



# Commissioners of Leonardtown

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## Commissioners of Leonardtown LEONARDTOWN BOARD OF ZONING APPEALS

41660 Courthouse Drive

June 8, 2010 @ 5:00 p.m.

Attendees: Dr. Herbert Winnik, Chairman  
Jerome DuVal, Member  
Dr. William Icenhower, Member  
Joan Ritchie, Member

Absent: Darren Meyer, Member

Also in attendance were: Laschelle McKay, Town Administrator, DeAnn Adler, Plans Reviewer; Teri Dimsey, Recorder; Robert D'Esposito, Resident; Kay Owens, Resident; Maguire Mattingly III, Resident; Larry, Jackie and Anne Lancaster, Residents. An official list of attendees is on file at the Town Hall.

Chairman Winnik called the meeting to order at 5:00 p.m. and then took up the first item of business.

### **APPROVAL OF MINUTES – November 3, 2008**

Chairman Winnik entertained a motion to approve the November 3, 2008 meeting minutes.

Chairman Winnik noted that there are a few changes to the minutes. On page three, paragraph seven, delete “anything that discusses” and replace with “any reason to discuss”. And, on page 5, paragraph ten, delete “building heights and views” and replace with “surrounding buildings”.

**Chairman Winnik entertained a motion to approve the minutes as amended.**

**Member Ritchie moved to approve the November 3, 2008 minutes as amended; seconded by Member DuVal; no further discussion, motion passed unanimously.**

Chairman Winnik moved on to the next order of business.

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**COUNCIL:** WALTER WISE, *Vice President* DANIEL W. BURRIS  
THOMAS R. COLLIER ROGER L. MATTINGLY LESLIE E. ROBERTS

## NEW BUSINESS

**Case # 13-10 – 22635 Washington Street** – Request for a BOA approval for a special exception to build a new single family home in the C-B (Commercial Business) district.

Applicant: Harry Lancaster  
Engineer: Mehaffey & Assoc, P.C.  
Zoning: C-B (Commercial Business)

Enclosed in the member's packets for review are:

- Detailed Site Drawings
- Preliminary Architecturals
- Aerial of the site
- Commercial Business District Section from Town's Zoning Code
- Special Exception Process from the Town's Zoning Code
- Minutes from the April 19, 2010 Planning and Zoning Meeting

### **Project Description:**

Ms. Adler reported that the applicant is requesting permission to build a single family home on the corner of Lawrence Ave. and Washington Street on a piece of property owned by Mr. Lancaster. This property is zoned Commercial Business and a single family home *would* be permitted there as a special exception use. The existing site has parking that will be removed for the proposed new residence. The finished site will have two spaces for each of the residential buildings; however two of them are proposed inside the garage of the existing residential unit with two in front of the garage. This new building/residence will still have commercial zoning even though its use will be residential for now.

At the April 19, 2010 P & Z Meeting, the commission voted to send a favorable recommendation to the BOA for this project – see the enclosed minutes of that meeting.

**Action Needed Today: The applicant is requesting BOA approval for a special exception to build a new single family home in the C-B (Commercial Business) district. The Board of Appeals can vote to approve, approve with conditions, deny or delay a decision.**

Chairman Winnik asked if the proper procedure have been followed for notifying the adjacent and surrounding neighbors by certified mail, posting signs on the property, notifying the community and advertising in the local papers.

Ms. Adler responded yes.

Chairman Winnik stated that all the members of the Board of Appeals were required to attend a certification class issued by the State of Maryland. During this class he learned that all citizens who speak before the board need to be officially sworn in before giving testimony.

Member Icenhower wanted it noted that he may need to be excluded from voting as he owns property in Leonardtown that he may be asking for a special exception or zoning change.

Chairman Winnik asked if the land was adjacent to the property to be heard today.

Member Icenhower responded that it was not.

Chairman Winnik stated that it would not be a concern unless it was adjacent to this property.

Mr. William Mehaffey, President of Mehaffey Associates and the engineer for this project, recited the oath and was sworn in.

Mr. Mehaffey introduced those who were present with him. Mr. Lanny Lancaster, his wife Jackie, his mother, Mrs. Lancaster, his sister-in-law Mrs. Mary Owens, and his mother-in-law, Mrs. Kay Owens.

Mr. Mehaffey presented a drawing of the property. He noted that he had an outline he would like to use regarding the limits and guidelines of the ordinance they are discussing today. Mr. Mehaffey provided the board members with a brief presentation outlining the project.

Member Icenhower inquired about the distance between the new proposed structure and the other buildings, particularly the Camalier House.

Mr. Mehaffey responded that there would be approximately six feet between the two structures. He also pointed out that setback front is 0' and side and rear is 3'.

Mr. Mehaffey noted that just to the north of the site there is an existing multi-family residential structure, a small office building to the east, a strip of offices along Courthouse Drive, the Court House across the street and a single family residence to the south and then to the west side there is undeveloped land.

Chairman Winnik inquired if there would be sufficient parking.

Mr. Mehaffey stated yes, they are tabulated on the site plan and we have calculated that the current commercial uses will generate a requirement for five spaces and the two existing residential units will generate six spaces, for a total of eleven spaces.

Member Ritchie commented that the two spaces outside of the garage may not be available for the commercial use, so there are really only five spaces available for two separate businesses.

Mr. Mehaffey noted that the spaces are underutilized, but this may change.

Ms. McKay stated that they do meet the required code. However, the County allows spaces in a garage to be counted. Town Code does not spell it out one way or the other.

Mr. Mehaffey noted that the next suggested area to discuss is the orderliness of the development. The Camalier house has been established for many years, the uses have changed over the years and today its role is primarily residential with some commercial use. The Carriage house was designed and built for the purpose of an in-law house.

Mr. Mehaffey addressed the way the traffic operates on the site and will continue to operate. The site has a long parking lot with two entrances which will remain. According to the ITE, the Manual of Traffic Management, which is the standard to use for projected traffic uses, he has computed that the 1675 square feet of existing office space will generate 16.6 vehicle trips on the average day or 2.3 trips on the peak hour. The one new unit plus two existing will generate merely 29 vehicle trips on an average day and little more than three vehicles trips on the peak hour which is a very low traffic generation.

Member Icenhower asked if there was parking along Lawrence Avenue, his concern is the when someone is parked in front of the garage which already has cars parked inside, they will need room to back out of the garage and onto Lawrence Avenue.

Mr. Mehaffey answered that in typical residential development, it is not uncommon to have a driveway provide multiple spaces and you have to shuffle cars to make that work. The requirement is for residents to have two parking spaces.

Member DuVal stated that currently the average family has two drivers and I, personally, have four cars for two drivers, which is why parking and traffic are my concerns about this project.

Mr. Lanny Lancaster asked to address this issue and Chairman Winnik asked him to read the oath and be sworn in, which Mr. Lancaster did.

Mr. Lancaster remarked that this plan is designed so that one area is for traffic for the office spaces and the other area is for the residential uses.

Member Ritchie noted that there are five parking spaces for two separate offices and assuming they have staff using those spaces, where do the clients park?

Mr. Lancaster stated that they park along Washington St, at the Court House and along Courthouse Drive.

Ms. McKay again stated that they do meet the required code for parking.

Member DuVal asked the board members how many of them have garages and use that garage for storage instead of parking? He also stated that to be able to provide housing for elderly parents is commendable. The proposed new house location would remove two spaces and those other two spaces will be made up with the two new spaces inside the garage. He questioned whether any other designs were considered?

Mr. Lancaster responded that there were several options considered but esthetically it will look so much better if we create these courtyard parking areas.

Ms. Mary Owens asked to testify, to address the floor plans and structure. Ms. Owens repeated the oath of office and was sworn in.

Ms. Owens stated that the design of the house was based on the fact that the two residents of the new proposed home were elderly, one of which is in the early stages of Alzheimer's and would eventually use a wheelchair. This facilitated the house design to be an open floor plan with one level living area with wide doors to accommodate wheelchair access. They did look at three different locations for the house but settled on this location to keep it somewhat separate from the commercial and maintain the courtyard feel of the property.

Mr. Mehaffey stated that the number of spaces on the site do follow the required code. Also, in a mixed use sort of arrangement, it is convenient that, during the day, when offices are in operation and their parking needs are greater, people are typically gone from their homes, not so much in this situation, but usually, thereby parking adjusts as needed.

Member DuVal inquired about handicap accessibility.

Ms. Owens responded that one is not shown, as her father is presently able to walk, but when the need comes for him to use a wheelchair, a ramp will be put in.

Mr. Mehaffey moved on to the question of what effect this kind of special exception use will have on the peaceful enjoyment of the surrounding neighborhood? He noted that the elderly residents of this house will have less of an impact on the neighborhood as far as traffic and noise than some of the permitted uses allowed on this site.

Mr. Mehaffey stated that these buildings will have high quality construction and will be a positive addition to the value of the neighborhood.

Member Icenhower remarked that he had read that if the property were changed or sold it would have to be sold as Residential Commercial, in other words, it would have to be used in the same manner.

Chairman Winnik noted that not necessarily, unless we make a proviso of some nature, as it is zoned Commercial.

Member Icenhower inquired if this project is approved, can the houses be sold separately in the future?

Ms. McKay stated that we did confer with the Town's attorney and that it would not meet the current subdivision regulations.

Mr. Mehaffey commented that this zoning district does allow for multi-family residential by right, not as a special exception or an additional use.

Member DuVal asked if any traffic study has been done for the impact to Lawrence Avenue, given that this road is used quite frequently to bypass downtown during special events.

Mr. Mehaffey stated that no formal study has been completed; it is not typically warranted for a project this small. We are dealing with the introduction of a structure that produces less than ten vehicle trips per day, one or two at peak hour. The threshold for a study is usually considered for 50 vehicles per peak hour. However, we are preserving the two entrances so that the commercial traffic can enter along Lawrence Avenue, as it does today, and the residential traffic can continue to enter the road as it does

today. The increase in traffic is very small, so its' impact to the current flow of traffic along Lawrence Avenue is basically unaffected.

Mr. DuVal inquired if the Town anticipates expanding or widening Lawrence Avenue?

Ms. McKay noted that it could be widened as there is additional right-of-way available. Whatever type of building they put there has a three foot setback. If this were a commercial building, this project would not be before you today, they would still be allowed to build it with the same setbacks. It really does not impact the road anymore than a commercial building would.

Chairman Winnik stated that they are outside the limits of the right-a-way even if they expand or widen Lawrence Avenue in the future.

Mr. Mehaffey addressed the effects of odor, gas, dust, smoke, fumes, vibration, glare, noise upon the use of the surrounding properties. All of the environmental concerns will not be increased to the level they would be if we introduced a permitted higher intensity use.

Mr. Mehaffey discussed the section of the ordinance regarding the most appropriate use of the land and the structure. This property is zoned CB, Central Business District and zoning is a function of many things. This property is located at the junction of a central business district, a single family residential district and a multi-family planned unit development, so it is a transitional piece of land. We feel that this use is in keeping with the general neighborhood.

Mr. Mehaffey addressed the decisions of the court. We believe that this board has every right to grant approval or deny this request. We are not aware of any court action that has frustrated the action we have requested.

Mr. Mehaffey moved on to the purposes of the regulations. The zoning regulations provide for an orderly development of the town. The proposed use of the single family dwelling is a listed special exception in this zoning district and it is in conformance with the standards and in keeping with the neighborhood.

Mr. Mehaffey referred to the types and kinds of structures in the vicinity where public gatherings may be held, such as schools, churches and the like. This property is adjacent to a public building, the Circuit Court House and what we are proposing in no way jeopardizes the function of that use.

Member DuVal inquired as to how many bedrooms are in the current home and in the carriage house?

Mr. Lancaster responded two in the Camalier house and one in the Carriage house.

Chairman Winnik asked if anyone else wished to come forward to testify.

Member Ritchie asked if any of the neighbors had any objections to this project.

Mr. Mock Mattingly read the oath and stated his name; J. Maguire Mattingly, III. He stated that he lives one street over from the Lancaster's and was sworn in. He stated that the proposal by Mr. Mehaffey and

Mr. Lancaster would be esthetically pleasing to the neighborhood and is absolutely and one hundred percent in support of what they want to build and he feels that it will be good for the neighborhood.

Mr. D 'Esposito stated his name, read the oath and was sworn in. He remarked that he is the Lancaster's neighbor and Kaye, his wife, and I have no objections to Mr. Lancaster's project.

Member DuVal asked Mr. D 'Esposito if he had thought about the future impact of this project if the property is sold.

Mr. D 'Esposito remarked that he had thought about it but could not see any problem with it being sold, it would not make any difference.

Member DuVal commented that if they sold the house it could have a different use in the future.

Mr. D 'Esposito responded that he would not like to see a store there, but as far as the house, we have no problem.

Mr. John Weiner asked to make a comment. He read the oath and was sworn in. He stated that he is also a neighbor to the property and owns an office building across from the property, along Courthouse Drive, and he likes the fact that the Lancaster's can keep an eye on his property when he is not there. He commented that it is a benefit to have your elderly family members live close by and does not see anything offensive at all about putting a residential home on this property and it will be a benefit to the downtown.

Chairman Winnik thanked everyone for their comments.

Chairman Winnik stated that he had written out a proviso that could be included in the motion, it reads: *"Henceforth this property cannot be sold as meeting the commercial business district zoning codes unless at that time there is a specific business proposed and it meets all the parking requirements under the zoning code for that business"* This proviso could be included in the motion if it meets the Board's approval.

Member Ritchie commented that she commends the Lancaster's on what they are doing. She has a family member with Alzheimer's and wished she could do something similar in her development but there are HOA restrictions there.

**Member Ritchie moved to approve the plan as submitted, to include the proviso; seconded by Member DuVal.**

*Discussion:*

*Member Icenhower remarked that in regards to the proviso he wanted to clarify that the property can be sold as meeting commercial business zoning codes if it meets all the parking requirements.*

*Ms. McKay stated that it has to meet the zoning regulations, so if they decide to use it for another use, such as commercial, they would be required to obtain a Use and Occupancy permit and show that they*

*meet the parking requirement, because each use has a different requirement. As far as selling these houses individually, it is not going to meet the subdivision regulations.*

*Chairman Winnik noted that adding the proviso highlights the issue of parking for future consideration.*

*Member DuVal commented that the Town has a history in the past for making special exceptions. If the Board approves this, can the Town come back and create a special exception?*

*Ms. McKay responded that certain decisions are Town Council decisions such as a waiver of parking and it also depends on the zoning designation, for instance they could get the PIRD overlay and get a parking waiver. It would depend on what requirements would be waived.*

*Member Ritchie remarked that placing this proviso in the motion actually has no real effect if it comes to a parking exception as described above.*

*Chairman Winnik stated he is not sure but if we place it in the motion and the Town Council decides to ignore it, someone could sue the Town Council given the fact that it is clear there was a strong concern about parking as noted by the Board of Appeals.*

*Ms. McKay remarked that it certainly does not hurt to place the proviso in the motion but legal counsel would need to be consulted for a final determination.*

*Ms. Ritchie reworded the proviso to read “henceforth this property can be sold as meeting the commercial business district zones at that time” and asked for the Board’s opinion.*

*Ms. Ritchie reworded the proviso again to read “henceforth this property can be sold if meeting the commercial business district zones and all parking requirements under the zoning codes for that business” and asked for the Board’s opinion.*

*Chairman Winnik stated that the reason there are so many different parking requirements depending on the type of business that someone could sell as commercial and then change the type of business, this way they would have to know ahead of time what type of business and the type of parking requirements, therefore it needs this type of requirements which is why it states a specific business proposal.*

*Member Ritchie reworded once more to read “this property can be sold if meeting the commercial business district zoning, that if at the time there is a specific business proposed that it meets all of the parking requirements under the zoning codes”.*

*Member DuVal stated that this is getting a bit messy and does not feel that this Board would be in any position to stop the Lancaster’s or anyone else from selling their property and the rights that they have as the owners of the property. The more consideration I give to this issue the more I think the Board needs to look at an alternative approach instead of using this language.*

*Ms. Adler noted that the zoning code itself protects this issue because whatever is placed there has to meet the parking requirements for that use.*

*Member DuVal noted that one of his three concerns was the property being sold to be used for another type of use and would not meet the parking requirement. As it is before us today for a special exception we have to look at that issue.*

*Ms. McKay stated that it does not have to be sold to be used as a different use, the Lancaster's themselves could use it as commercial, it does not have to be sold for that use to change.*

*Member DuVal stated that the point is meeting the parking requirements; this is the key that we cannot overlook, which is why Chairman Winnik has suggested we include this proviso.*

*Ms. McKay stated that as a part of the motion you would like to stress the importance of meeting the parking regulations for future boards making future decisions, that you would want them to take this into consideration, it could be a recommendation. But it is not legally binding.*

*Member Ritchie asked if a statement could be attached that in the future should the property be sold that this Board has a concern with the parking and the businesses it will be used for. I do not know if we can attach something to the property for future use that will overcome the Town's regulations.*

*Member DuVal inquired if they had considered downsizing the structure?*

*Ms. Owen responded that she did look at making it smaller but with two people and wheelchair access and everything on the first floor there really was not a lot of ways to make changes.*

*Chairman Winnik stated that there is a motion on the floor, which does include the proviso, which I do not think has a negative effect. Any further comments on the motion on the floor?*

*Member Icenhower remarked that the proviso isn't really necessary as it does not matter how they park, the problem is if they sold the property to a really large family who has more than six cars. They have met the current code.*

**Member Icenhower moved to amend the motion to drop the proviso; Member DuVal seconded, no further discussion, motion passed unanimously.**

Chairman Winnik entertained a motion to accept the applicant's request for a special exception to build a single family home in the Commercial Business District, any discussion:

*Member DuVal commented that in terms of approving this concept plan, it still has to go through the approval process, so this could look totally different when it comes before the Planning and Zoning Commission.*

*Ms. McKay stated that architectural drawings are required at final site plan approval and they are at the final site plan approval process at this point, they have gone through their review with DPW and Soil Conservation. They have not been before the Planning Board for those specific approvals that is their next step.*

**Chairman Winnik asked if there were any questions, there being none, there is a motion on the table from Member Ritchie to grant the special exception as submitted without the proviso; seconded by Member DuVal; no further discussion, motion passed unanimously.**

**Adjournment:**

**Member Icenhower moved to adjourn the meeting at 6:15 p.m., seconded by Member Ritchie, no further discussion, motion passed unanimously.**

Respectfully submitted:

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Teri P. Dimsey, Recording Secretary

**Approved:**

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Dr. Herbert Winnik, Chairman

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Jerome DuVal, Member

\_\_\_\_\_  
Dr. William Icenhower, Member

\_\_\_\_\_  
Absent  
Darren Meyer, Member

\_\_\_\_\_  
Joan Ritchie, Member