide by 34' deep. He noted that many of the other homes in the neighborhood are built on 50-foot wide lots and that his proposal is compatible with the existing pattern of development.

The Petitioners submitted photographic evidence and plats (Exhibits 1 and 2) noting homes on 50-foot wide lots. The Petitioners' exhibits disclosed that the pattern of development in the immediate neighborhood has taken place on undersized lots, which they say support their request. Moreover, the uncontradicted evidence clearly establishes that there has never been a desire to combine or merge the two (2) lots. There is no physical evidence that the subject property was used or consolidated with any other lot to invoke the doctrine of merger as described in *Friends of the Ridge v. Baltimore Gas & Electric Co.*, 352 Md. 645 (1999) and *Remes v. Montgomery County*, 387 Md. 52 (2005).

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<sup>2</sup> The single-family dwelling on Lot 93 was erected in the 1940's, was served by public water and sewer (the water meter is still located within its vault) and razed in 2001 due to demolition by neglect. Until it was torn down, it was the home of John Knueppel who, rather than rebuild, sold the lot to Gerald Prichard in 2005. In 2006, the Prichards sold the vacant lot to Scott Copinger. See Deed history – Exhibit 3 – Case No. 2011-0042-A.

As noted above, the properties are zoned D.R.5.5. The D.R.5.5 zoning classification imposes a number of requirements for the construction of single-family dwellings thereon. First, each lot must be a minimum 6,000 square feet in area; the subject lots are 5,150 square feet. Secondly, for any single-family dwelling on a D.R.5.5 lot, the minimum front property line setback is 25 feet and a 30-foot rear property line setback must be maintained. Finally, 10-foot side yard setbacks must be maintained on each side. In this regard, the Petitioners proposal meets or exceeds all of these requirements. The only deficiency under the current regulations relates to the lot areas and their widths. Under the D.R.5.5 zoning regulations, a minimum lot width of 55 feet is required. As noted above, these lots were originally laid out as 50-foot wide lots. Although recorded well prior to the adoption of the zoning regulations, the current requirements must be maintained or variance relief acquired before building permits can be approved. Finally, Mr. Battaglia noted that most of the houses in the immediate vicinity are situated on 50-foot wide lots. This fact was confirmed during a site visit by the Office of Planning. Indeed, this Commission has approved similar variance relief in this area. *See* Case Nos.: 06-518A (1215 Third Road), 06-470-A (16 Elm Drive), and 03-474-A (25 Elm Drive).

Suitable of mention here is the Baltimore County Zoning Commissioner's Policy Manual (ZCPM) which was enacted pursuant to Sections 3-7-203 through 3-7-208 and 32-3-105 of the Baltimore County Code (B.C.C.). The ZCPM was last adopted and approved by the County Council in 1992. The Policy Manual contains policies and other information that assists the reader in interpreting the B.C.Z.R. On Page 3-3 thereof, the requirements of Section 304 of the B.C.Z.R. are discussed. Therein, it is indicated that the Zoning Commissioner has traditionally applied the "six-year rule" in considering adjacent property ownership. It is important to consider the intent of the owner of contiguous undersized lots that were purchased in good faith

and without any intent to avoid the area requirements of Section 304.1.C. I am satisfied that the requirements set forth in Section 304 have been satisfied and that the construction of a dwelling on the subject undersized lot is appropriate and should be approved.

After due consideration of the testimony and evidence presented, I am persuaded that relief should be granted. To deny relief would result in a practical difficulty for the Petitioners in that there would be no reasonable use of the property for a permitted purpose, a purpose for which the neighboring properties have previously been used. The proposed development is in keeping with other homes in the neighborhood and meets the spirit and intent of Section 307 of the B.C.Z.R. and *Cromwell v. Ward* 102 Md. App. 691 (1995) for variance relief to be granted. This subdivision and the subject lots were created in 1946, much before the zoning was imposed on the area. The imposition of zoning on this property disproportionately impacts the subject property as compared to others in the zoning district. I find that no increase in residential density beyond that otherwise allowable by the Zoning Regulations will result by granting this variance when looking at the overall neighborhood density. I find that the Prichard's, who at one time owned the contiguous undersized lots, purchased the subject property at different times and in good faith and without any intent to avoid the area requirements. Moreover, as noted above, at the time of Mr. Copinger's purchase of the property (Lot 93) in 2006, the improvements had been torn down and the properties always had separate Deeds and separate tax identification numbers. Finally, I find this variance can be granted in strict harmony with the spirit and intent of the regulations, and in a manner as to grant relief without injury to the public health, safety and general welfare.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 14<sup>th</sup> day of September 2010 that the Petition for Variance filed in Case No. 2011-0042-A seeking relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a lot width of 50 feet and an area of 5,150 square feet in lieu of the required 55 feet and 6,000 square feet, for a replacement dwelling to be built on Lot 93 at 1305 Third Road, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance in Case No. 2011-0043-A seeking similar relief from Section 1B02.3.C.1 of the B.C.Z.R. to permit a lot width of 50 feet and an area of 5,150 square feet in lieu of the required 55 feet and 6,000 square feet, for an existing dwelling on Lot 94 at 1307 Third Road, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED, subject to the following restrictions imposed in both cases:

1. The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.
2. Petitioners shall comply with the Zoning Advisory Committee (ZAC) comments submitted by the Office of Planning, dated August 11, 2010, and the Department of Environmental Protection and Resource Management (DEPRM), dated September 8, 2010. Copies of these comments have been attached hereto and are made a part hereof.

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

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