

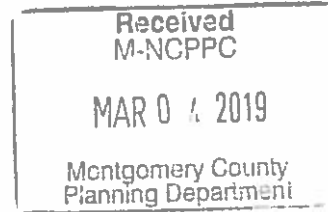
REQUEST FOR RECONSIDERATION
Old Angler's Cove Preliminary Plan 120170290
MCPB No. 19-013

GLAZER | WINSTON | HONIGMAN | ELLICK

March 4, 2019

VIA HAND DELIVERY

Ms. Gwen Wright
Planning Director
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910



Re: Application of Benjamin B. Wisler; MCPB No. 19-013

Dear Ms. Wright:

Enclosed please find nine (9) sets of documents comprising a Petition for Reconsideration, two (2) supporting Affidavits, and a proposed Resolution, which you are asked to present to the Planning Board.

Thank you for your attention and courtesy.

Very truly yours, .


L. Mark Winston

LMW/bsd
Enclosures

BEFORE THE MONTGOMERY COUNTY PLANNING BOARD

In Re the Application of Benjamin B. Wisler

Preliminary Plan No. 120170290

Old Angler's Cove

MCPB No. 19-013

**Petition for Reconsideration of Action of
Montgomery County Planning Board**

Come now, the undersigned Petitioners, Barbara R. (Bonnie) Casper, Jr. ("Casper") and L. Mark Winston ("Winston") (with "Casper" and "Winston" being collectively referred to as "Petitioners"), and herewith petition the Montgomery County Planning Board (the "Board") to reconsider its Resolution Adopted February 21, 2019, granting the Application in the above-captioned matter.

The grounds for this Petition are that:

(1) The Board improvidently denied Petitioners' request for a 60-day extension in taking action on the Resolution to enable Petitioners to review the record in this matter, research the underlying facts on which the action was based, and submit appropriate argument, comments and evidence to the Board.

(2) Denial of the request for extension of time was made in spite of the fact that no legal prejudice would have arisen had the request been granted.

(3) The action was based, at least in part, on misstatements of fact presented to the Planning Staff and, in turn, presented to the Board, in part by Applicant's civil Engineer ("Engineer"). Those misstatements apparently resulted in the conclusion by the Board that

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Petitioners were acting in a dilatory fashion. Such a conclusion, if made, would have been without basis and without merit.

As the attached Affidavits of Petitioners state, Petitioners had no communication of any kind from Applicant, Applicant's Civil Engineer, nor any other person representing Applicant, for over one year prior to the hearing in question (that is, since a public meeting conducted by Applicant's Engineer in 2017, during which a proposed plan for the creation of four (4) lots on Applicant's land was presented to adjoining or neighboring landowners. Any representation to the contrary is false. Neither have the other neighboring landowners received any communications during such period.

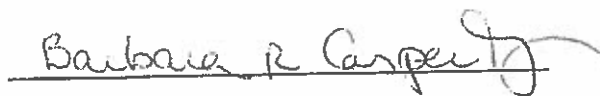
(4) The planning staff also stated that with the lapse of time Petitioners undoubtedly made the unreasonable assumption that no further development on the application had occurred and that nothing was going to happen. This outrageous and presumptuous assertion by the Board's staff misses the whole point. Petitioners had previously been informed of a 4 lot proposal. Petitioners heard nothing further. Casper received a telephone call the day before this Board took action from Applicant Benjamin Wisler telling her that he hoped "she wasn't attached to the tree in our front yard because it would be killed during construction of a WSSC water line in the right of way bordering our front yard. Wisler informed Casper of the existence of the staff report and the Board hearing the next day. This was the first time Petitioners learned of either or anything that would have even suggested a direct adverse impact on Petitioners' property if the Application were granted. Other than a perfunctory notice from the Board received approximately 10 days before the hearing, which contained very brief bullet points, none of which led Petitioner to believe any adverse impact might result from approval. No other notice was received from the Board and no information was received from Applicant until the call to Ms.

Casper the day before the hearing. Under these circumstances the Board acted unreasonably and in an abuse of its discretion in denying Petitioners' request for an extension of time. Simple fairness would have compelled the grant of an extension of time. It is fair to ask the question: "What was the hurry?"

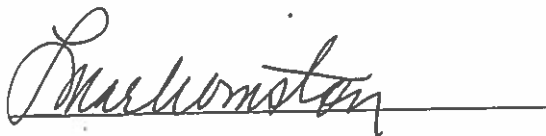
Each of the foregoing factual assertions are supported by the separate Affidavits of Petitioners Casper and Winston.

WHEREFORE, the Board should reverse this unfortunate miscarriage, grant this Petition for Reconsideration, vacate the Resolution approving the Application, and grant a 90 -day extension of time for Petitioners to file comments and evidence regarding the pending Application. PETITIONERS REQUEST THAT IF THE BOARD IS NOT INCLINED TO GRANT THE PETITION WITHOUT HEARING, THAT THE BOARD GRANT A HEARING, AT WHICH TIME EVIDENCE MIGHT BE ELICITED UNDER OATH.

Respectfully submitted,



Barbara R. Casper, Jr.



L. Mark Winston

CERTIFICATE OF SERVICE

The foregoing Petition for Reconsideration, and attached Affidavits, was served on the Planning Director (copies for all Commissioners), Applicant, and certain neighbors as follows:

Benjamin B. Wisler
10640 Macarthur Blvd., Potomac, Md. 20564; and on neighbors:

Neeraj and Libby Mendiratta, 10560 Macarthur Blvd., Potomac, Md. 20564; and

Parivash K. and Ali Eidezadeh, 10600 Macarthur Blvd., Potomac, Md. 20854

BEFORE THE MONTGOMERY COUNTY PLANNING BOARD

In Re the Application of Benjamin B. Wisler

Preliminary Plan No. 120170290

Old Angler's Cove

MCPB No. 19-013

Affidavit of L. Mark Winston

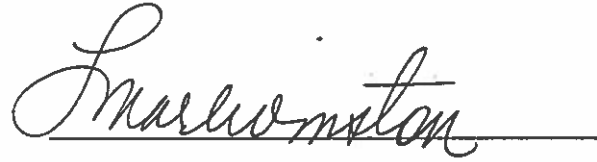
In Support of Petition for Reconsideration

The undersigned, L. Mark Winston, being sworn, deposes and says as follows:

1. The undersigned is an adult and competent to testify in the above-captioned matter. The undersigned is a member in good standing of the bar of the Court of Appeals of Maryland.
2. The undersigned is the husband of Barbara R. ("Bonnie") Casper, Jr., Co-Petitioner in this matter, who has also subscribed to an Affidavit in this matter.
3. This Affidavit is subscribed to on personal knowledge unless otherwise stated.
4. The undersigned has reviewed the Petition for Reconsideration to which this Affidavit is attached, and states that to the best of the undersigned knowledge the facts contained therein are true and correct.
5. The undersigned avers that, since a community meeting in 2017 during which Applicant's engineer presented a proposed site plan for 4 lots, the undersigned has had no

communication from nor contact with Applicant nor Applicant's Engineer pertaining to this matter.

6. Further your Affiant sayeth naught.

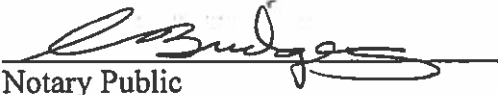
A handwritten signature in cursive script, reading "L. Mark Winston", is written over a horizontal line.

L. Mark Winston

ACKNOWLEDGMENT:

I HEREBY CERTIFY that on March 4, 2019, before me, a notary public of the Prince George's County, Maryland, personally appeared L. Mark Winston, who acknowledged himself to be L. Mark Winston, executed the foregoing instrument for the purposes therein contained, by signing his name.

WITNESS my hand and notarial seal.


Notary Public
My Commission Expires:
March 21, 2023

LESLIE D. BRIDGES
NOTARY PUBLIC
Prince George's County
State of Maryland
My Comm. Expires March 21, 2023

BEFORE THE MONTGOMERY COUNTY PLANNING BOARD

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Affidavit of Barbara R. ("Bonnie") Casper, Jr.

In Support of Petition for Reconsideration

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1. The undersigned is Barbara R. "Bonnie" Casper, Jr., and subscribes to this Affidavit upon personal knowledge, unless otherwise stated, in support of the Petition for Reconsideration of Planning Board Action in the above-captioned action to which this Affidavit is attached.
 2. I am the wife of Co-Petitioner L. Mark Winston who has also subscribed to an affidavit in this matter. Winston and I own the real property known as 10562 MacArthur Boulevard, Potomac, Maryland 10562, as tenants by the entireties.
 3. In 2017, we and other neighbors of Applicant's property, were invited to a community meeting presided over by Applicant's Engineers. That presented a proposal for 4 lots. The undersigned had no further communication from or contact with Applicant's Engineer thereafter – and none from Applicant on the subject until the day before the hearing.
 4. I have reviewed the Petition for Reconsideration to which this Affidavit is attached and hereby attest that the facts recited therein are true and correct to the best of my knowledge, information and belief.

5. Further your Affiant sayeth naught.

Barbara R. Casper, Jr.
Barbara R. Casper, Jr.

ACKNOWLEDGMENT:

I HEREBY CERTIFY that on March 4, 2019, before me, a notary public of the Prince George's County, Maryland, personally appeared Barbara R. Casper, Jr., who acknowledged herself to be Bonnie R. Casper, Jr., executed the foregoing instrument for the purposes therein contained, by signing her name.

WITNESS my hand and notarial seal.

Carol English

Notary Public
My Commission Expires ~~_____~~ English
Montgomery County, Maryland

Notary Public
My Commission Expires August 20, 2020

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RESOLUTION

Upon consideration of the Petition for Reconsideration filed by Petitioners L. Mark Winston and Barbara R. Casper, Jr. it is by the Montgomery County Planning Board, hereby

RESOLVED, that the Petition for Reconsideration be, and the same hereby is, granted, and it is

FURTHER, Resolved, that the prior Resolution of February 21, 2019, in the above-captioned action, whereby vacated, and Petitioners are granted until June 15, 2019 to present their arguments and evidence preliminary to the Application, and a hearing on this Application is scheduled for June 20, 2019.

For the Board.
