

Commissioners of Leonardtown
Leonardtown Planning and Zoning Commission Special Meeting
Friday, December 15, 2006 ~ 3:00 p.m.

Attendees: Jean Moulds, Chairperson
Dan Burris, Member
Jack Candela, Member
Dave Frock, Member

Absent: Frank Fearn, Vice Chair

Also in attendance were: Laschelle Miller, Town Administrator; Jennie McGraw, Plans Reviewer; Teri Dimsey, Recording Secretary; Norman Norris, Resident; Ned Brinsfield, Brinsfield Funeral Home; Jim Bacot, Bacot Brook Run Builders; Tom Collier, Resident; Jan Norris, Resident; Mock Mattingly, Resident; J. Harry Norris, Resident. A complete list of attendees is available on file at the Leonardtown Town Office.

Chairperson Moulds called the meeting to order at 3:00 p.m.

The meeting minutes for the November 20, 2006 Planning and Zoning Commission meeting were presented for approval.

Chairperson Moulds waived the approval of the November 20, 2006 meeting minutes until the January 16, 2007 Planning and Zoning Commission Meeting, as the members had not had time to properly review the minutes.

Chairperson Moulds then took up the next item of business.

Case #151-05 Brinsfield Funeral Home, 22950 Hollywood Road
Review of Building Permit

Ms. Laschelle Miller, Town Administrator stated that John Norris, attorney for the Town of Leonardtown would cover the issues and provide the Board members guidance.

Mr. John Norris, Norris and Dudderar, stated that we are here to discuss Brinsfield's Funeral Home. Brinsfield's Funeral Home site is an existing non-conforming use funeral parlor pre-existing the land use regulations and presumed that it was created in accordance with all laws so that makes it a legal non-conforming use which gives it rights to continue to exist under

Chapter 155 of the Town's Code, where an illegal use would not have the right to continue to be in existence.

The facts, as he understands them, are that a building permit was issued December 2, 2005 for 1,239 square feet of additional space for prep and chapel use. There has been a subsequent submission that the square footage for the addition is 2,710 square feet and a citizen's inquiry was filed with the Town Council. The Council considered the inquiry at the last meeting and recommended unanimously that the Planning and Zoning Commission consider whether all the approvals necessary for the expansions have been obtained, whether there are stormwater management issues that need to be addressed that have not been addressed and pursuant to Chapter 155 that clearly is under the purview of the Planning and Zoning Commission. They have the ability to enforce the zoning provisions of the Town Code pursuant to that Chapter.

Mr. Norris stated that the sole issue that brings us here today is the expansion of the non-conforming use. The property is zoned RMF, the permitted uses in RMF do not include funeral parlors, it does include chapels, residences and some churches, but the question that is before the Planning and Zoning Commission today is whether all the necessary approvals have been granted and if they have not, whether the work should be permitted to continue so that all the necessary approvals have been granted. The enforcement powers of Article 145 - Chapter 155 will allow you to consider this and consider whether all the approvals necessary for the work have been submitted.

The property owner, Mr. Ned Brinsfield of Brinsfield Funeral Home and Mr. Jim Bacot, Brooks Run Builders is also here today.

Chairperson Moulds remarked that it would be helpful to begin with the original application and asked Ms. Laschelle Miller, Town Administrator to proceed.

Ms. Miller stated that in December 2005 an application was submitted for 1,239 sq. ft., a building permit was issued and fees were collected based on the 1,239 sq. ft. When this project was inquired about and brought to our attention we met with Mr. Bacot and Mr. Brinsfield. Mr. Bacot explained that he had spoken with Ms. Colleen Bonnel, who was on staff at that time, and he was under the impression that the project was actually approved for a larger square footage amount of 2,710 sq. ft. We have nothing in our file to indicate that and the only fee that was collected was for 1,239 sq. ft. and this is what the building permit was issued on. When we met with Mr. Bacot he did provide us with an updated drawing that did show the 2,710 sq. ft. The only thing we have in the file is for the 1,239 sq. ft.

Member Burris commented that it seemed like there are a number of issues. It sounds like the permit should not have been issued to begin with through no fault of the property owner and this is the Town's fault. He is not sure how the expansion was submitted to the Town and seems to be questionable.

Ms. Miller noted that we do not have anything in the file.

Member Burris stated that swm issues have not been addressed which should have been addressed originally, including some buffering on the side and there are also parking issues to consider. If the Town had not issued the permit to begin with these items would not be an issue.

Member Candela remarked that he would like to hear from the property owner and the builder as to their rationale for expanding from the 1,239 sq. ft. to the 2,710 sq. ft.

Mr. Bacot replied that the last conversation he had with Ms. Bonnel, which was in November of 2005, was regarding squaring the building off and taking the 2,710 sq. ft. I didn't hear anything different from Ms. Bonnel and picked the permit up and went from there. I have never had a problem with getting a permit in Leonardtown and thought I was in compliance with it. If I am not what do I need to do correct this problem?

Member Candela replied that assuming from what you said, it was not the intent to square the building up to begin with and that was an after the fact decision.

Mr. Bacot responded that he was in conversation with Ms. Bonnel and it was the same day that we updated the original application. I said "let's square the building off" and she said she did not see any problem with it put the initials down on it and she said just initial this and made a copy of it. I do not know what happened.

Ms. Miller inquired if that was the same day that the permit was issued for the 1,239 sq. ft.

Mr. Bacot responded that it was the same day it was submitted, November 28, 2005

Chairperson Moulds inquired about the additional fees to be collected.

Ms. Miller stated that there were never any additional fees collected. Mr. Bacot did provide a copy of the application he is speaking of and it is a copy of the original 1,239 sq. ft., which we have stamped and the fees were calculated but, we do not have a copy of that in the file and, the copy does not have the stamp or anyone's initials on it except Jim had initialed the change to 2,710 sq. ft. but we do not have this in the file.

Mr. Bacot remarked that is only what Ms. Bonnel asked him for was to initial the document.

Mr. Candela asked when this was supposed to have taken place?

Mr. Bacot replied that it was the same day as the original application.

Member Frock asked who fills out the approximate or exact square footage?

Ms. Miller stated that the applicant does. The application is dated November 28, 2005, we stamped it in November 29 but the building permit was not actually issued until December 2, 2005 and it is issued for 1,239 sq. ft., which would have been a few days later but it was only issued for the 1,239 sq. ft.

Member Frock asked how they arrived at 2,710 sq. ft when it was submitted for 1,239 sq. ft.?

Mr. Bacot responded that it was the same day. In talking with Ms. Bonnel I suggested we just square the building off and said we would add the square footage from that. I wrote the square footage down, I initialed it and thought it was taken care of from there, it was the same day.

Member Frock inquired did you think at that point it was 1,239 sq. ft. or that it would be 2,710 sq. ft.?

Mr. Bacot replied 2,710 sq. ft.

Member Frock remarked, so you just didn't change the number on the application?

Mr. Bacot replied that he thought we were good to go, as far as Ms. Bonnel said, let's initial it and be done with it.

Chairperson Moulds noted that Mr. Bacot changed it on his copy but Ms. Bonnel did not change it on her copy.

Mr. Bacot said that Ms. Bonnel had a copy of what I had and I got the copy from her.

Member Frock asked if Ms. Bonnel had Mr. Bacot initial a change?

Mr. Bacot responded that he just initialed the zoning application.

Chairperson Moulds noted that it is not the same one that Ms. Bonnel filed.

Ms. Miller commented that the application that is filled in for 1,239 sq. ft., it is stamped as received and that is what the building permit was typed up from. It looks like the same original application but it does not have the stamp nor does it have a couple of the notations that Ms. Bonnel had made (are not on the copy) and there is no updated application in the file other than what Mr. Bacot provided me.

Member Candela remarked that at the time it was decided all that happened on the same day. He inquired of Mr. Bacot that at the time it was decided to square off the building did you have any idea of what the square footage would be by squaring off the building or was that just a thought that crossed your mind at the time and you had to go back and measure?

Mr. Bacot responded that he just calculated it out by scale from the drawing and went from there and added it up.

Member Candela asked if the 1,239 sq. ft. was your computation or was that the Town's computation?

Ms. Miller remarked the applicant filled out the initial application. The building permit was issued a couple of days later and when it was picked up you must not have noticed it was for 1,239 sq. ft. The fee collected was only for the 1,239 sq. ft. We do not have anything in the file indicating anything more.

Member Candela asked if anybody had a conversation with Ms. Bonnel?

Ms. Miller replied no.

Mr. Norris commented that the compounding issue is that non-conforming structures are not permitted to be expanded under Article 155-65. The permit should not have been issued to begin with.

Member Burris noted that it does not matter whether it was 2,700 sq. ft or 1,000 sq. ft it should not have been issued.

Ms. Miller asked if Mr. Norris could detail what the Board's decision has to be today and then what the process would be depending on that decision.

Mr. Norris stated that the question before you today, after hearing the applicant's side of the story, is whether or not there are the requisite approvals to do the work that is being done. If there is not, then the Planning and Zoning Commission has the authority to enforce Chapter 155 and stop work that is going on until all the requisite approvals are granted. Whether it requires variances or whether it requires other approvals and whatever that next step is beyond today.

Member Burris asked if the proper step is for them to apply for a variance?

Mr. Norris remarked that there are a couple of different things that could happen. You could find that they are only making an addition for the chapel and that is permissible use in residential multi-family and therefore they will only need to address stormwater management. You could find that they are trying to expand their use in a way that is not consistent with a non-conforming use of a funeral parlor and therefore there should have been no approvals granted under Chapter 155-65 and they should figure out how they are going to get the approvals to do the expansion whether it is through variance or some other process or revising their plan for the use of the building.

Member Candela inquired if the application for part of the original 1,239 sq. ft. was for the operation of the funeral home; it was not all for the Chapel?

Mr. Norris replied correct, the two uses that were identified on the drawing of the submitted original application, one was funeral home and one was Chapel.

Member Candela noted that the prep part was an expansion of the non-conforming use of the property currently operating as a funeral home. The Chapel was a brand new issue. So all along it was part of the original application, a reason that would not have complied with the ordinance but the Town granted the building permit for that purpose.

Mr. Norris noted that the case law is such that because people are given constructive knowledge of the laws that are in effect in their jurisdiction that the people who have that constructive knowledge cannot rely on the statement of a public employee and exploit that, to construct something that they ordinarily would not be able to do. That is the case law and does not mean that is how it is applied in every single instance.

Chairperson Moulds stated that we should take into consideration the fact that even though this permit was granted what they are building there right now is not within the scope of the original permit application. Even if he picked up the permit and it was not the permit he thought he was picking up, he did only pick up a permit for the smaller square footage and paid the fees for the smaller square footage and until we can get something on what they are actually building out there, which is the larger square footage, I think they need to go back and apply for that. We need to stop what is going on there now until they can get proper permits.

Member Burris commented that if they address everything, swm is going to take six months and the appeals process will take a few months. I am not in favor of shutting a business down for six months when there was a mistake on both sides. I make a recommendation that they apply for a variance sighting hardship. Being a business in the same location for fifty years and being a businessperson, I know you have to be able to expand to meet competition. This is not necessarily expansion to compete so I believe this would be a consideration for a hardship. But these other issues do need to be addressed such as swm, changing the looks of the building on the one side, some buffering so it looks like a residential structure in a residential neighborhood, parking and another separate issue is it looks like the two houses have been combined with the asphalt parking. I am not sure if that should be addressed or not. Is that within our purview?

Mr. Norris stated these are items to be determined by the Planning and Zoning Commission and is within the Board's purview.

Member Candela stated that he has another issue. Part of what has happened has been aesthically improving the front of the building which really does not have anything to do with the expansion on the side of the building; I would hope they would be able to go forward with finishing the front for the aesthetic purposes to blend into the neighborhood.

Member Burris responded that he agrees and would not like to see them shut down for doing improvements that are needed. What is the exterior carport along the back supposed to be?

Mr. Bacot provided the members with photos.

Member Frock inquired as to how far along they are on the construction?

Mr. Bacot stated they were already under roof.

Ms. Miller stated that maintenance and restoration of these things could be done but the expansion is what is against regulations and is being questioned today.

Chairperson Moulds stated that maintenance and repairs would be allowed to continue and asked if these were not listed under the expansion permit.

Ms. Miller stated no these items were not.

Chairperson Moulds stated that the only thing about continuing with the expansion is the fact that this could go through the appeals process, if they decide to do that but it could be denied. As

this will be an open hearing, I am not sure it is a good idea to let them continue until they have gone through the appeal process.

Member Frock remarked that the issue is this sets a precedent for every permit. Someone comes in saying they are building something and then comes back with something else, what would be the point of a permit in the first place.

Mr. Norris noted that he has seen this handled in Houston in a similar case. In that case, they allowed the property owner to continue to weatherize what they had already started so they would not suffer a financial loss and then stopped them at that point. But ultimately, if the approvals were not granted that would be necessary to continue with the addition, it may be required to come down.

Ms. Miller remarked that Mr. Mark Grant, the Town's Capital Projects Coordinator, has already looked at the swm issues and has some recommendations for some innovative solutions on the swm. Maybe we could put something together by the next Planning and Zoning Commission meeting on January 16, 2007. We already have an appeals hearing scheduled for the end of January so it could feasibly happen in January.

Chairperson Moulds remarked that as we are in the winter months it is a good suggestion to grant an exception to winterize it and stop at that point.

Member Burris asked what are we talking about as far as the additional space?

Mr. Brinsfield remarked that just a garage is located in that corner and restrooms. This has been a thought of his for years. I have an old house and the restrooms I have there have bearing walls and I have had a couple of contractors come in to look at it over a period of years and they told me it would take 6 or 8 weeks and without restrooms, I could not operate. Mr. Bacot came up with moving it out on the side to create larger handicapped access restrooms. That was the reason for trying to do this. Now I am going to have another step coming out of the funeral home I already had five different steps on the roof as I was having leaking problems. This place has been a funeral home since 1957 and nothing has been done since 1973. I have been talking about doing this for two and half years and this was a good idea to see what I could do about the back and move the garage. All I did was take the garage and move the double door on that side and shifted it back. I still own the other side and was going to have a zigzag in and out. The roofline also needs to compensate for that.

Chairperson Moulds commented that our discussion today is to determine if what you are doing is legal and within the scope of the permit that was issued. Your ideas may be very good but that is not what we are discussing today.

Mr. Brinsfield remarked that this is the reason I hired Mr. Bacot. He said he had a permit and I thought everything was fine up until Tuesday before Thanksgiving.

Member Candela asked if in the original 1,239 sq. ft how much of that square footage was designated for the Chapel and how big is the Chapel?

Ms. Miller stated that it was an additional 620 sq. ft. and an additional 726 sq. footage for the Chapel, over the existing pavement and garage, so a total of 1,320 sq. ft. originally submitted. It has turned out to be 1,580 sq. ft.

Member Candela stated that the Chapel is now double the size of the original plan?

Mayor Norris stated that he had been involved with this information and would like to share that one of the things mentioned is that staff approved the 1,239 sq. ft., which was not for an addition but for an enclosure. We all recognize that this should not have been done in-house and it was done without my knowledge, the Council's knowledge and the Town administrator's knowledge. It probably should not have been done but it was not for an addition it was for an enclosure, which is important to note.

Secondly, when it came to the Council's attention, without knowing who had the authority for the stop work order, the Council requested that I put a stop work on the project because we needed to get this issue straight. Mr. Brinsfield said he didn't know this was a problem until right before Thanksgiving but he and Mr. Bacot met with Ms. Miller and myself to inform them we had a problem and that we would have to do something about it. Whatever they have done in these last three or four weeks was certainly after they knew they had a problem. One of the biggest concerns is the precedent this sets, especially a potential commercial expansion in a residential zone.

Member Burris noted that it is not unprecedented for an applicant to come back after the fact and get the permits and required variances.

Mr. Norris stated that it does happen but it is preferred to use redlines and initial applications and plans and to obtain a stamp and proper approvals.

Ms. Miller stated that we have had cases here that were not an after the fact but someone did get a building permit and there was a change but typically the file is documented very specifically what the change was and the new fee is collected. A new building permit is issued or changes are actually made on the building permit. That is not unheard of, but none of that is documented in this case at all.

Member Burris inquired into the interior work where the restrooms are and the expansion if Mr. Brinsfield could operate with it as it is right now.

Mr. Brinsfield stated it would be very tough because he has no storage and no heat. This would basically put me out of business at this point. I thought everything was taken care of. I am at a point now where it is enclosed with paper but I am very concerned about not having any heat. I would not have invested in this if I didn't think it was okay. I am building for the future and to be an asset to the Town.

Member Burris put before the Board members for discussion that they suggest they proceed with a variance request before the Board of Appeals, start discussions with Mr. Grant on swm and allow Mr. Brinsfield to continue and put up a bond for the swm.

Mr. Brinsfield stated that he has tried to address the swm and if it can be done he would do it. He has not seen any standing water and in regards to parking we have not lost anything. It has been there and they are improving the in/out access.

Member Burris noted that one of the issues as far as parking is not necessarily the number of parking but is the house next to it looks like one continuous parking lot now.

Mr. Brinsfield stated that it could be separated but the parking there is for about one hour for prayers. Parking has been out in the street but only for a short period of time.

Chairperson Moulds remarked this is not for discussion today. Our decision today is to make a recommendation based on any stop work orders or stipulations until they move forward to get the required permits. I suggest we allow him to continue to weatherize it and wait until he gets the variances to proceed and as Ms. Miller stated, it could possibly be done in January. We have to be careful about what kind of precedent we set to allow a permit to go through that was not properly applied for and we need to get this project back into the proper channels. We need to do it with as much efficiency as possible so as not to hold up his business any longer than is absolutely necessary.

Member Candela stated that they definitely need to go through the proper steps of the variances, which of course involves another meeting of this group and a recommendation to the Board of Appeals. The question today is what can happen between now and the start of that process and if they need to winterize.

Chairperson Moulds asked in order to winterize it what more would you need to do?

Mr. Bacot responded that the second floor is the problem, which isn't an issue and should be sided.

Chairperson Moulds asked if any winterizing work would need to be done on the addition?

Mr. Bacot responded if it would sit for any length of time it would have to be re-papered with Tyvek.

Chairperson Moulds stated that if it would sit for a month would you need to do that?

Mr. Bacot replied yes and turn the heat back on too.

Member Candela asked if there is any part of the new addition currently being constructed that is used in the daily operation of the funeral home at this time?

Mr. Bacot replied no not at this time.

Member Candela moved on Case #151-05, Brinsfield Funeral Home, Review of Building Permit, that any additional work on the property, other than that which is necessary to secure and winterize from the winter weather, be ceased and that the applicant proceed, before the Board of Appeals, with a variance request to the building permit that was

originally issued on December 2, 2005; Member Burris seconded, no further discussion, motion passed unanimously.

Chairperson Moulds thanked everyone for attending and noted that this was a misunderstanding and hoped it could be resolved as soon as possible. It is certainly not our intent to disrupt anyone's business but yet we have to address it through the proper channels.

Member Candela moved to adjourn the meeting at 3:50 p.m., seconded by Member Frock, motion passed unanimously.

Respectfully Submitted:

Teri Dimsey, Recording Secretary

Approved:

Jean Moulds, Chairperson

Frank Fearn, Vice Chair

Dan Burris, Commission Member

Jack Candela, Commission Member

Dave Frock, Commission Member