

TOWN OF SMITHFIELD PLANNING BOARD AGENDA PACKET



Chairman: Eddie Foy

Vice-Chairman: Stephen Upton

Members:

Mark Lane

Jack Matthews

Ashley Spain

Gerald Joyner

Daniel Sanders

Teresa Daughtry

Paul Embler, Planning Director

Mark Helmer, Senior Planner

Meeting Date: Thursday, April 3, 2014

Meeting Time: 6:00 p.m.

Meeting Place: Council Chambers, Smithfield Town Hall

**PLANNING BOARD AGENDA
REGULAR MEETING
APRIL 3, 2014
MEETING TIME: 6:00 PM
TOWN HALL**

Call to Order.

Approval of the minutes for March 6, 2014.

Announcement of Quorum / Voting members

Public Hearings.

ZA-14-01 Hank Daniels, Danbar Ptr: The applicant is requesting to amend the Town of Smithfield Unified Development Ordinance, Article 19-6 (B) (7) to specifically state that digital billboard signs shall not change more than one time in eight seconds.

ZA-14-02 Town of Smithfield: The Town of Smithfield Planning Department is requesting to amend the Town of Smithfield Unified Development Ordinance, Article 5-2 (B), to reflect statutory changes to approval criteria for variances granted by the Town of Smithfield Board of Adjustment.

Old Business.

New Business.

Advisory Board compensation through direct deposit.

Adjournment.

DRAFT
Smithfield Planning Board Minutes
Thursday, March 6, 2014
6:00 P.M., Town Hall, Council Room

Members Present:

Chairman-Eddie Foy
Vice-Chairman Stephen Upton
Daniel Sanders
Gerald Joyner (Alt)
Mark Lane
Teresa Daughtry
Jack Matthews

Members Absent:

Ashley Spain

Staff Present:

Mark Helmer, Senior Planner
Veronica Hardaway, Administrative Support Specialist

Staff Absent:

CALL TO ORDER

Mr. Foy stated due to Mr. Spain's absence, Mr. Joyner will be a voting member this evening.

APPROVAL OF MINUTES FROM JANUARY 2, 2014.

Stephen Upton made a motion, seconded by Jack Matthews to approve the minutes as written. Unanimous.

Public Hearings:

After all persons giving testimony were duly sworn, Mr. Foy opened the public hearing.

RZ-14-01 George Mack Langdon Jr.:

Mr. Helmer stated the applicant is requesting to rezone approximately 3.45 acres of land from R-20A (Residential-Agricultural) to B-3 (Business). The property considered for rezoning is located on the southwest side of West Market Street approximately 1200 feet north of its intersection with Wilson's Mills Road. The property is further identified as Johnston County Tax ID# 15077017A.

Mr. Helmer stated the property considered for rezoning does not appear to contain environmentally sensitive areas such as regulated streams or designated wetlands. The property contains an existing two story single-family dwelling with ample room for additional parking and storage. The property contains two access points from West Market Street. Rezoning the property to the B-3 (Business) will allow for all permitted use within the B-3 (Business) zoning district to be considered for future approval to include retail sales, medical and professional offices and extermination services.

Mr. Helmer stated the proposed rezoning to the B-3 (Business) zoning district is consistent with the Strategic Growth Plan which recommends the property be zoned for commercial uses. The proposed property will be consistent with the Town of Smithfield Unified Development Ordinance provided that all proposed future land uses construct the minimum required parking and meet ADA accessibility standards. Any use requiring outdoor storage will require conditional use permit approval by Town Council. The location of the property is located on West Market Street which is predominantly commercial in nature. Rezoning this property from residential to a commercial district will not create any compatibility issues with the adjacent commercial uses. The Town of Smithfield will provide fire protection as well as water/sewer services. Duke Progress Energy will provide electric.

Mr. Helmer stated the Planning Department recommends approval of the request to rezone approximately 3.45 acres of land located on the northeast side of West Market Street approximately 625 feet north of its intersection with Wilson's Mills Road from the R-20A (Residential-Agricultural) zoning district to the B-3 (Business) zoning district.

Mr. Foy asked if anyone wanted to speak for or against the proposal.

Mr. Foy asked Mr. Helmer if there were any objections.

Mr. Helmer stated he was not aware of any.

Daniel Sanders asked if there was adequate parking.

Mr. Helmer stated it is unclear at this time due to the applicant requesting rezoning. When the applicant is ready to apply for a conditional use permit, parking availability will have to be provided at that time. There are opportunities for parking in the front and rear of the building.

George Mack Langdon Jr., Allied Commercial Properties of Johnston, stated he owns a local extermination business in town. The property to be rezoned is in a great location and is conducive to professional offices. At this point the most important issue is to enhance the appearance and neighborhood. Prior to application for a conditional use permit a survey will be done as well as a site plan for the location.

Mark Lane asked if there was a possibility Mr. Langdon would move his current extermination business to the new location.

Mr. Langdon stated that it was a possibility but has a good home right now.

Mark Lane asked Mr. Helmer if the applicant would have to come back if he wanted to move his current business to the new location.

Mr. Helmer stated if the applicant relocated his extermination business to the new location he would need a conditional use permit.

Mr. Foy closed the public meeting for RZ-14-01 and asked for a motion.

Stephen Upton made a motion, seconded by Mark Lane, to move to the Finding of Fact.

In connection with a legislative decision for a rezoning request, the Planning Board may consider certain approval criteria. Planning staff generally accepts these findings as fact as part of the complete application submitted by the petitioner.

Mr. Foy stated that Article 13 Section 13-17 of the Town of Smithfield Unified Development Ordinance requires all applications for a zoning map amendment to address the following eight findings. The burden of proof is on the applicant and failure to adequately address the findings may result in denial of the application.

Mr. Foy stated that the Planning Board and Town Council have the responsibility to determine if the zoning map amendment is warranted. The Town of Smithfield Planning Board shall recommend and the Town Council of the Town of Smithfield shall decide the matter of this rezoning application by motion and vote on each of the following eight findings of fact. Any motion to find against the application must be supported by statement of specific reason or conclusions reached in support of the motion.

1. The zoning petition is in compliance with all applicable plans and policies of the Town of Smithfield:

The rezoning request from the Residential-Agricultural to the Business zoning district meets all the Town's plans and policies and will blend in well with the adjacent land uses. The Comprehensive Land Use Plan directly indicates the subject property is best suited for commercial land uses.

2. The rezoning petition is compatible with established neighborhood patterns of the surrounding area:

The rezoning request is compatible with the adjacent commercial land uses. Very few residential zoned properties remain along the Market Street corridor near the property considered for rezoning.

3. The rezoning petition is compatible with the changing neighborhood conditions that might warrant a rezoning:

The rezoning petition is compatible with the changing neighborhood conditions that might warrant a rezoning because the West Market Street corridor is a heavily traveled corridor considered ideal for commercial endeavors. Most lots in the area that contain a single family dwelling have already been rezoned and converted to commercial uses.

4. The rezoning request is in the community interest:

The rezoning will allow for a wider range of commercial and office uses and provide additional office space and services for the residents of Smithfield. The development that will occur from the rezoning will increase the tax base as an additional benefit. **All members stated true.**

5. The request does not constitute "Spot Zoning":

Since adjacent nearby properties are presently zoned B-3 (Business) then it is unlikely an argument could be made for "spot zoning" or "small scale" zoning. **All members stated true.**

6. Present regulations deny or restrict the economic use of the property:

The property is currently zoned R-20A (Residential-Agricultural). The R-20A zoning district allows for single family dwellings and rezoning the property to B-3 (Business) will not create nonconformity since single family dwellings are permitted in the B-3 (Business) zoning district as well. However, additional office and commercial uses such as those permitted in the B-3 (Business) zoning district cannot occur unless the property is rezoned. **All members stated true.**

7. The availability of public services allows consideration of this rezoning request:

In addition to public water and sewer being available to the site, the property is served by Duke Power with electricity. CenturyLink and Time Warner also serve the area with phone and cable respectively. **All members stated true.**

8. Physical characteristics of the site prohibit development under present regulations:

There are no physical restraints to the area considered for rezoning such as wetlands, stream buffers, potential flood hazard areas and storm water. There is no limiting geological and hydrological formation that would prohibit development (rock outcrops, lakes, etc.). **All members stated true.**

Based upon satisfactory compliance with the above eight stated findings and fully contingent upon acceptance and compliance with all conditions as previously noted herein and with full incorporation of all statements and agreements entered into the record by the testimony of the applicant and applicant's representative;

Stephen Upton made a motion, seconded by Mark Lane, to recommend approval to rezone a 3.45 acre tract of land from an R-20A (Residential-Agricultural) zoning district to a B-3 (Business) zoning district. Unanimous.

CUP-14-02 Saint Joseph of The Pines:

Teresa Daughtry recused herself for this case.

Mr. Helmer stated the applicant is seeking a conditional use permit to operate an adult daycare with medical facilities on property located within a B-3 (Business) zoning district. The property considered for approval is located on the northeast side of West Market Street approximately 625 feet north of its intersection with Wilson's Mills Road. The property is further identified as Johnston County Tax ID# 15084003A.

Mr. Helmer stated the adult daycare facility will be used as a "PACE Center" (Program for All-Inclusive Care for the Elderly) and will include comprehensive series of professional services by physicians, nurses, nurse practitioners, pharmacists, social workers, physical therapists, speech therapists, occupational therapists, nutritionists, and personal care assistants. There does not appear to be any environmentally sensitive areas on the property considered for a Conditional Use Permit to include flood plains or designated wetlands. The existing facility is exempt from storm water retention and nitrogen offset payments.

Mr. Helmer stated the proposed adult daycare facility is a permitted use within the B-3 (Business) zoning district with a Town Council approved conditional use permit. The applicant has provided a sketch plan of the site showing improvements to the property to include landscaping and minor changes to internal circulation patterns. Ample lighted parking is available at the site. An existing fire lane in the rear will remain. A new entrance with a canopy will be constructed on the north side of the building. The proposed plan is consistent with the recommendations of the Comprehensive Growth Management Plan which calls for commercial uses near the intersection of Wilson's Mills Road and West Market Street.

Mr. Helmer stated the adult daycare facility is a permitted uses within a B-3 (Business) zoning district with a valid conditional use permit. The site has adequate parking and the proposed landscape improvements will meet minimum development standards. Services at this location should not pose a compatibility issue with surrounding land uses given that it is located on a very busy commercial corridor and not immediately adjacent to residential homes. There is an existing nonconforming free standing ground sign that may be refaced. Any changes beyond re-facing, the existing sign cabinet will require the entire sign to come into compliance with current development regulations. The Town of Smithfield will provide fire protection as well as water/sewer services. Duke Energy Progress will provide electric.

Mr. Helmer stated the Planning Department recommends approval of the Conditional Use Permit for an adult daycare facility providing the parking lot is landscaped in accordance with the Town of Smithfield Unified Development Ordinance.

Mr. Foy asked if anyone wanted to speak for or against the proposal.

Mr. Foy asked Mr. Helmer if there were any objections.

Mr. Helmer stated he was not aware of any.

Stephen Upton asked because of the new entrance that will be constructed, will any permits need to be issued.

Mr. Helmer stated that the new entrance that is shown on the site plan will more than likely require building permits and that no changes are proposed to the existing NCDOT approved driveway to West Market Street.

Daniel Sanders asked who oversees inspections.

Mr. Helmer stated he's not sure which State and Federal regulators will inspect the facility. Mr. Helmer stated the applicant could elaborate more.

Mark Lane asked if Heilig Meyers and Kmart was one building.

Mr. Helmer stated it is one building with two existing spaces separated by a shared wall and that each side is on a separate lot of record. The side considered for approval is the Heilig Meyers side.

Daniel Sanders asked if any beautification improvements will be made.

Mr. Helmer stated as far as appearances are concerned, the site will be greatly enhanced by the required landscape and lighting improvements to the parking lot.

Robert Dickson, Executive Director at St. Joseph of The Pines in Fayetteville, stated he will be presenting to the Board a Powerpoint presentation.

Robert Dickson stated he will be overseeing the Smithfield location. Saint Joseph of The Pines is a "PACE" (Program of All-inclusive Care for the Elderly). "PACE" provides adult daycare offering supportive and professional services through an interdisciplinary team which consists of Physicians, Personal Care Services, Nursing Care, Transportation, Medical Supplies & Equipment, Meals, Spiritual Support, Prescriptions, Occupational, Physical, Speech, and Recreational Therapies. The Department of Social Services does monthly checks and annual recertification checks. The proposed facility provides transportation to and from the facility as well as to physician appointments. This program partners with Hospitals, Home Care, Hospice, Skilled Nursing, Pharmacy, Assisted Living, Contractors, Churches, Transportation, and Physician Specialists.

Mr. Dickson stated the proposed project will be servicing Johnston, Harnett, and Wayne Counties. This program is designed for families that do not want their loved ones placed in Skilled Nursing Facilities, but rather go to the facility during the day and care for them at night in their homes.

Stephen Upton asked what the capacity would be for daily participants.

Mr. Dickson stated it would be based on square footage. Every 60ft, excluding office space, that's been designed for the participant will determine the number of enrolled. For this particular location the number of enrolled has yet to be determined.

Mr. Foy asked how many employees will be hired.

Mr. Dickson stated approximately 96 employees.

Mr. Foy asked what the timeline is for this project.

Mr. Dickson stated CMS just passed new guidelines so typically it will take 6-8 months for an application to get approved by the state.

Mr. Foy asked why Smithfield.

Mr. Dickson stated a market analysis was done and saw this area had a substantial amount of people who are Medicaid/Medicare eligible. For the program to work there has to be a market for it. What's different about this program is we partner with the family so the participant has the option to stay at home instead of being placed in a Skilled Nursing Facility.

Stephen Upton asked what the hours would be.

Mr. Dickson stated the facility would be open Monday-Friday 8-5, but it's based on need and can be flexible as long as they don't stay the night.

Stephen Upton asked how many facilities are there.

Mr. Dickson stated there are eight in North Carolina in the larger city areas.

Daniel Sanders asked if a participant needs transportation outside city limits.

Mr. Dickson stated they would service them through the contracted transportation provider.

Stephen Upton asked if Medicare Part D would be the only supplemental insurance accepted.

Mr. Dickson stated that when a participant enrolls they give up Part A&B and utilize Part C&D.

Mark Lane asked at what stage a participant cannot be eligible.

Mr. Dickson stated the participant cannot be eligible if they are not safe in the community, lack of payment, or danger to their self or others.

Mr. Foy closed the public meeting for CUP-14-02 and asked for a motion.

Stephen Upton made a motion, seconded by Jack Matthews, to move to the Finding of Fact.

The Planning Board shall recommend and the Town Council of the Town of Smithfield shall decide the matter of this Conditional Use Permit Application by motion and vote on each of the following four findings of fact. Any motion to find against the application must be supported by statement of specific reasons or conclusions reached in support of the motion.

1. ***Based on evidence and testimony presented it is the finding of the Planning Board that the application, if approved, will not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and approved or is approved with the following stated conditions.***

The proposed adult daycare facility at this location will not materially endanger the public where located because the existing retail center contains adequate parking, access and lighting. Buffering from adjacent land uses is provided by existing old growth trees and fire lanes exist around the building. ***All members stated true.***

2. ***Based on the evidence and testimony presented it is the finding of the Planning Board that the application, if approved meets all required specifications and conforms to the standards and practices of sound land use planning and the Town of Smithfield Unified Development Ordinance or other applicable regulations or is approved with the following additional stated conditions.***

The application conforms to the standard and practices of sound land use planning due to the fact that it conforms to the Town of Smithfield Unified Development Ordinance. Adaptive reuse of underperforming properties is desired and encouraged. ***All members stated true.***

3. ***Based on evidence and testimony presented it is the finding of the Planning Board that the application, if approved, will not substantially injure the value of adjoining or abutting property and will not be detrimental to the use or development of adjacent properties or other neighborhood uses or is approved with the following additional stated conditions.***

The adjacent properties will not be injured in value because the subject property has provided all necessary improvements to include buffering, landscaping, dumpster screening and adequate parking in accordance with the Town of Smithfield Unified Development Ordinance. ***All members stated true.***

4. ***Based on evidence and testimony presented it is the finding of the Planning Board that the application, if approved, would not adversely affect the adopted plans and policies of the Town of Smithfield, or violate the character of existing standards for development of the adjacent properties or is approved with the following additional stated conditions.***

The adult daycare at this location will not be in conflict with existing adopted plans and development standards due to the fact that the Town of Smithfield Comprehensive Land Use Plan has identified this area as being suitable for commercial endeavors and the applicant has provided a site plan showing compliance with current landscape regulations. ***All members stated true.***

Based upon satisfactory compliance with the above four stated findings and fully contingent upon acceptance and compliance with all conditions as previously noted herein and with full incorporation of all statements and agreements entered into the record by the testimony of the applicant and applicant's representative;

Stephen Upton made a motion, seconded by Daniel Sanders to recommend approval of a conditional use permit to operate an adult daycare with medical facilities on property located within a B-3 (Business) zoning district.

Old Business:

No Report.

New Business:

Mr. Helmer asked the Board if they would like to receive their compensation through direct deposit paperwork needs to be submitted.

Submitted this 6th day of March, 2014.

Veronica Hardaway
Administrative Support Specialist
Planning Department

TOWN OF SMITHFIELD
Planning Board
Action Form

ZA-14-01 Hank Daniels, Danbar Ptr: The applicant is requesting to amend the Town of Smithfield Unified Development Ordinance, Article 19-6 (B) (7) to specifically state that digital billboard signs shall not change more than one time in eight seconds.

Date of Meeting: April 3, 2014

Date Prepared: March 27, 2014

Staff Work By: Mark Helmer

Presentation By: Mark Helmer

Petition Description:

The existing Town of Smithfield Unified Development Ordinances regulating digital billboards mirror the NCDOT (North Carolina Department of Transportation) standards in most respects with one major difference being the minimum time in which a message must remain before changing. The Town of Smithfield currently allows digital billboard messages to change no more than 1 (one) time in a 30 (thirty) second period while NCDOT requires a digital billboard messages change no more than 1 (one) time in an 8 (eight) second period. The applicant is requesting the Town of Smithfield to amend the Unified Development Ordinance to allow digital billboards message to change at the same rate in which NCDOT allows for.

Planning Department Recommendations:

The Planning Department recommends that to avoid future litigation and to conform to NCDOT standards for digital billboards, approval of the proposed text amendment to allow digital billboard messages to change no more than 1 (one) time in an 8 (eight) second time period.

Action Requested:

The Planning Board is requested to review the petition and make a recommendation to Town Council for a zoning text amendment that will allow digital billboard message to change no more than 1 (one) time in an 8 (eight) second time period.

DRAFT
ORDINANCE TO AMEND
TOWN OF SMITHFIELD UNIFIED DEVELOPMENT ORDINANCE, ARTICLE
19, REGULATIONS FOR SIGNS,
SEC. 91-6, SPECIALTY SIGNS (B) BILLBOARD, LED

BE IT ORDAINED by the Town Council of the Town of Smithfield that the Unified Development Ordinance, Article 19, Regulations for Signs, Sec. 91-6, Specialty Signs is amended to allow for LED Billboards to change its copy to once every eight seconds and shall read in its entirety as follows:

Section 19-6: Specialty Signs, (B) Billboard, LED (Light Emitting Diodes).

1. Billboard signs utilizing LED or other similar technologies shall be a permitted use by right in all zoning districts when adjacent to I-95. A zoning permit may be granted provided the following minimum standards are met.
2. The property on which the sign is to be located must be adjacent to I-95.
3. The sign must be located within six hundred sixty (660) feet of the edge of the right-of-way of I-95.
4. The sign shall comply with all regulations of the North Carolina Department of Transportation and with the North Carolina General Statutes.
5. No two (2) such LED billboards shall be placed less than two thousand five hundred (2,500) feet apart; however, an LED billboard may be allowed within five hundred (500) feet of a non-LED billboard. Distance shall be measured as specified in North Carolina Administrative Code T19A:023.0200.
6. No “stacking” of signs is permitted.
7. The sign shall be of monopole design and placed on the site so as to be viewed only from the corridor in which it is permitted.
8. Billboards may not change content more than one (1) time within a ~~thirty~~ ***an eight*** second period and the change must occur within a two (2) second period. All LED billboards must be equipped to automatically turn off in case of malfunction.

Duly adopted this the 3rd day of June 2014.

John H. Lampe II, Mayor

ATTEST:

Shannan L. Williams, Town Clerk



Petition for Ordinance Amendment

I, Hank Daniels, Danbar Ptr., hereby petition the Town Council to amend the
Town of Smithfield Article 19 Regulations for Signs Ordinance as follows:

Section 19-6 B 7 LED Billboards: Billboards may not change content
more than one (1) time within a "eight second period" and the change
must occur with a two (2) second period

(Attach additional sheets as necessary)

Hank Daniels, Danbar Ptr.

Petitioner's Name

735 Industrial Park Drive

Street Address or P.O. Box

Smithfield NC 27577

City, State Zip Code

919-669-1911

Telephone Number

This application must be accompanied by a Statement of Justification which addresses the following:

1. How the amendment proposed would serve the public interest or correct an obvious error in the existing ordinance.
2. How the amendment proposed will enhance or promote the purposes and goals of the adopted plans and policies of the governing body.

The undersigned hereby authorizes the filing of this petition and certifies that the information contained herein stands alone based on the merits of this request and is accurate to the best of their knowledge and belief.

2-26-14
Date

Hank Daniels, General PTR
Signature of Petitioner

Date Received

Filing Fee

Danbar Limited Partnership
270 N. Equity Drive
Smithfield, NC 27577

February 25, 2014

Town of Smithfield
Attn: Mr. Paul Emblar
PO Box 761
Smithfield, NC 27577

RE: Smithfield, NC Digital Billboard Message Change Rate, Article 19 Section 19.6 B7

To Whom This May Concern:

I would like to request a text amendment in the regulations for signs concerning hold times. I understand that currently digital billboards may not change content more than one (1) time within a thirty second period. I am requesting that the Town of Smithfield lower the message change rate on digital billboards along the I-95 corridor to eight (8) seconds. Such reduction would line up with the State of North Carolina's regulations which mandate an eight (8) second change rate. This change would further the economic goals of the community as more messages may be conveyed to citizens. According to the attached federal safety study digital billboards operating at such a change rate do not increase traffic safety concerns. If this change is made I would be very happy to place free content for either the Town, Johnston Community College, or the Chamber.

Sincerely,



Hank W. Daniels, General Ptr.
Danbar Limited Partnership

February 19, 2014

Town of Smithfield
Attn: Mr. Paul Emblar
PO Box 761
Smithfield, NC 27577

RE: Smithfield, NC Digital Billboard Message Change Rate

To Whom This May Concern:

We are writing to you to provide support for a recommendation to lower the message change rate for digital billboards in Smithfield.

Daktronics is the world leader in design and manufacture of electronic display systems. We are committed to working with regulatory entities to draft appropriate sign regulations that cater to both community tastes as well as the needs of local business owners.

We encourage the Town of Smithfield to lower the message change rate on digital billboards to 8 seconds in order to assist with furthering the economic goals of the community as more messages may be conveyed to citizens. Such reduction also lines up with the State of North Carolina's regulations which mandate an 8 second change rate for digital billboards. Other communities have also adopted an 8 second change rate, such as Fayetteville, NC and Brunswick County, NC.

According to a Federal Highway Authority 2007 memo, a message change rate between 4 and 10 seconds is a general standard, with 8 seconds recommended. Additionally, such message duration has been found to not violate prohibitions against "intermittent" or "flashing" lights. At the end of December 2013, the United States Federal Highway Administration published a report that found eye fixation on digital billboards is well within federal safety standards concerning driver distraction. In this study, which was performed in Reading, PA and Richmond, VA, the billboard messages changed approximately every 8 to 10 seconds (page 53 of the attached FHWA report). Thus, digital billboards operating at such a change rate do not increase traffic safety concerns. As a result, there are no safety concerns with reducing the hold time to 8 seconds, mirroring the State of North Carolina's regulations.

Please let me know if you have any questions or concerns.

Best Regards,
DAKTRONICS, INC.



Angela Bailey
State and Local Regulatory Affairs
605-692-0200 Ext. 56808

TOWN OF SMITHFIELD
Planning Board
Action Form

ZA-14-02 Town of Smithfield: The Town of Smithfield Planning Department is requesting to amend the Town of Smithfield Unified Development Ordinance, Article 5-2 (B), to reflect statutory changes to approval criteria for variances granted by the Town of Smithfield Board of Adjustment.

Date of Meeting: April 3, 2014

Date Prepared: March 27, 2014

Staff Work By: Mark Helmer

Presentation By: Mark Helmer

Petition Description:

The North Carolina General assembly adopted land use regulations in 1923 including enabling statute for boards of adjustment. Ninety years later, the statute remained essentially the same despite decades of changes in land use law, numerous appellate opinions, advances in land use and planning theories, and the way we construct communities. In reaction to these changes, the North Carolina General Assembly during the 2013 session adopted a modern and more user friendly version of G.S. 160A-388 written in a simple, clear and concise language. The Planning Department is requesting the approval criteria for variance requests be adopted as it was approved by the North Carolina General Assembly in 2013.

Planning Department Recommendations:

The Town of Smithfield Planning Department recommends approval of the request to amend the Town of Smithfield Unified Development Ordinance, Article 5-2 (B), to reflect statutory changes to approval criteria for variances granted by the Town of Smithfield Board of Adjustment.

Action Requested:

The Planning Board is requested to review the petition and make a recommendation to Town Council for a zoning text amendment that adopts the new approval criteria for variances granted by the Town of Smithfield Board of Adjustment.

DRAFT
ORDINANCE TO AMEND
TOWN OF SMITHFIELD UNIFIED DEVELOPMENT ORDINANCE, ARTICLE 5,
APPEALS, VARIANCES. INTERPRETATIONS,
SEC. 5-2: VARIANCES, (B)

BE IT ORDAINED by the Town Council of the Town of Smithfield that the Unified Development Ordinance, Article 5, Variance approval criteria be amended to reflect statutory changes as found in G.S. 160A-388 and shall read in its entirety as follows:(new text underlined and text to be deleted struck through)

Section 5-2: Variances (B).

(B) Variances. – When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

(1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

(4) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

(5) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

~~(B) A variance may be granted by the Board of Adjustment if it concludes that, by granting the variance, the following findings are supported by the Board of Adjustment decision: (1) that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance; (2) that the variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit; and (3) that in the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. It may reach these conclusions if it finds that:~~

~~(1) If the applicant complies strictly with the provisions of the Ordinance, he can make no reasonable use of his property;~~

- ~~(2) The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public;~~
- ~~(3) The hardship relates to the applicant's land, rather than personal circumstances;~~
- ~~(4) The hardship is unique, or nearly so, rather than one shared by many surrounding properties;~~
- ~~(5) The hardship is not the result of the applicant's own actions; and~~
- ~~(6) The variance will neither result in the extension of a nonconforming situation in violation of Article 8 nor authorize the initiation of a nonconforming use of land.~~

Duly adopted this the 3rd day of June 2014.

John H. Lampe II, Mayor

ATTEST:

Shannan L. Williams, Town Clerk

§ 160A-388. Board of adjustment.

(a) **Composition and Duties.** – The zoning or unified development ordinance may provide for the appointment and compensation of a board of adjustment consisting of five or more members, each to be appointed for three years. In appointing the original members or in the filling of vacancies caused by the expiration of the terms of existing members, the city council may appoint certain members for less than three years so that the terms of all members shall not expire at the same time. The council may appoint and provide compensation for alternate members to serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member serving on behalf of any regular member has all the powers and duties of a regular member. The ordinance may designate a planning board or governing board to perform any of the duties of a board of adjustment in addition to its other duties and may create and designate specialized boards to hear technical appeals.

(a1) **Provisions of Ordinance.** – The zoning or unified development ordinance may provide that the board of adjustment hear and decide special and conditional use permits, requests for variances, and appeals of decisions of administrative officials charged with enforcement of the ordinance. As used in this section, the term "decision" includes any final and binding order, requirement, or determination. The board of adjustment shall follow quasi-judicial procedures when deciding appeals and requests for variances and special and conditional use permits. The board shall hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use or development.

(a2) **Notice of Hearing.** – Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning or unified development ordinance. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

(b) **Repealed by Session Laws 2013-126, s. 1, effective October 1, 2013, and applicable to actions taken on or after that date by any board of adjustment.**

(b1) **Appeals.** – The board of adjustment shall hear and decide appeals from decisions of administrative officials charged with enforcement of the zoning or unified development ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

- (1) Any person who has standing under G.S. 160A-393(d) or the city may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the city clerk. The notice of appeal shall state the grounds for the appeal.
- (2) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
- (3) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to

- appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
- (4) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.
 - (5) The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
 - (6) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.
 - (7) Subject to the provisions of subdivision (6) of this subsection, the board of adjustment shall hear and decide the appeal within a reasonable time.
 - (8) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.
 - (9) When hearing an appeal pursuant to G.S. 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160A-393(k).

- (10) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

(c) Special and Conditional Use Permits. – The ordinance may provide that the board of adjustment may hear and decide special and conditional use permits in accordance with standards and procedures specified in the ordinance. Reasonable and appropriate conditions may be imposed upon these permits.

(d) Variances. – When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

(e) Voting. –

- (1) The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.
- (2) A member of any board exercising quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that

member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(e1) Recodified as subdivision (e)(2) by Session Laws 2013-126, s. 1, effective October 1, 2013, and applicable to actions taken on or after that date by any board of adjustment.

(e2) Quasi-Judicial Decisions and Judicial Review. –

(1) The board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the ordinance specifies. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

(2) Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with subdivision (1) of this subsection. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

(f) Oaths. – The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.

(g) Subpoenas. – The board of adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full board of adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. (1923, c. 250, s. 7; C.S., s. 2776(x); 1929, c. 94, s. 1; 1947, c. 311; 1949, c. 979, ss. 1, 2; 1963, c. 1058, s. 3; 1965, c. 864, s. 2; 1967, c. 197, s. 1; 1971, c. 698, s. 1; 1977, c. 912, ss. 9-12; 1979, c. 50; 1979, 2nd Sess., c. 1247, s. 37; 1981, c. 891, s. 7; 1985, c. 397, s. 2; c. 689, s. 30; 1991, c. 512, s. 2; 1993, c. 539, s. 1088; 1994, Ex. Sess., c. 24, s. 14(c); 2005-418, s. 8(a); 2009-421, s. 5; 2013-126, ss. 1, 2(a), 2(b); 2013-410, s. 25(a).)



PLANNING DEPARTMENT

Paul C. Embler, Jr., Director

Notice Of Public Hearings

Notice is hereby given that public hearings will be held before the Planning Board of the Town of Smithfield, N.C., on Thursday, April 3, 2014 at 6:00 P.M., in the Town Hall Council Chambers located at 350 East Market Street to consider the following requests:

ZA-14-01 Hank Daniels, Danbar Ptr: The applicant is requesting to amend the Town of Smithfield Unified Development Ordinance, Article 19-6 (B) (7) to specifically state that digital billboard signs shall not change more than one time in eight seconds.

ZA-14-02 Town of Smithfield: The Town of Smithfield Planning Department is requesting to amend the Town of Smithfield Unified Development Ordinance, Article 5-2 (B), to reflect statutory changes to approval criteria for variances granted by the Town of Smithfield Board of Adjustment.

All interested persons are encouraged to attend. To accommodate disabilities and to comply with ADA regulations, please contact the town office if you need assistance. Further inquiries regarding this matter may be directed to the Smithfield Planning Department at (919) 934-2116 or online at www.smithfield-nc.com.

Run "Legal Ad" in the Smithfield Herald on 3/19/14 and 3/26/14