

IN RE: <b>PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE
NW/Side Island View Road, 208' SW/Side of		
Barrison Point Road	*	ZONING COMMISSIONER
<b>(2534 Island View Road)</b>		
15 <sup>th</sup> Election District	*	OF
6 <sup>th</sup> Council District		
	*	BALTIMORE COUNTY
Andrew J. Mattes, III, et ux,		
<i>Legal Owners/Respondents</i>	*	
Theresa J. Guckert, et al	*	<b>Case No. 2010-0220-SPH</b>
<i>Petitioners</i>		

\* \* \* \* \*

**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

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

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 1<sup>st</sup> 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.

\_\_\_\_SIGNED\_\_\_\_\_  
WILLIAM J. WISEMAN, III  
Zoning Commissioner  
for Baltimore County

WJW:dlw