

IN RE: PETITIONS FOR SPECIAL HEARING,	*	BEFORE THE
SPECIAL EXCEPTION & VARIANCE -		
N/S Holly Neck Road, 150' E of the c/l	*	ZONING COMMISSIONER
Frankewitz Road		
(2426 Holly Neck Road)	*	OF BALTIMORE COUNTY
15 th Election District		
6 th Council District	*	Case No. 04-304-SPHXA
Holly Neck Marina, LLC	*	
and William Faber – Petitioners		
* * * * *		
* * * * *		

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing, Special Exception and Variance filed by William Faber and the Holly Neck Marina, LLC, through their attorney, Alfred L. Brennan, Jr., Esquire. The Petitioners request a special hearing to approve or confirm the use of the subject property as a marina, as nonconforming, and, if necessary, to allow an expansion of the marina use by 18.7%, and to permit the required parking for same to be located in an R.C.5 zone. Alternative special exception relief is requested to allow a marina or boatyard with a Class A out-of-water storage facility in a B.L. zone. Finally, variance relief is requested from Sections 232.1 and 232.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a street centerline setback of 38 feet in lieu of the required 40 feet and a side yard setback of 40 feet in lieu of the required 50 feet for an existing building. 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 William Faber, property owner; Michael Weaver and Joseph Byrnes on behalf of the Holly Neck Marina, LLC, Lessees; David Billingsley, zoning consultant; and Alfred L. Brennan, Jr., Esquire, attorney for the Petitioners. Also appearing in support of the request were numerous residents from the surrounding community, all of who signed the citizens’ sign-in sheet that was circulated at the hearing. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the relief requested relates to two separate, but adjacent parcels used in conjunction with the operation of the Holly Neck Marina. The first is an irregular shaped waterfront parcel containing approximately 3.96 acres in area, of which 2.52 acres is dry land, zoned R.C.5. The remainder of that parcel is located in the bed of Sue Creek. This parcel features numerous boat slips and piers along the water's edge and is also improved with a two-story dwelling (known as 2426 Holly Neck Road), which is located immediately adjacent to that road. To the rear of that parcel is a boat repair shop and small office attached thereto. This parcel has been operated as the Holly Neck Marina for many years and was acquired by Michael Weaver approximately 3½ years ago.

The second parcel under consideration relates to an adjacent 0.47-acre tract, which is actually part of a larger parcel owned by William Faber. The Faber property is located at the intersection of Holly Neck Road and Frankewitz Road and is zoned B.L. The front portion of the site is improved with a two-story building, which is used as a boarding house and bears the address 2420 Holly Neck Road. The rear portion of the site is improved with a dwelling, identified on the site plan as 909 Frankewitz Road. Mr. Faber proposes to subdivide his property and convey the rear portion of the site containing approximately 0.47 acres and the dwelling known as 909 Frankewitz Road to the Holly Neck Marina. It was indicated that the Marina approached Mr. Faber about this conveyance to obtain additional land and allow for expansion of the marina operation. The Marina intends to convert the dwelling for use as a storage building.

As noted above, Mr. Weaver has owned and operated the marina for the past 3½ years. In fact, he resides to the rear of the subject property at 903 Grove Road. Mr. Weaver indicated that he has made numerous improvements and upgrades to the property since his acquisition of same in order to improve its appearance. Indeed, the citizens who appeared from the neighborhood indicated that the property is well maintained. In this regard, there are numerous piers and boat slips along the waterfront. Mr. Weaver indicated that the Faber property will be utilized for additional out-of-water storage and that the existing building will be refurbished and used for storage. Testimony indicated that they currently have 49 boat slips and can store a maximum of 60

boats on land in the winter. It is anticipated that another 15 boats will be stored within the expansion area. No boat racks are proposed and there will be no stacking of boats.

Turning first to the Petition for Special Exception, relief is requested specifically for the 0.47-acre parcel, which is zoned B.L. Section 230.13 of the B.C.Z.R. allows boat yards as uses permitted by special exception in the B.L. zone. Boat yards are defined in Section 101 of the B.C.Z.R. as “A commercial or non-profit boat basin with facilities for one or more of the following: sale, construction or repair, storage, launching, berthing, securing, fueling and general servicing of marine craft of all types.” It is clear that the proposed use of the 0.47-acre parcel falls within this definition as boats will be both stored and repaired on that property. Testimony and evidence was offered from a number of witnesses that there are numerous boatyards and marinas in the vicinity and thus, the proposed use is consistent with the locale.

I am easily persuaded that the Petition for Special Exception should be granted. I find that the relief requested meets the criteria for special exception relief and that there will be no detrimental impact to the health, safety and general welfare of the surrounding locale.

Turning to the Petition for Special Hearing, it is to be noted that the R.C.5 zone does not permit a boatyard or a marina as either a use permitted by right or by special exception. Thus, relief is requested to approve the use of the subject property as nonconforming. Nonconforming uses are defined in Section 101 of the B.C.Z.R. and regulated in Section 104. A nonconforming use is defined 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 applicable to such use.” The nonconforming use designation is frequently utilized to grandfather an otherwise illegal use. That is, if the Petitioner can demonstrate that the use existed prior to the effective date of the regulation which prohibited such use, then the use may continue as nonconforming. Nonconforming uses can be forfeited if abandoned or discontinued for a period of one year or more.

The testimony and evidence presented in this case was clear that the subject property has been used as a marina/boat yard since at least 1951, well prior to the effective date of the zoning regulations which prohibited such use in 1955. Testimony from a number of neighbors

indicated that there has been no discontinuance or abandonment of such use. Thus, I easily find that the use is nonconforming. In the alternative to the special exception relief, the Petitioners also requested approval to allow the proposed expansion of the marina use into the 0.47-acre parcel zoned B.L., as nonconforming. As I've granted the special exception to allow the operation of a boat yard/marina in the B.L. zone, this request is moot. Moreover, an expansion of the nonconforming use would be inappropriate under these circumstances, given that the request relates to an adjacent property. That is, the marina property as it presently exists is nonconforming; the 0.47-acre parcel is not. However, once the Petitioners acquire the 0.47-acre parcel, it will be incorporated into the Marina property and the internal property line will cease to exist. The entire tract would then be used in a uniform and consistent manner.

Turning to the Petition for Variance, all of the requests relate to the 0.47-acre parcel to be acquired from Mr. Faber. Due to the location of the existing building, relief is necessary to legitimize existing setbacks and there is no new building proposed. Thus, relief will be granted; however, certain restrictions will be imposed to protect the locale. First, I will limit storage on the overall tract to no more than 75 boats. Second, there can be no boat racks or stacking of boats on the property. Third, the Petitioner shall submit a landscape and lighting plan to Avery Harden for review and approval prior to the issuance of any permits. Landscaping should be designed to buffer the subject property from adjacent residential uses, and emphasis should be particularly placed on landscaping along Frankewitz Avenue. Lighting should be designed in such a manner so as to not reflect onto adjacent properties. Lastly, there will be no vehicular access to the subject property from Frankewitz Avenue. The sole means of access will remain from Holly Neck Road.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore county this _____ day of March, 2004 that the Petition for Special Hearing seeking approval or confirmation that the use of the subject property as a marina is nonconforming, and to allow the

required parking for same to be located in an R.C.5 zone, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Special Exception to allow a marina or boatyard with a Class A out-of-water storage facility in a B.L. zone, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Sections 232.1 and 232.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a street centerline setback of 38 feet in lieu of the required 40 feet and a side yard setback of 40 feet in lieu of the required 50 feet for an existing building, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, the Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) There shall be no more than 75 boats stored on the subject property and each boat must be stored at ground level. That is, there can be no stacking of boats or boat racks on the subject property.
- 3) Prior to the issuance of any permits, the Petitioner shall submit a landscape and lighting plan to Avery Harden, Baltimore County's Landscape Architect, for review and approval. Proposed landscaping should be designed to buffer the use from adjacent residential properties. Emphasis should be particularly placed on landscaping the property along Frankewitz Avenue. In addition, the lighting should be designed so as not to reflect onto adjacent properties.
- 4) There will be no vehicular access to the subject property from Frankewitz Avenue. The sole means of access will remain from Holly Neck Road.
- 5) When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

IT IS FURTHER ORDERED that the Petition for Special Hearing seeking approval of an expansion of the nonconforming marina use by 18.7%, be and is hereby DISMISSED AS MOOT.

LES:bjs

SIGNED
LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County