

IN RE: PETITIONS FOR VARIANCE	*	BEFORE THE
NE/S Tred Avon Road, 35' & 85' NE of		
Antietam Road	*	ZONING COMMISSIONER
(2100 & 2100A Tred Avon Road)		
15 th Election District	*	OF
6 th Council District		
	*	BALTIMORE COUNTY
Charles A. Sommers, III, et ux and		
Robert John Wilson, Sr., et ux	*	Case Nos. 2011-0150-A &
		2011-0151-A

* * * * *

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, Charles and Virginia Sommers and Robert and Deborah Wilson. Since the properties were at one time under common ownership and are adjacent to one another, the two (2) cases were heard contemporaneously. In Case No. 2011-0150-A, the Sommers, in their Petition, request a Variance from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing dwelling at 2100 Tred Avon Road with a lot width of 50 feet and individual side yard setbacks of 10 feet minimum with a sum of side yards of 22 feet in lieu of the required 70 feet, 10 feet minimum, and 25 feet respectively. In Case No. 2011-0151-A, the Wilsons request similar relief for a proposed new dwelling. Specifically, relief is requested from Section 1B02.3.C.1 of the B.C.Z.R. to permit a lot width of 50 feet and side yard setbacks of 10 feet minimum with a sum of 20 feet in lieu of the required 70 feet, 10 feet minimum, and 25 feet respectively. The subject properties and requested relief are more particularly described on the redlined site plan submitted

in each case, which were accepted into evidence and respectively marked as Petitioners' Exhibits 1.¹

Appearing at the requisite public hearing in support of the requests were Charles A. Sommers, his wife, Virginia L. Sommers, Robert J. Wilson and Deborah B. Wilson, his wife, and their consultant, David Billingsley, with Central Drafting and Design, Inc., who prepared the site plan and is assisting the Petitioners through the permitting process. 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. Letters of support were received by the adjacent property owners (Barbara M. Knopp, 2036 Tred Avon Road, and William W. Furst, Jr., 2102 Tred Avon Road) and marked as Petitioners' Exhibit 11.

Testimony indicated that the subject properties, known as 2100 and 2100A Tred Avon Road, are each 50' wide x 200' deep consisting of area(s) of 10,000 square feet, zoned D.R.3.5 and located within the Chesapeake Bay Critical Area (CBCA) with frontage on Hopkins Creek in Middle River. Vehicular access is by way of Tred Avon Road. These two (2) properties are also known as Lots 49 and 50 of the Middleborough subdivision which was recorded in the land records in 1916. Both lots meet or exceed the lot area of the D.R.3.5 zone but do not meet the lot width requirement. Mr. Billingsley discussed the lengthy history of these properties through the Development Review Committee (DRC) process in 2006. That process effectively removed any zoning merger considerations that may have occurred as a result of joining the contiguous properties while under the Wilson's common ownership. See Petitioners' Exhibits 5 through 8.

¹ The Petitioners in Case No. 2011-0151-A amended their site plan in response to the Zoning Advisory Committee (ZAC) comment received from Laurie Hay, on behalf of the Office of Planning, dated November 22, 2010. The redlined amendments clarify that the existing dwelling at 2100A Tred Avon Road will be converted to a storage building and no longer allowed to be used for additional living space purposes. It further identified accessory structures that are to be removed prior to the issuance of a use and occupancy permit.

He then noted that many of the other homes in the neighborhood are built on 50-foot wide lots and that this proposal is compatible with the existing pattern of development.

The Petitioners submitted photographic evidence and plats (Exhibits 4, 9 and 10) 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. The properties are served by public water and sewer. The D.R.3.5 zoning classification imposes a number of requirements for the construction of single-family dwellings thereon. First, each lot must be a minimum 10,000 square feet in area; the subject lots are slightly in excess of 10,000 square feet. Secondly, for any single family dwelling on a D.R.3.5 lot the minimum front and rear property line setbacks are 30 feet. Finally, 10-foot side yard setbacks must be maintained on each side with a minimum sum of side yard widths of 25 feet. In this regard, the only deficiency under the current regulations relates to the lot widths and the sum of side yard setbacks. 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, as noted by Mr. Billingsley 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.

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, given the laborious history of these two (2) lots, that the requirements set forth in Section 304 have been satisfied and that the construction of a new dwelling by the Wilsons on the subject (Lot 49) 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 these lots and the neighboring properties have previously been used.² 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 1916, 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 Wilson’s, who at one time owned the contiguous lot, purchased the subject property in good faith and that by proceeding through the DRC removed any intent to avoid the area requirements. Mr. and Mrs. Wilson wish to build a new 30' wide x 50' deep two-story home on the property they retain at 2100A Tred Avon Road that will be set back 70 feet from the bulkhead at Hopkins

² See Maryland Department of Assessments and Taxation property records (Petitioners’ Exhibit 2) evidencing that a modest 660 square foot dwelling was built on Lot 49 in 1927.

Creek. In doing so, they will also remove and/or improve other accessory structures that have existed on this lot (Lot 49) for many years. 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 15th day of December 2010 that the Petition for Variance filed in Case No. 2011-0150-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 individual side yard setbacks of 10 feet minimum with a sum of side yards of 22 feet in lieu of the required 70 feet, 10 feet minimum and 25 feet, respectively, for an existing dwelling on Lot 50 at 2100 Tred Avon 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. 2011-0151-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 individual side yard setbacks of 10 feet minimum with a sum of side yards of 20 feet in lieu of the required 70 feet, 10 feet minimum and 25 feet respectively, for a new single-family dwelling on Lot 49 at 2100A Tred Avon 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 November 22, 2010, and the Department of Environmental Protection and Resource Management (DEPRM), dated December 10, 2010. Copies of these comments have been attached hereto and are made a part hereof.
3. The Petitioners shall permit a representative of the Code Enforcement Division of the Department of Permits and Development Management (DPDM) reasonable access to the subject property to insure compliance with this Order and approved site plan.
4. When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

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

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