

Commissioners of Leonardtown  
**Leonardtown Planning and Zoning Commission Meeting**  
*February 20, 2007 ~ 2:30 p.m.*

Attendees: Jean Moulds, Chairperson  
Frank Fearn, Vice Chair  
Dan Burris, Member  
Jack Candela, Member  
Dave Frock, Member

Also in attendance were: Laschelle Miller, Town Administrator; Jennie McGraw, Plans Reviewer; Teri Dimsey, Recording Secretary; Jackie Post, Fiscal Clerk; Ned Brinsfield, Brinsfield Funeral Home; Jim Bacot, Brooks Run Builders; Chris Longmore, Attorney; John Norris, Attorney; Norman Norrris, Resident; Kennedy Abell, Resident; Billy Mehaffey and Jay Hapson; Mehaffey & Associates; Dean Beck, Home Builders; Thomas & Dave McKay, McKay's Grocery Store; Fred and Lorrie Wallace, Residents; John Wharton, Enterprise; Bill Higgs and Wayne Hunt, LSR; Chip & Jan Norris, Residents; J. Abell Longmore, Resident; Rick D'Esposito, Resident. A complete list is available on file at the Leonardtown Town Office.

Chairperson Moulds called the meeting to order at 2:30 p.m.

The meeting minutes for the January 16, 2007 Planning and Zoning Commission meeting are presented for approval.

**Chairperson Moulds entertained a motion to approve the January 16, 2007 meeting minutes, Member Burris moved to approve the minutes, seconded by Member Fearn, no further discussion; motion passed unanimously.**

**Town Administrator's Report – Laschelle Miller**

LBA Live Music Proposal – Council heard a proposal from LBA to do live music on the square the 4th Saturday of the month from May-August, from 4:00 p.m. till 7:00 p.m. They are proposing no cost to the Town and not closing any streets.

So. Md Winegrowers Cooperative Presentation – Steve Purvins gave a short presentation on the winery project at the Pt. of Leonardtown. The cooperative have been developing a business plan for the winery and forming the cooperative. They presented concept drawings for the proposed renovation of the building. This will be for information only.

St. Mary's County MOU for Wharf Funding – Council gave the Mayor the authorization to sign an updated MOU to reflect the additional pledge of 1.7 million dollars by the County for the Leonardtown Wharf project. This requires approval by the Commissioners of Leonardtown and then will go to the Board of County Commissioners for their signature.

Letters of Support for Two So. Md. Heritage Area Grants – Council also approved two letters of support for two grants through the So. Md. Heritage Area Grants Program.

Streetscape Water and Sewer Project – A Special Town Council meeting was held on Friday to discuss the streetscape water and sewer project. That project was to upgrade water and sewer lines along Fenwick and Washington Street prior to the streetscape State Highway project. That project went out to bid two separate times, significantly over budget and Council decided that we were no longer going to do that project as we do not have enough residents to support funding of that project as it was a million dollars over budget.

## **NEW BUSINESS**

### **CASE #1-07: McKay's Food and Drug-40845 Merchants Lane, 4000 sq. ft. Sign Variance Request**

Applicant: Fairland Market, Inc.  
Engineer: John Norris, NG & O  
Location: 40845 Merchants Lane, Shops at Breton Bay Zoning: C-B

The Applicant is requesting a sign variance. They are renovating the 43,646 sq. ft. grocery store. According to Leonardtown Sign Ordinance, the site is allowed a total of 273 sq. ft. of signage and that is based on the building frontage of 223 sq. feet. Additional information is attached to provide the Board with history about other uses of the building. Also a chart which would have been allowed on the entire frontage of that site including the whole shopping center and the restrictions for the smaller businesses are more restrictive on the shopping center criteria, so even allowing this additional signage on McKay's does not go as far as we would allow within our ordinances for the entire shopping center. They have already received their permits for the large McKay sign and Café sign because they were within the guidelines. They are requesting two other small signs, the Marketplace sign, 61.75 sq. ft and the Pharmacy sign, which is 71.25 sq. ft for a total of 133 sq. ft of additional signage.

Mr. Thomas McKay and Mr. David McKay are here today to answer any questions. Mr. Thomas McKay stated that this is not an attempt to overdo the signage, as a matter of fact; the McKay sign is smaller than our other store locations; a six-foot sign at Wildewood and Great Mills and an eight-foot sign in Charlotte Hall. This is a five and half foot McKay's sign and we have reduced that down to try and preserve as much square footage as possible. Signs are very important to marketing the stores.

Chairperson Moulds noted that signs are shown as white in color, will that be the color of the signs?

Mr. Thomas McKay responded that the signs will be white but the building colors will change. The building front will be repainted.

Chairperson Moulds inquired as to the color scheme they will be using.

Mr. Thomas McKay replied that they are working with a designer and have not finalized the color scheme but mainly purple, green, blue and natural tone browns.

Member Burris commented he had been inside the new store and it looked really nice.

Member Fearn stated that sometimes when this type of variance is granted we receive an influx of additional sign variance requests. This is not a good precedent to set.

Ms. Miller remarked that there is a process and a justification for a sign variance request. This request is based on the length of the frontage of the building and the distance from the road. Research was done on the previous Super Fresh case and they put up a total of 654 sq. ft of signage without a permit and then ended up voluntarily taking down a significant amount of it and then got a smaller variance. For a building of this size it is not an unusual request.

Member Candela stated that for the years he served on the Board of Appeals, this issue came before the Board quite a lot and at the time I criticized that the ordinance did not take into consideration how far a building was sitting off of the main highway.

Ms. Miller stated that it might be that our ordinances need updating to reflect storefront changes.

Chairperson Moulds commented that we need to take into consideration that because this is one big store, we are not exceeding the amount of signage that would be needed for a large store such as this you would not want a long blank area.

Member Frock noted that without any past knowledge, he sees this signage request as proportional for the building and does not appear to be obtrusive.

**Member Burris moved to forward a positive recommendation for a sign variance request to the Board of Appeals for Case #1-07; Member Candela seconded, no further discussion, motion passed unanimously.**

## **OLD BUSINESS**

### **CASE # 38-06: Sterling House, Modified Site Plan Approval**

Applicant: Dean Beck  
Location: Washington Street  
Engineer: Jonathan Blasco, Mehaffey & Associates  
Zoning: C-B

The Applicant has submitted a revised concept plan. In addition to acquiring the Duke site, the adjacent Hunt property has now been acquired. The new site plan shows the new three story 13,500 sq. ft. on the Hunt property. The proposed building will have first floor office space; second level retail and third floor will be residential. Each floor will have 4,500 sq. ft. and the plan also shows a retaining wall along the northern edge of the building

According to the Leonardtown Code, the parking requirement for the entire site is 113 spaces and the spaces provided are 113. Setback requirements have been met for the Leonardtown Zoning Ordinance, front setback is zero feet.

Attached are site plans and building designs. The concept plan has not changed other than the addition of the new building. Concept approval was given at the September 18th Planning and Zoning Commission meeting for previous submission.

Mr. Dean Beck is available today to answer any questions.

Mr. Beck provided the Board members with a brief overview with the addition of the new building. The building was pushed back to allow for a few spaces for parking upfront in consideration of handicapped people and the grade works to help retain the earth. We have taken the retail space out of the first floor of this building and changed it to office space and that helped to make the parking numbers work. We would like to have the concept plan approved for the additional building and we would like to proceed forward with the work as far as the parking, getting the rest of swm worked out which we are pretty close and the parking in place for the restaurant. At a later time we will come back for the final approval on buildings 2, 3 and 4 with architectural drawings for those buildings.

Ms. Miller stated that in the members packet is a copy of a letter from Christopher Aiken, the neighboring property owner, regarding his concerns. Mr. Beck has also been provided a copy.

Mr. Beck remarked that he has not contacted Mr. Aiken yet and was not sure how to respond until meeting with the Board. We did have a larger building in the back and did pull that up per the Town's request so before I give Mr. Aiken a call I wanted to get some input from the Board.

Mr. Burris commented that he certainly understands Mr. Aiken concerns especially with the two buildings being on both sides of his and blocking the view and people would not be able to see his building. How far out do your two buildings stand closer to the sidewalk than his?

Mr. Beck responded about twenty-five to twenty-seven feet approximately. I am building three buildings, which are all about ten or fifteen feet back from the property line.

Member Burris stated that the Downtown Plan calls for pulling the buildings up to the lot lines and also mentions that these structures should be consistent with setbacks on the street to those that are already there.

Mr. Beck noted that the buildings could always be made smaller if necessary.

Ms. Miller inquired if there was any way that the building closest to the parking lot could be placed a little back sort of staggering the buildings. You may lose a few parking spaces and the Board would have to take that into consideration. This would make it so that two buildings were not hiding it on each side. This might be a good compromise workable for everyone.

Chairperson Moulds stated that the Downtown Plan was a suggestion that we didn't necessarily have to follow the zero setbacks if it wasn't feasible. Maybe the building next to the restaurant could have some architectural design to the front of the building to make it look less like a wall,

such as a porch or entry way or windows on the corner for a more open feel. I realize we will not get any kind of setbacks, pulling it way back to where the other two buildings were, that is not practical and not what we are looking for.

Member Burris asked how much sq. footage would you lose on building three if you did pull the building back ten or fifteen feet.

Mr. Beck responded thirty square foot per floor for every foot we took it back, so if we took back ten feet it would be 300 sq. ft. per floor.

Chairperson Moulds suggested that since you have grassy area on both sides of that building it might be nice to have a small area in the front to have some grass and landscaping at the entrance to the building.

Ms. Miller stated that as far as building two you could look at the Hair Company and Aiken Building and split the difference, see what you have to work with once you start looking at pulling it back but this would help coming down Washington Street to see the building a bit better.

Member Frock remarked that a paragraph in the letter brought up the subject of fire safety of the building, along with drainage and run-off due to the slope of the land, keeping in mind how close these buildings are.

Mr. Beck stated that we would take care of all of our roof leaders so that it would go into the swm area along with a retaining wall. But I did not have any intention to build these buildings without talking to Mr. Aiken because our buildings are so close.

Ms. Miller brought up the drainage issue in the back for discussion and asked Mr. Beck to talk briefly about the project.

Mr. Bill Mehaffey explained that they have looked at this in two phases. The first thing that is going to happen is the storm drain system will be constructed and the gorge essentially filled. The storm drain system will lower the water from the top of the bank to the bottom of the gorge, which will remove the energy from the water that is causing the erosion. Once that is stabilized we can fill the site through the parking. Soil Conservation has reviewed the plan and I think we are very close to approval; they have some very minor comments.

Member Collier asked if Mr. Mehaffey would explain how this would slow down and stop the erosion from moving further on down the creek.

Mr. Mehaffey responded that if you walk that ravine and you get down toward this northern most end of that area it is very stable, the gorge is not deep and it is very deep where the water is coming out of the pipe it is slashed and eroded tremendously. Once you get down further there are trees long-standing, old trees and all of this water is going by there but up in the northern end is where it is turbulent and eroded. What we are going to do is return it to its natural condition. We are going to pipe the water here and drop it vertically into the inlet and that will dissipate the energy that is in the water and then it will return back out through the pipe, along a riprap pad. More importantly the water will drop inside of a concrete structure to take the energy out of the water. Right now there is no problem down there.

Member Collier exclaimed that Mr. Mehaffey should be cautious with that statement. Every time it rains there is a lot of mud washing out.

Mr. Mehaffey remarked that no doubt there is a lot of erosion going on but as you get down further, the side slopes are stable, it is not active erosion. There is sediment going on through there. This is essentially what Soil Conservation prefers. They call it a grade stabilization structure. They do this on farms when there is a gully. This is a solution that I believe is going to work. The final product will be much more gently sloping all through the property line up to the parking area.

Mr. Beck asked if in regard to the parking for the restaurant portion could they get site plan approved for that portion at this time.

Ms. Miller stated that as there are still several outstanding issues, the Town would be more comfortable if they came back before the Board.

Member Candela clarified that the only difference between today and the previous time they were here is the acquiring of the Hunt property of which with the planned amount of sq. footage there is the required number of parking spaces.

Ms. Miller stated that for the changes to the project discussed today there may be a couple parking spaces short but the overall site plan had enough parking.

Member Candela remarked that we are not losing any of the previous parking spaces that we had previously approved for the original concept plan.

Member Candela moved on Case 38-06 to modify the original concept approval to add the additional building and the necessary parking and swm and to come back before the Board with architectural for final approval; Member Fearn seconded, no further discussion, motion passed unanimously.

Member Candela interjected that before proceeding with the next case he would like to take this opportunity to apologize to Mr. Brinsfield for the unnecessary remark that he made regarding the Brinsfield building at last month's meeting. At the time of the remark, I was looking at the back of the building and certainly in no way implying that the whole building looked like a motel and was not intentional nor personal in nature. There have been a number of comments made to me regarding this remark that was reported in the Enterprise. I wanted to publicly apologize to Mr. and Mrs. Brinsfield for this unfortunate remark.

**CASE # 151-05: Brinsfield Funeral Home, 22955 Hollywood Road, and Recommendation to the Board of Appeals for a variance request.**

Applicant: Jim Bacot, Brooks Run Builders  
Owner: Edward Brinsfield  
Location: 22955 Hollywood Road  
Zoning: Residential Multi-Family (R-MF)

The applicant Jim Bacot of Brooks Run Builders is filing for a variance to expand a non-conforming use.

There was a delay making a decision at the last meeting until we received additional information and we have received all of that information which is included in your packet. There were some revisions last week to the original photos that you received the prior week. We received the architectural drawings or the photos that show the new roofline and a side elevation. We received photos showing the screening that is proposed for the rooftop air conditioning units. The engineer, Mr. Bill Higgs, has been working on completing the swm design. At the table today you have received a copy of the most recent swm design and staff has agreed that this does meet the requirements and are moving forward with this swm design and the only outstanding issue is they need to do some soil borings. We need to verify the accurate square footage numbers. The new construction added is 3,472 sq. ft. that includes 2, 775 heated sq. ft. and 577 sq. ft. in covered walkways. We also had a letter from the attorney for the case, Mr. Chris Longmore, who is present today, to provide the issues as far as addressing the variance standards and all of the above items that were mentioned and requested for additional information. Also included in the packet is an overview from the Town's attorney as far as what a possible decision for direction that could be taken today. It is the request of the applicant that if the Board decides to grant a favorable recommendation for the variance that they also would give final site plan approval today.

Before closing discussion on this case, I will have a couple of additional questions that have come into the office from the public who could not be here today and strictly for the record that we would like to have answered.

Mr. Longmore came forward and explained that the letter referred to by Ms. Miller sets forth some arguments and we have had a chance to see a draft of the staff report since then so there are a few things I would like to address on that. For the record I would like to state who is here on behalf of the applicant and owner, Mr. Jim Bacot, the applicant is here today and would be happy to answer any questions you have about the design or the work itself. Mr. Wayne Hunt of Little Silences Rest, our engineer, is here and can address any of the square footage concerns or the swm issues that arose at the last meeting, as well as Mr. Brinsfield is here in support of his application and as the owner of the property. I also note for the record that there are several neighbors here in support of the application today as the Board is aware there has been some press on this issue. We feel that at the last meeting those who supported this did not have a chance to be present for support. I would like to have Mr. Bacot and Mr. Hunt available if you have any questions on the project itself and I will come in after that and share with you what we believe are possible resolutions that the Board could reach today. I have read Mr. Norris' suggestions and I have one or two that I would like to add that may be appropriate. If you would like to have Mr. Hunt come up and Mr. Higgs to address any swm or square footage issues,

which is where we left off at the last hearing. I will note for the record that as far as swm goes we do not believe that given the square footage that is being added to the building. We would be required under the ordinance to do any swm as was just stated. It is 3,472 sq. ft that is being added and Mr. Brinsfield has worked with the Town per the concerns of the Board and is willing voluntarily to address these concerns in a show of good faith and to do a quality project on this property. Mr. Hunt, I believe, can testify to you that in addition to us not being required to do it and what we are doing exceeds what the requirements would be should we be required to actually address swm. I believe we are addressing 30% as opposed to 20% on the property so we are actually putting systems in place that we believe will address even more than we would have to should we be required to go forward.

Mr. Hunt stated that the site itself does not really work well for conventional swm. It is very flat and does not allow easily for traditional infiltration practices. Working with Mr. Mark Grant of the Town, we have come up with a solution for a bio-retention. This bio-retention facility as designed will treat 9,500 sq. ft. of impervious area, that coupled with the actual pavement that's removed to install the infiltration device itself and the additional drywell up here we should be handling 33% or 13,584 sq. ft of impervious. Under the current regulations we are required to either reduce the existing impervious area by 20% or treat 20% of the total impervious area.

Member Fearn asked if our engineers have had a chance to look at this?

Ms. Miller responded that Mr. Mark Grant, Capital Projects Coordinator has been working with Mr. Hunt and has given his approval pending the soil borings.

Mr. Hunt noted that the bio-retention was at the suggestion of Mr. Grant.

Ms. Miller stated that as far as swm, Town staff is satisfied.

Mr. Longmore announced that Mr. Bacot is here today to address any of the screening concerns you may have. I believe that the computer generated pictures you have do show the type of screening that will be on the roof which was a question that was posed at the last meeting and we believe that those address all the concerns and viewpoints that the commission had asked for.

Chairperson Moulds inquired about the four units shown on the top, are those air conditioning units?

Mr. Bacot responded that the units are air conditioning only.

Member Fearn asked if they work with the white cap on?

Mr. Bacot explained that the white cap goes up a slow pitch about ten inches and does not block the top of the opening.

Member Burris noted that additional windows were added on the side.

Mr. Bacot replied, yes.

Chairperson Moulds announced that there are quite a few neighbors present today and even

though this is not an open hearing she is willing to open the floor for discussion. If anyone had not yet seen or were interested in seeing the photos they could come forward to take a look.

Some of those present came forward before the Board to view the photos and some made comments to the Board.

Mr. Longmore remarked that he had some comments to make before the Board.

Chairperson Moulds stated that she had some questions regarding the downspouts on the side of the house and how they will drain.

Mr. Hunt addressed the drywell, which is basically an infiltration device. In discussions with Mr. Grant, he has also stated some concerns regarding this device as well and that is the reason Ms. Miller previously stated that he is requesting a soil boring be done in this area. If it proves in this area that the soils will not infiltrate adequately then a device similar to the bio-retention cell will be replaced.

Member Fearn asked how that will be screened?

Mr. Hunt explained that a bio-retention cell itself will have specific plantings and is a shallow depression with a landscaping feature.

Mr. Bacot stated that the downspouts down the side would be painted a similar color to the siding to blend in.

Mr. Hunt noted that it is a requirement with the swm ordinance that each downspout handles no more than 500 sq. ft. of impervious area. It is the reason for all of the downspouts being placed where they are.

Mr. Longmore stated that in looking at the staff report I believe there are two options that the Board has that are not highlighted there. One, as mentioned at the last hearing, which I highlighted in the letter, the Leonardtown Zoning Ordinance has four separate types of non-conformities that it defines within the ordinance and each of those is proven different ways. One is labeled non-conforming lots of record that relates to the lot size and the configurations of them. One is the conforming use of land. One is a non-conforming structure where a structure exists that would not fit within our requirements today, so for instance the building may be too big or built in a way that does not fall within our requirements. And the one that is applicable to this case is a non-conforming use of structures which is applicable when you have a structure that otherwise conforms with the current zoning ordinance but the use is a non-conforming use under the new ordinance and that is what we are dealing with. As Mr. Higgs testified last time, the building itself conforms to the standards in the zoning ordinance and the standards of the zone as set forth on the zoning map. The only issue is the use itself and our zoning ordinances when you have that type of situation where the building is fine and legal and not non-conforming and only used as it is, says that you cannot expand that unless it is a dwelling and as a dwelling there are no restrictions on whether you have the right to expand that other than the other ordinance provisions that everyone has to comply with. It defines a dwelling as any building that is designed to be occupied for residential purposes. The only evidence before this Board and the only evidence that is out there because it is true is that this building was designed as a residence.

This was Dr. Camalier's residence and he had a small medical office in it. Mr. Brinsfield used it initially as his residence before he purchased the other property next door that he uses as his residence now. This was designed as a residence and the ordinance says that when you have a dwelling, and the dwelling is defined as a building that was designed or used for residential purposes, there are no restrictions on expanding it other than what every one has to comply with to go through the normal site plan process. If the Board accepts that definition, I think it is a clear definition in your ordinance, we do not need to talk about the intensification versus expansion of non-conforming use because this ordinance when it defines what a non-conforming use is does not put any restrictions on whether or not you are allowed to expand that building so long as you do it according to the ordinance. So that is a fifth option in line with what Mr. Norris presented to you.

We have listed factors that this Board is supposed to consider when deciding whether a proposed development is intensification, which is allowed and there are no restrictions, or whether it is an expansion of a non-conforming use which are listed on page four of my letter. I tried to give a list of facts that relate to each of those and if you look at them, I believe it is clear when you read through factors 1 through 4, nothing that is proposed will run foul of these four factors. Whether or not the current use reflects the nature and purpose of the original non-conforming use, we are clearly not proposing any type of new use that is non-conforming. It is the one that has existed there for generations. Whether it is a different matter of utilizing the non-conforming use and whether it is different in character, nature or kind, it is the same use. Again, they are not adding new viewing rooms or expanding the capacity to do more funerals or viewings at one time, they are simply making what they have more comfortable and more easily used by our citizens. It will not have a substantially different effect on the neighborhood; you have seen that by the swm issues we are exceeding what the ordinance requires. Again this business has been here for generations and this is not going to add more people coming to individual funerals, it is a unique business in that way, that the funeral itself will dictate how many folks come to the funeral, it is simply going to make it more comfortable and it is by no means a drastic enlargement or extension of the original use, because again, they are not adding a capacity to hold more funerals at one time simply making the viewing rooms of the chapels that they have now more comfortable. So for that reason, we think the evidence before the Board is clear that this is really an intensification and not an expansion of a non-conforming use. We ask that the Board so consider. I've run through the standards of the variance provisions within our ordinance and am happy to address them in more detail. We believe that should the Board not find that this is some type of expansion that requires a variance that you look at those provisions that we have addressed at the previous meetings and ask that this letter be made part of the record. We believe, for the record, since the last meeting, the applicant, through his engineer and Mr. Bacot have met and made an attempt to work with the neighbors including Mr. Norman Norris and we have attempted to resolve or address the issue with them and address the concerns. We did make an effort, which, of course, is not required of us. We quite simply feel that no matter how many concerns that we address or rectify that there is going to be no common ground reached here. We believe that the facts that are before the Board clearly show that this is something that should be approved and should be approved today without the need for a variance. Again, should you disagree with us, we ask for a favorable recommendation to the Board of Appeals.

Ms. Miller stated that the Town office has received a number of questions and would like clarification for the record. One question is regarding the use of the house next door, is that still residential?

Mr. Brinsfield replied that it is his residence.

Ms. Miller asked if there were preparation in the prep rooms from other funeral homes at this site? As far as your other sites, do you do the prep work at this site?

Mr. Brinsfield replied, yes, it always has. Other funeral homes call me to help with removal. I do some prep work for my other sites.

Mr. Longmore shared with the Board that we were asked these concerns earlier before the meeting and we do not feel they are relevant to the application before them. Mr. Brinsfield in an effort of good faith is here to answer any questions the Board may have to make you comfortable with the application.

Mrs. Jan Norris asked to speak. She lives at 22960 Hollywood Road and lives across the street from Brinsfield Funeral Home and has a few questions. Why was a permit issued for 1,239 sq. ft. allowed to be built for 3,300 sq. ft.?

Chairperson Moulds responded that the original permit did not allow that. The fact is that it happened but it was not allowed from that permit.

Mrs. Norris noted that anything over the 1,239 sq. ft. is in fact an illegal expansion of that permit.

Member Fearn remarked that until we got the information we requested the Town issued a stop work order.

Mr. Longmore commented that a stop work order was issued and it has been complied with other than the winterization. I believe the Board has already considered this issue and they asked us to come forth with a new application, which is why we are here today.

Mrs. Norris stated that she is reading the law as follows *“It is the intent of this chapter to permit these nonconformities to continue until they are removed but not to encourage their survival. Such uses are declared by this chapter to be incompatible with permitted uses in the zones involved. Nonconformities shall not be enlarged upon, expanded or extended nor be used as grounds for adding other structures or uses prohibited elsewhere in the same zone.”* You will absolutely have to have a variance or you are in direct conflict with the laws of the Town.

Mr. Longmore remarked that our response to that is to respectfully disagree and cite the Maryland law that is before the Board in the letter that we presented. As the letter starts out Maryland courts and courts all over the country have consistently found that when someone has a non-conforming use on a piece of property they have a constitutional right to continue that use, that it is a vested right in those individuals and that they are allowed intensification of those uses and they are not required to stay stagnate and have every action that they take within that use put under a microscope. The law is very clear on that and nothing within the Town ordinance could trump that or it would be unconstitutional.

Mrs. Norris commented, "I thought the Town had planning and zoning rights and I feel that everyone should have to conform to the law. My home was built in 1901 and is situated on two and half acres and is very beautiful. Brinsfield's new large structure very much changes the complexion of our neighborhood. I was never consulted nor informed by Mr. Brinsfield or Mr. Bacot to be included in any discussions; I just saw this happening one-day. This is very disturbing to me and I believe we are setting a dangerous precedent."

Chairperson Moulds agreed with Mrs. Norris that this project happened without any discussion beforehand. It also happened that it has been built bigger than the permit that was issued. This has all happened now and we have to deal with it and we hope we can come to some sort of resolution to this problem. I do agree with you that this is a variance problem and is the only legal way to resolve that way before it comes to a conclusion is whether we think a variance is the way to go because if we do we will send a recommendation to the Board of Appeals.

Mrs. Norris noted that she would like everyone to consider the future ramifications about the way this situation has happened and could set a very dangerous precedent for the Town.

Mr. Norman Norris heard the story about the expansion of the land over to the property next door, which is known as the Warren property, but that property has been paved into two parking lots and added together and I asked if that square footage was calculated in the swm. There are also tombstones and vehicles stored there and employees are parking there. It is an expansion of the land. Your code says on page 77, no such non-conforming use (of land) shall be increased, nor the lot be extended.

Ms. Miller stated that we did not ask for those numbers to be added to swm. The direction at the last meeting was to address the impervious surface on the funeral home site.

Mr. Norman Norris remarked that the water would flow over to the neighbor's home. If you don't enforce your ordinance you are not being fair to everybody.

Mr. Longmore commented that the applicant has not derived any benefit from any parking on that side and does not consider that to meet those requirements of the ordinance. We believe the ordinances require that you look at this lot and these issues on that, we have not tried to double dip for any credit for that in the proposed development.

Member Burriss asked if the tombstones would be moved back over to the other site once the construction is completed.

Mr. Brinsfield responded that he would most likely get out of this part of the business. He only has some government markers and does very little stonework any more. Most of that will go away.

Mr. Norman Norris suggested putting a rail up if it is not going to be part of the funeral home to separate it.

Member Fearn noted that there is an on going issue particularly in that neighborhood with some changes that are taking place and there are some beautiful homes out there. One of the things the Town needs to take into consideration is trying to maintain the integrity of that neighborhood. I

looked at our current zoning categories and really what is needed there is left out as a category. There is not a specific niche in our categories for that. Whatever we do here today we ought to carry a recommendation to the Town Council that we look at that area and others in Town where we have old homes in an atmosphere that we want to preserve. Even though there will be growth and change, we need to manage that and we want to preserve that beautiful area, one of our oldest and most historic areas in Town. We need to possibly change our zoning to preserve those types of areas.

Chairperson Moulds stated that we could make a recommendation for a comprehensive review of the neighborhoods.

Member Burris remarked that that strip is currently zoned RMF and whatever the recommendation we can also send a recommendation to the Council to consider that area.

Mr. Abell Longmore spoke up that he came to support Ned and Nancy. My concern is that Ned and Nancy have developed a very solid business there and they have upgraded that property from day one. I do feel for the Norris' and their concerns. I do have an office building directly behind my home but I am saying we should consider the long and good service that this business has given our community. If it is deteriorating the neighborhood, that is different, but that is not the case.

Mr. Norman Norris responded that, under your zoning ordinances for variances, this provision should not be construed as to permit the Board, under the guise of a variance, to change the use of land. You are going to change the whole area. You cannot do it out the back door. Mr. Burris is on the mark to re-zone the whole strip and have everyone treated fairly instead of putting a monster in the middle of the block.

Member Fearn commented that Mr. Brinsfield's piece is not the only non-conforming use in that area and I believe there is one other in the vicinity and we do need to take a look at that to try to protect the structures and the historic value of that neighborhood with whatever we decide.

Mr. Kennedy Abell remarked that he has been listening to the whole situation and is friends with both parties. I had the opportunity to go inside and see the improvements that have been done in the building and the expanded area, which is very nice. I am concerned that the Town has some problems and things are happening and maybe some of these things happen faster than they were controlled. Other than that I hope you can come to a good decision and settle this matter.

Member Fearn stated that is a good thing that people can come together to work through this process, difficult as it may be.

Mrs. Norris commented that she would have liked to have had the opportunity to speak before the building was being built.

Mr. Norman Norris remarked that everyone is talking about how wonderful Mr. Brinsfield's place is. I have taken a piece of property and restored it and I would not have painted it if I had known the area might be changed to commercial. I own the lot between my home and the funeral home that I was hoping to sell for my retirement and nobody is going to want to live

there. You have to treat everyone fairly. If you are going to re-zone that area, you have to do it through the front door and not leave some people hung out to dry.

Chairperson Moulds stated that re-zoning is not something we are going to do here today. Re-zoning is something that needs to be considered and the Town needs to discuss but will not be the answer to this problem today. It would have been nice to have had this discussion before it was built but now we have to make a recommendation with the building we have there now. It seems that a variance is a way to go with a recommendation that the Town Commissioners do a comprehensive review of the zoning in that area.

Ms. Miller noted that a committee could be formed for a comprehensive review, which will go through the public hearing process.

Chairperson Moulds stated that we also need to take into consideration the condition of this building is providing a more comfortable experience for the patrons using the building. It is not an expansion of the business but is it an expansion of the physical part of the building.

Mr. Norman Norris interjected that our code states you cannot change the footprint of the building.

Member Candela remarked that this is not changing the neighborhood because this has been in the neighborhood for fifty plus years. Anybody that would try to use any change of the appearance of this property as a change in the neighborhood, I do not think will hold any water.

**Member Fearn moved on Case # 151-05 to forward a favorable recommendation for the variance request to allow the addition to the building to the Board of Appeals to include a strong recommendation to the Town Council to have a comprehensive zoning plan for historic areas; Member Burris seconded, Member Frock opposed, no further discussion, motion passed.**

*Ms. Miller noted that the applicant is requesting final site plan approval.*

*Mr. Longmore stated that this would save more time after sending for a variance.*

**Member Burris moved on Case #151-05 that pending approval of the variance from the Board of Appeals, that they receive final site plan approval pending staff approval of the swm design; Member Fearn seconded, Member Frock opposed, no further discussion, motion passed.**

**Monthly In-House Permits – No Questions**

**Town Council Minutes – No Questions**

**Member Candela moved to adjourn the meeting at 4:00 p.m., seconded by Member Fearn, motion passed unanimously.**

Respectfully Submitted:

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Teri Dimsey, Recording Secretary

Approved:

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Jean Moulds, Chairperson

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Frank Fearn, Vice Chair

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Dan Burris, Commission Member

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Jack Candela, Commission Member

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Dave Frock, Commission Member