

IN RE: PETITION FOR SPECIAL HEARING *

NW/Side Island View Road, 208' SW/Side of
Barrison Point Road *

(2534 Island View Road)

15th Election District *

6th Council District *

Andrew J. Mattes, III, et ux,
Legal Owners/Respondents *

Theresa J. Guckert, et al
Petitioners *

BEFORE THE

ZONING COMMISSIONER

OF

BALTIMORE COUNTY

Case No. 2010-0220-SPH

* * * * *

RULING ON PETITIONERS' MOTION FOR RECONSIDERATION

This matter comes before the Zoning Commissioner on a Motion for Reconsideration filed by Petitioners', Theresa J. Guckert, James S. Brown and David M. Donovan, of the decision rendered in the above-captioned matter. The Motion is filed pursuant to Rule 4K of Appendix G of the Baltimore County Zoning Regulations (B.C.Z.R.), wherein the Rules of Practice and Procedure before the Zoning Commissioner are provided. Rule 4K permits a party to file a Motion for Reconsideration within thirty (30) days of an Order issued. The Motion must state with specificity the grounds and reasons for the request.

The validity of the existing Use Permit having been decided and no longer at issue – Petitioners' by way of their Motion for Reconsideration now seek a finding that the fishing and shellfishing operation at the subject property is operating at an intensity that is above that which was grandfathered in 1978 when the Use Permit was issued. As more particularly set forth in my Order, dated April 19, 2010, the issue originally presented in the underlying Petition for Special Hearing involved a request "to invalidate a fishing and shellfishing facility *for non-conforming use or otherwise*. On May 10, 2010, the Petitioners in their Motion introduce for consideration

ORDER RECEIVED FOR FILING

Date

By

6-1-10
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the issue of intensification which is a divergence from that initially contained in the Petition, the posting and public notice provided.

Notice is an element of procedural due process. It is incorporated in the Express Powers Act, Article 25A, Section 5(U), Maryland Code, the Baltimore County Code Section 32-3-302 and the B.C.Z.R. Section 500.7. As stated therein, no zoning commissioner's hearing shall be conducted without giving at least fifteen (15) days notice . . . of the action requested. *See, Cassidy v. County Board of Appeals* 218 Md. 418 (1958) (The noticee should be apprised clearly of the character of the actions proposed and enough of the basis upon which it rests to enable him intelligently to prepare for the hearing).

The Petitioners' may argue or reason that the zoning commissioner has the discretion to accept their intensification issue for a determination at this time and that there is no additional requirement that the public or respondents be notified. Such a position would be legally deficient. In the case before me, the decision rendered was based upon the evidence introduced material to the matters raised in the Petition, i.e., the validity of the Use Permit based upon legislative actions, prior approvals and applicable law. A decision now on the shellfishing operations intensity and the imposition of conditions limiting the number of crab pots that can be stored at 2534 Island View Road etc. would require a resolution of significant conflicts.

I have considered the arguments presented in Petitioners' Motion and understand their position that the intensification of use on this site is surely suspect and that Mr. Mattes may be skating precariously close to losing his Use Permit altogether. The Zoning Commissioner is, however, required to render a decision under a correct legal standard and issue findings of fact and conclusions of law in support of the Opinion. This cannot be done without requiring the requisite notice that provides parties with the ability and time to address the issues. The

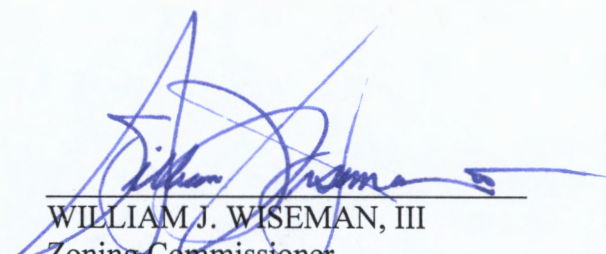
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Respondents have a right to confront and cross-examine anyone – including a hearsay declarant – who bears testimony against him or his predecessor' in interest. As a result, this Commission does not have jurisdiction to review Petitioners' Motion for Reconsideration and finds that the Motion predicated on materially different issues must be denied and that Petitioners' are instructed to file a new Petition with the Department of Permits and Development Management (DPDM) raising the central issue of intensification of use at this location and request a new hearing after proper notice is provided in accordance with the B.C.Z.R. and Baltimore County Code (B.C.C.).

WHEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 1st day of June, 2010, that the Motion for Reconsideration filed in the above-captioned matter, be and the same is hereby DENIED.

Any appeal of this decision shall be entered within thirty (30) days of the date hereof.

WJW:dlw


WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

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Date

By

6-1-10

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BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

WILLIAM J. WISEMAN III
Zoning Commissioner

June 1, 2010

Theresa J. Guckert
2530 Island View Road
Baltimore, MD 21221

David M. Donovan
James S. Brown
2502 Island View Road
Baltimore, MD 21221

RE: PETITION FOR SPECIAL HEARING – MOTION FOR RECONSIDERATION

NW/Side Island View Road, 208' SW/Side of Barrison Point Road

(2534 Island View Road)

15th Election District - 6th Council District

Andrew J. Mattes, III, et ux, *Legal Owners/Respondents*;

Theresa J. Guckert, et al - *Petitioners*

Case No. 2010-0220-SPH

Dear Ms. Guckert and Messrs. Donovan and Brown:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Department of Permits and Development Management office at 887-3391.

Very truly yours,

A handwritten signature in black ink, appearing to read "William J. Wiseman, III", written over a circular stamp.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw
Enclosure

c: Lawrence E. Schmidt, Esquire, Gildea & Schmidt, LLC, 600 Washington Avenue,
Ste. 200, Towson, MD 21204
Stephanie L. & Andrew J. Mattes, III, 2534 Island View Road, Baltimore, MD 21221
Daniel F. Beck, 2358 Schaffers Road, Baltimore, MD 21221
People's Counsel; Mike Mohler, DPDM

May 10, 2010

Sent via Hand Delivery

Honorable William J. Wiseman, III
Zoning Commissioner
Jefferson Building
105 W. Chesapeake Avenue, Suite 103
Towson, MD 21204

RECEIVED

MAY 10 2010

ZONING COMMISSIONER

**Re: Mattes/2534 Island View Road
Case No.: 2010-0220-SPH**

Dear Commissioner Wiseman:

We are writing to ask for a Motion for Reconsideration on Case 2010-0220-SPH regarding the 466 Barrison Road (2534 Island View Road) Commercial Fishing and Shell fishing 'Use Permit'. We contend that the current fishing and shellfishing operation at 2534 Island View Road is operating at an intensity that is above that which existed in 1978, and thus does not reflect the intent of the zoning code. We ask that the Commissioner provide relief by limiting the amount of crab pots stored at this location to more closely mimic the intensity of fishing and shellfishing performed by Mr. Dan Beck, Sr. prior to 1978 when the secondary Use Permit was issued.

It is uncontested that Mr. Beck Jr. did not reside at 466 Barrison Point Road for several years prior to 1978. So any fishing and shell fishing that occurred here must reflect the use by Mr. Beck Sr. who was born in 1895 and died in 1979. In 1978 when the use Permit was issued, Mr. Beck Sr. was ~84 years of age. Bill 98-75 limits the intensity of the fishing and shellfishing operation to that level ongoing at the time the Use Permit was issued. Bill No. 139-83 in 1983 continues to support this limit of intensity. We contend that the Use Permit for 466 Barrison Road with a 50' x 65' crab pot storage area, and 50% of the property available for fishing and shellfishing use, does not reflect the prior usage and thus does not adhere to the intent of the code.

Dan Beck Sr. never used Crab Pots at 466 Barrison Road and thus the Use Permit plot diagram that includes a 50' x 65' Crab Pot Storage Area does not reflect the intensity of crabbing by the resident fisherman at the time the Use Permit was filed.

Ms. Guckert, the next door neighbor to the fishing facility, included a statement in her testimony (Petitioner's Exhibit 1, Attachment 3, page 1, next to last paragraph), indicating that Dan Beck Sr. did not ever use crab pots or store crab pots at 466 Barrison Road. He only used a trot line. Several points of evidence introduced at the hearing support this assertion.

1.) The use permit inspection (Shellfishing inspection report) in Petitioners Exhibit 1 (Attachment 16) under Remarks: states that 'no crab pots were stored' on the Barrison Road property. This is in contrast to the Schaffer's Lane Use Permit, also in Dan Beck, Jr's name presented at the Hearing on April 8th, for (Attachment 15) where the same inspector reported that 'the pots were stored in the proper place.' This indicates that at the time of the inspection, June 13, 1978, there would have normally been pots stored on the Barrison Road property, if they were being used by Mr. Beck Sr.

2.) The Barrison Road Use Permit (Attachment 16) includes pictures of the property in the Inspection Report. Those pictures despite poor quality support the inspectors remarks and do not show any crab pot storage occurring on the property. The property looks like a residential property in keeping with the neighborhood. This is in contrast to the current status of the property (see attached photos taken May 5).

3.) To further verify that crab pots were never used or stored on the Barrison Road property by Mr. Beck Sr., we have also attached a document, with Mrs. Guckert and Mr. Earnie Hoffman from Island View Road indicating the years they resided at their homes and that they never saw Mr. Beck Sr. use or storage of crab pots at this location during any of the years that Dan Beck, Sr. fished and crabbed at this location. Each of these petitioners resided on Island View Road during the period when Mr. Beck Sr. operated his fishing and shellfishing facility, until now. Each also signed as part of the original documentation at the April 8th hearing, (Attachment 5). It is unlikely that even a small stack of [red] crab pots would not be noticed on this property by the next door neighbor and other neighbors who drove past this property every day for the years in question prior to 1978. It is impossible to imagine that a stack of crab pots the size of the crab pot storage area on this Use Permit, or the number of pots stored currently at 2534 Island View Road could be disguised or would not have been seen by the local residents all winter long.

The plot diagram of the 466 Barrison Road Use permit indicates a Crab Pot Storage area capable of storing 3,000 crab pots (if stacked five high, as cited by Mr. Mattes at the April 8th hearing), and allows 50% of the property to be used for fishing and shell fishing. Mrs. Guckert indicates that Mr. Beck Sr. only used ~10% of his property on a daily basis for bringing in his catch and rebaiting his trot line (these activities were performed at the bulk head and not at numerous location, as is the current status of the crab pot storage). On occasion (once weekly) she indicates that Mr. Beck Sr. might string his fishing nets out the length of the property for a few hours, long enough for the nets to dry prior to storage or repair. His nets and trot lines were stored inside the garage during the off season, so she never needed to see the nets and trot lines all winter, in contrast to the current situation with crab pots. She also indicates that there were rarely as many as five cars that would arrive at the property on a daily basis for selling of the catch (mostly carp and crabs). This usually occurred in the early afternoon, when the fishermen were selling their catch. She recalls that there was no fishing of any sort ongoing during 2 or 3 months in the winter.

In the April 8th hearing, Dan Beck Jr. indicated that with regard to filing the two Use Permits he '[was keeping his options open]' (paraphrased in the absence of a tape or transcript of the hearing). He indicated that he thought he might move back to his parents' 466 Barrison Road location. In light of the fact that he was using crab pots on his Schaeffer Lane operation (per Use Permit, Attachment 15) it is a fair assumption that he intended to store crab pots on his parents property if he did move back to this location. In support of this fact, Mr. Schmidt indicated in his letter to the Commissioner that the Beck family was not requesting a secondary fishing and shellfishing facility on the Barrison Road Property. A Primary fishing and shellfishing facility (the only other class of commercial facility allowed by this Bill 98-75 and supported by the use permit) would have allowed Mr. Beck Jr to incorporate his fishing practices into this location and it is known from the Schaeffer Lane Use Permit that Mr. Beck Jr. did use and store crab pots on the Schaeffer Lane property. Although Mr. Beck Jr. intended to use crab pots on the Barrison Road property if he moved there in the future. However, he never did move there and he never did store or use crab pots from this as both Mr. Hoffman and Mrs. Guckert have indicated. There were in fact no crab pots used or stored on this property prior to 2009 following Mr. Mattes' purchase of the property.

We thus contend that the addition of a Crab Pot Storage Area [50' x 60'] to the Barrison Road Use Permit application plot diagram (Attachment 16) submitted by Dan Beck Jr. does not reflect the prior usage of the property, but usage that Mr. Beck Jr. intended if he moved there. Similarly, 50% use of the property for fishing and shellfishing was never exercised by Mr. Beck Sr. The actual use of the property was much less. Mrs. Guckert also indicates that Mr. and Mrs. Beck Sr. were impeccable in their maintenance of the Barrison Road property which melded very well into this residential community, consistent with the Use Permit Inspection report photographs, and in direct contrast to the current situation.

Testimony of Mr. Dan Beck Jr. April 8, 2010 vs. long term residents of Island View Road.

The Commissioners response dated April 19, 2010 states that the April 8, 2010 testimony of Dan Beck Jr. indicated that "In 1979 his father phased out the heavy work required to haul in nets and crab pots but continued with minnow catching, eel traps and the use of slough boxes." Although there is not a tape of the hearing, to the best of our recall, none of the other witnesses stated that crab pots were used by Mr. Beck Sr., prior to 1978. Most of the witnesses testified to storage of crabbing and fishing equipment on the Barrison Road property after 1978. Mr. Gene Williams worked with Mr. Beck Sr. since 1968 and did not mention the use of crab pots in his testimony. Thus the testimony regarding crab pot useage at this location is largely based on the historical account by one person, Mr. Beck Jr. The attached document indicates that two full time residents of Island View Road recall otherwise.

As stated above, we contend that Mr. Beck Sr. never used crab pots. However, if the Commissioner decides that there might have been some crab pot usage at the Barrison Road site prior to 1978, certainly it was at a drastically reduced level than is currently being used and stored at this location. We have attached a picture of the Mattes property at 2534 Island View Road, taken May 5, 2010. This picture as well as in Attachment 3 illustrates that the crab pots are not being stored in the crab pot storage area abutting the bulk head, but rather are located along side the house and extend beyond the house into the back yard (in the direction of the road). It is apparent that despite the April 8th hearing when both Code Enforcement Officers and Mr. Mattes were made aware of the neighborhood concerns, and the Commissioner's decision April 19th indicating that the Use Permit plot diagram was to be followed (dictating the exact location of the crab pot storage area), neither intend to adhere to the Use Permit Plot diagram. ***It is apparent that both Mr. Mattes and Code Enforcement require explicit instructions detailing where the crab pots should be stored on this property.***

Crab pots constitute an increased intensity of crabbing over trot lines and the two methods are impossible to compare for equivalency.

We contend that the use of crab pots over trot lines constitute an increased intensity of crabbing outside that of the resident, Mr. Beck Sr., and is thus also outside the intended scope of the 98-75 Bill. It is common knowledge that the Crab Pot is a much more efficient mechanism for catching crabs and for that reason virtually all commercial crabbers use this method today. Several lines of evidence support this contention. First, the crab pot stays on the bottom of the river as a trap for crabs 24 hours a day with a tethered floating bobber for the crabber to find the pot. It is filled with bait at the time the crabs are harvested (once daily or every couple days). The crabs can not access the bait, only the bait scent is used to attract the crabs, thus a wide variety of bait types can be utilized as opposed to the trot line which are limited in the types of bait that they can use. Trot line bait must be a very strong textured meat like eel, in order to avoid the crabs pulling the bait off the trot line. Furthermore, a crab pot catches crabs 24 hours a day, and because the crab can not access the bait, it uses less bait than a trot line. It is fool proof and does not require any specialized skill by the operator and sits on the bottom of the river so is not dependent on good weather or calm seas. It can stay out for days and continues to catch crabs. In contrast, the trot line which Mr. Beck Sr. utilized exclusively is only in the water for a few hours a day. It is usually placed in the water in the morning, and taken up each night. The amount of crabs caught is dependent on the crabber running the line and repeatedly checking each bait that is attached at 3-4 foot intervals. Also, the bait is eaten by the crabs on the trot line, so there is an added complexity that the bait can be degraded during the time in the water, and it can fall off if degraded to the point where the line is not holding tightly. The line needs to be rebaited in the evening after each day, adding yet more time to an already time consuming operation. The amount of crabs caught is depending on the amount of time the crabber is willing to run the trot line in a day, while the crabber using crab pots can do other types of fishing while the pot is catching crabs unattended. There are many other complex factors that can reduce the efficiency of a trot line method, including the wind, sun, the coordination/skill of the dip net operator, and the boat navigator. The trot line yield is negatively effected by high seas (the crabs fall off the trot line in rough waters, as they are only held on by their own claws, so when the boat rocks and exposes the crab out of the water, they often release their grip). Similarly, high winds alter the successful navigation of the boat, which must be aligned correctly

with the trot line in order to maximize the ability of the crabber to dip the crabs successfully. In general, if bad weather, the trot line crabber does not go out, while the crab pot is not effected by the occasional bad weather day. The crabs are also not usually caught in the middle of the day when the sun is brightest, as the crabs often will not stay on the bait all the way to the surface of the water when in bright sun light. Needless to say, the skill of the crabber is another important human factor. In contrast, the crab pot is fool proof, taking advantage of the crabs natural tendency to climb up when it feels trapped. Also, with the crab pot, there is no special skill involved, just navigate alongside the bobber, pull up the pot, empty it, rebait it, and drop back into the river. Trot lines are thus very labor intensive method to catch crabs compared to crab pots and this combination of factors makes the crab pot much more efficient, allowing for more crabs to be caught and other fishing to be performed.

If trying to compare the crab pot method to the trot line method, it might seem intuitively obvious to count the bait on a given length of trot line and assume a similar number of baits in the form of a crab pot might be an equivalent level of intensity, but this is not actually a valid comparison. When the question was posed to Michael Luisi, MD DNR Fisheries (410-260-8341), and Brenda Davis DNR Blue Crab Program Manager (410-260-8267), both indicate that there is no way to equate a length of trotline to a number of crab pots. Their comments indicate that these are two different methodologies that rely on two different mechanisms, and thus there is no equation to reliably equate the two methods.

Briefly, regardless of the length of trot line, 1 mile or five miles, the crabber must spend the time to constantly re-run the line all day long to catch the crabs while they are in the act of feeding. Crabs are bottom dwellers and feed on the bait of the trot line that is lying on the bottom of the river. The trotline bait is attracting the crabs the entire time it is on the bottom of the river. Only a short stretch of the trot line (in the region of the crabber and his crew) is off the bottom of the river for any length of time. It takes a sufficient length of time for the crabber to complete a run on a 1 mile trot line, such that by the time the crabber gets to the end of the run, the crabs can repopulate the trotline at the beginning of the run. Thus, it is not the length of the trot line that is a factor, it is the time required to run the line that is the limiting factor. In short, a five mile trot line will yield the same number of crabs as a 1 mile trot line, depending moreso on the amount of labor committed to running the line than the length of the line. The intensity of labor required is actually the limiting factor. The fisherman can not catch any more crabs than he and his crew are able to personally dip from the water with all of the complexities described above. Second, the crabber is only dipping crabs during day light hours, and is subject to many complex factors such as skill and weather, while a crab pot is catching crabs for virtually 24 hours a day with no consideration for skill or weather and with no loss of crabs. The pot can be left out for days on end, and the crabs will still be there. Whereas if the crabber does not put out the trot line daily, rebait it daily, and run it constantly, the bait will disappear and no crabs will be caught.

Level of intensity was primarily intended to consider impact on the neighborhood.

Bill 98-75 was intended to protect residential neighborhoods from new fishing and shellfishing operations by requiring special exceptions for new operations. These facilities are so offensive to a residential neighborhood that the originators of this code also included a statement to limit the intensity of the existing fishing and shellfishing to that level occurring at the time of enactment of the legislation. If the fisherman wanted to increase his fishing and shellfishing intensity, then they needed to use the Special Exception mechanism to obtain the permit. Thus, we interpret this to indicate that intensity should not only be limited to the amount of fish and shellfish caught but should also limit other potential impacts on the neighborhood.

It is indicated by MD DNR, Mike Luisi that the maximum number of pots a crabber can currently have a license for is 900, (a number that would easily be stored in the crab pot storage area on the Barrison Road Use Permit plot diagram). However, a crabbing license only limits the number of pots *in the water* at any given time, but *does not limit* the amount of crab pots stored on the property due to the potential for fouling of the pot, or lost crab pots (bobber tether line cut by recreational boats). Thus, a license for just 300 pots would allow the

crabber to store many more pots (essentially unlimited amounts) on his property. Thus, even though there is a limit on the crabber license for the number of crab pots he can use, this does not reflect the intensity that the neighborhood must face. The actual storage of crab pots can be much higher, as Mr. Mattes indicated in his testimony up to 3000.

As stated above, one part of the original intent of Bill 98-75 was to help improve residential communities through the requirement of special exceptions in order to allow certain commercial uses. Although the Use Permit option in bill 98-75, protected the fisherman from losing their livelihood, it also limited the expansion of the fishing and shellfishing operation in order to protect the residential community from the unsightly aspects of the commercial operation. We contend that the pictures of the 466 Barrison Road property that were included as part of the annual inspection report found in the official records of the Use Permit at Zoning Code enforcement had two purposes, first, to verify adherence to the plot diagram included with the Use Permit (e.g. location of crab pot storage), but also to indicate the quality of the residential property in 1978. It is apparent that the appearance of the Barrison Road property now (Attachment 3) is not maintained at the same level of acceptability as it was in 1978 (see pictures in the Use Permit; Attachment 16, Attachment 1, and the pictures of the property as it appears now, described above and in the attached photo from May 5, 2010).

Furthermore, we ask you to consider as any reasonable man could: Even without any of the facts surrounding the payment schedule for the mortgages of either Mr. Beck Sr. in the 1970s or Mr. Mattes in 2009. Do you think it likely that a 29 year old Mr. Mattes with a mortgage based on a \$380,000 sale price is intending to fish at the same level of intensity as the ~84 year old Mr. Beck Sr. in 1978 with a house that originally cost ~\$5,000 in 1940 (estimated by Mrs. Guckert from the \$3200 refinanced price of her home in 1944). Mr. Beck Sr. had likely completed paying on a 30 year mortgage well before the late 70's. It is reasonable to expect that Mr. Mattes intends to fish at a much higher intensity than Mr. Beck Sr. and the low quality of his property appearance is a direct reflection of this heightened effort, an effort that breaches the intent of Bill 98-75. When looking at the picture of the 2534 Island View Road property in Petitioner's Exhibit 1, Attachment 1, it is a modest home. From even an amateur evaluation, it does not appear to be a home worth \$380,000. Mr. Mattes purchased a property that has an inflated price due to a real estate market that places an inordinate value on water front property. The current market values of water front property in the Baltimore area is exaggerated in a way that was unheard of in the 1940's when Mr. Beck Sr. bought his property. We feel it is obvious that Mr. Mattes will need to perform a higher intensity of fishing and shellfishing relative to the level of fishing that an ~84 year old Mr. Beck Sr. performed in 1970's.

Summary

We implore you to uphold the intent of the 98-75 Bill and help limit the negative impact of the commercial operation on our residential neighborhood by requiring that the Mattes family restore the property back to its 1978 status (per the Use Permit pictures) and request that the impact on the neighborhood also be restored to the 1978 level. The pictures included with the 466 Barrison Road Use Permit (Attachment 16) indicate a nearly normal residential property lacking the large extraneous equipment and large stacks of crab pots that are apparent at 2534 Island View Road in Petitioner's Attachment 3 and pictures attached to this document. We contend the pictures were added to the Use Permit inspection report in order to validate the 1978 impact on the neighborhood. If strictly adhering to the intent of the code, Mr. Mattes would only be crabbing via trotline. By reducing the number of crab pots allowed to be stored on the property, you would help to uphold the intent of the Bill 98-75 and limit the detriment to the community, a detriment that this community never faced previously. Such a decision would protect both the commercial operation (at the intended 1978 level) and limit the impact on the neighborhood, thus fulfilling both intents of the original legislation.

Proposed Relief:

Mr. Mattes comments that his fishing and shellfishing income are essential to pay for his home are compelling.

As stated in the hearing, we are most concerned about losses in property values due to the negative impact that a fishing and shellfishing facility has on the neighborhood. It is not our goal to ruin Mr. Mattes dream of owning his own fishing facility or to have him fault on his mortgage. [We feel it is unlikely that Mr. Mattes could make his mortgage payment if he were limited to the 1978 level of fishing and shellfishing performed by the ~84 year old Mr. Beck Sr.] We feel Mr. Mattes bought this property in good faith and that the Use Permit was his primary reason for purchasing the property. It is apparent that there is a conflict in the testimony and statements as to the use of crab pots on this property. Thus, we propose a compromise:

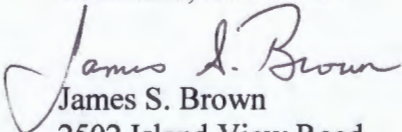
1. Mr. Mattes would limit his crab pot storage at 2534 Island View Road, to one layer of crab pots to be stored exclusively in the crab pot storage area. These pots would be stored as a mono-layer, not mounded up. We are not concerned about the number of pots he uses on his license, merely the amount he stores at the property. He stated on April 8th that he has had a license for many years prior to moving to Island View Road, so he obviously had stored his pots somewhere previously. We ask that he store any additional pots at some other location. Per his comments at the April 8th hearing, a single layer of pots would equate to ~600 crab pots. ^{EQUALS} ~~This is~~ Based on 1 minute to travel between, lift, and bait each crab pot in one 10 hour work day [60 min x 10 hours = 600 minutes]. This is a very generous number. Certainly it takes more than one minute to travel between pots, lift, empty and rebait the pot. We believe this is a heightened intensity of fishing over the 1978 level, but this number of pots would allow a reasonable income, stay ~~in~~ within the Use Permit crab pot storage area, while limiting the negative impact that the neighborhood currently faces.
2. Mr. Mattes would keep the entire back of his property (from the back of the house to the road, across the entire width of the property) looking 'residential' in appearance and all fishing equipment, trailers, heavy equipment, etc. stored on the waterfront and/or side yards or inside the garage and storage shed. We again feel we are allowing a heightened intensity of usage compared to the 1978 usage Mrs. Guckert observed (5%) or indicated in the Use Permit photos, but would still allow approximately 50% of his property to be used for his fishing and shellfishing needs as indicated in the Use Permit. This would drastically reduce the negative impact of the facility that we have faced in the past year.
3. Baltimore County would install no parking signs on Island View Road in the vicinity of the fishing facility to prevent the public hazard created by vehicles parking along Island View Road. Mr. Mattes would inform his customers of this and help prevent parking on the road.

Thank you for your consideration.

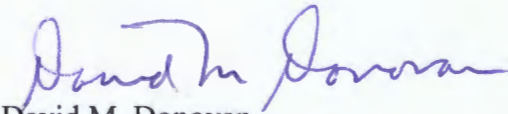
Sincerely yours,



Theresa J. Guckert
2530 Island View Road
Baltimore, MD 21221



James S. Brown
2502 Island View Road
Baltimore, MD 21221



David M. Donovan
2502 Island View Road
Baltimore, MD 21221

enclosures

CC: P. Zimmerman
L. Schmidt
Andrew and Stephanie Mattes, 2534 Island View Road

April 2010

Petitioners against the Fishing Facility at 2534 Island View Road.

In support of Teresa Guckert's testimony on the bottom of page 1, next to the last paragraph.

TERESA

There were never any crab pots utilized or stored at 466 Barrison Road (2534 Island View Road).

I have lived on Island View Road since 1926.

To the best of my knowledge, ~~Dan~~ Beck, Sr. never stored or utilized Crab pots at his residence in the years I lived here.

FRANK (T.G.)

Teresa J. Guckert *2530 Island View Rd.* _____
Name Address Signature

I have lived on Island View Road since 1955.

To the best of my knowledge, Dan Beck, Sr. never stored or utilized Crab pots at his residence in the years I lived here.

Ernest R. Hoffman *2512 ISLAND VIEW RD* _____
Name Address Signature

I have lived on Island View Road since _____.

To the best of my knowledge, Dan Beck, Sr. never stored or utilized Crab pots at his residence in the years I lived here.

Name Address Signature

I have lived on Island View Road since _____.

To the best of my knowledge, Dan Beck, Sr. never stored or utilized Crab pots at his residence in the years I lived here.

Name Address Signature

I have lived on Island View Road since _____.

To the best of my knowledge, Dan Beck, Sr. never stored or utilized Crab pots at his residence in the years I lived here.

Name Address Signature



May 5, 2010 Picture of 2534 Island View Road,
Taken from Ms. Guckert's front yard.

4/19/10
IN RE: PETITION FOR SPECIAL HEARING *

NW/Side Island View Road, 208' SW/Side of
Barrison Point Road *

(2534 Island View Road)

15th Election District *

6th Council District *

Andrew J. Mattes, III, et ux,
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BEFORE THE

ZONING COMMISSIONER

OF

BALTIMORE COUNTY

Case No. 2010-0220-SPH

* * * * *

MEMORANDUM AND ORDER

STATEMENT OF THE CASE

This zoning case involves 2534 Island View Road, formerly 466 Barrison Road, in eastern Baltimore County. On October 5, 1977, Robert J. Romadka, Esquire, on behalf of the then property owners, D. Franklin Beck, Sr. and Mae M. Beck, his wife, and their son, Daniel F. Beck, Jr., filed an application for a Zoning Use Permit and site plan for a "Commercial fishing, crabbing and shellfishing operation".¹ This application was submitted consistent with Baltimore County Council Bill No. 98-75 and Section 500.4 of the Baltimore County Zoning Regulations (B.C.Z.R.). An inspection of the property was conducted on June 13, 1978. On October 9, 1978 Zoning Commissioner S. Eric DiNenna (also deceased) issued a Use Permit to use 50% of the land "as a secondary commercial fishing, crabbing and shellfishing operation". This matter now comes before the undersigned Zoning Commissioner for consideration of a Petition for Special Hearing filed by adjacent neighbor, Theresa J. Guckert (2530 Island View Road), and

¹ D. Franklin Beck (12/1/79) and Mae Beck (7/14/08) departed this world vesting title to the property in Daniel F. Beck, Jr. who sold the land and improvements to Andrew J. Mattes, III and Stephanie L. Mattes, his wife, on February 3, 2009.

ORDER RECEIVED FOR FILING

Date

By

4-19-10

3

interested residents David M. Donovan and James S. Brown (2502 Island View Road).² As filed, Petitioners request a special hearing "To invalidate the fishing and shell fishing facility for non-conforming use or otherwise". The requested relief is more fully set forth in a notebook containing 22 tabbed attachments that was submitted and accepted into evidence as Petitioners' Exhibit 1.

The issues presented in this case generated significant interest on the part of commercial fishermen and members of the Baltimore County and Maryland Waterman's Association. A large number of individuals from as far away as Stevensville and Queenstown appeared and/or testified in opposition to the Petitioners' request. Due to limitations of time and space, a complete listing of all those association members identified on the "sign-in sheets" circulated at the hearing cannot be set out here; however, it needs to be noted that Lawrence E. Schmidt, Esquire represented respondents Andrew and Stephanie Mattes and presented as witnesses Permits and Development Management's Code Enforcement Inspectors Gary C. Freund³ and M. Stuart Kelly, commercial crabbers Daniel F. Beck, Darren Hallock, Gene Williams, Joe Rohlfins, Marcus Blake, Harry Grauling, Ray Bonczewski and Charles A. Wagerman, Jr. Letters of support were also offered as Community/Respondents Exhibit 2. It is clear that the request made by the Petitioners has caused sharp lines to be drawn, both pro and con.

² Mr. John H. Bean, Sr. also appeared in support of the Petitioners. Letters were received from Island View Road neighbors who support the termination of a commercial fishing and shellfishing operation in this community given its adverse impacts to the environment, their right to enjoy peace and quiet, increased traffic and the unsightliness of stored crab pots and equipment that diminish property values - especially for those residents that live next to or drive pass the fishing operation to reach their homes.

³ Gary Freund was employed in the County's Office of Planning and Zoning in the mid-1970's. On September 19, 1978, he approved site plans for the crabbing and shellfishing operations at 294-C Schaffers Road and 466 Barrison Road (2534 Island View Road). Both applications for these locations identified Daniel Beck as the "lessee or applicant".

QUESTIONS PRESENTED

(1) Whether the Use Permit granted by Commissioner DiNenna was appropriate and effective, and if so, does it run with the land so as to inure to the benefit of a subsequent purchaser who is also a commercial fisherman? (2) Does a Use Permit survive periods of non-use or does a discontinuance bring into play the non-conforming use provisions of B.C.Z.R. Section 104.1?

RELEVANT LAW AND BALTIMORE COUNTY ZONING REGULATIONS

The following County zoning regulations and Council Bills are contained in the case file: Council Bills 98-75 and 139-83; the 1978 Zoning Commissioner's Order and site plan; B.C.Z.R. Sections 101, Definition of Non-Conforming Use; 104, Non-Conforming Uses, and 500.4, Issuance of Use Permits. Not contained in the file, but applicable is the Annotated Code of Maryland's Rules of Procedure [Rule 2-535(B)] and Maryland case law regarding revisory powers over prior Orders.

SUMMARY OF KEY POINTS

The zoning law at the heart of this controversy is the "definitional" and "grandfathering" provisions of Bill 98-75 and subsequent Bill 139-83 that was passed for the purpose of ratifying and approving those Use Permits issued under the authority of Bill 98-75. Specifically, these acts amended the B.C.Z.R. to establish four (4) new zoning classifications intending to insure the preservation of Baltimore County's Natural Resources and allowing shellfishing businesses to operate in R.C.5 Zones only by special exception. The Council permitted those fishermen presently in operation (on or about 1975) to file for Use Permits to "grandfather" their businesses, thereby negating the necessity of seeking special exceptions for continuation. It added the following new definitions:

"Commercial fishing, crabbing and shellfishing operation.

Primary - A residential or commercial property fully devoted to commercial fishing activities and the retail and wholesale sale of fish, crabs and shellfish including facilities for the repair, storage, launching, berthing, securing, loading and unloading of catches and gear including nets, crab pots, oyster tongs; trout lines and clamming equipment, also live boxes and the necessary cold storage facilities.

Secondary - A residential property which is the domicile of a person engaged full or part time as a commercial fisherman and who is required under Title 4 of the Department of Natural Resources to possess a license for the purpose of catching by net, line, trap or tongs, of fish, crabs or shellfish and has limited facilities for the storage and berthing of a commercial fishing boat and the loading or unloading of catches and gear."

New Sections 1A00 through 1A04 were added to the Resource - Conservation Zones. Section 1A04 - R.C.5 (Rural - Residential) zone enumerated uses permitted by right or by special exception. Applicable here is B.C.Z.R. 1A04.2.B.7 - that states:

"Commercial fishing, crabbing or shellfishing operation - *Primary* or *Secondary*, except that any such use existing at the time of date of enactment of this subsection may continue at the same level of intensity provided that within 365 days of the enactment date of this legislation, they shall file for a Use Permit as prescribed under Section 500.4 of the Zoning Regulations."

Each fisherman was required to submit a site plan to the Zoning Commissioner within this timeframe so that the Zoning Commissioner could approve the continued operation of each shellfishing business in existence at the time the legislation was enacted. Each fisherman would be bound by the site plan as to the extent of his business and would be limited to the "same level of intensity" forevermore. Of course, nothing would prevent any fisherman so protected from requesting a special exception in order to expand their business operations. See Case No. 84-

147-XSPHA involving James R. Myrick and his attempt to expand his shellfishing business at 1326 Goose Neck Road.⁴

The waterfront property under consideration has 27,500 square feet in lot area (110' wide at Island View Road with 140' of frontage on Browns Creek). The property did not meet the minimum lot area requirements after Bill 98-75 enacted new Section 1A04.3 but had been a lot of record as shown on the Amended Plat of Barrison Point, recorded in the Land Records of Baltimore County in Plat Record W.P.C. No. 8, Folio 82. The property is improved with a one-story single-family dwelling built in 1924, detached garage, bulkhead and pier. The Becks, following their marriage, purchased the home in 1940 and resided there until their deaths. It was the current owners' (Mattes), who after acquiring the property in 2009 from Dan Beck, Jr., put in place a macadam driveway, floating pier and began the resurgence of the property as a commercial fishing and shellfishing facility that sparked complaints and led to this litigation. Petitioners focused their effort at attacking the validity of the Use Permit and establishing a nonconforming use history by asserting that no fishing or shellfishing took place at this location for many years (between 1979 – from the death of D. Franklin Beck to 2009 when Andrew Mattes purchased the property) and that this surely diluted and brought to an end the conditional Use Permit granted in 1978.

Moreover, they assert the requirements of Bill 98-75 were never met as Daniel Beck, Jr., the named applicant for the Use Permit, submitted his application late and didn't reside or have his domicile on the subject property. They also presented evidence that neither he (Beck) nor his father possessed the requisite commercial DNR tidal fishing license set forth in the definition of a *secondary* shellfishing operation.

⁴ Mr. Myrick is identified as CFC No. 13 on the Use Permit records of Baltimore County submitted by Petitioners (Tab 17) indicating that Mr. Myrick was the 13th applicant out of 30 others who submitted applications.

HEARING TESTIMONY

The arguments of the parties are fully addressed in their respective written memorandums and will not be repeated here in length. Mrs. Guckert, the immediate neighbor of 2534 Island View, testified that her family moved to 2530 Island View in 1926 and she has lived there for over 83 years. She has been active in community organizations for some 50 years having served on both the Barrison Point Improvement Association and Back River Neck Community Association. Since living there, she stated that there has never been a licensed crabbing and fishing facility in her neighborhood. She acknowledged that D. Franklin Beck, Sr. did perform fishing and crabbing until 1979 but that he never had a commercial license. He used trout lines but never crab pots. The Becks' son, Dan Beck, Jr., moved to 294-C Schaffers Road, across Browns Creek in 1970 and never again resided on Island View Road. She was close to Mae Beck and after her husband's death would often help write checks for her to sign and was in and out of her home on a weekly basis for 28 years. Mrs. Guckert described those years as peaceful but that ended when the Mattes moved in and started to bring in loads of crab pots and began crabbing and fishing operations not far from her bedroom. The Mattes soft crab business requires pumps to run continuously and daily crabbing operations get started at 4:00 A.M. She provided a statement and a detailed account of her concerns and photographs. *See* Petitioners' Exhibit 1 (Tab 3). In her opinion, Mattes has intensified the use of the site and should lose the permit altogether. She says the commercial operation has made the area an obvious eyesore.

Mr. Donovan picked up the story from 1992 when he and James Brown purchased their properties. He testified that the shellfishing facility will cause serious disruption to the area because the already bad traffic conditions would be aggravated. There is only limited access onto the peninsula and the road is so narrow it often requires one driver to pull off the road so

another car or truck can squeeze by. The increased traffic due to a commercial fishing operation would constitute a nuisance and public hazard. He contends that the inactivity – no fishing or shellfishing at the subject property for 30 years – has effectively terminated the Use Permit and likewise the non-conforming use has been lost.⁵ Thus, the Mattes' have no vested right to operate a crab fishery.

On behalf of Mr. and Mrs. Mattes, Mr. Schmidt presented the application for the Use Permit, site plan, and signed Order as Respondents' Exhibit 1, and they are self-explanatory. The Zoning Commissioner approved a Use Permit that allowed 12,600 square feet to be utilized for fishing and crabbing, excluding slough boxes which protrude into Browns Creek. As shown on the site plan, this represents 50% of the entire lot used for commercial enterprise. Mr. Mattes testified that he is only using 2,300 square feet of the property and he owns and stores 600-700 crab pots in the areas designated on the plan. Messrs. Freund and Kelly, Zoning Enforcement Inspectors, testified that as a result of multiple complaints received from neighbors they inspected the property on 2/19/09, 5/21/09, 10/14/09, and 3/10/10 and each time found it to be in compliance with the Use Permit and regulations.

Next, Dan Beck testified that both he and his father possessed commercial fishing licenses issued by the DNR in the 1970's. He stated he obtained his license at age 14 (License Number 878) and has held the Office of President of the Baltimore County Waterman's Association. His father had always been a fisherman and crabber. He described how he and his father operated the business often employing additional people to help. They would fabricate and manufacture pots for their own use, store not only crab pots on the property, but also eel

⁵ As stated earlier, Petitioners believe the Use Permit issued in this matter to be a red herring to begin with, the requirements of Bill 98-75 were not met as Daniel Beck, the named applicant, did not reside on the property nor did he or his father have the required commercial fishing license (Petitioners' Exhibit 1 [Tab 19] – letter from DNR).

traps, pound nets, gill nets, anchors, floats and other materials necessary to carry on the shellfishing business. In 1979, his father phased out the heavy work required to haul in nets and crab pots but continued with minnow catching, eel traps and the use of slough boxes. Darren Hallock, Gene Williams and Joe Rohling testified and corroborated Beck's testimony. Hallock worked for Beck in 1985 through 1987 and often at Island View Road. Williams, familiar with the elder Beck's property since 1968, described the commercial operation and use of the holding boxes kept at Island View Road that offered deep water. Rohling worked for Beck and described the storage of equipment often brought to Island View Road. There is no doubt from this testimony that the Use Permit had been utilized.

APPLICATION OF LAW TO FACTS; REASONABLE INFERENCES

Bill No. 98-75 recognized the then existing shellfishing businesses by exempting them from extinction. D. Franklin Beck, Sr., and his son, Daniel F. Beck, Jr., were benefactors of this legislation. The site plans submitted to gain such exemption limited both the use and its location on a property. The shellfishing operation was not approved as a non-conforming use. It was approved as a Use Permit pursuant to B.C.Z.R. Section 500.4. That section provides that a land use may be validated in certain circumstances by the application for and receipt of a Use Permit. Rather than leaving existing shellfishing operations to be determined under the non-conforming use law regulated in B.C.Z.R. Section 104, Bill No. 98-75 established the Use Permit process. It is clear that the approval granted was exercised – as the shellfishing operation existed when Mr. Beck's parents lived on the property and continued until D. Franklin Beck, Sr.'s death in 1979. Neither the State nor County has changed the applicable regulations in the interim nor have any judicial decisions "defined the duration" of the Use Permit. The testimony of Mrs. Guckert provides substantiation that the "property interest" in the Use Permit became diluted after the

many years of nonuse; however, it is equally persuasive that the County has not sought to rescind or renegotiate the Use Permit, and thus it remains valid. Maryland case law supports the distinction between the Use Permit granted in 1978 and a special exception use which must be utilized under B.C.Z.R. Section 502.3. See, *Marek v. County Board of Appeals*, 218 Md. 351 (1958).

While any alleged defect regarding the validity of the Use Permit issued by Zoning Commissioner DiNenna, it was surely cured by the subsequent action taken by the County Council when it enacted Bill 139-83,⁶ I would, however, be remiss in not commenting on this in view of the lengthy testimony presented at this hearing regarding Daniel Beck Jr.'s alleged fraud, mistake or irregularity in obtaining it. Petitioners' Exhibit 1 (Tabs 15 and 16) show Dan Beck, Jr. filed two applications for Use Permits, one for 294-C Schaffers Road where he resided, and a separate application for 466 Barrison Road – now 2534 Island View Road. It is this second application signed by his parents, Franklin and Mae Beck – the legal owners that is relevant here. Dan Beck signed as "lessee". Neither the application(s), attorney Robert J. Romadka's cover letter, the site plan or County's inspection report makes mention or an indication as to whether Beck applied for a *primary* or *secondary* "Commercial fishing, crabbing and shellfishing operation" as defined above. It is important to note that a *primary* fishing operation does not require the residential property to be the *domicile* of the applicant. The documents filed indicate only that the Use Permit applied for was pursuant to Bill 98-75 and B.C.Z.R. Section 500.4. The County performed an inspection of the property, took photographs and recommended approval of a commercial fishing, crabbing and shellfishing Use Permit to the Zoning Commissioner. It

⁶ In October 1983, the Bill was enacted and states in pertinent part, "that all actions taken by the Zoning Commissioner or Deputy Zoning Commissioner in issuing or approving said use permits under the authority, or purported authority, of Council Bill 98-75, are hereby ratified, reinstated and approved."

was the Zoning Commissioner (for reasons we will now never know) who placed in his Order the words "that the herein described property should be and the same is hereby approved as a *secondary* Commercial fishing, crabbing and shellfishing operation". The case law that interprets the revisory power of a court or administrative agency found in Maryland Rule 2-535(b) requires a clear finding of fraud, mistake or irregularity in order to grant Petitioners' request that I reverse or revise late Commissioner DiNenna's Order. *See, Suburban Properties Management, Inc., v. Johnson* 236 Md. 455 (1964); *Home Indemnity v. Killian* 94 Md. App. 205 (1992); *Sheila F. Thacker v. Edwin F. Hale* 146 Md. App. 203 (2002). It can be of no comfort to the Petitioners that my search of the record and facts presented fails to disclose any clear evidence of a mistake or irregularity.

CONCLUSION

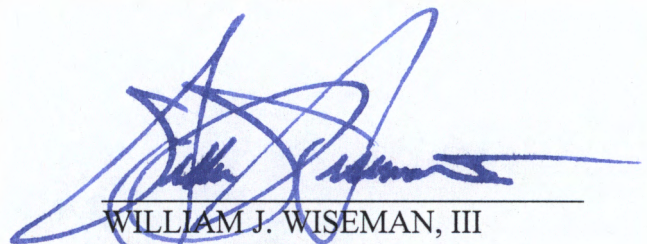
For all these reasons and based on the evidence presented, an examination of the words contained in the regulations and definitions provided and the language, purpose and legislative history, I find that Respondent is entitled to conduct a commercial fishing, crabbing or shellfishing operation as allowed under the October 9, 1978 Use Permit. The legislation (and permit) also mandated that any such use existing on the date of enactment of the law could continue only *at the same level of intensity*. Any attempt to expand the use as defined by the site plan would require a special exception and would not be allowed by amending the site plan. Although the legislation did not define the ordinance's duration, I find the County Council expressly intended a vested use permit to be a "property interest" and last forever. This finding is evidenced by the fact that in June, 1978, the Council passed Bill No. 30-78, effective June 22, 1978, which repealed Bill No. 98-75 and, in effect, deleted any reference to use permits and provided that fishing and shellfishing facilities in R.C.2, 3 and 5 Zones be allowed only by

special exception. In the interim period, between 1976 and the passage of Bill No. 98-75, use permits were submitted for approval to the Zoning Commissioner and were subsequently approved after Bill Nos. 98-75 and 30-78 went into effect. Approval, however, was contingent upon a site plan being submitted and total compliance being attained by the user. Because of the confusion rendered by the late approvals, the Council passed Bill No. 139-83 validating the continuation of such shellfishing activities by those who submitted site plans in 1977 and which were approved in 1978. This legislation recognized the importance of those site plans by reemphasizing the language of Bill No. 98-75, to wit, limiting the continued use to that which existed at the time the use permit was approved. On this record, the facts and law led to an inescapable conclusion that the Use Permit was properly granted in 1978, ratified in 1983 and continues with validity today.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, the relief requested shall be denied.

THEREFORE, IT IS ORDERED, by the Zoning Commissioner for Baltimore County this 19th day of April 2010, that the Petition for Special Hearing to invalidate a fishing and shellfishing facility at 2534 Island View Road for non-conforming use or otherwise, be and is hereby DENIED.

Any appeal of this decision must be entered within thirty (30) days of the date hereof.


WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

WILLIAM J. WISEMAN III
Zoning Commissioner

April 19, 2010

Theresa J. Guckert
2530 Island View Road
Baltimore, MD 21221

David M. Donovan
James S. Brown
2502 Island View Road
Baltimore, MD 21221

RE: PETITION FOR SPECIAL HEARING

NW/Side Island View Road, 208' SW/Side of Barrison Point Road
(2534 Island View Road)
15th Election District - 6th Council District
Andrew J. Mattes, III, et ux, *Legal Owners/Respondents*;
Theresa J. Guckert, et al - *Petitioners*
Case No. 2010-0220-SPH

Dear Ms. Guckert and Messrs. Donovan and Brown:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Department of Permits and Development Management office at 887-3391.

Very truly yours,

A handwritten signature in black ink, appearing to read "William J. Wiseman III", written over a horizontal line.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw
Enclosure

- c: Lawrence E. Schmidt, Esquire, Gildea & Schmidt, LLC, 600 Washington Avenue,
Ste. 200, Towson, MD 21204
Stephanie L. & Andrew J. Mattes, III, 2534 Island View Road, Baltimore, MD 21221
Paula A. Mattes, 15107 Winding Ash Drive, Chesterfield, VA 23832
John H. Bean, Sr., 2505 Island View Road, Baltimore, MD 21221
Rachel E. & Steven Sowa, 303 Sassafras Road, Baltimore, MD 21221
Daniel F. Beck, 2358 Schaffers Road, Baltimore, MD 21221
Harry Grauling, 7 Glenwood Road, Baltimore, MD 21221
Stacey Goh, 8057 Wallace Road, Baltimore, MD 21222
Andrew J. Mattes, Jr., 917 Sue Grove Road, Essex, MD 21221
James Grace, 2527 Barrison Point Road, Essex, MD 21221
Vince H. Sevier, 2512 Barrison Point Road, Essex, MD 21221
Van W. Seibel, 2507 Barrison Point Road, Essex, MD 21221
Gil Harbeson, 1322 Dorsey Avenue, Essex, MD 21221
Gene L. Williams, 1324 Dorsey Avenue, Essex, MD 21221
Raymond Bonczewski, 2553 Barrison Point Road, Essex, MD 21221
Charles A. Wagerman, Jr., 2540 Island View Road, Essex, MD 21221
Bruce Laing, 2546 Island View Road, Essex, MD 21221
Michael P. Copper, 1018 Cherlyn Road, Essex, MD 21221
Rex D. Hallock, 1010 Middleborough Road, Baltimore, MD 21221
Marcus B. Blake, 101 Spry Island Road, Joppa, MD 21085
Martin Lotz, Jr., 7215 Sunshine Avenue, Kingsville, MD 21087
Francis Hemsley, 100 Margaret Drive, Stevensville MD 21666
William Hemsley, V, 785 Hickory Ridge Drive, Queenstown, MD 21658
Robert J. Romadka, Esquire, 104B Briarwood Road, Dundalk, MD 21222
Joe Rohlfins – NO ADDRESS PROVIDED
People's Counsel; Gary Freund & M. Stuart Kelly, Division of Code
Inspections & Enforcement, DPDM; Traffic Engineering Division, File



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 2534 Island View Road, Baltimore, MD 21221
which is presently zoned RC-5

(This petition **must** be filed in person, in the zoning office, in triplicate, with original signatures.)

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

(This box to be completed by planner)

To invalidate a fishing and shell fishing facility for non-conforming use or otherwise. Other reasons to be presented at the hearing.

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

PETITIONER: Theresa J. Guckert

Name - Type or Print

Theresa J. Guckert

Signature

2530 Island View Road 410-391-3521

Address

Telephone No.

Baltimore

MD

21221

City

State

Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address

Telephone No.

City

State

Zip Code

Legal Owner(s):

ANDREW J. MATTES, 3 RD

Name - Type or Print

Signature

STEPHANIE L. MATTES

Name - Type or Print

Signature

2534 ISLAND VIEW RD

Address

BALTO

City

MD

State

Telephone No.

21221

Zip Code

Representative to be Contacted:

James s. Brown

Name

2502 Island View Road

Address

Baltimore

City

443-386-1741

Telephone No.

MD

State

21221

Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

Case No.

2010-0330-5711

REV 9/15/98

UNAVAILABLE FOR HEARING

Reviewed By

Date

Date

By

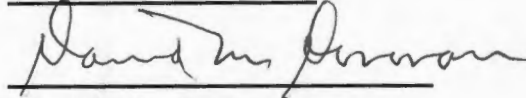
4-19-10

DS

2/22/10

PETITION FOR SPECIAL HEARING (Attachment)
2534 ISLAND VIEW ROAD

PETITIONER NO. 2



David M. Donovan

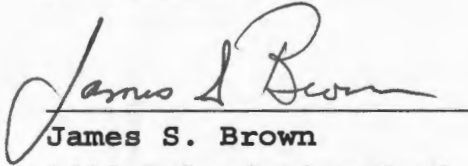
2502 Island View Road

Baltimore, Md. 21221

443-690-4251

ddonovan@yahoo.com

PETITIONER NO. 3



James S. Brown

2502 Island View Road

Baltimore, Md. 21221

443-286-1741

dmajsb@comcast.net

ZONING DESCRIPTION

2534 ISLAND VIEW ROAD

Beginning at a point on the northwest side of Island View Road (40 feet wide) distant 208 feet from it's intersection with the northwest side of Barrison Point Road thence being all of Lots 2, 3 and 4, Section C as shown on the plat entitled Amended Plat of Barrison Point recorded among the Baltimore County plat records in Plat Book 8 Folio 82. Saving and excepting the northernmost 10 feet of said Lot 2.

Containing 21,860 square feet or 0.502 acre of land, more or less.

Being known as 2534 Island View Road. Located in the 15TH Election District, 6TH Councilmanic District of Baltimore County, Md

2010-0220-SPH

**DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW**

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number: 2010-0220-SPH
Petitioner: THERESA GUCKERT
Address or Location: 2534 ISLAND VIEW ROAD

PLEASE FORWARD ADVERTISING BILL TO:

Name: JAMES S. BROVNY
Address: 2502 ISLAND VIEW ROAD
BALTO., MD. 21221
Telephone Number: (443) 386-1741

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. _____

Date: 2/22/10

Fund	Dept	Unit	Sub Unit	Rev	Sub	Dept	Obj	BS Acct	Amount
				Source/	Rev/				
001	500			0150					65.00

Total: 65.00

Rec

From: _____

For: _____

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

**CASHIER'S
 VALIDATION**

**NOTICE OF ZONING
HEARING**

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: # 2010-0220-SPH
2534 Island View Road
N/West side of Island View Road, 208 ft. s/west side of centerline of Barrison Point Road
11th Election District
6th Councilmanic District
Legal Owner(s): Andrew & Stephanie Mattes, 3rd
Petitioner: Theresa Guckert
Special Hearing: to invalidate a fishing and shell fishing facility for non-conforming use or otherwise; and for other reasons to be presented at the hearing.

Hearing: Thursday, April 8, 2010 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson 21204.

WILLIAM J. WISEMAN, III
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT 3/928 March 23 233523

CERTIFICATE OF PUBLICATION

3/25, 2010

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 3/23, 2010.

- ☒ The Jeffersonian
- ☐ Arbutus Times
- ☐ Catonsville Times
- ☐ Towson Times
- ☐ Owings Mills Times
- ☐ NE Booster/Reporter
- ☐ North County News

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: Case No 2010-0220-SPH

Petitioner/Developer THERESA
GUCKERT

Date Of Hearing/Closing 4/8/10

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue

Attention:

Ladies and Gentlemen

This letter is to certify under penalties of perjury that the necessary
sign(s) required by law were posted conspicuously on the property
at 2534 ISLAND VIEW RD

This sign(s) were posted on March 23, 2010
Month, Day, Year

Sincerely,

Martin Ogle 3/23/10
Signature of Sign Poster and Date

Martin Ogle
60 Chelmsford Court
Baltimore, Md. 21220
443-629-3411

ZONING NOTICE

CASE # 2010-0220-SPH

**A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD**

ROOM 106, COUNTY OFFICE BUILDING 111

PLACE: WEST CHESAPEAKE AVENUE TOWSON MD 21204

DATE AND TIME: THURSDAY, APRIL 8, 2010
AT 9:00 A.M.

REQUEST: SPECIAL HEARING TO INVALIDATE A FISHING
AND SHELL FISHING FACILITY FOR NON-CONFORMING USE
OR OTHERWISE: AND FOR OTHER REASONS TO BE PRESENTED
AT THE HEARING

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 857-3391

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW
HANDICAPPED ACCESSIBLE



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, Director
Department of Permits and
Development Management
March 15, 2010

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2010-0220-SPH

2534 Island View Road

N/west side of Island View Road, 208 ft. s/west side of centerline of Barrison Point Road

11th Election District – 6th Councilmanic District

Legal Owners: Andrew & Stephanie Mattes, 3rd

Petitioner: Theresa Guckert

Special Hearing to invalidate a fishing and shell fishing facility for non-conforming use or otherwise; and for other reasons to be presented at the hearing.

Hearing: Thursday, April 8, 2010 at 9:00 a.m. in Room 106, County Office Building,
111 West Chesapeake Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: Theresa Guckert, 2530 Island View Road, Baltimore 21221
Mr. & Mrs. Mattes, 2534 Island View Road, Baltimore 21221
James Brown, 2502 Island View Road, Baltimore 21221

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WEDNESDAY, MARCH 24, 2010.**
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

TO: PATUXENT PUBLISHING COMPANY
Tuesday, March 23, 2010 Issue - Jeffersonian

Please forward billing to:
James Brown
2502 Island View Road
Baltimore, MD 21221

443-386-1741

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2010-0220-SPH

2534 Island View Road

N/west side of Island View Road, 208 ft. s/west side of centerline of Barrison Point Road

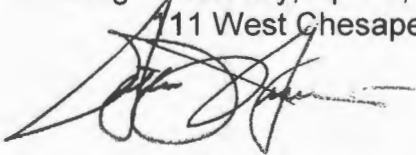
11th Election District – 6th Councilmanic District

Legal Owners: Andrew & Stephanie Mattes, 3rd

Petitioner: Theresa Guckert

Special Hearing to invalidate a fishing and shell fishing facility for non-conforming use or otherwise; and for other reasons to be presented at the hearing.

Hearing: Thursday, April 8, 2010 at 9:00 a.m. in Room 106, County Office Building,
111 West Chesapeake Avenue, Towson 21204



WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management

March 29, 2010

Theresa J. Guckett
2530 Island View Rd.
Baltimore, MD 21221

Dear: Theresa J. Guckett

RE: Case Number 2010-0220-SPH, 2534 Island View Rd.

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on February 22, 2010. This letter is not an approval, but only a **NOTIFICATION**.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

A handwritten signature in black ink that reads "W. Carl Richards, Jr." with a stylized flourish at the end.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:lnw

Enclosures

c: People's Counsel
Andrew & Stephanie Mattes; 2534 Island View Rd.; Baltimore, MD 21221
James Brown; 2502 Island View Rd.; Baltimore, MD 21221

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits &
Development Management

FROM: Dennis A. Kennedy, Supervisor
Bureau of Development Plans
Review

SUBJECT: Zoning Advisory Committee Meeting
For March 15, 2010
Item Nos. 2010-220, 221, 222, 223,
224 and 225

DATE: March 3, 2010

The Bureau of Development Plans Review has reviewed the subject-zoning items, and we have no comments.

DAK:CEN:cab

cc: File

G:\DevPlanRev\ZAC -No Comments\ZAC-03152010 -NO COMMENTS.doc



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

JOHN J. HOHMAN, *Chief*
Fire Department

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

March 8, 2010

ATTENTION: Zoning Review Planners

Distribution Meeting Of: March 1, 2010

Item Numbers: 0219, 0220, 0221, 0222, 0223, 0224 and 0225

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

1. The Fire Marshal's Office has no comments at this time.

Lieutenant Roland P Bosley Jr.
Fire Marshal's Office
410-887-4881 (C) 443-829-2946
MS-1102F

cc: File



Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor

State Highway
Administration

Beverley K. Swaim-Staley, Secretary
Neil J. Pedersen, Administrator

MARYLAND DEPARTMENT OF TRANSPORTATION

Date: MARCH 4, 2010

Ms. Kristen Matthews
Baltimore County Office Of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 2010-0220-SPH
2534 ISLAND VIEW RD
GUCKERT PROPERTY
SPECIAL HEARING

Dear Ms. Matthews:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 2010-0220-SPH.

Should you have any questions regarding this matter, please contact Michael Bailey at 410-545-5593 or 1-800-876-4742 extension 5593. Also, you may E-mail him at (mbailey@sha.state.md.us).

Very truly yours,

For Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/mb

My telephone number/toll-free number is _____

Maryland Relay Service for Impaired Hearing or Speech 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone 410.545.0300 • www.sha.maryland.gov

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



RECEIVED

APR 07 2010

ZONING COMMISSIONER

TO: Timothy M. Kotroco
FROM: Dave Lykens, DEPRM - Development Coordination
DATE: April 7, 2010
SUBJECT: Zoning Item #10-220-SPH
Address 2534 Island View Road
(Guckert Property)

Zoning Advisory Committee Meeting of March 1, 2010.

X The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

_____ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

X Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-2-1004, and other Sections, of the Baltimore County Code).

Additional Comments: This property is within a Limited Development Area (LDA) and Buffer Management Area (BMA) within the Chesapeake Bay Critical Area. All lot coverage and BMA requirements must be met. A minimum 15% tree cover must exist on site at all times.

Reviewer: Paul Dennis

Date: March 11, 2010

BW 4/8
9am

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: April 6, 2010

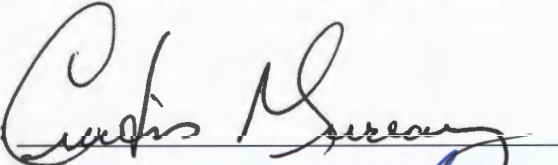
FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: Zoning Advisory Petition(s): Case(s) 10-220- Special Hearing

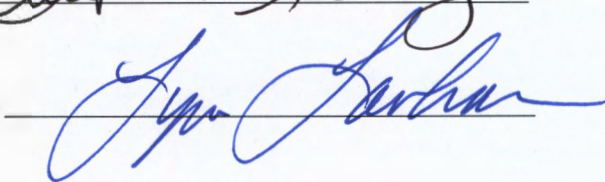
The Office of Planning has reviewed the above referenced case(s) and has no comments to offer.

For further questions or additional information concerning the matters stated herein, please contact Laurie Hay in the Office of Planning at 410-887-3480.

Prepared By



Division Chief:
CM/LL



RECEIVED

APR 07 2010

ZONING COMMISSIONER

Sent to Genl Schmidt's ofc
+ Donovan + Brown

4/7/10

RE: PETITION FOR SPECIAL HEARING * BEFORE THE
2534 Island View Road; NW/S Island View *
Road, 208' SW/S of Barrison Point Road * ZONING COMMISSIONER
11th Election & 6th Councilmanic Districts
Legal Owner(s): Andrew & Stephanie Mattes* FOR
Petitioner(s): Theresa Guckert *
* BALTIMORE COUNTY
* 10-220-SPH

* * * * *

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

RECEIVED

MAR 04 2010

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of March, 2010, a copy of the foregoing Entry of Appearance was mailed to James S. Brown 2502 Island View Road, Baltimore, MD 21221, Representative for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

From: Debra Wiley
To: ddonovan0@yahoo.com; dmdjsb@comcast.net; jlewis@gildeallc.com
Date: 4/7/2010 2:21 PM
Subject: DEPRM Comment - Tomorrow's Hearing

Jen

Hi there,

As promised, please find attached DEPRM's comment for tomorrow's hearing which was just received.

Thanks.

Debbie Wiley
Legal Administrative Secretary
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson, Md. 21204
410-887-3868
410-887-3468 (fax)
dwiley@baltimorecountymd.gov

From: Debra Wiley
To: Livingston, Jeffrey; Murray, Curtis
Date: 4/1/2010 3:26 PM
Subject: Comments Needed
Attachments: April Calendar

Missing
of Reig 4-7
DEPRM
A1

Good Afternoon Gentlemen:

In reviewing case files for next week's hearings, it appears Bill needs comments for:

4/8 @ 9 AM - Room 106 (need Planning & DEPRM)

4/8 @ 11 AM - Room 106 (need Planning & DEPRM)

I've attached the April calendar for your convenience in locating the appropriate case numbers.

As always, thanks for your usual cooperation and have a great day !

Debbie Wiley
Legal Administrative Secretary
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson, Md. 21204
410-887-3868
410-887-3468 (fax)
dwiley@baltimorecountymd.gov

From: Mike Mohler
To: Debra Wiley
Date: 5/11/2010 2:09 PM
Subject: Re: Case No. 2010-0220-SPH - 2534 Island View Road

Inspector Kelly will be returning to take some updated photos but in speaking w/him he feels they have been operating under the site plan as they should and allowed.

>>> Debra Wiley 5/11/2010 2:01 PM >>>

In reference to the above, Bill indicated that he left your copy of the Motion for Reconsideration with Tim Kotroco. He also mentioned that the level of intensity was high and that perhaps you may have some updated information for him once he returns from his short vacation; he's returning on 5/19.

Thanks.

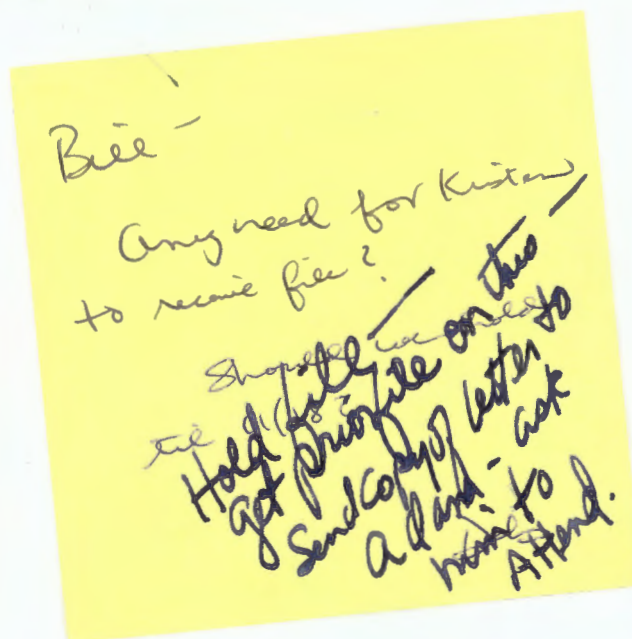
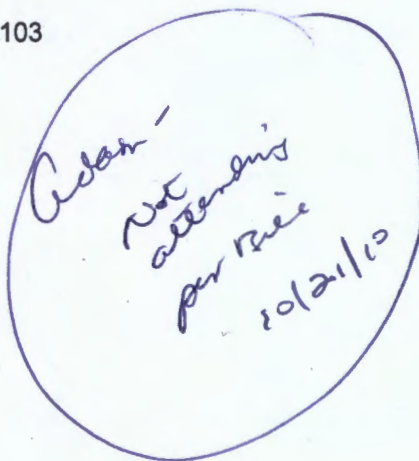
Debbie Wiley
Legal Administrative Secretary
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson, Md. 21204
410-887-3868
410-887-3468 (fax)
dwiley@baltimorecountymd.gov

From: Debra Wiley
To: Lewis, Kristen; Williams, LaShenda
Date: 10/14/2010 8:19 AM
Subject: Request for Bill

Good Morning,

Bill would like to Case No. 2010-0200-SPH when you bring files over for next week. Thanks.

Debbie Wiley
Legal Administrative Secretary
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson, Md. 21204
410-887-3868
410-887-3468 (fax)
dwiley@baltimorecountymd.gov



IMPORTANT MESSAGE

FOR

Bue

DATE

4-7

TIME

10:15

M

Andrew Mattes

OF

(waterman's group)

PHONE

410-574-1763

☐ FAX

AREA

NUMBER

EXTENSION

☐ MOBILE

☒

PLEASE CALL

☐

WILL CALL AGAIN

☐

CAME TO SEE YOU

☐

WANTS TO SEE YOU

☐

RETURNED YOUR CALL

☐

URGENT

NOTE

wants to film

the hearing of

2010-0220-SPN - its

his property

(Thurs 4-8 at 9-11)

OPERATOR



BLIND INDUSTRIES
1-888-322-4567

NSN 7530-00-NIB-0547

[Handwritten signature]
10:28 am

GILDEA & SCHMIDT, LLC

600 WASHINGTON AVENUE

SUITE 200

TOWSON, MARYLAND 21204

TELEPHONE 410-821-0070

FACSIMILE 410-821-0071

www.gildeallc.com

DAVID K. GILDEA

LAWRENCE E. SCHMIDT

D. DUSKY HOLMAN

SEBASTIAN A. CROSS

CHARLES B. MAREK, III

JASON T. VETTORI

April 14, 2010

Sent via Hand Delivery

Honorable William J. Wiseman, III

Zoning Commissioner

Jefferson Building

105 W. Chesapeake Avenue, Suite 103

Towson MD 21204

**Re: Mattes/2534 Island View Road
Case No.: 2010-0220-SPH**

Dear Commissioner Wiseman:

As indicated during the public hearing for the above matter, I am enclosing herewith the original letters offered in support of my client's existing shell fishing/fishing facility that were marked as Community Exhibit No. 2. These include correspondence from Delegate Michael H. Weir, Jr., of the Maryland House of Delegates, as well as, several neighbors and others in the area. Also, a Petition in Support of the request is included as part of the exhibit. I am forwarding a copy of these documents to Ms. Guckert and Messrs Donovan and Brown.

Moreover, the Petitioners' submitted a notebook at the hearing including 22 tabbed exhibits along with a written summary of their position. Typically, such a written summary would be submitted to the Zoning Commissioner only if requested via closing memorandum. In view of the fact that Mr. Mattes was not requested and did not submit any formal closing summary, please accept the following comments in response to the written materials you have received from the Petitioners.

I. The Instant Petition is Improper and Barred by Res-Judicata. The Issue Cannot be Re-Litigated via a Motion for Reconsideration.

It is undisputed that the Mattes property presently known as 2534 Island View Road and formerly known as 466 Barrison Point Road was approved for use as a commercial fishing, crabbing and shell fish operation, wholesale and retail sale of crabs and fish by use permit on October 9, 1978. Such approval was granted via written order by then Zoning Commissioner S. Eric DiNenna. In that this use was granted, the doctrine of res-judicata

would preclude the current Petition which seeks consideration of the identical issue on the identical property.

Res-judicata applies to administrative proceedings. See *Battson v. Shiflett*, 325 Md. 684 (1992). Moreover, res-judicata applies to both parties or their privies. A successor owner is a privy. This clearly applies in zoning cases where the issue frequently revolves around property use rather than the owner's identity. See e.g. *City of Baltimore v. Poe*, 224 Md. 428 (1961). Res-judicata bars litigation of the same matter with respect not only to the legal claims or issues decided in the case adjudicated, but also "as to all matters which with propriety could have been litigated in the first suit." See *Alvey v. Alvey*, 225 Md. 386 (1961), *MPC, Inc. v. Kenny*, 179 Md. 29 (1977) and *Kim v. Council of Unit Owners of Collington Center II Condominium*, 180 Md.App 606 (2008).

The Petitioners apparently recognize that this is not a case of Baltimore County issuing a "spirit and intent letter" or "letter of advice." Commissioner DiNenna's decision was a binding written order, issued in his capacity as a quasi judicial authority. Thus, like any other order of the Zoning Commissioner, it has the force of law and under res-judicata, precludes further review of this issue.

The Petitioners seek to revisit the issue properly concluded in 1978 through, in effect, a Motion for Reconsideration. Rule K of the Zoning Commissioner Rules of Practice and Procedure (Appendix G - Baltimore County Zoning Regulations) provides authority for the Zoning Commissioner to reconsider an order issued by him. However, any reconsideration must be made within 30 days of the original order. Obviously, the Petitioners' request, filed in 2010 is untimely as it was filed nearly 32 years after the Zoning Commissioner's order. Thus, respectfully, you cannot now reconsider that decision.

Moreover, it is to be noted that Rule K was not in effect in 1978. At that time, the Zoning Commissioner had no authority to reconsider a decision by him and a litigant's only recourse was to file an appeal to the Baltimore County Board of Appeals. There was no appeal filed in this case. In *Redding v. Board of County Commissioners for Prince George's County* (263 Md. 94 (1971)), the Court of Appeals set forth the common law rule for reconsiderations by administrative bodies, such as the Office of the Zoning Commissioner. Although *Redding* was decided nearly 40 years ago, the Court's holding remains the current state of Maryland law on this issue. In *Redding*, the Court stated that the common law rule in regard to the power of an administrative body in reconsidering its decision is permitted only, "...if an error has been caused by fraud, surprise, mistake or inadvertence." (Pg. 111). None of these factors exist here.

Fraud can serve as a basis to vacate a prior judgment only when the action complained of, "actually prevents an adversarial trial; the issue is not whether fraud caused the trier of

fact to reach an unjust result but whether it prevented the dispute from being submitted to finder of fact at all." See *Fleisher v. Fleisher Company*, 60 Md.App 565 (1984). "Fraud" has also been defined as "is an act of deliberate deception designed to secure something by taking advantage of someone." See *Green v. Lombard*, 28 Md.App 1 (1970). Nothing of the sort occurred in this case.

Neither was Commissioner DiNenna's decision a "mistake." In the context of revisions to judgment, a "mistake is limited to those instances in which a jurisdictional mistake is involved." See *Chapman v. Kamara*, 118 Md.App 418 (1997). As further stated in *Claibourne v. Willis* (347 Md. 184 (1997)), a "mistake" is limited to jurisdictional error, "such as where the court lacked the power to enter judgment." Thus, it is clear that there was no jurisdictional mistake in the rendering of Commissioner DiNenna's order.

Inadvertence, which is now labeled as "irregularity" in the context of a motion for reconsideration, is defined as "the doing or not doing of that, in the context of a suit at law, which, conformable with the practice of the court ought or ought not to be done" (See *Bowen v. Rohnacher*, 15 Md.App 280 (1972)). "Irregularity" specifically refers to a substantive error in the trial of the case or a failure to follow required process or procedure. There was no irregularity in this case and no "surprise" is alleged or exists.

In conclusion, the instant Petitions filed by Ms. Guckert and Messer's Donovan and Brown are barred for consideration by the doctrine of res-judicata. Although the Petitioners' theory is novel that the decision be revisited via a Motion for Reconsideration, such a Motion is not remotely permitted under any theory of law¹.

II. The Use Permit

The RC zoning classifications came to Baltimore County through the enactment of Bill No. 98-75 in 1975. At that time, four RC zones were created; namely RC 2, RC 3, RC 4 and RC 5. The Mattes (then Beck) property was zoned RC 5 shortly thereafter, in the 1976 Comprehensive Zoning Map Process.

The Petitioners submitted a copy of Bill 98-75 under Tab No. 18. As shown within the Bill, commercial fishing, crabbing or shell fishing operations (primary or secondary) were permitted by special exception in the RC 5 zone. However, a caveat was added to the Bill providing that existing operations at the time of the enactment of the legislation could

¹ The Petitions are also banned by laches. Laches is that doctrine of law which prohibits any action where there has been an inexcusable delay and prejudice to the party asserting the defense. See *Dept. of Human Resources v. Druhworth*, 180 Md.App 166 (2008). The Petitioner (Ms. Guckert), now asserts her claim 31 years after the use permit was issued. She lived here at the time and could have asserted a claim then. Commissioner DiNenna is dead, memories are unclear and records no longer available. Mr. & Mrs. Mattes are unquestionably prejudiced by the delay.

continue without special exception approval. In those instances, the owner could file for a use permit to continue the operation. The Bill further provided that the application for use permit should be submitted within one year of the date of the enactment of Bill No. 98-75.

Admittedly, the then owners (Beck) did not file for a use permit in that first year. As evidenced in materials under Petitioner's tab 16, the application was filed by the Beck's then attorney (Robert J. Ramadka, Esquire) on October 5, 1977. Baltimore County accepted and processed the application and the County's act certainly does not rise to the level of fraud, mistake, surprise or irregularity. Further legislation, Bill No. 30-78 (Tab 18) was enacted on April 3, 1978. The primary purpose of that Bill was to expand the permissibility of fishing and shell fishing facility to the DR zone. In fact, the Bill itself reads that it is "an ordinance to allow shoreline fishing and shell fishing facilities, by special exception in DR zones..." Although the Bill dealt primarily with the DR zone, it did revise the RC 5 zone regulation. As importantly, it is clear that the Beck's application was filed prior to the introduction of Bill 98-75 and, therefore, not subject to that not yet enacted legislation.

Petitioners have also questioned the fact that Daniel Beck apparently appeared on two applications for use permit, one for the Barrison Point Road/Island View Road property and a separate application for another site. It is to be noted, however, that the relevant application was signed by Franklin Beck and May Beck (Daniel Beck's parents), who were indeed the legal owners and residents of the subject property at the time. Mr. Beck signed as "lessee." There is no indication whether the Beck's applied for a primary commercial fishing, crabbing and shell fishing operation (which does not require residency of the applicant) or a secondary commercial fishing, crabbing and shell fishing operation, which requires residency. The application indicates only that the use applied for pursuant to the BCZR and that the request is for approval of a commercial fishing, crabbing and shell fishing operation including the wholesale and retail sale of crabs and fish.

The County file further indicates that the County performed an inspection on the property and satisfied itself that the shell fishing operation was indeed an ongoing use. As the use permit was properly applied for and comprehensively investigated by the County, there can be no doubt that the use permit was properly issued.

Even assuming that the Petitioner's claims of impropriety regarding the application for use permit (i.e. the timing of its filing and the residency of Mr. Beck) are valid, they were cured by subsequent action of the County Council. Records of the County submitted by the Petitioners (tab 17) suggest that Mr. Beck was the third applicant for use permit pursuant to Bill 98-75 and that 27 others submitted applications thereafter. All of these individual's applications were arguably untimely. In apparent response to the delayed implementation of this law, the Council enacted Bill 139-83 in October 1983. That Bill states, in part, "that all actions taken by the Zoning Commissioner or Deputy Zoning Commissioner in issuing or

approving said use permits under the authority, or purported authority, of Council Bill 98-75, are hereby ratified, reinstated and approved." Thus, no matter the alleged errors in the Beck's application for use permit and its approval by Commissioner DiNenna in 1978, it was cured by legislative act of the Council.²

III. The Existing Operation is Not a Non-Conforming Use

The Petitioners consistently contended that the shell fishing operation on the Beck/Mattes property is a non-conforming use and that its validity lapsed due to lack of use. This argument is factually and legally incorrect. The shell fishing operation was not approved as a non-conforming use, rather, it was approved as a use permit pursuant to BCZR Section 500.4. That section provides that a land use may be validated in certain circumstances by the application for and receipt of a use permit by the property owner. This is in fact the process that Bill Nos. 98-75 prescribed. As that Bill clearly states, any shell fishing/fishing facility proposed after the effective date of Bill No. 98-75 could be approved only through the special exception process. Rather than leaving existing operations to be determined under the non-conforming use law, the use permit process was established.

A non-conforming use is defined in BCZR Section 101 and regulated in Section 104. The definition defines the term as "a legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation application to such a use. A specifically named use described by the adjective 'non-conforming' is a non-conforming use." The instant use does not meet either of the prongs of that definition. First, the shell fishing operation is not "described by the adjective non-conforming." Moreover, the use **does** conform to a use regulation for the zone in which it is located. Specifically, the Council, through the enactment of Bill No. 98-75, established a use regulation (e.g. obtaining a use permit) for existing fishing and shell fishing operations. It bears emphasize to repeat, the Mattes is not a non-conforming use. Thus, it is not governed by the provisions of BCZR Section 104. Those provisions limit the expansion of non-conforming uses and also provide that if a non-conforming use is abandoned for a prior of one year or more it cannot be re-instituted. Notwithstanding the Petitioners' contentions, the testimony in this case is that the use was never abandoned. Mr. Beck and others testified that the fishing and shell fishing activity at the property has continued on a lesser scale since 1978. Moreover, it is clear that the approval granted under the use permit was exercised. Ms. Guckert acknowledged that

² As stated by Mattes counsel in opening statement, the Petitioners filing of this petition constitutes harassment. The Mattes should not be required to endure the cost and aggravation of defending a valid approval long ago obtained. Interestingly, the Petitioners submitted a hearing binder, evidencing that they had done exhaustive research on the issues in this case. Quite convenient for them, the binder, although containing copies of Bills 98-75 and 30-78, does not contain Bill 139-83 or make mention of it. If the Petitioners were represented by counsel and he/she had not disclosed that law, sanctions for ethical breach might be appropriate. As non-lawyers, notwithstanding the acts by Mr. Brown and Mr. Donovan in "representing" Mrs. Guckert at the hearing, the Petitioners are not subject to the ethical rules governing attorneys. They are, however, subject to Maryland Rule 1-341 regarding unjustified proceedings. They are thus forewarned.

Honorable William J. Wiseman, III

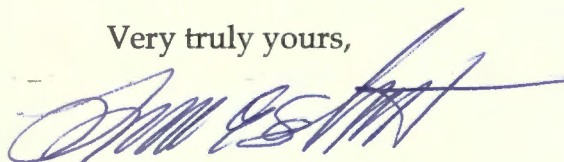
April 14, 2010

Page 6

the shell fishing/fishing operation existed when Mr. Beck's parents lived on the property and continued until the senior Mr. Beck's death. Other witnesses corroborated that the elder Mr. Beck fished the property after the use permit was issued in 1978 until his death in 1979. As noted above, after that date, the activity continued.

For all of these reasons, the Petition for Special Hearing must be denied. Simply stated, this approval for this use was properly granted in 1978, ratified in 1983 and continues with validity today. The Petition filed herein is without merit.

Very truly yours,



Lawrence E. Schmidt

LES: jkl

Enclosures

CC: Andrew & Stephanie Mattes, 2534 Island View Road
Theresa J. Guckert, 2530 Island View Road
David M. Donovan & James S. Brown, 2505 Island View Road
Sebastian A. Cross, Esquire

GILDEA & SCHMIDT, LLC

600 WASHINGTON AVENUE

SUITE 200

TOWSON, MARYLAND 21204

TELEPHONE 410-821-0070

FACSIMILE 410-821-0071

www.gildeallc.com

DAVID K. GILDEA

LAWRENCE E. SCHMIDT

D. DUSKY HOLMAN

SEBASTIAN A. CROSS

CHARLES B. MAREK, III

JASON T. VETTORI

May 24, 2010

Sent via Hand Delivery

Honorable William J. Wiseman, III

Zoning Commissioner

Jefferson Building

105 W. Chesapeake Avenue, Suite 103

Towson MD 21204

RECEIVED

MAY 24 2010

ZONING COMMISSIONER

Re: Mattes/2534 Island View Road
Case No.: 2010-0220-SPH

Dear Commissioner Wiseman:

This correspondence serves as response to the document labeled Motion for Reconsideration submitted by Petitioners to your office on May 10, 2010. Any reconsideration of the previous decision handed down in Case No. 2010-0220-SPH should be denied based on the previous arguments outlined in our supplemental memorandum to the file submitted on April 14, 2010 and the findings of the decision itself. However, this firm will briefly reiterate the propriety of the existing shellfish operation at 2534 Island View Road in relation to Petitioner's latest arguments.

As established through testimony and stated in the decision itself, a valid use permit was obtained for this property in 1978, which was later ratified in 1983, and continues today. Both the permit and the site plan clearly allow 50% of the site to be used for the shell fishing operation and both specifically refers to an area of the site permitted for crab pot storage. These crab pots are mentioned on both the permit and the site plan and Baltimore County has confirmed this operation exists legally through this previous permit after four inspections from 2009 and 2010, all requested by the Petitioner. As found in the decision, these use permits are vested to the property and are not able to be rescinded by Baltimore County and/or changed based on different ownership. As such, this property is permitted to maintain the current operation, limiting the shell fishing activity to 50% of the lot area and a 60 by 30 foot crab pot storage area.

Petitioners go at great length to discuss the differences between using a trout line and crab pots in their letter; however, this unconfirmed narrative ignores the fact that crab pots

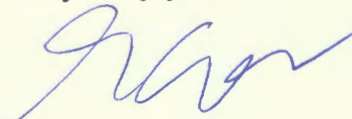
Honorable William J. Wiseman, III
May 24, 2010
Page 2

were specifically used and permitted to be on site. Even if weight were to be given to an adverse party's claims of past history and knowledge of the crabbing industry, they are irrelevant due to crab pots being what was approved. A person receiving a use permit from Baltimore County can conduct an operation for what was approved; here crab pots and 50% lot coverage for operation. While crab pots have been used on this site, at least since 1978, Petitioner claims that the use has intensified since that time. Again, these baseless accusations cannot alter the fact that the shell fishing operation is operating within the confines of the 1978 approval, and a hearing to amend this approval would only be necessary if the operation intensified to what was specifically approved. This site has been inspected by Baltimore County and found proper, and the resulting denial of Petitioners' Special Hearing further confirms this operation is permitted, legal and vested.

As stated previously, my clients believe these proceedings constitute a certain level of harassment and as such, do not desire to devote excess time and resources to what is a frivolous matter. As such, this correspondence outlines briefly what was thoroughly presented at the hearing, found in the decision, and reiterated through a supplemental memorandum to Case No. 2010-0220-SPH. As such, we respectfully request the Motion for Reconsideration be denied. My clients will operate the shell fishing/fishing operation in strict compliance with the prior approvals and applicable laws. The imposition of certain additional limitations as requested by the Petitioners will only serve to encourage the limitation of a bona fide business and bring about further demands for inspection and compliance.

If there is any additional information you may require, please contact me. As always, I am

Very truly yours,



Sebastian A. Cross

SAC: sf

CC: Andrew & Stephanie Mattes, 2534 Island View Road
Theresa J. Guckert, 2530 Island View Road
David M. Donovan & James S. Brown, 2505 Island View Road
Lawrence E. Schmidt, Esquire

Bruce Laing
2546 Island View Rd.
Essex, Maryland 21221
4/10/2010

Zoning Commissioner
Baltimore County
The Jefferson Building, Suite 101
105 W. Chesapeake Ave, Towson, MD 21204

Re: Zoning hearing for 2534 Island View Rd

Dear Zoning Commissioner

First and foremost Mrs. Guckert, the immediate neighbor of 2534 Island View, has the right to a peaceful existence; the neighbors and the community in general have the right to a peaceful existence. As with most zoning hearing it is your responsibility to sort out the legalities and make a decision based on law. While the property use for 2534 Island View Rd may be legal, it should not be forgotten that businesses located in communities have a large impact on the community. Business owners therefore have the greater responsibility to be good neighbors. Whether a restaurant, a home based business, or a waterman, it is the responsibility of the owner to protect (to the best of his/her ability) the community and neighbors from the effects of operating their business. Proper screening/landscaping, quiet ingress and egress, proper waste disposal, odor control, etc. are necessary practices to insure that appearance, perception, and property values of a community are not diminished. Should the law require you to decide in favor of the owner of 2534 Island View Rd.; it is within your power and responsibility to insure the property will be buffered in a way that protects Mrs. Guckert's right to a peaceful existence while protecting the integrity of the community. I ask that you keep these thoughts in mind when making your final decision.

Sincerely

Bruce Laing
2546 Island View Rd



Permits & Development Management Facility History Report

Report Criteria:
Facility Record ID: fa0247626

Facility:	Owner :	Councilmanic District	Election District	Number of Complaints	Number of Programs
FA0247626 PDM 2100014765 2534 ISLAND VIEW RD ESSEX MD 21221	MATTES ANDREW J,3RD MATTES STEPHANIE L 2534 ISLAND VIEW RD BALTIMORE MD 21221	6	15	7	

Record ID	AS/400 Case Number	Assigned To	Received Date	Received By	Status	Hearing Date	ADC Grid
CO0073925		Kathy O'Donnell	03/10/2010	Claudia Fischer	Closed		46D4

Complaint Description: owners address in records shows that he lives at a different address. Neighbor say this is a rental property. Complainant: anon

Daily Activity Details

Serial Number	Inspector	Activity Date	Service	Result	Action
DA0055548	Kathy O'Donnell	03/25/2010	IN-OFFICE ADMINISTRATIVE WORK	NOT IN COMPLIANCE	CORRECTION NOTICE ISSUED

Inspector Notes:

Violation Details

Violation Record ID: IV0030294 Comply By: 04/22/2010 Complied On: 03/25/2010 Status: IN COMPLIANCE
Program Category/Section Source: BCC Building and Housing - Rental Housing Licenses/BCC Violation Description: Rental Housing - License Required
Correction Text: A license is required for each dwelling unit. Director shall determine the number of dwelling units
Violation Text: Sec. 35-6-105(b)(1)(2): License must be submitted for each dwelling unit
Violation Comment: 03/25/10 CORRECTION NOTICE ISSUED. K.O.

Serial Number	Inspector	Activity Date	Service	Result	Action
DA0055549	Kathy O'Donnell	03/25/2010	IN-OFFICE ADMINISTRATIVE WORK	FACT FINDING	CLOSE CASE

Inspector Notes:

Violation Details - No Data

Comment Details - No Comments

Lien Information - None

Record ID	AS/400 Case Number	Assigned To	Received Date	Received By	Status	Hearing Date	ADC Grid
CO0073924		Christina Frink	03/10/2010	Claudia Fischer	Closed		46D4

Complaint Description: running a business out of home - crab business TJ&D Complainant: anon

Daily Activity Details

Serial Number	Inspector	Activity Date	Service	Result	Action
DA0054393		03/11/2010	IN-OFFICE ADMINISTRATIVE WORK	IN COMPLIANCE	CLOSE CASE

Inspector Notes: 3-11-10 crabbing business is legal close 3-11-10 cf

Violation Details - No Data

Comment Details - No Comments



Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search (2007 vw2.3d)

[Go Back](#)
[View Map](#)
[New Search](#)

Account Identifier: District - 15 **Account Number -** 2100014765

Owner Information

Owner Name: MATTES ANDREW J,3RD **Use:** RESIDENTIAL
 MATTES STEPHANIE L **Principal Residence:** YES
Mailing Address: 2534 ISLAND VIEW RD **Deed Reference:** 1) /27604/ 293
 BALTIMORE MD 21221-6411 2)

Location & Structure Information

Premises Address **Legal Description**
 2534 ISLAND VIEW RD PT LT2 LTS3,4 .631AC
 BALTIMORE 21221-6411 2534 ISLAND VIEW RD
 WATERFRONT BARRISON POINT

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
105	9	80				B	2	3	Plat Ref: 8/ 82

Special Tax Areas **Town**
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1924	858 SF	27,500.00 SF	04

Stories	Basement	Type	Exterior
1	YES	STANDARD UNIT	FRAME

Value Information

	Base Value	Value	Phase-In Assessments		
		As Of	As Of	As Of	
		01/01/2009	07/01/2009	07/01/2010	
Land	166,370	206,370			
Improvements:	76,050	101,870			
Total:	242,420	308,240	264,360	286,300	
Preferential Land:	0	0	0	0	

Transfer Information

Seller: BECK MAE M(DEC)	Date: 02/03/2009	Price: \$380,000
Type: IMPROVED ARMS-LENGTH	Deed1: /27604/ 293	Deed2:
Seller:	Date: 01/09/1990	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: / 1208/ 470	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2009	07/01/2010
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
 * NONE *

105B2
SE 3-K

SITE

RC 5

Bowleys Quarters-Back River Neck Area

6 CD

15 ED

Back River Neck District

Pt. Bk./Folio # 008092C

ISLAND VIEW RD

BARRISON POINT RD

20020262

20080303

2010-0220-SPH

CASE NAME 2534 Leone viora
CASE NUMBER 2010-0220-SM
DATE 4-8-10

CASE NAME 2534 Leone viora
CASE NUMBER 2010-0220-SM
DATE 4-8-10

[illegible]

PLEASE PRINT CLEARLY

 CASE NAME 2010-220-
 CASE NUMBER Mattes SPK
 DATE 4/8/00
CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E-MAIL
Lawrence E. Schmitt Stephanie Mattes	6000 Washington Ave 2534 Island View Rd	Russon 21208 Balto MD 21221	lschmitt@ 911dealtc.com smattes3@verizon.net
Andrew Mattes	↑	↑	
PAULA A. Mattes	15107 Winding Ash DR.	Chesterfield, Va. 23832	pam229@aol.com
Rachel E. Sowa	303 Sassafras Road	Baltimore, MD 21221	resowa@comcast.net
DAVID F. BECK	2358 S. HOFFERS ROAD	Baltimore, MD 21221	4106878808
Harry Grauling	7 Glenwood Rd	Baltimore MD 21201	
Stacey GOTT	8051 Wallace Rd	Baltimore Md 21222	sgott@comcast.net
STEVEN SOWA	303 SASSAFRAS RD	ESSEX MD 21221	SSOWA7@COMCAST.NET
ANDREW MATTES	917 Sue Grove Rd	ESSEX MD 21221	
JIM GRACE	2527 BARRISON PT RD	ESSEX MD 21221	JIMLG3@NETZERO.COM
VINCE SEVIER	2512 BARRISON PT RD	ESSEX MD 21221	
VAN Stibel	2507 BARRISON PT. RD	ESSEX MD 21221	willstibel@concoct.net
GIL HARBESON	1322 DORSEY AVE	ESSEX MD 21221	
GENE WILLIAMS	1324 DORSEY AVE	ESSEX MD 21221	BEHAVE OF ANDREW MATTES
RAY BONCZEWSKI	2553 BARRISON PT RD	ESSEX MD 21221	chezbayman@yahoo
CHARLES A. WAGERMAN JR	2540 Island View Rd	ESSEX MD 21221	
BRUCE LAINIG	2546 Island View	ESSEX 21221	
Michael Copper	1018 Cheryl Rd	ESSEX MD 21221	MPC24@verizon.net
Joe Rollins		ESSEX MD 21221	443-865-7336

CASE NAME 2534 blank View
CASE NUMBER 2910-0220-
DATE 4-8-10 SPH

[illegible]

CASE NAME 2534 Jolene View Rd.
CASE NUMBER 2010-0220-SP1
DATE 4-8-10

NAME _____

CITY, STATE, ZIP

[illegible]

CIVIL - GENERAL

DOCKET.

5

PAGE

3

CASE NO. 84 CG 1503

CATEGORY APPEAL

APPEAL

Protestants
MR. & MRS. THEODORE GRESS
Appellants'

Phyllis Cole Friedman
Peter Max Zimmerman
Room 223 1/2 Courthouse (04) 494-2188
Ralph K. Rothwell, Jr.
7508 Eastern Ave. (24)
Malcolm F. Spicer, Jr.
Thomas J. Bollinger
Mezzanine, Courthouse (04) 494-4420

CECILE MYRICK (cross appellant)
JAMES R. MYRICK (cross appellant)
COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Appellees (cross appellee)

John B. Gontrum-Robt. J. Romadka
Romadka, Gontrum Hennegan & Foos
809 Eastern Blvd. (21) 686-8274

89 OCT 31 Fri 3:02

RECEIVED
COUNTRY PLANTING & PROPAGATION

12-10-84 End of Appendix 2 - a.c.
D/C Under Co. H. 5-27-25

- (1) Nov. 28, 1984 - Appellants' (PEOPLE'S COUNSEL FOR BALTIMORE COUNTY & MR. & MRS. THEODORE GRESS) Order for Appeal from the decision of County Board of Appeals & same day Petition for Appeal fd.
- (2) Nov. 28, 1984 - Appellants' (BALTIMORE COUNTY ZONING COMMISSIONER & BALTIMORE COUNTY, MARYLAND) Order for Appeal from the decision of Board of Appeals & same day Petition for Appeal fd.
- (3) Nov. 29, 1984 - Certificate of Notice fd.
- (4) Nov. 29, 1984 - Certificate of Notice fd.
- (5) Dec. 7, 1984 - Order for Cross Appeal fd.
- (6) Dec. 11, 1984 - Certificate of Notice fd.
- (7) Dec. 19, 1984 - App. of John B. Gontrum and Robert J. Romacka for Cross Appellants James R. Myrick and Cecile Myrick and Same Day Petition for Appeal fd.
- (8) Dec. 28, 1984 - Transcript of Record fd.
- (9) Dec. 28, 1984 - Notice of Filing of Record fd.
- (10) Dec 31, 1984 - Deft's (James R Murick and Cecile Myrick) Answer and Motion to dismiss appeal fd.
- (11) Jan. 16, 1985 Protestants', Appellants & Cross-Appellees' Motion to Dismiss & Statement of Points & Authorities fd.
- (12) Jan. 25, 1985 - Cross Appellants' (Myrick) Answer to Motion to Dismiss & Statement of Points & Authorities fd.
- (13) Jan. 28, 1985 - Appellant's (People's Counsel) Memorandum in Support of Petition on Appeal fd.

CV GEN	841503
CV CLK	70.00
CKCHECK TL	70.00
#31242 C001 R02 T15:	
	11/29/

10/30/84

Eileen Hennegan

IN THE MATTER OF
JAMES R. MYRICK, ET UX
FOR SPECIAL EXCEPTION FOR
A FISHING FACILITY IN AN R.C.
ZONE; FOR SPECIAL HEARING
REGARDING AMENDED SITE PLAN;
FOR VARIANCES TO PERMIT SET-
BACKS AND TO ALLOW PARKING
AREAS TO BE PAVED WITH CRUSHER
RUN IN LIEU OF MACADAM
ON PROPERTY LOCATED ON THE
SOUTHWEST SIDE OF GOOSE NECK
RD., 626.89' NORTHWEST OF THE
CENTER LINE OF GOOSE HARBOR
RD. - 15th DISTRICT

BEFORE

EX(3)

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

No. 84-147-XSPHA

O P I N I O N

This case comes before this Board on appeal from a decision of the Baltimore County Zoning Commissioner dated January 16, 1984, denying all the relief prayed for by the Petitioners. The Board will note that the hearing in this case consumed three full days of direct testimony, the introduction of over 50 exhibits, many of which are multiple exhibits, and produced much controversial testimony. In addition, there were lengthy memorandums submitted for the Board's consideration by Petitioners' attorney, Protestants' attorney and People's Counsel, plus a lengthy Findings of Fact and Conclusions of Law by the Baltimore County Zoning Commissioner. All of this has been carefully considered by this Board, but we will not attempt in this Opinion to detail or summarize these factors but will attempt to confine this Opinion to the specific issues before us. It will be noted, however, that the following persons testified during these three days of hearing.

Testifying for Petitioners

1. Captain Harry Phillips - Charter Boat Captain
2. James Myrick - Petitioner and property owner
3. Kenneth Hubbard - Commercial crabber
4. Patti Chatterton - Neighborhood resident
5. Dennis Fandl - Neighborhood resident
6. Anthony Reale - Area resident and customer

Testifying for Protestants

7. Mrs. Ruth Gress - Next door neighbor
8. Mr. Theodore Gress - Husband of Mrs. Gress
9. William O. Luethe - Professional engineer and land surveyor
10. Richard Davis - Attorney and real estate broker

1/16/84

IN RE: PETITIONS SPECIAL EXCEPTION, * BEFORE THE
SPECIAL HEARING, AND ZONING *
VARIANCES * ZONING COMMISSIONER
SW/S of Goose Neck Road, *
626.89' NW of the centerline *
of Goose Harbor Road - 15th *
Election District *
James R. Myrick, et ux *
Petitioners *
* * * * *

Case No. 84-147-XSPHA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special exception to allow expansion of their shellfishing business to a Class I status. They also request approval, by special hearing, to expand their business to property owned by them and located across a public road from their primary property. They request that the two properties be considered contiguous and therefore treated as one for zoning purposes. The Petitioners want to amend the original site plan, filed in 1978 and marked Petitioners' Exhibit 3, to include both lots and to show the "renovation" of an existing garage shown thereon. Other minor additions and/or deletions to that site plan are also requested. Additionally, the Petitioners seek variances to permit side yard setbacks of 2.5 feet, 15 feet, and 25 feet instead of the required 50 feet, a setback of 20 feet to the centerline of the street instead of the required 75 feet, a distance between buildings of 38 feet instead of the required 100 feet, and to allow the requested parking areas to be paved with crusher run material. These requests are more fully described on Petitioners' Exhibit 9.

The Petitioners appeared and were represented by Counsel. Testifying were James R. Myrick, Petitioner; Robert Eurice, President of the Baltimore County Watermen's Association; Daniel Beck, Vice President of that Association; Craig Rogers, a licensed surveyor on surveying crews; and Dennis Fandl, a neighbor. Numerous Protestants appeared. Mr. and Mrs. Theodore Gress and Steven Bauer were represented by Counsel

ORDER RECEIVED FOR FILING

DATE

BY

January 16, 1984
Sandra A. Lavery, Clerk

ADMINISTRATIVE ASSISTANT

ORDER RECEIVED FOR FILING

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

Legislative Session 1975, Legislative Day No. 21

BILL NO. 98-75

Mr. Huddles, Councilman

By the County Council, October 6, 1975

A BILL
ENTITLED

AN ACT to amend the Baltimore County Zoning Regulations to establish four new zoning classifications intended to insure the preservation of Baltimore County's Natural Resources, by repealing subparagraph 100.1.A.2 of Section 100 of the Zoning Regulations of Baltimore County and enacting a new subparagraph 100.1.A.2 in lieu thereof by adding certain new definitions to Section 101 of said regulations; by adding new subsection 103.3 to Section 103 of said regulations; and by repealing Article 1A, and Sections 1A00 and 1A01 thereunder, of said regulations and enacting new sections 1A00 through 1A04, under new Article 1A entitled "Resource-Conservation Zones", in lieu thereof.

WHEREAS, THE COUNTY COUNCIL HAS CONSIDERED THE FINAL REPORT OF THE PLANNING BOARD, ENTITLED PROPOSED ZONING AMENDMENTS: ZONING CLASSIFICATIONS FOR RESOURCE CONSERVATION, IN ACCORDANCE WITH SECTIONS 22-20 AND 22-21 OF THE BALTIMORE COUNTY CODE (1974 SUPPLEMENT); AND,

WHEREAS, THE COUNTY COUNCIL HAS CONSIDERED TESTIMONY AT THE PUBLIC HEARING HELD IN ACCORDANCE WITH SECTION 22-21 OF THE BALTIMORE COUNTY CODE (1974 SUPPLEMENT); AND,

WHEREAS, THE COUNTY COUNCIL HAS REVIEWED IN WORK SESSION AND LEGISLATIVE SESSION THE PLANNING BASIS OF THE FINAL REPORT AS ELABORATED BY

County Council of Baltimore County Maryland

Legislative Session 1978, Legislative Day No. 10

BILL NO. 30-78

Mr. John W. O'Rourke, Councilman

By the County Council, April 3, 1978

A BILL ENTITLED

AN ORDINANCE to allow shoreline fishing AND SHELLFISHING facilities, by special exception, in D.R. zones in addition to permitting the continuation of existing shoreline fishing AND SHELLFISHING facilities in such zones, by repealing the definitions of "commercial fishing, crabbing, and shellfishing operation" and enacting in lieu thereof the definitions "fishing AND SHELLFISHING facility, shoreline; fishing AND SHELLFISHING facility, shoreline, Class I; and fishing AND SHELLFISHING facility, shoreline, Class II" in Section 101 of the Baltimore County Zoning Regulations; by repealing and re-enacting subparagraph 1A01.2.C.6, 1A02.2.B.10, 1A04.2.B.7; and by adding new subparagraph 7A to paragraph 1B01.1.C; all of the Baltimore County Zoning Regulations.

WHEREAS, the County Council has received a final report from the Baltimore County Planning Board, and has held a public hearing thereon, recommending the adoption of legislation allowing shoreline fishing AND SHELLFISHING facilities by special exception in D.R. zones in addition to permitting the continuation of existing shoreline fishing AND SHELLFISHING facilities in such zones; and

WHEREAS, the County Council has determined that the adoption of the legislation referred to herein is in the best interests of the citizens of Baltimore County and that it affects

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 1983, Legislative Day No. 22

BILL NO. 139-83

Mr. Lauenstein, Councilman

By the County Council, October 17, 1983

A BILL
ENTITLED

AN ACT concerning

Fishing, Crabbing and Shellfishing Operations

FOR the purpose of ratifying and approving certain use permits issued under the authority of Bill No. 98-75 regarding fishing, crabbing and shellfishing operations; ratifying all actions taken by certain officials in the approval of such permits; and requiring compliance with all applicable Zoning Regulations with respect to any extension of such operations.

1. SECTION 1. Be it enacted by the County Council of Baltimore County, Maryland, that
2. all use permits issued or approved by the Zoning Commissioner or Deputy Zoning Commis-
3. sioner prior to January 1, 1979, and allowing the continuation of existing commercial
4. fishing, crabbing and shellfishing operations primary or secondary (now known as fishing
5. and shellfishing facilities, shoreline Class I and Class II) be and they are hereby
6. ratified, reinstated and approved.

7. SECTION 2. And be it further enacted, that all actions taken by the Zoning Com-
8. missioner or Deputy Zoning Commissioner in issuing or approving said use permits under
9. the authority, or purported authority, of Council Bill No. 98-75, are hereby ratified,
10. reinstated and approved.

11. SECTION 3. And be it further enacted, that nothing contained herein shall be
12. construed to authorize the extension, expansion or intensification of any commercial
13. fishing, crabbing and shellfishing operations, primary or secondary, or fishing and
14. shellfishing facilities, shoreline, Class I and II, beyond that indicated in the plans
15. accompanying the application for use permit unless and until the applicant shall have
16. complied with all applicable Zoning Regulations, including but not limited to the peti-
17. tioning for the grant of a Special Exception for any extension or intensification of use,
18. and that failure to comply with such Zoning Regulations shall subject the applicant to
19. all applicable penalties, including a civil penalty.

20. SECTION 4. And be it further enacted, that this Act shall take effect forty-five
21. days after its enactment.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter stricken from existing law.

~~Strike-out~~ indicates matter stricken from bill.

Underlining indicates amendments to bill.

To **BILL WISEMAN**

Company

Location

Fax #

Comments

No. of Pages **2**

Today's Date

Time

15 1:00pm

From

Company

Location

Fax #

Original

Disposition:

Dept. Charge

Telephone #

☐ Destroy☐ Return☐ Call for pickup

987-3468

LAWS OF BALTIMORE COUNTY

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nt appropriations
the grant period;
cal year.

ounty Council of
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ng June 30, 1984,
ederal funds made
an Services, in the
m:

\$115,862.00

at this Ordinance
ffecting the public
n passed by the
Council, the same

Current Expense
d from the State
ent of Employment
Training Partner-

ship Act, as amended, to the Job Training Partnership Act Fund to be used for programs established by said Act.

WHEREAS, Baltimore County desires to participate in such job training programs; and

WHEREAS, in accordance with Sections 306 and 712(a) of the Baltimore County Charter, the County Council may accept gifts and grants received from sources not anticipated in the budget for the current fiscal year as amended, appropriate same to the Job Training Partnership Act Fund and expend the same. Said fund having been established solely for the purpose of accounting for Job Training Partnership Act funds made available to the County for specified programs and projects.

SECTION 1. *Be it enacted by the County Council of Baltimore County, Maryland, pursuant to the power and authority conferred upon it by Sections 306 and 712(a) of the Baltimore County Charter, that the Current Expense Budget for the fiscal year ending June 30, 1984, be and it is hereby amended by appropriating funds received pursuant to the Job Training Partnership Act, Public Law 97-300, as amended, to the following programs:*

07-06-03	Title IIA Training Services	\$1,929,545
07-06-02	Title IIA Participant Support	593,705
07-05-01	Administrative Cost Pool	445,279
	TOTAL	\$2,968,529

SECTION 2. *And be it further enacted, that this Act is hereby declared to be an emergency measure affecting the public health, safety or welfare, and having been passed by the affirmative vote of five members of the County Council, the same shall take effect from the date of its enactment.*

ENACTED: 10/19/83

BILL NO. 139-83

AN ACT concerning

Fishing, Crabbing and Shellfishing Operations

FOR the purpose of ratifying and approving certain use permits issued under the authority of Bill No. 98-75 regarding fishing, crabbing and shellfishing operations; ratifying all actions taken by certain officials in the approval of such permits; and requiring compliance with all applicable Zoning Regulations with respect to any extension of such operations.

Westlaw

204 A.2d 326
 236 Md. 455, 204 A.2d 326
 (Cite as: 236 Md. 455, 204 A.2d 326)

Page 1

C

Court of Appeals of Maryland.
 SUBURBAN PROPERTIES MANAGEMENT, INC.

v.
 Walter S. JOHNSON.
 No. 38.

Nov. 11, 1964.

The plaintiff obtained a judgment on a confessed judgment note. The judgment debtor filed a motion to set aside the judgment on ground that there was a failure of consideration. That motion was withdrawn and thereafter the judgment debtor filed a second motion to set aside the judgment on ground that it was obtained by fraud. From an order of the Circuit Court, Montgomery County, Thomas M. Anderson, J., setting aside the judgment, the judgment creditor appealed. The Court of Appeals, Marbury, J., held, inter alia, that where maker of confessed judgment note not only was tardy in filing his first motion but failed to show any basis for setting aside the judgment on ground of fraud, which he alleged in his second motion to set aside the judgment filed more than four months after judgment had become final, judgment on such note was erroneously set aside.

Reversed.

West Headnotes

[1] Judgment 228 ⚡ 344

228 Judgment

228IX Opening or Vacating

228k344 k. Discretion of Court. Most Cited Cases

Under the rules, after expiration of 30 days from entry of judgment, within which discretionary power to revise and control judgment may be exercised, trial court can set aside enrolled judgment only in case of fraud, mistake or irregularity. Mary-

land Rules, Rules 625, 645 b.

[2] Judgment 228 ⚡ 344

228 Judgment

228IX Opening or Vacating

228k344 k. Discretion of Court. Most Cited Cases

After lapse of 30-day period prescribed by rule, the power of court to revise and control judgment is no longer discretionary, and when judgment by confession became enrolled the judgment creditor acquired a substantial right in judgment of which it could not be validly deprived except upon a showing of fraud, mistake or irregularity. Maryland Rules, Rules 625, 645 b.

[3] Fraud 184 ⚡ 3

184 Fraud

184I Deception Constituting Fraud, and Liability Therefor

184k2 Elements of Actual Fraud

184k3 k. In General. Most Cited Cases

The elements of legal fraud are: (1) that a representation made by a party was false, (2) that either its falsity was known to that party or the misrepresentation was made with such reckless indifference to truth to impute knowledge to him, (3) that misrepresentation was made for purpose of defrauding some other person, (4) that that person not only relied upon the misrepresentation but had right to rely upon it with full belief of its truth, and that he would not have done the thing from which damage resulted if it had not been made, and (5) that that person suffered damage directly resulting from misrepresentation.

[4] Fraud 184 ⚡ 28

184 Fraud

184I Deception Constituting Fraud, and Liability Therefor

184k28 k. Fraud in Particular Transactions or for Particular Purposes. Most Cited Cases

Westlaw.

334 A.2d 536
 25 Md.App. 493, 334 A.2d 536
 (Cite as: 25 Md.App. 493, 334 A.2d 536)

Page 1

C

Court of Special Appeals of Maryland.
 Richard KOWALSKI
 v.
 John LAMAR et al.
 No. 587.

April 4, 1975.

Landowner filed a complaint with zoning commissioner alleging that an adjoining landowner was violating zoning regulations by operating a commercial fishing business and a boatyard in a residential zone. The Commissioner found that the adjoining landowner was violating the regulations, the County Board of Appeals reversed, and the Circuit Court for Baltimore County, H. Kemp MacDaniel, J., entered an order affirming the Board. Landowner appealed. The Court of Special Appeals, Davidson, J., held that where the only uses to which vacant land zoned 'rural, deferred-planning' were berthing, maintenance, storage and launching of fishing boats and commercial fishing activities, the zoning ordinance did not permit such uses as of right, and no special exception had been obtained, the uses were prohibited by the zoning ordinance.

Reversed.

West Headnotes

[1] Zoning and Planning 414 ⚡ 1065

414 Zoning and Planning
 414II Validity of Zoning Regulations
 414II(B) Particular Matters
 414k1065 k. In general. Most Cited Cases
 (Formerly 414k68)

Zoning and Planning 414 ⚡ 1465

414 Zoning and Planning
 414IX Variances and Exceptions
 414IX(A) In General

414k1465 k. Nature and necessity in general. Most Cited Cases
 (Formerly 414k481)
 Any use other than those permitted by zoning ordinance and being carried on as of right or by special exception is prohibited.

[2] Zoning and Planning 414 ⚡ 1811

414 Zoning and Planning
 414XI Enforcement of Regulations
 414k1811 k. Review. Most Cited Cases
 (Formerly 414k351)

On appeal of zoning commissioner's finding that landowner was violating zoning ordinance by operating boatyard and by conducting commercial business upon land classified in residential zone, board of appeals was required to determine whether uses complained of were permitted in zone as matter of right or by special exception, and erred in basing its decision on the narrow finding that uses complained of did not constitute boatyard or commercial business.

[3] Zoning and Planning 414 ⚡ 1286

414 Zoning and Planning
 414V Construction, Operation, and Effect
 414V(C) Uses and Use Districts
 414V(C)2 Accessory Uses and Buildings
 414k1286 k. Particular accessory uses.

Most Cited Cases
 (Formerly 414k302)

Where only uses made of completely vacant land were boatyard and commercial fishing uses objected to by adjoining landowner as prohibited by zoning ordinance, uses constituted main or principal uses of property and did not constitute accessory use under county zoning ordinance.

[4] Zoning and Planning 414 ⚡ 1243

414 Zoning and Planning
 414V Construction, Operation, and Effect
 414V(C) Uses and Use Districts

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Westlaw

806 A.2d 751

146 Md.App. 203, 806 A.2d 751

(Cite as: 146 Md.App. 203, 806 A.2d 751)

Page 1

H

Court of Special Appeals of Maryland.
Sheila F. THACKER f/k/a Sheila Thacker Hale

v.

Edwin F. HALE, Sr.
No. 0532, Sept. Term, 2001.

Sept. 5, 2002.

Ex-wife filed motion to accelerate the entire unpaid balance of the installment monetary award, alleging that ex-husband had never made any of the annual payments by the deadline established in the divorce judgment. The Circuit Court, Baltimore County, Christian M. Kahl, J., struck acceleration clause from divorce judgment, and ex-wife appealed. The Court of Special Appeals, Adkins, J., held that: (1) because acceleration clause in divorce judgment did not result from any error in process or procedure, acceleration clause was not an irregularity which could be excised from the divorce judgment under rule providing that court may exercise revisory power and control over judgment in case of fraud or irregularity, and (2) even if erroneous inclusion of impermissible acceleration term in monetary award portion of divorce judgment rendered that judgment voidable on direct appeal, that error was not the type of jurisdictional mistake that could be remedied by the exercise of court's revisory powers.

Reversed and remanded.

West Headnotes

[1] Divorce 134 ⚡258

134 Divorce

134V Alimony, Allowances, and Disposition of Property

134k258 k. Payment of Alimony or Allowance. Most Cited Cases

Decisions regarding method of payment of monetary award in divorce action lie within the sound discretion of trial court.

[2] Appeal and Error 30 ⚡941

30 Appeal and Error

30XVI Review

30XVI(H) Discretion of Lower Court

30k940 Nature and Extent of Discretionary Power

30k941 k. In General. Most Cited Cases
Even in matters of discretion, trial court must exercise its discretion in accordance with correct legal standards.

[3] Divorce 134 ⚡258

134 Divorce

134V Alimony, Allowances, and Disposition of Property

134k258 k. Payment of Alimony or Allowance. Most Cited Cases

Court may permit a monetary award in divorce action to be paid in installments over time. Code, Family Law, § 8-205(b) (2000).

[4] Judgment 228 ⚡321

228 Judgment

228VIII Amendment, Correction, and Review in Same Court

228k321 k. Time for Application. Most Cited Cases

After a judgment becomes enrolled, which occurs 30 days after its entry, a court has no authority to revise that judgment unless it determines that the judgment was entered as a result of fraud, mistake, or irregularity, and evidence necessary to establish fraud, mistake, or irregularity must be clear and convincing. Md.Rule 2-535(b).

[5] Judgment 228 ⚡392(2)

228 Judgment

228IX Opening or Vacating

228k392 Evidence

228k392(2) k. Presumptions and Burden

Brief: Public Hearing to examine the validity of the commercial fishing and shell fishing facility at 2534 Island View Road, Baltimore, MD 21221.

Theresa Guckert
James Brown
David Donovan

I. SUMMARY:

Theresa J. Guckert (2530 Island View Road), David M. Donovan (2502 Island View Road) and James S. Brown (2502 Island View Road) have requested that the Commissioner shut down all commercial fishing and shell fishing operations at 2534 Island View Road (zoned RC-5) owned by Stephanie Mattes and Andrew Mattes III. The complainants contend that this property should not be a commercial property for several Zoning compliance related concerns:

1. There was NO fishing or shell fishing at this location for 30 years, between 1979 and 2009 (at which time Andrew Mattes III purchased the property). Thus with over 30 years of inactivity of this non-conforming use, we believe the right to run a commercial operation at this location has expired. We can find nothing in the Zoning code to indicate that a Use Permit is to be treated any differently than any other non-conforming use.
2. There are very few requirements to fulfill a Use Permit Application for a secondary fishing or shell fishing operation as described in the Baltimore County Code in 1978. We contend that the requirements were not met as applied for by the son (Daniel F. Beck, Jr.) of the previous property owner (D. Franklin Beck, Sr.) for these reasons:

a. Daniel Beck, Jr. the named applicant and Lessee for the Use Permit did not reside or have his domicile on this property since the application was filed (a requirement of a secondary fishing facility Use Permit application),

b. Neither Daniel Beck, Jr., nor Daniel Beck Sr. had the required commercial fishing license when the Use Permit was issued on Oct 9, 1978 or in the subsequent 365 days. Daniel Beck, Sr. never obtained a

commercial license prior to his death in 1979, and Daniel Beck Jr. obtained his first commercial license in 1998, 20 years after the application.

In addition, the complainants are concerned about the negative impact that the fishing and shell fishing facility will have on a) the environmental health of Browns Creek, b) public safety of motorists and pedestrians [due to the heightened traffic resulting from a retail establishment], and c) the reduced property values of residential properties in close proximity to a commercial/retail fishing operation. We have obtained letters or signatures in support of this action from 11 of the 15 impacted property owners and/or residents of Island View Road.

II. AREA MAPS WITH LOCATION OF ALL PROPERTIES:

See **Attachment 1**.

III. HISTORY AND TIME LINE:

See **Attachment 2**.

IV. IMPACTED NEIGHBORS INPUT:

1. Statement from Ms. Guckert and pictures of 2534 Island View Road (**Attachment 3**)
2. Statement from Mr. Brown (**Attachment 4**)
3. Letters/Petition from other impacted neighbors (**Attachment 5**)

V. ENVIRONMENTAL HEALTH CONCERNS:

Documentation of Balto Co DEPRM and MDE Offenses by Stephanie and Andrew Mattes III.

1. Mr. Mattes installed a floating Pier (barge) without permit (**Attachment 6**). MDE cites numerous times when Mr. Mattes refuses to return their call. He was instructed to remove the barge in May 2009 and still has not removed it in January 2010. MDE gave him another date of Mar 5, 2010 to remove floating pier and he missed that date. At the time of the PIA, MDE had initiated litigation against him.

2. Mr. Mattes installed a macadam driveway from the road to bulkhead without permit (**Attachment 7-B**). Mr. Mattes indicated to the Baltimore County, DEPRM staff that he was resurfacing an existing driveway. Pictures in **Attachment 7-A** indicate the 'existing drive way' was grass. He was instructed that he has exceeded the allowable impervious surface on his property and that he was to remove 25' of macadam closest to water. Pictures indicate that he has not removed the 25' closest to the water.
3. Mr. Brown and Ms. Guckert witnessed Mr. Mattes dredging Browns Creek next to the floating Pier without a permit. The event occurred at dusk, so no good pictures. Mr. Brown called it into DEPRM and Maryland Department of the Environment (MDE) (**Attachment 8**). Mr. Mattes denied the claim to both DEPRM and MDE .
4. Mr. Mattes brought in eleven ~13 yard Dump-truck loads of fill dirt within 100 feet of water front without a grading permit (**Attachment 9**). Mr. Mattes ignored the 'stop work' order 9/10/09, and brought in two or more truck loads of dirt and graded the property on 9/21/09.
5. We are concerned about the environmental impact of a second fishing and shell fishing facility on Browns Creek for many of the same reasons stated in a recent Judgment by Zoning Commissioner in 2009, case no. 05-167-X (**Attachment 10**), denying a Special Exception application for a Fishing and Shell fishing facility on Browns Creek (1245 Engleberth Road), due in large part to environmental concerns. Page 4, "The proper question is whether those adverse effects are above and beyond (i.e. Greater here) that they would generally be elsewhere with the areas of the County where fishing/shell fishing facilities may be established. In considering the question presented in that light, the character of Browns Cove is particularly relevant. The undisputed testimony, chiefly presented by James Mitchell and corroborated by many other, was that Brown Creek is a peaceful, secluded cove, with a delicate ecosystem. It is narrow (225' in width) and shallow (depth of between 2 ½ - 3 feet). With a lack of natural flushing action, trapping sediment. At low tide it is difficult, if not impossible, to navigate out of the cove and sediment and mud churned up creating murky conditions."

6. We contend that nearly the identical conditions exist in Browns Creek, but we have two fishing facilities in the cove, both Dan Beck Jr. and Andrew Mattes III. Mr. Dan Beck Jr. has over 8 Department of Natural Resources (DNR) offenses (**Attachment 13**) and our concern is that like Mr. Mattes, these are both poor stewards of the Bay. We hope you agree that it is not environmentally responsible to allow two fishing facilities, both with numerous regulatory offenses in such close proximity on such a small and shallow inlet.

VI. HUMAN SAFETY CONCERNS

1. Island View Road is a small road. Despite requests, the county will not paint the road with either white or yellow lines to demark edges and center. The increased commercial and retail traffic due to a commercial fishing facility with retail sales constitutes a hazard to both pedestrians and motorists. Island View Road is so thin it often requires one driver to pull partially off the road so another car or truck can squeeze by. The increased traffic due to a commercial fishing operation, [without any additional parking spaces for retail sales] would constitute a nuisance and a public hazard.

2. In **Attachment 6-A** it is made clear by DEPRM that there is not sufficient space at 2534 Island View Road for additional impervious surfaces (i.e. parking pad). In **Attachment 11** we show a picture of a truck, even when half off the road is still an obstruction to see around, and a hazard to public safety, especially in light of the fact that the 2534 Island View Road is located on a bend in the small road.

3. We also show how the ditches in this area trap water and become swampy, due to the proximity to the water. These wet spots can be quick-sand-like for weeks after even a small rain shower. As mentioned in an earlier statement, this road is a high traffic Dead End road. In summer when County residents miss their turn to either the Rocky Point Park golf course or beach, they are usually racing to their destination, and often with a boat in tow. They speed along Barrison Point and Island View Roads where they then must turn around and back track the same roads. There are small children that walk this road during the school year when the school

bus drops them off at the Island View Café parking lot. Currently there are five school age children that take this walk. Both students and motorists return home in the late afternoon, just at the time when the fisherman has returned to his dock to sell his days catch. Without ample parking, the retail customer will have little choice but to park on the road, and will create a hazard for motorist and pedestrian alike.

4. In a recent Judgment by Zoning Commissioner in 2004, case no. 05-167-X (**Attachment 10**), page 4 next to last sentence "...and testified to the perils of driving of Engleberth Road during the crabbing season. All of the Protestants testified that grant of the requested special exception, even with strongly worded conditions, would be detrimental to the health, safety and general welfare of this residential community and surrounding environment." The same arguments could be used for Island View Road and the secondary fishing or shell fishing operation that Mr. Mattes would like to operate.

VII. NON-COMPLIANCE WITH NON-CONFORMING USE REGULATIONS

1. It is our understanding that in the late 70's, a new Zoning policy indicating that fishing and shell fishing facility applications in residential neighborhoods were required to apply through the 'special exception' mechanism. The special exception mechanism requires approval from the community and could be blocked by public disapproval. A consortium of fisherman through the lawyer Mr. Romadka, lobbied County Councilman Mr. Huddles for and obtained a new mechanism in the zoning code, the Use Permit. These were awarded for existing fishing and shell fishing facilities, effectively exempting the existing fisherman from the need to win over the community through a special exception, in order to continue their livelihood. It is our contention that it was NOT the intent of the Use Permit mechanism to rezone the property forever or a commercial zoning code would have been assigned and commercial taxes would have been assessed. In fact if you contact the Balto Co Zoning office, they will tell you that 2534 Island View Road is zoned RC5 (**Attachment 1**). It does not have a commercial zoning code. If you contact the Baltimore County tax office, there are no commercial taxes levied against 2534 Island View Road (**Attachment 22**). If you examine the Deed to the property, there is no

conveyance of this right with the property (**Attachment 20**). The only place where we can find the Use Permit records is in the Office of Code Enforcement.

We contend that:

- i. The fishing and shell fishing operation in 1978 at 2534 Island View Road was a non-conforming use in a residential area zoned RC5 that was allowed by a Use Permit mechanism rather than a Special Exception.
- ii. The Use Permit mechanism was to help provide the existing fisherman a leg-up in maintaining his livelihood, and was never intended to rezone the property forever.
- iii. Regardless of the mechanism (Special Exception or Use Permit) a non-conforming use should lose the right to operate after one year of non-use. Certainly the rights to this non-conforming use should have dissolved after 30 years of non-use.

We now provide arguments that this non-conforming use was inactive for 30 years.

1. Mr. Daniel F. Beck Sr. was living at 466 Barrison Road (2534 Island View Road) until he died Dec 01, 1979 (**Attachment 12**).
2. Ms. Mae M. Beck on her 100th Birthday was interviewed by Maryann Horn for article for East County Times Nov 30, 2006 (**Attachment 12**). The article on page 7, second column, next to last sentence in paragraph states "Frank passed away in 1979 and the crabbing business ceased. By Mae M. Beck's own statement the property had not been used for crabbing for 27 years. Ms. Mae M. Beck died on July 14, 2008 (**Attachment 12**).

3. Based on Ms. Theresa Guckert and Ms. Mae M. Beck's above statements any non-conforming use on 2534 Island View Rd was terminated one year after Mr. Beck's death, 1980 and we contend it should not have been sold to Mr. and Mrs. Mattes III in 2009 as a secondary crabbing and fishing facility.

4. We contend that a Non-Conforming use if allowed to go un-used for a period of one year, the right to that non-conforming use is lost. The fact that there was no fishing or crabbing from this location, for at least one year is further upheld by each of the complainant's statements and the fact that Mr. Daniel F. Beck was charged with a Felony [Case Number: MJG-00-0310] and was sentenced to confinement for one year and one day on 10/13/2000 for Illegal Possession of Fish (**Attachment 13**). Thus there is further documentation verifying that no fishing or crabbing occurred at 2534 Island View Road for one year during the 30 years, Ms. Guckert claim there was no fishing or shell fishing at this location.

5. Pertinent Code for Non-conforming : **Attachment 14**

BALTIMORE COUNTY CODE

§ 101.1 Word usage; definitions.

NONCONFORMING USE

A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically named use described by the adjective "nonconforming" is a nonconforming use.

[Bill No. 18-1976]

App. K APP. K: 1945 – 1955 ZONING REGULATIONS App. K

SECTION 1 – DEFINITIONS

24. Non-conforming Use: A building or land occupied by a use that does not conform to the provisions of the regulations for the zone in which is located.

SECTION XI -- NON-CONFORMING USES

A lawful non-conforming use existing on the effective date of the adoption of these regulations may continue, provided, however, upon any change from such non-conforming use to a conforming use, or any attempt to change from such non-conforming use to a different nonconforming use or any discontinuance of such non-conforming use for a period of one year, or in case a non-conforming structure shall be damaged by fire or otherwise to extent of seventy five (75%) per cent of its value, the right to continue to resume such non-conforming use shall terminate, provided, however, that any such lawful non-conforming use, may be extended or enlarged to an extent not more than once again the area of the land used in the original nonconforming use.

§ 104.1. Continuation of nonconformance; exceptions.

[Bill Nos. 18-1976; 124-1991]

A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations, provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate.

VIII. INVALID 1978 USE PERMIT APPLICATION FOR 466 BARRRISON ROAD (2534 ISLAND VIEW ROAD)

1. To further support our case, we contend that the Use Permit Application for 466 Barrison Road (2534 Island View Road) did not fulfill all of the requirements for a valid Use Permit, as put forth in the zoning code.

2. **Attachment 15** is a Secondary Fishing and Shell Fishing Facility Use Permit Application (Application # CF-78-4; Code Enforcement # CFC4) filed in 1978 by Daniel Beck Jr. In this application he indicates his address at 294-C Schaffer Road which is also on the property (or very near) where his fishing and shell fishing operation was located. He did not own the property on Schaffer's lane, at this time, but was renting it from Charles Velte. In summary, he did fish from a property that was located at [or very near] his domicile.

3. On the 1978 Use Permit filed by Daniel Beck (Jr.), Lessee for 2534 Island View Road (466 Barrison Road) (CF-78-3; Code Enforcement # CFC3), he again indicates the address of his domicile was 294-C Schaffer Road, Baltimore, Md. 21221.

4. Mr. Daniel F. Beck Jr. never resided at 466 Barrison Road (2534 Island View Road) during or after his Use Permit application. He rented his domicile at 294-C Schaffers Road, Baltimore, Md 21221 in 1978, according to both of the Use permits he filed with Baltimore County (**Attachments 15 & 16**), and Ms. Guckert's testimony (**Attachment 3**). 294-C Schaffers Road was located on or near the property he later purchased on 11/10/86 known as 2538 Schaffers Rd, Baltimore, MD. 21221. Mr. Beck has lived there until present, according to tax records (**Attachment 1**).

5. **Attachment 17** is a list from Balto Co. Code Enforcement indicating the approved Use Permit properties that are allowed to operate as a fishing and shell fishing facility. Daniel Beck Jr. is the only person listed with two locations as a CFC (#'s 3 and 4).

6. We contend that this Use Permit was not valid because it does not fulfill the requirements of Baltimore County Bill 98-75 (**Attachment 18**) of the Baltimore County Zoning Regulations for a Secondary commercial fishing, crabbing and shell fishing operation.

7. The first requirement for a valid Fishing and Shell fishing Use Permit under Baltimore County Bill 98-75 [page 2 line 30] states "Secondary – A residential property which is domicile of a person engaged full or part time as a commercial fisherman". The applicant, Dan Beck Jr. did not live at the location. Possibly Dan Beck Jr. was planning to move back to his parents home in the 365 days after filing the Use Permit, but he never did...and thus the Use Permit requirements were never fulfilled.

8. A second requirement under Baltimore County Bill 98-75 [Page 2 line 31 continued on Page 3 line 1-2], "..... and who is required under Title 4 of the Department of Natural Resources to possess a license for the purpose of catching by net, line, trap or tongs, or fish, crabs or shellfish".

9. A Public Information Request to the Maryland Department of Natural Resources January 21, 2010 (**Attachment 19**) was filed to see if Mr. D. Franklin Beck, Sr. or Mr. Daniel Beck (Jr) met the second requirement under Baltimore County Bill 98-75 as stated above.

10. Per **Attachment 19**, public information obtained from DNR, neither Mr. D. Franklin Beck, Sr., nor Mr. Daniel Beck Jr. held a commercial license for more than 20 years after the Use Permit was filed in 1978. (Mr. Beck Sr. died in 1979). Daniel Beck Jr. first obtained a commercial fishing license September 1, 1998, (~20 years after both Use Permits were filed). So both Becks Jr. and Sr. failed the second requirement for the use permit in 1978 for 466 Barrison Road facility (2534 Island View Road) (Code Enforcement # CFC3; **Attachment 17**).

CLOSING REMARKS:

1. It is our understanding that the Commissioner can reverse prior permits if they are demonstrated to be either surprising, fraudulent or some other factor directly affecting their validity. [Court of Appeal of Maryland, SkipJack Cove Marina Inc. vs. County Commissioner for Cecil County et al. No. 66 dated Feb 14, 1969. Maryland Rules, Rule B4]. (**Attachment 21**).

2. Commercial fishing in a residential neighborhood is a non-conforming use. Such a facility can be initiated via a Special Exception or a one time Use Permit issued in the 1970's. We can find no documentation in the Zoning code to indicate that commercial fishing and shell fishing operations that were allowed to operate through a Use Permit in the 1970's are to be treated any differently than any other non-conforming use. The right to operate any non-conforming use obtained through a special exception is lost if the use is inactive for one year, or reverts to a use other than non-conforming. Thus, with over 30 years of inactivity of the fishing facility at the 2534 Island View Road location, we feel that the rights to operate a commercial operation at this site have expired, and the property reverts to the residential status only.

3. It is our contention that Mr. Mattes has a documented and blatant disregard for the County and State environmental regulations and regulatory agents. This 'cowboy' attitude has resulted in numerous offenses in just the first eight months of operating his commercial fishing operation at 2534 Island View Road. With this track record, we predict future environmental health issues arising from this operation. In addition, there is already one existing fishing and shell fishing facility on Browns Creek (Daniel Beck Jr., Schaffers' Lane). We feel a second fishing facility on Browns Creek will further aggravate an already delicate and fisherman-challenged environment.

4. In addition, we contend that the 2534 Island View road fishing and shell fishing facility constitutes a public health concern to both Ms. Guckert [who lives next door and must suffer the industrial noises, smells, and eyesore created by the commercial operation] as well as pedestrians and motorists who use Island View Road. As demonstrated in the past year, there is insufficient parking at 2534 Island View Road for a commercial operation with a retail component. The operation exists at a bend in a very small but unusually heavily trafficked road with small children that use this road to reach the school bus stop. This combination of factors is an accident just waiting to happen.

5. Finally, due to the documented eyesore, increased traffic volume, and industrial look that 2534 Island View Road confers to the neighborhood, we fear that it will diminish the property values in the neighborhood, especially for those residents on Island View Road that must drive past the fishing operation.
6. The relief we are requesting :
 - a. terminate the fishing and shell fishing operation at 2534 Island View Road
 - b. have the Baltimore Code Enforcement records corrected removing this property 2534 Island View Road [called CFC3 by the Office of Code Enforcement] from the county's list of Commercial Fishing and Shell fishing Facilities in RC Zones (**Attachment 17**).
 - c. ask that the owners of 2534 Island View Road to remove anything relating to the secondary crabbing and fishing facility.
7. Mr. Mattes III was a fisherman prior to moving to Island View Road and thus we ask that he continue his fishing and crabbing from the location he used previously. He obtained his Waterman #1827 license 8/31/2008 and he gave his address as 917 Sue Grove Rd, Baltimore, Md. 21221 (**Attachment 19**).

INDEX ATTACHMENTS
CASE NO. 2010-0220-SPH
[2534 ISLAND VIEW ROAD]
April 8, 2010

1. Map of fishing facilities on Schaffer Rd and Island View Rd (Browns Creek).
Barrison Point Plot Diagram SDAT TAX SHEETS for pertinent properties.
2. Time Line of pertinent events
3. Statement: Ms. Theresa Guckert
4. Statement: James Brown
5. Statement: Letters/Petition from impacted neighbors condemning the fishing facility
6. Letter from Balto Co. DEPRM documenting floating pier and macadam driveway installed without permit. No more impervious surface allowed at 2534 Island View Road.
7. Notes from DEPRM inspector documenting Mr. Mattes claim of a pre-existing driveway and pictures indicating otherwise.
8. DEPRM/MDE Documents indicating report of dredging at 2534 Island View Road.
9. Documentation of fill dirt without permit. 'Stop work' order was ignored by Mr. Mattes.
10. Zoning Commissioner's decision on request for fishing and shellfishing special exception on Engelberth Road (Browns Creek), with list of environmental concerns of fishing facility in small creek.
11. Documentation of public safety concerns with vehicles parked on Island View Road, and flooded ditch.
12. Death Notices for Mr. and Mrs. Daniel F. Beck Sr. Article, East County Times, Nov 30, 2006, Page 1 and Page 7. "Happy 100th Birthday to Mae Beck" by Maryann Horn
13. Daniel Beck Jr. Felony incarceration for 1 year and 1 day plus other DNR misdemeanors to further document non-conforming use was vacated for at least one year.
14. Non Conforming use regulations in Balto. Co. Zoning Code (one year absence is sufficient to terminate).
15. 1978 Use Permit for secondary fishing and shellfishing facility at Schaffer Road showing Daniel Beck Jr. residence on Schaffer's Lane.
16. 1978 Use Permit for secondary fishing and shellfishing facility at 466 Barrison Point (2354 Island View) showing Daniel Beck Jr. domicile on Schaffer's Lane.
17. Balto. Co. list of Commercial Fishing and shellfishing Facilities (CFC)
18. Baltimore County Bill No. 98-75 with list of requirements for secondary fishing and shell fishing facilities.
19. Letter from DNR indicating first commercial fishing license for Dan Beck, Jr. was obtained in 1998. No commercial license for Frank D. Beck, Sr. was ever obtained.
20. Copy of Deed for 2534 Island View Road, for Andrew J. Mattes, III and Stephanie L. Mattes, Jan 30, 2009, indicating no rights conferred for fishing or shellfishing facility.
21. Case report indicating that the Zoning Commissioner has the right to revoke permits if they are determined to have been filed with fraudulent or invalid claims. Court of Appeals of Maryland, Skipjack Cove Marina, Inc. vs. County Commissioners for Cecil County et al., No. 66. Feb 14, 1969
22. Maryland Tax Assessment for 2534 Island View Road (residential) and 2546 Island View Road (Island View Café; commercial).



Attachment 1

Timeline (not to scale)

**466 Barrison Road
(1978)**

**-- Barrison Road becomes
Island View Road**

**-- 2534 Island View Road
(2010)**

**30 YEARS: 1979-2009. NO FISHING at 466 Barrison Road.
Dan Beck Jr. does not live or fish at 466 Barrison Road
[2534 Island View Road]**

**1926 Guckert
Family moves to
Barrison Point**

**1940 Beck Family
moves to Barrison
Point Dan Beck Sr.
is a waterman**

**1970's Dan Beck Jr. resides
(rents) at Schaffer's Lane**

**1978 Dan Beck Jr. files Use
Permit for Secondary fishing
facility at both 466 Barrison
Road and Schaffer's Lane**

**1979 Dan Beck Sr.
passes away**

**1986 Dan Beck Jr.
purchases Schaffer
Lane property**

**1998 Dan Beck Jr. obtains first
Commercial fishing license
(20 years after Use Permit).**

**2008 Dan Beck Jr. inherits 2534
Island View Road**

**2008 Andrew Mattes III obtains
commercial fishing license**

**2009 Dan Beck sells 2534 Island View Road
to Stephanie and Andrew Mattes III**

**2009 No less than four code violations
occur at 2534 Island View Road to support
Andrew Mattes III fishing/crabbing**

Attachment 2

Statement of :
Theresa Guckert
2530 Island View Road
Essex, MD 21221

In 1926 my family moved to what is now known as 2530 Island View Road. I live in the house immediately next door to 2534 Island View Road. I have lived here for over 83 years. I have been very involved with many community organizations since the 1960s that are designed to protect the neighborhoods and the Environment on the Back River Neck Peninsula:

1. Barrision Point Improvement Association - member 1960's till present, serving as Secretary for one year.
2. Back River Neck Community Association - member 1980's till present, President for one year and Treasurer for 15 years.
3. Baltimore County Forestry Board - member and treasurer for 19 years till present
4. Essex Police Community Relations (concerned citizens interacting with police to maintain community relations) - Attend Monthly meeting for 15 years, Secretary 4 years.

The associations that I have worked with while living at 2530 Island View Road have helped to keep the Back River Neck Community clean, free of over-development and the environmentally critical areas protected from environmental insult.

Since I have lived here - there has never been a licensed secondary crabbing and fishing facility in my neighborhood. Franklin D. Beck Sr. did performing fishing and crabbing until 1979, but he never had a commercial license..

Mr. and Mrs. D. Franklin Beck Sr. where married in June 1940 and bought the property (466 Barrison Road) that is currently 2534 Island View Road. Mr. Beck Sr. was a fisherman and crabber waterman from Havre de Grace. At 2534 Island View Road, he used only a trot line, never crab pots.

In the 1970s Dan Beck Jr. moved to 294-C Schaffers Road property across the creek. He did not own it but rented the property until Nov 10, 1986 when he then purchased the property know as 2358 Schaffers Road . He never moved back to Island View Road after moving to Schaffer Road across Brown's Creek. He also never fished from this property after

James S. Brown

Mr. Commissioner my name is James S. Brown and I have owned 2502 Island View Rd, Balt, MD since June 4, 1992 and resided there since Spring 1993. When I purchase my property there was no commercial fishing and shell fishing ongoing at 2534 Island View Road. In the subsequent eighteen years that I have lived at my home there has been no commercial fishing and shell fishing facility operation at 2534 Island View Road until last year, 2009, when Mr. and Mrs. Andrew J. Mattes purchased the property. Mr. Mattes claimed that he had the right to operate a secondary commercial fishing and shell fishing facility. He kept stalling on producing documents that backed this statement up.

I would never have invested in the purchase of my current home or other properties on Island View Rd., which consist of a total of 10 lots [29, 30, 34, 35, 20, 21, 22 and 23] if a commercial crabber/fisherman was operating on my street. Dave Donovan and I have invested more than \$1,500,000 in these properties on Island View Road. I am trying to improve the neighborhood, not tear it down. The Mattes operation at 2534 Island View Road is an eye sore and I feel is bringing down both my property value(s) and my quality of life. I am retired and can not afford to have my nest eggs spoiled because Mr. Mattes wants to start up a crabbing facility on our street. My statement is in attachment 4 for your review. I have included in my written statement information that I received from a Public Information Act request I made to DEPRM and Maryland Department of Environment (MDE) about Mr. Mattes and his property 2534 Island View Rd. In an effort to move this meeting ahead to the issues of non-conforming and use permit, I will not go through the details of my written statements since they are backed up by MDE and DEPRM official records.

4/7/2010 4:08 PM

April 5, 2010

Mr. Wisemann
Zoning Commissioner
BaltimoreCounty Gov.
Towson, Maryland 21204

Dear Mr. Wiseman,

I am writing to support the effort by Dave Donovan, Jim Brown and Theresa Guckert to have Baltimore County abolish the fishing facility at 2534 Island View Road. I lived at 2549 Barrison Point Road for 20 years (1967-1987). Daniel Beck Sr. and his wife May Beck resided at 466 Barrison Road (currently 2534 Island View Road during that time). My home at 2549 Barrison Point Road had a clear view of the Beck property on Island View Road. I am shocked that after 30 years of no fishing, this commercial operation is now allowed to reinstate in this residential neighborhood. I strongly object to this commercial fishing/crabbing operation at this location and ask that the county Code Enforcement terminate this business.

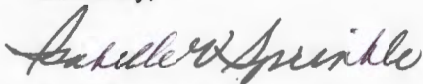
I moved away from Barrison Point in 1987 but I inherited my mothers property across the street from 466 Barrison Road (2534 Island View Road.) My property is located on Section C lots 22, 23, 24 and part of lot 21 of the area plat, and is currently for sale. With my property located immediately across the street from the commercial fishing/crabbing operation at 2534 Island View Road (the property owned by Andy and Stephanie Mattes), I am a highly impacted party by the commercial operation on Island View Road.

I live in Lancaster PA and monies I hope to obtain from the sale of my Island View Road property is an important part of my retirement income. The appearance of surrounding properties can be a very important factor for any potential buyer, and this is an even greater concern in such a down-turned economy. I am concerned that a commercial fishing and shell fishing facility will result in a greatly reduced property value for my property that I am currently trying to sell.

I strongly oppose re-starting a commercial fishing/crabbing operation at this location, and would very much like to see Baltimore County protect me and my property value from the negative impact that such a commercial facility will have on the neighborhood.

Thank you for your efforts on my behalf. Please call me if I can help by giving a more detailed listing of my concerns.

Sincerely,



Isabelle Sprinkle
1734 Saffin Cir
Lancaster, PA
17601-4650
Phone: 717-393-3640

Attachment 5

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

JONAS A. JACOBSON, *Director*
Department of Environmental Protection
and Resource Management

August 17, 2009

Mr. Andrew Mattes
2534 Island View Road
Baltimore, MD 21221-6411

RE: Chesapeake Bay Critical Area Complaint:
Impervious surface limit / floating barge

Dear Mr. Mattes:

As you are aware, Environmental Impact Review (EIR) has been to your property to review a complaint regarding a floating pier/barge as well as lot coverage (impervious surface) issues on your property. Your lot falls within the Buffer Management Area (BMA) and Limited Development Area (LDA) of the Chesapeake Bay Critical Area (CBCA). The LDA regulations impose a maximum lot coverage (impervious surfaces) limit of 5,445 square feet (19.8% of the total lot size) and a 15% minimum tree cover requirement of 8 trees on your lot. Currently there is 5,630 square feet of lot coverage on the lot with adequate tree cover. Lot coverage includes, but is not limited to, your house, driveway, walkways, garage, gravel driveway to the water, etc. Because your lot is over the allowed limit, you must remove at least 185 square feet of lot coverage.

The BMA program, which applies to heavily developed shoreline areas of the Critical Area, was developed to eliminate the need for variances for many buffer disturbances and to provide more expeditious review of building permits. While certain structures are permitted within the 100-foot buffer, BMA regulations specify that adequate mitigation must be provided to offset the proposed impacts to the buffer. BMA regulations prohibit any structures or other lot coverage within 25 feet of the water. Therefore, the gravel driveway leading down to the water must be removed within 25 feet of the existing bulkhead. If the removal of the gravel equals or exceeds 185 square feet, your lot will no longer be in violation of CBCA regulations. If you require additional removal, this can be achieved by removing lot coverage from any portion of your lot. You will have 30 days from the date of this letter (September 17, 2009) to remove 185 square feet of lot coverage (to include all gravel driveway within 25 feet of the water). Failure to abide by these regulations by the above date will result in enforcement action by this Department, which can include the imposition of civil monetary penalties, as noted in Sections 33-2-901 through 33-2-902 of the Baltimore County Code.

Please keep in mind that any additional lot coverage would require the removal of an equal amount of impervious surfaces and mitigation in the form of either tree planting or payment of a fee-in-lieu.

Attachment 6

Baltimore County
Department of Environmental Protection
And Resource Management

Record of Investigation

Location: 2534 Island View Road

ADC Map #: 46 D-4

Owner/Occupant: Andrew and Stephanie Mattes

Address: 2534 Island View Road Subdivision: N/A

Tax Map: 105 Block: N/A Parcel: 80 Lot: 2 Zip Code: 21221

Phone: (410) 574-1763 (h), (443) 250-3737 (c)

Complainant: David Donovan

Address: 2502 Island View Road

Phone: (443) 690-4251

Reason for Investigation: Illegal 2nd pier being installed on residential property, put in driveway down to pier.

Received by: BAL Date: 05/19/09

Assigned to: TAK Date: 05/28/09

Date of Investigation: 6/16/09 Time: 1:30pm Weather: 72, overcast

Report:

Measured impervious surfaces and spoke to owner. According to him there was a driveway down to the water and he just put stone over it. In the letter sent 8/17/09 I told him to remove any stone within 25 feet of the water. The second pier is a floating barge, he may need permits for it.

Waiting on action taken by MDE – 2nd pier is actually a barge. Driveway was resurfaced according to owner – they will have to remove from the 25 foot buffer (BMA).

MARYLAND DEPARTMENT OF THE ENVIRONMENT

(1/19/10)

CITIZEN REFERRAL/COMPLAINT FORM

1/15/10

RECORD NUMBER: 18-2201
 DATE RECEIVED: 10/13/09
 TIME RECEIVED: (24HR) 1130

DOES THE COMPLAINANT WISH TO BE
 KEPT CONFIDENTIAL: YES ☐ NO ☒ (CIRCLE)

RECEIVERS NAME: CLAY TROY
 HOW WAS THE COMPLAINT RECEIVED: (1)PHONE (2)LETTER (3)PERSON (4)800 (CIRCLE)

COMPLAINANTS NAME: JIM BROWN
 COMPLAINANTS ADDRESS: ISLAND VIEW Rd.
 COMPLAINANTS CITY: _____ STATE: _____ ZIP: _____
 COMPLAINANTS PHONE: (HOME) 443-386-1741 (WORK) _____
 ADDITIONAL CONTACT NAME: _____ PHONE: _____

WHAT IS THE NATURE OF THE PROBLEM: (1)SEDIMENT (2)STORMWATER (3)FLOODPLAIN (4)INDUSTRIAL
 (5)MUNICIPAL (6)AGRICULTURAL (7)TIDAL WETLANDS (8)SURFACE MINING (9)COAL MINING
 (10)NON-TIDAL WETLANDS (11)OTHER (CIRCLE ONE)

PROBLEM CODE: _____ (THREE LETTERS FROM CODE SHEET)

PROBLEM
 DESCRIPTION: OWNER of 2534 ISLAND VIEW Rd had someone
operate equipment to DREDGE in front of Bu (HEAD), BESIDE FLOATING
PIER.

LOCATION OF
 PROBLEM: 2534 ISLAND VIEW Rd

COUNTY: BA BOOK MAP COORDINATES: PAGE: 46 LTR GRID: D NUM GRID: 4
 REGION: _____ ASSIGNED TO: CFT (INITIALS) ASSIGNED BY: _____ (INITIALS)
 DATE ASSIGNED: 10/19/09 TIME: (24HR) _____

DISTRIBUTION: WHITE - DATA ENTRY YELLOW - FACILITY FILE PINK - COMPLIANCE SPECIALIST ASSIGNED

Attachment 8

BALTIMORE COUNTY MARYLAND
Department of Environmental Protection and Resource Management
Inspection and Enforcement Section

Phone: 410-887-3226

Fax: 410-887-4804

Job Location: 2534 Island View Rd District: 15

Grading Permit #: NONE Building Permit #: _____ Date: 9/10/09

☒ Grading ☒ Building
☒ Other ☒ Other 410-0227

I have, this day, inspected this site and have found the following violation(s) of the Baltimore County Code, Article 33, Title 5, Section 103+104.

FILLING & GRADING IN THE 100' BUFFER WITHOUT A GRADING PERMIT
& NO SEDIMENT CONTROLS & SILT FENCE NOT INSTALLED CORRECTLY.
STOP ALL WORK ON SITE. REINSTALL SILT FENCE ACROSS WATERFRONT
WITH STAKES ON THE OUTSIDE OF THE WORK AREA & TRENCH 4" 8"
STRAIGHT DOWN & BACKFILL. EXTEND SILT FENCE OVER TO THE
BOAT RAMP & UP THE RIGHT SIDE OF THE DISTURBED AREA.
STABILIZE AREA WITH TEMPORARY SEED & STRAW & OBTAIN A GRADING
PERMIT OR REMOVE ALL FILL DIRT & RESTORE ORIGINAL GRADE
& STABILIZE.

These conditions must be corrected no later than 9/24/09. Failure to comply and complete the required work you could be penalized by fine, imprisonment, or both, pursuant to Article 1, Section 217, and Article 33, Section 5 of the Baltimore County Code.

Inspector: J. Bread

Received by: POSTED ON SITE
(signature)

(print)

Site re-inspection date: _____

Correction(s) approved: _____

Inspector

Revised: 08/07

Attachment 9

IN RE: PETITION FOR SPECIAL EXCEPTION	* BEFORE THE
NW/S Engleberth Road, 1,435' N of the c/l	
Cross Road	* ZONING COMMISSIONER
(1245 Engleberth Road)	
15 th Election District	* OF BALTIMORE COUNTY
6 th Council District	
	* Case No. 05-167-X
Mark T. Gray and Thomas W. Gray	
Petitioners	*

* * * * *

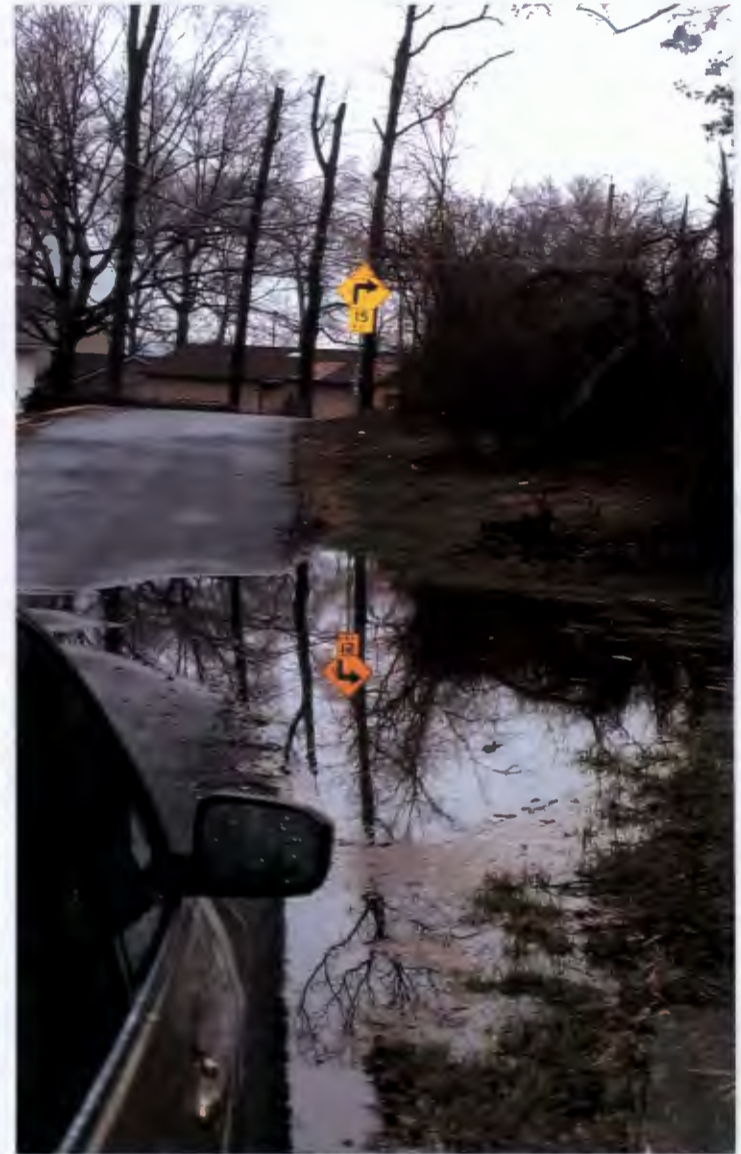
FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Exception filed by the owners of the subject property, Mark T. Gray and Thomas W. Gray. The Petitioners request a special exception for a fishing and shell fishing facility, shoreline, Class 1, on the subject property, pursuant to Section 1A04.2.B.7 of the Baltimore County Zoning Regulations (B.C.Z.R.). The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were Mark T. Gray, co-owner of the subject property, and Brendon Daley, a friend and consultant who has knowledge of wetland issues and is employed with Engineering Consultant Services, LTD. Numerous residents from the surrounding community appeared in opposition to the request, including James and Catherine Mitchell, adjacent property owners, and several representatives from the Holly Neck Conservation Association, Inc., and the Back River Neck Peninsula Community Association, Inc. In addition, this Zoning Commissioner received letters from many of the residents bordering Browns Cove expressing strong opposition to the special exception request, all of which were collectively marked as Protestants' Exhibit 1.

Testimony and evidence offered revealed that the subject property is a rectangular shaped, waterfront parcel, located on the west end of Engleberth Road, just north of Cross Road in Essex. The property contains a gross area of 0.452 acres, more or less, zoned R.C.5, and is

Attachment 10



Attachment 11

Mae M. Beck

BECK, Mae M. On July 14, 2008, MAE M.; beloved wife of the late Daniel F. Beck, Sr.; devoted mother of Daniel F. Beck Jr. and his wife Joyce; dear grandmother of Lisa Savage and the late Daniel F. Beck III; great-grandmother of Lisa's son, Alex Savage. A private cremation was held. Memorial service will be held at the Zion Evangelical Lutheran United Church of Christ, 7146 Golden Ring Road, Essex 21221, on Sunday, July 27, 2008 at 11 a.m. Please omit flowers. Memorials in Mae's name to Zion Evangelical Lutheran Church will be appreciated. Arrangements by the family owned Bruzdinski Funeral Home, P.A., 410 686-4888.

Published in Baltimore Sun on 7/16/2008

Attachment 12



[Home](#)

Search by Last Name:

Friday, June 26, 2009

**WHERE
ART
THOU**



**FIND
ANYONE
INSTANTLY!**

First Name Last Name State

GET INSTANT RESULTS!

INCLUDES...

- ☐ Name
- ☐ Birthdate, age
- ☐ Address
- ☐ Much More...

[Newspaper Results](#)

[Social Security Death Index Results](#)

RESOURCES

**SOCIAL SECURITY DEATH INDEX RESULTS FOR
"DANIEL BECK"**

Modify Your Search

First Name (Optional)

Last Name

State (Optional)

Date Range (Optional)

Search Results - Social Security Death Index
Page 1 of 1 (1 total results)

Show results per page

Name	Birth	Death
BECK, DANIEL	Dec 23, 1895	Dec 01, 1979
Last residence: 21221 (Essex, Baltimore, MD)		

[Gift Shop](#)

[Flowers](#)

[Charities](#)

[Funeral Home Directory](#)

[ObitMessenger:
E-mailed obituary alerts](#)

[Legacy Memorial
Websites](#)

[Condolence Advice](#)

[Grief Support](#)

United States District Court

District of Maryland

OCT 18 8 18 AM '00

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed on or After November 1, 1987)

v.

DANIEL F. BECKCase Number: **MJG-00-0310**Defendant's Attorney: Michael T. Pate, Esq.
Boozar, Esq.

OCT 17 2000

AT BALTIMORE
CLERK U.S. DISTRICT COURT
DISTRICT OF MARYLAND
CRIMINAL
DEPUTY

Assistant U.S. Attorney: P. Michael Cunningham

THE DEFENDANT:

- ☒ pleaded guilty to count one
- ☐ pleaded nolo contendere to count(s) _____, which was accepted by the court.
- ☐ was found guilty on count(s) _____ after a plea of not guilty.

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
16 U.S.C. §3372(a)(3)(A)	Illegal Possession of Fish	12/31/99	1
16 U.S.C. 3373 (d)(1)(B)			
18 U.S.C. §7			

The defendant is adjudged guilty and sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) _____
- ☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's SSN:

Defendant's Date of Birth:

Defendant's U.S.M. No.:

Defendant's Residence Address:

October 13, 2000

Date of Imposition of Judgment

Marvin J. Garbis

10/14/00

MARVIN J. GARBIS

United States District Judge

Date

I hereby attest and certify on June 5, 2009
that the foregoing document is a full, true and correct
copy of the original on file in my office and in my
legal custody.

FELICIA C. CANNON
CLERK, U. S. DISTRICT COURT
DISTRICT OF MARYLAND

By *[Signature]* Deputy*[Signature]*

Name of Court Reporter: Barbara Shaulis

Attachment 13

OCT 17 2000

BALTIMORE COUNTY CODE

§ 101.1 Word usage; definitions.

NONCONFORMING USE

A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically named use described by the adjective "nonconforming" is a nonconforming use.

[Bill No. 18-1976]

App. K APP. K: 1945 – 1955 ZONING REGULATIONS App. K

SECTION XI -- NON-CONFORMING USES

A lawful non-conforming use existing on the effective date of the adoption of these regulations may continue, provided, however, upon any change from such non-conforming use to a conforming use, or any attempt to change from such non-conforming use to a different nonconforming use or any discontinuance of such non-conforming use for a period of one year, or in case a non-conforming structure shall be damaged by fire or otherwise to extent of seventy five (75%) per cent of its value, the right to continue to resume such non-conforming use shall terminate, provided, however, that any such lawful non-conforming use, may be extended or enlarged to an extent not more than once again the area of the land used in the original nonconforming use.

§ 104.1. Continuation of nonconformance; exceptions.

[Bill Nos. 18-1976; 124-1991]

A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations, provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate.

Attachment 14

APPLICATION FOR ZONING
USE PERMIT

This Use Permit is requested in accordance with Section 500.4 and B.Co. Bill 98-75 of the Baltimore County Zoning Regulations.

The property in question is situated in the 15th Election District of Baltimore County, and is more specifically located on the South side of Schaffers Road, 3700 feet southerly of Holly Neck Road. The total net area is 3.50 acres.

This property is presently zoned RC-5

The use for which this permit is requested is commercial fishing and crabbing and shellfish operation, wholesale & retail sale of crabs and fish. The following items will be utilized in the operation and/or will be stored on the premises: storage of nets, crab pots, boats, anchors, walk-in box, live boxes and other miscellaneous equipment used in the operation thereof, berthing of fishing boat and loading and unloading of catches and gear. Approximately 75 percent of the total net area of the property will be utilized in the operation.

Said use is more specifically detailed on the attached scale drawing.

Daniel Beck
Daniel Beck Lessee
Address 292-C Schaffers Road
Baltimore, Md. 21221

Charles J. Velte
Charles J. Velte
Edward G. Velte
Edward G. Velte Legal Owner
Address 619 Murdoch Road
Baltimore, Maryland 21212

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 9th day of Oct, 19 78 that the herein described property should be and the same is hereby approved as a Secondary Commerical fishing, crabbing and shellfishing operation.

Attachment 15

[Signature]
Zoning Commissioner of
Baltimore County

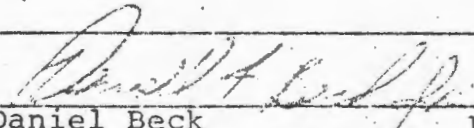
APPLICATION FOR ZONING
USE PERMIT

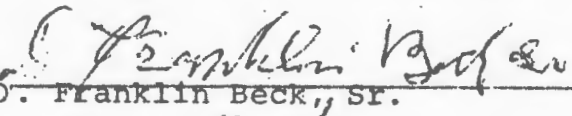
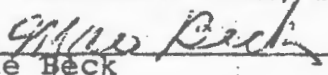
This Use Permit is requested in accordance with Section 500.4 and B.Co.Bill 98-75 of the Baltimore County Zoning Regulations.

The property in question is situated in the 15th Election District of Baltimore County, and is more specifically located on the south side of Barrison Road, 9/10 mi. feet south ✓ of Holly Neck Road. The total net area is 25,200 sq. feet. This property is presently zoned RC-5

The use for which this permit is requested is commercial fishing crabbing and shellfish operation, wholesale & retail sale of crabs and fish, ~~live and frozen crabs and fish~~. The following items will be utilized in the operation and/or will be stored on the premises: storage of nets, crab pots, boats, anchors, walk-in box live boxes and other miscellaneous equipment used in the operation thereof, berthing of fishing boat, loading & unloading of catches and gear. Approximately 50 percent of the total net area of the property will be utilized in the operation.

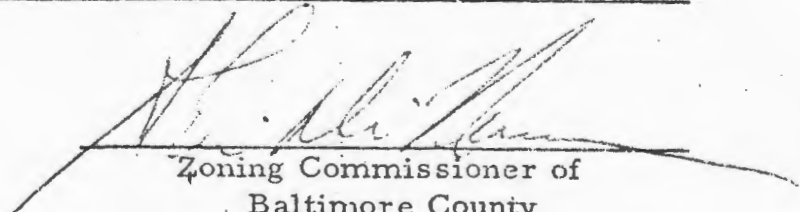
Said use is more specifically detailed on the attached scale drawing.


Daniel Beck Lessee
Address 294-C Schaffers Road
Baltimore, Md. 21221


D. Franklin Beck, Sr.

Mae Beck Legal Owner
Address 466 Barrison Road
Baltimore, Maryland 21221

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 9th day of Oct, 19 78, that the herein described property should be and the same is hereby approved as a secondary Commercial fishing, crabbing and shellfishing operation.

Attachment 16


Zoning Commissioner of
Baltimore County

COMMERCIAL FISHING & SHELLFISHING. FAC.
R.C. ZONES

CFC 1 FRANK DORN. 206 GOLUPSKI RD N/S 15th RC5

CFC 2 KENNETH HUBBARD / ANTHONY BENNETT
846
S/S SENECA PARK RD. BOX 524 15th RC5

CFC 3 DANIEL BECK, JR. (D. BECK SR.) S/S BARRISON RD.
15th RC5

CFC 4 DANIEL BECK (CHARLES VELTE) S/S SCHAFFERS RD.
BOX 294C 15th RC5

CFC 5 CHARLES L. MCDANIEL, JR. - NEW SECTION RD.
RT 15, BOX 639C 15th RC5

CFC 6 JOHN CALLIN E/S NEW SECTION ROAD RT 15,
BOX 639A 15th RC5

CFC 7 LEROY FERSTERMANN E/S BOWLEY'S QUARTERS
ROAD BOX 743H 15th RC5

CFC 8 WILLIAM PETER E/S SENECA RD BOX 711
15th RC5

CFC 9 GORDON SEELHORST 665 NEW SECTION RD
15th RC5

CFC 10 MILTON REHBEIN N/S SENECA RD. RT 15 BOX 725
15th RC5

CFC 11 ROBERT P. EURICE S/S S. SENECA RD. RT 15
BOX 626 15th RC5

CFC 12 DOROTHY HULL (ROBERT EURICE) E/S BOWLEY'S
QUARTERS RD. 15th RC5

CFC 13 JAMES R. MYRICK, SR. E/S GOOSE NECK RD BOX 59
(1326) 15th RC5

CFC 14 CARL R. FISHER, JR. 668 NEW SECTION RD.
15th RC5

CFC 15

CFC 16 PAUL J. FORTIER, JR. 731 CHESTNUT RD 15th RC5

CFC 17 A.C. PINDER NEW SECTION & BOWLEY QUATERS R
15th RC5

CFC 18 CHARLES MACK N/S MILLERS IS. BLVD. 15th RC5

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

Legislative Session 1975, Legislative Day No. 21

BILL NO. 98-75

Mr. Huddles, Councilman

By the County Council, October 6, 1975

A BILL
ENTITLED

AN ACT to amend the Baltimore County Zoning Regulations to establish four new zoning classifications intended to insure the preservation of Baltimore County's Natural Resources, by repealing subparagraph 100.1.A.2 of Section 100 of the Zoning Regulations of Baltimore County and enacting a new subparagraph 100.1.A.2 in lieu thereof; by adding certain new definitions to Section 101 of said regulations; by adding new subsection 103.3 to Section 103 of said regulations; and by repealing Article 1A, and Sections 1A00 and 1A01 thereunder, of said regulations and enacting new sections 1A00 through 1A04, under new Article 1A entitled "Resource-Conservation Zones", in lieu thereof.

WHEREAS, THE COUNTY COUNCIL HAS CONSIDERED THE FINAL REPORT OF THE PLANNING BOARD, ENTITLED PROPOSED ZONING AMENDMENTS: ZONING CLASSIFICATIONS FOR RESOURCE CONSERVATION, IN ACCORDANCE WITH SECTIONS 22-20 AND 22-21 OF THE BALTIMORE COUNTY CODE (1974 SUPPLEMENT); AND,

WHEREAS, THE COUNTY COUNCIL HAS CONSIDERED TESTIMONY AT THE PUBLIC HEARING HELD IN ACCORDANCE WITH SECTION 22-21 OF THE BALTIMORE COUNTY CODE (1974 SUPPLEMENT); AND,

WHEREAS, THE COUNTY COUNCIL HAS REVIEWED IN WORK SESSION AND LEGISLATIVE SESSION THE PLANNING BASIS OF THE FINAL REPORT AS ELABORATED BY THE STAFF OF THE OFFICE OF PLANNING AND ZONING OF BALTIMORE COUNTY; AND,

WHEREAS, THE COUNTY COUNCIL HAS CONSIDERED THE COMPREHENSIVE PLAN FOR BALTIMORE COUNTY APPROVED BY THE PLANNING BOARD OCTOBER 13, 1975.

1. SECTION 1. Be it enacted by the County Council of Baltimore County, Maryland,
2. that subparagraph 100.1.A.2, under section 100 of the Baltimore County Zoning Regu-
3. lations, be and it is hereby repealed and new subparagraph 100.1.A.2 be and it is

Attachment 18



MARYLAND
DEPARTMENT OF
NATURAL RESOURCES

Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor
John R. Griffin, Secretary
Joseph P. Gill, Deputy Secretary

February 17, 2010

James S. Brown
2502 Island View Road
Baltimore, Md. 21221-6411

This is in response to your January 21, 2010 Public Information Request to the Maryland Department of Natural Resources. You asked for information about Andrew Mattes 3rd and Daniel Beck, Sr. and Daniel Beck, Jr. with reference to licenses issued by the Maryland Department of Natural Resources.

Your request was reviewed under the Public Information Act, Md. Ann. Code, State Gov't. §10-611 et seq., and the regulations promulgated there under by the Maryland Department of Natural Resources (DNR), COMAR 08.01.

The following is the information you requested:

Your request was reviewed under the Public Information Act, Md. Ann. Code, State Gov't. §10-611 et seq., and the regulations promulgated there under by the Maryland Department of Natural Resources (DNR), COMAR 08.01.

Andrew John Mattes 3rd – 917 Sue Grove Rd, Baltimore MD 21221
Waterman # 1827 renewed 8/31/09

2010 licenses – unlimited tidal fish, seafood marketing surcharge, oyster harvester surcharge, power dredge permit

Mr. Beck, Jr. has held a commercial license since 1998. Commercial licenses are valid from September 1 through August 31 of the following year.

There is no record of Mr. Beck, Sr. having a license.

If you have any questions, please let me know.

Sincerely,

Eugene F. Deems, Jr.
Maryland Department of Natural Resources
580 Taylor Avenue, D4
Annapolis, MD 21401
410-260-8014
Fax: 410-260-8024
gdeems@dnr.state.md.us

Attachment 19

FILE NAME: Mattes, Andrew J., Jr.
FILE NO. : 09-T-1393

TAX I.D. #: 21-00-014765

THIS DEED, Made this 30th day of January, 2009, by and between DANIEL F. BECK, JR., Personal Representative of the Estate of Mae M. Beck, of Baltimore County, in the State of Maryland, party of the first part, and ANDREW J. MATTES, III and STEPHANIE L. MATTES, husband and wife, parties of the second part.

WITNESSETH, that in consideration of the sum of Three Hundred Eighty Thousand Dollars and No Cents (\$380,000.00) and such other good and valuable consideration, the receipt of which is hereby acknowledged, the said DANIEL F. BECK, JR., Personal Representative of the Estate of Mae M. Beck, party of the first part, does hereby grant and convey unto the said ANDREW J. MATTES, III and STEPHANIE L. MATTES, husband and wife, parties of the second part, as tenants by the entireties, their assigns, and unto the survivor of them, his or her personal representatives and assigns, in fee simple, all that lot of ground situate in the 15th Election District of Baltimore County, Maryland, and described as follows, that is to say:

BEGINNING FOR THE SAME on the north side of Barrison Road as shown on the Plat of Barrison Point duly recorded among the Land Records of Baltimore County in Plat book WPC No. 7, folio 176 and as further shown on the Amended Plat of Barrison Point recorded among said Land Records in Plat Book No. WPC 8, folio 82, said point of beginning being at the southeast corner lot no. 5 in Section B as shown on said Plat and running thence northeasterly and binding on the division line between lots Nos. 5 and 4 in Section B on said Plat two hundred and thirty feet more or less to the waters of Brown Creek thence running easterly binding on said creek one hundred and forty feet to a point ten feet westerly from the northwest corner of lot No. 1 in Section B on

Attachment 20

Westlaw.

250 A.2d 260
 252 Md. 440, 250 A.2d 260
 (Cite as: 252 Md. 440, 250 A.2d 260)

Page 1

▷

Court of Appeals of Maryland.
 SKIPJACK COVE MARINA, INC.
 v.
 COUNTY COMMISSIONERS FOR CECIL
 COUNTY et al.
 No. 66.

Feb. 14, 1969.

Proceeding on application by property owner for modification of conditions and special exception **use permit**. The board of zoning appeals denied application and the landowners appealed. The Circuit Court for Cecil County, Edward D. E. Rollins, J., entered order affirming order of board and the landowner appealed. The Court of Appeals, Barnes, J., held that action of board of zoning appeals in refusing application of successor in title for modification of conditions on which special exception for use of property for a marina had been predicated because of an alleged change in conditions which were in fact mainly the result of compliance with conditions and restrictions originally set forth was not arbitrary, capricious or unreasonable.

Order affirmed.

West Headnotes

[1] Zoning and Planning 414 ⚡546

414 Zoning and Planning

414IX Variances or Exceptions

414IX(B) Proceedings and Determination

414k546 k. Effect of Determination. Most Cited Cases

Unappealed original decision of board of zoning appeals determining that a special exception was required for the use as requested by applicant became final after expiration of 30-day period provided by rule and was subject to challenge only for fraud, surprise or some other factor directly affecting validity, vel non, of decision. Maryland Rules, Rule

B4.

[2] Zoning and Planning 414 ⚡24

414 Zoning and Planning

414II Validity of Zoning Regulations

414II(A) In General

414k23 Persons Entitled to Attack Validity

414k24 k. Waiver, Estoppel, or Laches. Most Cited Cases

Where land owners did not appeal original decision of board of zoning appeals deciding that a special exception was required, obtained, by agreement, dismissal of appeal taken by protestants and executed and recorded option agreement required by board decision as condition to granting special exception, subsequent purchaser of property who had accepted benefits and advantages of special exception, subject to expressed conditions, could not attack, in absence of claim of fraud, surprise or some other factor directly affecting validity, vel non, of decision, those conditions. Maryland Rules, Rule B4.

[3] Zoning and Planning 414 ⚡587

414 Zoning and Planning

414X Judicial Review or Relief

414X(B) Proceedings

414k584 Time for Proceedings

414k587 k. Effect of Delay. Most Cited Cases

Successors in title to land could not by filing a proceeding subsequent to 30-day appeal period, in effect, seek to obtain a belated appeal challenging decision of board of zoning appeals that predecessors in title were required to have a special exception and were not entitled under zoning ordinance to use land for the marina uses applied for as a matter of right. Maryland Rules, Rule B4.

[4] Zoning and Planning 414 ⚡547

414 Zoning and Planning

Attachment 21

BALTIMORE COUNTY, MARYLAND

www.baltimorecountymd.gov

Real Property Tax

[Logout](#)

Ownership and Address Information

Parcel ID: 21-00-014765
Tax Year: 2010
Owner Name: Mattes Andrew J,3rd
 Mattes Stephanie L
Mailing Address: 2534 Island View Rd, Baltimore, MD 21221
Parcel/Situs Address: 2534 Island View Rd
District: 15
Property Class: 04 Residential
Semi-Annual Eligible: Yes
Miscellaneous:

Legal Description

IMPSPT LT2 LTS3,4 .631AC
 2534 ISLAND VIEW RD

Assessment Information

Full Year 264,360
 Tax rate for Full Year: County \$1.10000, State \$0.11200 per \$100 of Assessed Value

Tax Receivable Amounts

Bill Date: 07/01/2009

	Billed Amount	Paid	Outstanding	First SA	Second SA
Taxes/Charges	4,607.314	,584.88	22.43	2,303.66	2,303.66
Fees	25.00	.00	25.00	25.00	.00
Gross/Base	4,632.314	,584.88	47.43	2,328.66	2,303.66
Discount Applied	.00	.00	.00	.00	.00
New Discount	.00	.00	.00	.00	.00
Interest Applied	46.07	46.07	.00	.00	.00
New Interest	.00	.00	.67	.00	.67
Total	4,678.384	,630.95	48.10	2,328.66	2,304.33

Date to calculate interest amount owed (mm/dd/yyyy): 03/31/2010

[Recalculate](#)

If the recalculation process does not change the amount due, please contact the Office of Budget and Finance for further assistance at 410-887-2404

Payments Received

Payment	Payment Type	Interest/Discount Calculation Date	Amount Paid
Partial	FY	11/24/2009	4,630.95

Detailed Breakdown of Receivable Amounts

Description	Amount	Tax Credits
County Tax	2,907.96	
State Tax	296.08	
Bay Res Fee	30.00	
Sewer Benefit	230.00	
Sewer Service	380.61	
Utility	535.47	
Water Benefit	138.00	
Water Distribution	89.19	
Postage Tax Sale	25.00	
Total	4,632.31	

The receivable tax amounts reflect the application of the tax credits listed.

[Back](#)[Return To Search Menu](#)[Print Bill](#)[Print Page](#)

400 Washington Avenue • Courthouse • Towson, MD 21204

Attachment 22



Case No.: 2010-0220-SPH 2534 ISLAND VIEW RD

Exhibit Sheet

Petitioner/Developer

Community
~~Protestant~~

No. 1	Global Exhibit - Book 22 INDEX ATTACHMENTS	USE PERMIT
No. 2	Site PLAN FILED WITH PETITION	Letters of Support
No. 3		Photographs
No. 4		
No. 5		
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

APPLICATION FOR ZONING
USE PERMIT

COMMUNITY

EXHIBIT NO.

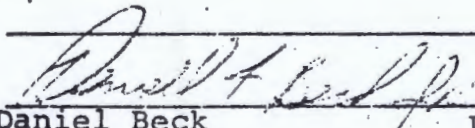
No 1

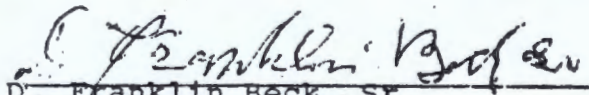
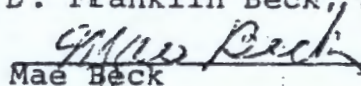
This Use Permit is requested in accordance with Section 500.4 and
B.Co.Bill 98-75 of the Baltimore County Zoning Regulations.

The property in question is situated in the 15th Election District
of Baltimore County, and is more specifically located on the
south side of Barrison Road, 9/10 mi. feet south
of Holly Neck Road. The total net area is 25,200 sq. feet.
This property is presently zoned RC-5

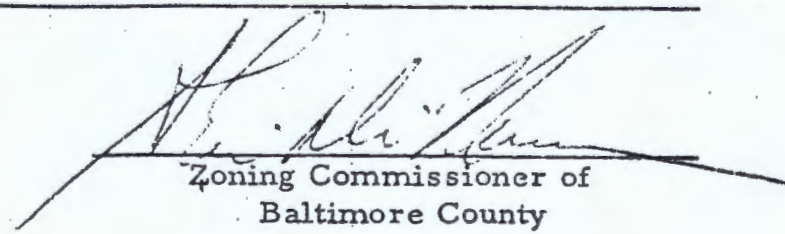
The use for which this permit is requested is commercial fishing
crabbing and shellfish operation, wholesale & retail sale of crabs and
fish. The following items will be utilized in the operation and/or will be stored on
the premises: storage of nets, crab pots, boats, anchors, walk-in box
live boxes and other miscellaneous equipment used in
the operation thereof, berthing of fishing boat, loading &
unloading of catches and gear.
Approximately 50 percent of the total net area of the property will be
utilized in the operation.

Said use is more specifically detailed on the attached scale drawing.


Daniel Beck Lessee
Address 294-C Schaffers Road
Baltimore, Md. 21221


D. Franklin Beck, Sr.

Mae Beck Legal Owner
Address 466 Barrison Road
Baltimore, Maryland 21221

IT IS ORDERED by the Zoning Commissioner of Baltimore County,
this 9th day of Oct, 1978, that the herein described
property should be and the same is hereby approved as a secondary Commercial
fishing, crabbing and shellfishing operation.


Zoning Commissioner of
Baltimore County

MICHAEL H. WEIR, JR.
6th Legislative District
Baltimore County



Environmental Matters Committee

Subcommittees

Agriculture, Agriculture Preservation
and Open Space

Environment

Natural Resources

The Maryland House of Delegates

ANNAPOLIS, MARYLAND 21401

April 8, 2010

☐ Annapolis Office
The Maryland House of Delegates
6 Bladen Street, Room 308
Annapolis, Maryland 21401
410-841-3328
800-492-7122 Ext. 3328
Michael.Weir@house.state.md.us

☒ District Office
429 Eastern Avenue
Baltimore, Maryland 21221
410-391-7800 · 410-282-9014
Fax 410-391-7802

Mr. William J. Wiseman, III
Office of the Zoning Commissioner
Baltimore County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Re: Case #2010-0220-SPH
2534 Island View Road 21221

Dear Commissioner Wiseman:

I am writing to express my support for Andrew and Stephanie Mattes and also to convey my hope that they will be allowed to continue realizing their dream of operating a small crabbing and fishing business from their waterfront home.

Mr. and Mrs. Mattes's live on Barrison Point, many of whose residents throughout the decades, have operated home based fishing and crabbing businesses. Mr. Mattes is a proud waterman who is carrying on that tradition by operating such a business from his 1920s era bungalow. It is a business that has been in continuous operation, at some level, from that location since the 1940s.

The Mattes' possess a use permit from Baltimore County and diligently follow the plat. They are the type of people who follow the rules simply because they believe it is the right thing to do.

I have known Andrew and Stephanie Mattes for many years and have always found them to be honest, forthright and extremely hardworking. They feel blessed to make their living on the water and are committed stewards of the environment so it is not surprising that they have the strong support of many resident homeowners in their community.

Mr. and Mrs. Mattes have made substantial improvements to their property including remodeling the interior and residing the exterior. I am confident that neighbors will be pleased with additional home improvements as time progresses and property values rise.

I believe that both the Mattes and their small business are assets to the community. They are good people and good neighbors and I hope they are allowed to continue in operation.

Thank you for your consideration.

Sincerely,

Michael H. Weir, Jr.
Delegate

collectively
COMMUNITY

EXHIBIT NO.

2

April 3, 2010

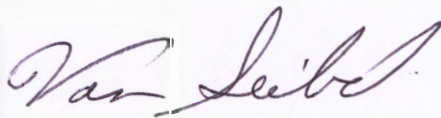
To Whom it may concern:

I have been living in the Barrison Point neighborhood since 1980, thirty years. This is a water oriented community and during my time here, I have seen many neighbors working on the water. It was always easy. You would get your license, and then crab or fish. The Barrison Point neighborhood is an old water community. Over the years I have seen shore shacks bought and renovated, but it is important to note that we do not have a home owner's association with covenants that residents must obey. We do have a small association, but that has dwindled due to the bickering of the officers and their need to constantly report residents for zoning violations and anything else they see fit. Since the Beck property was purchased, the owner has worked diligently to clean it up. Shortly after he and his family moved in a tornado came through and devastated their property. They not only had to cut all of the trees up, but they also had to repair the home from all of the storm damage. It looks like a new home! Far better than the ones on either side of it.

It is a sad day for me today. I had a crab business many years ago, and even though I no longer have it, I still have a tremendous love for the Chesapeake Bay and my neighborhood. To see a young man starting out and supporting his family being badgered and bullied by neighbors is just too much. The property he purchased was used as a commercial crabbing site for a long time. Equipment was also stored on the premises. There were live boxes out front and nets for carp fishing. At one time there was even a crab business at the neighbor's house, Mrs. Guckert. I believe it was her nephew that she let run his business from her home. I just don't know why she has a double standard. I also don't understand why the other two gentlemen find it necessary to litigate. They are not even a direct neighbor.

It is a privilege to live where I live. I could not imagine living anywhere else. I wake up in the morning to the sun rising on the Bay and the sounds of the seagulls. I go to bed at night with my window open, so I can hear the water as it laps against the bulkhead and smell the fresh air as it wafts in. Crabbing and fishing are a tradition. Please don't take that away from our neighborhood.

Sincerely,



Van Seibel
2507 Barrison Point Rd
Baltimore, Md 21221
410-574-7266



Melanie Cook, Agent

Auto – Fire – Life – Health – Business
1201 Eastern Boulevard
Baltimore, MD 21221

Office: 410-682-2200
Fax: 410-682-2077

April 6, 2010

To Whom It May Concern,

Please be aware that as a local business owner myself that I fully support other local businesses including Andy Mattes, local crabber and fisherman. I've had no problems or concerns as he is my neighbor. I have lived here over 15 years and am glad that local residents are able to use our bay and keep with Maryland tradition.

Sincerely,
Melanie

Melanie Cook, State Farm Agent
2551 Barrison Point Rd
Baltimore, MD 21221

Like a good neighbor, State Farm is there.



COMMUNITY

EXHIBIT NO.

3







Case No.: 2010-0220-SPH 2534 ISLAND VIEW RD

Exhibit Sheet

Petitioner/Developer

Community
Protestant

No. 1	global EXHIBIT - BOOK 22 INDEX ATTACHMENTS	USE PERMIT
No. 2	SITE PLAN FILED WITH PETITION	Letters of Support
No. 3		Photographs
No. 4		
No. 5		
No. 6		
No. 7		
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No. 9		
No. 10		
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No. 12		

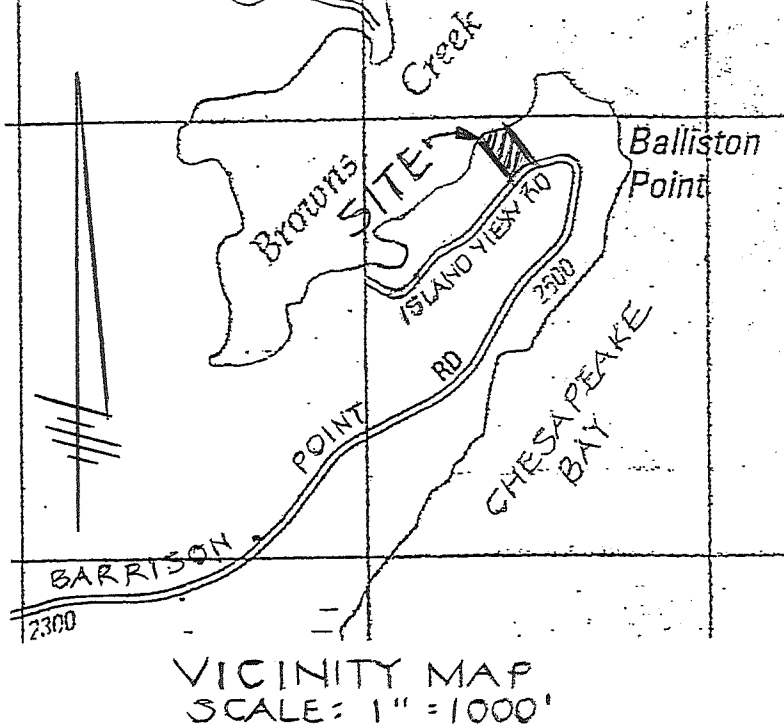
INDEX ATTACHMENTS
CASE NO. 2010-0220-SPH
[2534 ISLAND VIEW ROAD]
April 8, 2010

1. Map of fishing facilities on Schaffer Rd and Island View Rd (Browns Creek).
Barrison Point Plot Diagram SDAT TAX SHEETS for pertinent properties.
2. Time Line of pertinent events
3. Statement: Ms. Theresa Guckert
4. Statement: James Brown
5. Statement: Letters/Petition from impacted neighbors condemning the fishing facility
6. Letter from Balto Co. DEPRM documenting floating pier and macadam driveway installed without permit. No more impervious surface allowed at 2534 Island View Road.
7. Notes from DEPRM inspector documenting Mr. Mattes claim of a pre-existing driveway and pictures indicating otherwise.
8. DEPRM/MDE Documents indicating report of dredging at 2534 Island View Road.
9. Documentation of fill dirt without permit. 'Stop work' order was ignored by Mr. Mattes.
10. Zoning Commissioner's decision on request for fishing and shellfishing special exception on Engelberth Road (Browns Creek), with list of environmental concerns of fishing facility in small creek.
11. Documentation of public safety concerns with vehicles parked on Island View Road, and flooded ditch.
12. Death Notices for Mr. and Mrs. Daniel F. Beck Sr. Article, East County Times, Nov 30, 2006, Page 1 and Page 7. "Happy 100th Birthday to Mae Beck" by Maryann Horn
13. Daniel Beck Jr. Felony incarceration for 1 year and 1 day plus other DNR misdemeanors to further document non-conforming use was vacated for at least one year.
14. Non Conforming use regulations in Balto. Co. Zoning Code (one year absence is sufficient to terminate).
15. 1978 Use Permit for secondary fishing and shellfishing facility at Schaffer Road showing Daniel Beck Jr. residence on Schaffer's Lane.
16. 1978 Use Permit for secondary fishing and shellfishing facility at 466 Barrison Point (2354 Island View) showing Daniel Beck Jr. domicile on Schaffer's Lane.
17. Balto. Co. list of Commercial Fishing and shellfishing Facilities (CFC)
18. Baltimore County Bill No. 98-75 with list of requirements for secondary fishing and shell fishing facilities.
19. Letter from DNR indicating first commercial fishing license for Dan Beck, Jr. was obtained in 1998. No commercial license for Frank D. Beck, Sr. was ever obtained.
20. Copy of Deed for 2534 Island View Road, for Andrew J. Mattes, III and Stephanie L. Mattes, Jan 30, 2009, indicating no rights conferred for fishing or shellfishing facility.
21. Case report indicating that the Zoning Commissioner has the right to revoke permits if they are determined to have been filed with fraudulent or invalid claims. Court of Appeals of Maryland, Skipjack Cove Marina, Inc. vs. County Commissioners for Cecil County et al., No. 66. Feb 14, 1969
22. Maryland Tax Assessment for 2534 Island View Road (residential) and 2546 Island View Road (Island View Café; commercial).

PETITIONER'S

EXHIBIT NO. 1

OWNER
ANDREW J. MATTES, 3RD
STEPHANIE L. MATTES
2534 ISLAND VIEW ROAD
BALTIMORE, MD. 21221-6411
L. 27604 F. 293 ACCT. NO. 2100014765



NOTES

- 1. ZONING.....RC.5 (MAP 105B2)
- 2. AREA.....21,860 S.F. = 0.502 ACRE +/-
- 3. PUBLIS WATER AND SEWER
- 4. NO HISTORIC STRUCTURES, ARCHEOLOGICAL SITES OR UNDERGROUND STORAGE TANKS EXIST
- 5. SITE IS LOCATED IN THE CBCA
- 6. A PORTION OF THE SITE IS LOCATED IN THE 100 YEAR FLOOD ZONE
- 7. BUILDING COVERAGE.....7.3 %

PREVIOUS ZONING HISTORY
USE PERMIT FOR COMMERCIAL FISHING, CRABBING AND SHELLFISHING OPERATION GRANTED OCTOBER 9, 1978

2010-02 PETITIONER'S
EXHIBIT NO. 2

PLAT TO ACCOMPANY PETITION
FOR SPECIAL HEARING
2534 ISLAND VIEW ROAD
ELECTION DISTRICT 15C6
BALTIMORE COUNTY, MD
SCALE: 1 INCH = 30 FEET FEB. 19, 2010