

TOWN OF SMITHFIELD PLANNING BOARD AGENDA PACKET



Chairman: Eddie Foy

Vice-Chairman: Stephen Upton

Members:

Mark Lane	Gerald Joyner (Alt.)
Jack Matthews	Daniel Sanders
Ashley Spain	Teresa Daughtry

Paul Embler, Planning Director
Mark Helmer, Senior Planner
Veronica Hardaway, Administrative Assistant

Meeting Date: *Thursday, October 6, 2016*
Meeting Time: *6:00 p.m.*
Meeting Place: *Council Chambers, Smithfield Town Hall*

**AGENDA
PLANNING BOARD
REGULAR MEETING
OCTOBER 6, 2016
MEETING TIME: 6:00 PM
TOWN HALL**

Call to Order.

Identify voting members

Approval of the minutes for September 1, 2016

Public Hearings

RZ-16-03 John A Whitley: The applicant is requesting to rezone one tract of land totaling approximately .11 acres from the R-8 (Residential) zoning district to the B-3 (Business) zoning district. The property considered for rezoning classification is located on the northeast side on the intersection of South Third Street and Woodall Street. The property is further identified as Johnston County Tax ID# 15030016

CUP-16-10 Victor Hugo Garcia Rizo: The applicant is requesting a conditional use permit to allow for a residential use within a B-3 (Business) zoning district. The property considered for a conditional use permit is located on the southwest side of West Market Street approximately 190 feet southeast of its intersection with Park Avenue. The property is further identified as Johnston County Tax ID# 15077025.

Old Business

New Business

Nomination of Chairman

Nomination of Vice Chairman

Adjournment

DRAFT
Smithfield Planning Board Minutes
Thursday, September 1, 2016
6:00 P.M., Town Hall, Council Room

Members Present:

Vice-Chairman Stephen Upton
Teresa Daughtry
Daniel Sanders
Gerald Joyner
Jack Matthews
Ashley Spain

Members Absent:

Eddie Foy
Mark Lane

Staff Present:

Paul Embler, Planning Director
Shannan Williams, Town Clerk

Staff Absent:

Mark Helmer, Senior Planner
Veronica Hardaway, Admin

CALL TO ORDER

APPROVAL OF MINUTES FROM AUGUST 1, 2016.

Daniel Sanders made a motion, seconded by Ashley Spain to approve the minutes as written. Unanimous.

Stephen Upton made a motion, seconded by Jack Matthews to move nomination and vote of a new chairman to the October meeting.

Public Hearings:

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

CUP-16-07 Jorge Cuevas:

Mr. Embler stated the applicant is requesting a conditional use permit to construct and operate a storage building sales lot on property located within a B-3 (Business) zoning district. The property considered for approval is located on the south side of NC HWY 210 approximately 490 feet west of its intersection with West Market Street and further identified as Johnston County Tax ID# 15076019.

Mr. Embler stated 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 applicant is requesting a conditional use permit to construct and operate a sales lot for the retail sales of storage sheds, barns, playhouses, garages, greenhouses, gazebos, and other small buildings. The applicant has submitted a site plan indicating a single point of access from NC Highway 210. A paved parking lot with 17 parking spaces is proposed as well as a 20' x 20' block building. Other improvements to the site include a standard ADA accessible sidewalk adjacent to the public right-of-way of NC Highway 210, a standard 15' planted street yard and

planted transition yard between the proposed and existing commercial uses. A storm water retention pond is not required at this time and parking lot lighting is not proposed at this time.

Mr. Embler stated there is a fifty foot building setback along this portion of the NC Highway 210 corridor and is identified on the plan. The applicant is informed that storage buildings and other items for sale shall not be permitted between the building setback line and the right-of-way of NC Highway 210 or in any designated parking area. The applicant is requesting a conditional use permit to allow for retail sales only and no manufacturing will be conducted on the property. The proposed retail establishment is consistent with the recommendations of the Comprehensive Growth Management Plan which calls for commercial uses near the intersection of NC Highway 210 and West Market Street. Retail sales are a permitted use within the B-3 (Highway Entrance Business) zoning district with a valid conditional use permit. The applicant has submitted a site plan showing all required site improvements to include paved parking and landscaping. Construction and final site inspections will be required prior to issuance of a valid zoning permit and conducting of business at this location.

Mr. Embler stated retail sales of storage buildings at this location should not pose a compatibility issue with surrounding land uses to include Farrell Gas and Landmark Auto providing that buildings for sale do not encroach into the 50 feet building setback along NC Highway 210 and street yard landscaping is installed and maintained in accordance with the Town of Smithfield Unified Development Ordinance. Signs shall be permitted in accordance with the Town of Smithfield UDO which will allow one free standing ground sign and one wall sign mounted on the building. Town of Smithfield will provide fire protection as well as water/sewer. Duke Progress Energy will provide electric.

The Planning Department recommends approval of the proposed building sales lot with the following conditions of approval:

- 1. Storage buildings and all other items for display and sale are to be no closer than 50 feet from the public right-of-way of NC Highway 210.**
- 2. Storage buildings and all other items for display and sale shall not be placed in the parking lot.**
- 3. No manufacturing or construction of items for display and sale shall occur on the site.**

The Planning Board is requested to review the petition for a storage building sales lot on property located within the B-3 (Highway Entrance Business) corridor and make a recommendation to Town Council in accordance with the finding of fact for a conditional use permit.

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

Teresa Daughtry asked if there was a proposed sidewalk.

Mr. Embler stated sidewalks are the responsibility of the current land owner.

Daniel Sanders asked if the driveway will be paved.

Mr. Embler stated that it would.

Daniel Sanders asked how many units are allowed on the lot.

Mr. Embler stated a limit has not been set.

Daniel Sanders asked if there should be a widening of Highway 210.

Mr. Embler stated no, that's why the setback is 50 feet.

Being no further questions, Mr. Upton closed the public meeting for CUP-16-07.

Teresa Daughtry made a motion, seconded by Ashley Spain, 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 reason or conclusions reached in support of the motion.

- 1. Based on the 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 storage building sales lot at this location will not materially endanger the public where shown because the site has adequate parking available and layout of the site facilitates safe movement of automobiles and pedestrian traffic with little additional congestion.

- 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 proposed storage building sales lot at this location conforms to standards and practices of sound land use planning and the Town of Smithfield Unified Development Ordinances providing the applicant submits a detailed site plan for planning staff approval that shows required landscaping and paved parking prior to issuance of site plan approval and issuance of a valid zoning permit for an automobile sales lot.

3. ***Based on the 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 proposed storage building sales lot at this location 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 providing that the storage building and other items for display and sale are located on the property in a safe and orderly manner and that no manufacturing and construction of storage buildings and accessories occur on the site.

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 proposed storage building sales lot at this location will not adversely affect the adopted plans and policies of the Town of Smithfield, or violate the character of existing standards for development proving all minimum development standards are met to include parking, landscaping, and building setbacks.

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

Teresa Daughtry made a motion, seconded by Ashley Spain to construct and operate a storage building sales lot on property located within a B-3 (Business) zoning district.

CUP-16-08 Brent Wiggs:

Mr. Emblar stated the applicant is requesting a conditional use permit to operate a commercial dog kennel on property located within an R-20A (Residential-Agricultural) zoning district. The property considered for approval is located on the south side of Little Creek Church Road approximately 1,400 feet east of its intersection with Rock Pillar Road. The property is further identified as Johnston County Tax ID# 15J08009A.

Mr. Emblar stated the proposed use is an expansion of an existing commercial dog kennel with outdoor runs. 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 applicant is requesting a conditional use permit to expand an existing commercial dog kennel on a 5.89 acre parcel of land located within an R-20A zoning district. The applicant has submitted a site plan indicating a 1,800 square foot commercial kennel building behind an

existing single family dwelling. The site plan indicating the location of the kennel structure was approved by staff with the condition that a valid conditional use permit is issued by the Smithfield Town Council prior to occupying the structure. Since site plan approval was granted, Johnston County Building Inspections has inspected the facility and has identified structural issues that must be corrected prior to issuance of a certificate of occupancy. The applicant has hired Wayne R. Dashfield, P.E. which has certified to the necessary corrections needed in order to satisfy the commercial building code.

Mr. Emblar stated the building as constructed meets the building setbacks of the R-20A zoning district and adequate parking exists on the site. The expansion of the existing dog kennel should not pose compatibility issues with the surrounding land uses given the rural setting of the area. The next closest single family dwelling is approximately 370 feet to the north. If a conditional use permit is issued, the applicant can moved towards securing a certificate of occupancy and begin commercial operations in the new building. The proposed expansion on an existing commercial dog kennel can be considered consistent with the recommendations of the Comprehensive Growth Management Plan which calls low density residential development and agricultural endeavors near the intersection of Little Creek Church Road and NC 70 Business Highway West.

Mr. Emblar stated commercial dog kennels or expansions of an existing commercial dog kennels are a permitted use within the R-20A (Residential-Agricultural) zoning district with a valid conditional use permit. The applicant has submitted a site plan showing all required site improvements. Final site inspections will be required prior to issuance of a valid zoning permit and conducting of business at this location. A commercial dog kennel at this location should not pose compatibility issues with the surrounding land uses given the rural nature of the area. The closest neighboring residential home is approximately 370 feet to the north and on the other side of Little Creek Church Road.

Mr. Emblar stated signs shall be permitted in accordance with the Town of Smithfield Unified Development Ordinance which will allow one free standing ground sign and one wall sign mounted on the building. Fire protection will be provided by Wilson's Mills, water/sewer will be provided by Johnston County, and electric will be provided by Duke Progress Energy.

The Planning Department recommends approval of the proposed expansion of an existing commercial dog kennel with the following conditions of approval:

1. That all dog kennel structures meet current building and fire codes prior to occupying the facility.

The Planning Board is requested to review the petition for an expansion to an existing commercial dog kennel on property located within an R-20A (Residential-Agricultural) zoning district and make a recommendation to Town Council in accordance with the finding of fact for a conditional use permit.

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

Daniel Sanders asked if there are any surrounding neighbors.

Mr. Embler stated the closest neighbor is approximately 370 feet away.

Robert Moore, 440 Little Creek Church Road, stated he is the neighbor to the proposed site and approves how the kennel is presently running.

Daniel Sanders asked what the maximum height is for fencing.

Brent Wiggs, 445 Little Creek Church Road, stated he is the owner of the kennels. He stated he has been in this business for approximately 7 years. He stated the fence height is 5 feet.

Gerald Joyner asked how many dogs can be kept at one time.

Brent Wiggs stated he has roughly 14 dogs at one time, but the kennels can house up to 22 dogs.

Being no further questions, Mr. Upton closed the public meeting for CUP-16-08.

Jack Matthews made a motion, seconded by Ashley Spain, 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 reason or conclusions reached in support of the motion.

- 1. Based on the 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 expansion of the existing commercial dog kennel at this location will not materially endanger the public where shown because the site has adequate parking available and layout of the site facilitates safe movement of automobiles and pedestrian traffic with little additional congestion.

- 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 proposed expansion of the existing commercial dog kennel at this location conforms to standards and practices of sound land use planning and the Town of Smithfield

Unified Development Ordinances. Commercial dog kennels are a permitted use within the R-20A with no additional supplemental standards required by the current UDO.

3. ***Based on the 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 proposed expansion of the existing commercial dog kennel at this location 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. The adjacent land uses include agricultural and woodlands. The nearest neighbor is approximately 380 feet to the north of the proposed commercial dog kennel.

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 proposed expansion of the existing commercial dog kennel at this location will not adversely affect the adopted plans and policies of the Town of Smithfield, or violate the character of existing standards for development proving all minimum development standards are met to include building setbacks.

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

Jack Matthews made a motion, seconded by Ashley Spain to expand an existing commercial dog kennel on property located within an R-20A (Residential-Agricultural) zoning district.

RZ-16-02 Genesis Living Inc.:

Mr. Embler stated the applicant is requesting to rezone one tract of land totaling approximately 9.45 acres from the R-8 CUD (Residential-Conditional Use) zoning district to the R-8 (Residential) and RHO (Row House Overlay) zoning districts. The property considered for rezoning classification is located on the southwest side of Barbour Road approximately 780 feet northeast of its intersection with Laurel Drive. The property is further identified as Johnston County Tax ID# 4340665.

Mr. Embler stated there are no known sensitive areas to include wetlands and 100 year floodplain. The property is not located within the watershed protected area of the Town of Smithfield. The property considered for rezoning is a partially constructed duplex subdivision with 25 lots (50 dwelling units). The property was originally zoned R-20A and was rezoned to

the current R-8 CUD for the purpose of developing the duplex subdivision. A preliminary plat and an engineering plat were submitted and approved by the Town of Smithfield in 2001. The utilities and the roads were permitted and then partially constructed but never accepted by the State or the Town. The property although partially developed is listed on the tax books as undeveloped residential land. Adjacent property to the north, south and west is primarily agricultural land with a mix of typical rural residential housing on individual lots ranging in size from less than an acre to approximately 50 acres. To the east is Britthaven rest home located on approximately 6 acres of land.

Mr. Embler stated the proposed rezoning to the R-8 (Residential) with RHO (Overlay) zoning district is consistent with the Strategic Growth Plan which recommends the property be zoned for medium density residential development. The rezoning will be consistent with the Town of Smithfield Unified Development Ordinance provided that all proposed future land uses and developments are constructed in accordance with minimum development standards. The property considered for a rezoning is located on land presently zoned R-8 CUD district. The existing approved subdivision for the property permitted for 25 duplex lots allowing for 50 living units on the property. The proposed zoning change to R-8 RHO district should allow for a similar density of development. Therefore there should not be any appreciable difference in compatibility with the adjacent land uses.

Mr. Embler stated there will be potential for impact on the schools but no more than the presently approved subdivision. There will be impacts on parks and recreational facilities but will be mitigated when developed by construction of on-site recreational facilities or paying fee in lieu of recreation facilities in accordance with the UDO. Fire protection will be provided by Wilson's Mills, water and sewer allocation will be provided by Town of Smithfield, and electric will be provided by Duke Progress Energy.

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

The Planning Department recommends approval of the request to rezone approximately 9.45 acres of land from the R-8 CUD (Residential-Conditional Use District) zoning district to the R-8 RHO (Residential with Row House Overlay) zoning district.

The Planning Board is requested to review the petition and make a recommendation to Town Council in accordance with the approval criteria for the rezoning of approximately 9.45 acres of land from the R-8 CUD (Residential-Conditional Use) zoning district to the R-8 RHO (Residential with Row House Overlay) zoning district.

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

Daniel Sanders asked if there are any wetlands located on this property.

Mr. Embler stated there are no wetlands on this particular tract of land.

Being no further questions, Mr. Upton closed the public meeting for RZ-16-02.

Ashley Spain made a motion, seconded by Jack Matthews, to move to the Finding of Fact.

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.

The Planning Board has the responsibility to make a recommendation to the Council for either approval or denial of the rezoning request. The Council has the responsibility to determine if the zoning map amendment is warranted. 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 proposed rezoning petition is for a “redevelopment” project. The streets and utility infrastructure was previously constructed as Boyette Farm Subdivision. The rezoning petition is a request to include “Row House” as an overlay district. This request meets all applicable plans and policies of the Town of Smithfield.

The rezoning request to change the existing residential zoning with a conditional use district to a residential zoning with a row house overlay zoning district is consistent with the recommendations of the Future Land Use Plan which calls for moderate density residential uses.

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

The rezoning will allow for single family housing which is similar to and compatible with development patterns in the surrounding area.

The rezoning petition is compatible with established neighborhood patterns of the surrounding area. This area contains some of the most developable residential properties located within the Town of Smithfield city limits due to prior medium density residential development on nearby properties.

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

The rezoning will result in a product that meets the current market demand in this area.

The rezoning request from the R-8 CUD residential business zoning districts to an R-8 RHO zoning district is consistent with historical trends suggesting that residential development will continue to occur along Barbour Road to the west.

4. *The rezoning request is in the community interest*

The rezoning will result in a product that meets the current market demand in this area.

The rezoning will allow for a wider range of residential uses and provide additional area for expansion of Smithfield's residential base. Any development that will occur from the rezoning will increase the tax base as an additional benefit.

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

The rezoning is compatible with adjacent zoning and uses.

It is unlikely an argument could be made for "spot zoning" or "small scale" since the rezoning will be expanding on an already existing R-8 zoning.

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

As evidenced by the abandoned project, the market conditions have changed. The rezoning will allow for a use that meets current market demands.

The property is currently zoned for residential uses. The existing zoning on the property is specific for duplex housing. The new zoning will allow for single family residential development thus expanding the opportunities for development.

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

The current public services available are suitable for this rezoning.

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

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

The streets and utility infrastructure has been constructed. The rezoning will allow for a feasible development strategy.

There are no physical restraints to the area considered for rezoning such as wetlands, stream buffers, potential flood hazard areas and storm water that would outright

prohibit development of the property. There is no limiting geological and hydrological formation that would prohibit development (rock outcrops, lakes, etc.).

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

Ashley Spain made a motion, seconded by Jack Matthews to recommend approval of the rezoning of approximately 9.45 acres of land from the R-8 (Residential) and RHO (Row House Overlay) zoning district. (Unanimous)

CUP-16-09 Genesis Living Inc.:

Mr. Embler stated the applicant is requesting a conditional use permit to construct a 45 unit Row House subdivision development on approximately 9.45 acre tract of land located within an R-8 (Residential) and RHO (Row House Overlay) zoning districts. The property considered for a conditional use permit is located on the southwest side of Barbour Road approximately 780 feet northeast of its intersection with Laurel Drive. The property is further identified as Johnston County Tax ID# 4340665.

Mr. Embler stated there are no known environmentally sensitive areas to include wetlands and 100 year floodplain. The property is not located within the watershed protected area of the Town of Smithfield. The property considered is a partially constructed duplex subdivision with 25 lots (50 dwelling units). The property was originally zoned R-20A and was rezoned to the current R-8 CUD for the purpose of developing the duplex subdivision. A preliminary plat and an engineering plat were submitted and approved by the Town of Smithfield in 2001. The utilities and the roads were permitted and then partially constructed but never accepted by the State or the Town. The property although partially developed is listed in the tax books as undeveloped residential land. Adjacent property to the north, south, and west is primarily agricultural land with a mix of typical rural residential housing on individual lots ranging in size from less than an acre to approximately 50 acres. To the east is Britthaven rest home located on approximately 6 acres of land.

Mr. Embler stated the proposed conditional use permit is consistent with the Strategic Growth Plan which recommends the property be zoned for medium density residential development. The conditional use permit will be consistent with the Town of Smithfield Unified Development Ordinance provided that all proposed future land uses and developments are constructed in accordance with minimum development standards. The property considered for a conditional use permit is located on land presently zoned R-8 CUD district. The existing approved subdivision for the property is permitted for 25 duplex lots allowing for 50 living units on the property. The proposed zoning change to R-8 RHO district should allow for a similar density of development. Therefore there should not be any appreciable difference in compatibility with the adjacent land uses. The Town of Wilsons Mills will provide fire protection, the Town of Smithfield will provide water/sewer services, and Duke Energy will provide electric.

Mr. Embler stated there is a potential impact on the schools but no more than the presently approved subdivision. There will be impacts on parks and recreational facilities but will be mitigated when developed by construction of on-site recreational facilities or paying fees in lieu of recreation facilities in accordance with the UDO.

The Planning Department recommends approval of the request to establish a Row House Overlay (RHO) on the property with consideration given to the conditions requested by the developer.

The Planning Board is requested to review the petition and make a recommendation to Town Council in accordance with the approval criteria for the establishment of a Row House Overlay in accordance with the submitted plan and with the conditions requested by the developer.

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

Berry Barbour, 661 Barbour Road, stated his concern was the 2 acres that may be wetlands.

Being no further questions, Mr. Upton closed the public meeting for CUP-16-09.

Stephen Upton made a motion, seconded by Ashley Spain, 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 reason or conclusions reached in support of the motion.

- 1. Based on the 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 request for conditional use will not endanger the public health, safety, or general welfare for the reason that the 44 lot RHO subdivision will have less impact than the currently approved 25 lot 50 unit duplex subdivision.

- 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 proposed use will meet all required conditions and specifications in accordance with the current Unified Development Ordinance plus state and federal regulations once a variance is obtained to decrease the side yard setback from 6 feet to 5 feet.

3. ***Based on the 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 proposed use will not adversely affect the use or any physical attribute of adjoining or abutting property. The RHO subdivision is a single family residential subdivision which is more in keeping with adjacent developments than the previously approved duplex subdivision.

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 proposed RHO subdivision does not adversely affect the adopted plans and policies of the Town of Smithfield because the development is in compliance with the Comprehensive Land Use Plan and the Unified Development Ordinance.

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

Stephen Upton made a motion, seconded by Ashley Spain to recommend approval of the conditional use permit allowing for a Row House Overlay for a 44 lot single family development. (Unanimous)

Old Business:

New Business:

Daniel Sanders made a motion to adjourn, seconded by Teresa Daughtry. Unanimous.

Submitted this 1st day of September, 2016.

Veronica Hardaway
Administrative Support Specialist
Planning Department



Town of Smithfield
Planning Department
350 East Market Street
P.O. Box 761
Smithfield, NC 27577
Phone: 919-934-2116
Fax: 919-934-1134

STAFF REPORT

Application Number: CUP-16-10
Project Name: Victor Hugo Garcia Rizo
TAX ID number: 15030016
Town Limits/ETJ: City
Applicant: Victor Hugo Garcia Rizo
Owners: Victor Hugo Garcia Rizo
Agents: none
Neighborhood Meeting: none

PROJECT LOCATION: Southwest side of West Market Street approximately 190 feet southeast of its intersection with Park Avenue.

REQUEST: The applicant is requesting a conditional use permit to allow for a residential use within a B-3 (Business) zoning district.

SITE DATA:

Acreage: .292 acres
Present Zoning: B-3 (Business)
Proposed Zoning: N/A
Existing Use / Previous: vacant / vacuum cleaner sales

DEVELOPMENT DATA: The property is a small .292 acre tract of land with an existing single family dwelling which has been converted to accommodate commercial uses. However, no parking lot was ever constructed. A large accessory building is located in the rear of the principle structure. A horse shoe shaped driveway provides access to West Market Street. The property is adjacent to Heidi's Two Wheel Café to the Northwest and a single family dwelling to the southeast.

Proposed Use: Single Family Residential

ENVIRONMENTAL: 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.

ADJACENT ZONING AND LAND USES:

Northeast:	Zoning:	B-3 (Business)
	Existing Use:	Realty Office / Fuel station
Northwest:	Zoning:	B-3 (Business)
	Existing Use:	Restaurant / Heidi's Two Wheel Café
Southeast:	Zoning:	B-3 (Business)
	Existing Use:	Residential
Southwest:	Zoning:	R-20A (Residential- Agricultural)
	Existing Use:	Vacant / Wood Land

STAFF ANALYSIS AND COMMENTARY:

The property considered for approval contains a single family dwelling that has been converted to commercial to capitalize on the existing B-3 (Business) zoning district. Several commercial uses have cycled through the property over the last 10 years. The property has now been vacant for several years and has recently been marketed for residential. The property has now sold and the new owner is requested the property be permitted for residential purposes. The Town of Smithfield Unified Development Ordinance allows for residential uses within the B-3 (Business) zoning district with a valid conditional use permit which must be recommended by the Planning Board and approved by Town Council.

- **Consistency with the Strategic Growth Plan**

The proposed residential dwelling is not consistent with the recommendations of the Comprehensive Growth Management Plan which calls for commercial uses near the intersection of West Market Street and Park Avenue.

- **Consistency with the Unified Development Code**

Residential land uses are permitted uses within B-3 (Business) zoning district with a valid conditional use permit. Adequate parking exists for a single family dwelling and no other site improvements are requested at this time.

- **Compatibility with Surrounding Land Uses**

A residential use at this location should not pose a compatibility issue with surrounding land uses.

- **Signs**

The proposed residential use at this location will not qualify for a sign.

OTHER:

FIRE PROTECTION: Town of Smithfield

SCHOOL IMPACTS: NA

PARKS AND RECREATION: NA

ACCESS/STREETS: West Market Street

WATER/SEWER PROVIDER: Town of Smithfield

ELECTRIC PROVIDER: Duke Progress Energy

Planning Department Recommendations:

The Planning Department recommends approval of the request for a conditional use permit to allow for a residential use on property located within a B-3 (Business) zoning district.

Planning Board Recommendations:

The Planning Board is requested to review the petition for a residential use within a B-3 zoning district and make a recommendation to Town Council in accordance with the finding of fact for a conditional use permit.

Town of Smithfield
Conditional Use Permit Application
Finding of Fact / Approval Criteria

Application Number: CUP-16-10 **Name:** Victor Hugo Garcia Rizo

Request: Applicant seeks a CUP for residential land use in a B-3 zoning districts.

The Smithfield 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. Finding One of Four:

Circle One

A. Approval:

Based on the 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 residential land use at this location will not materially endanger the public were shown because:

B. Denial: (If denied, must include facts supporting denial)

Based on the evidence and testimony presented it is the finding of the **Planning Board** that the application, if approved, will materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved for the following stated reasons: (Applicant fails to meet the criteria for approval.)

The proposed residential land use at this location may endanger the public were shown if:

Finding Two of Four:

Circle One

A. Approval:

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 proposed residential land use at this location conforms to standards and practices of sound land use planning and the Town of Smithfield Unified Development Ordinances because:

B. Denial: (If denied, must include facts supporting denial)

Based on the evidence and testimony presented it is the finding of the **Planning Board** that the application, fails to meet all required specifications or fails to conform to the standards and practices of sound land use planning and the Town of Smithfield Unified Development Ordinance or other applicable regulations in the following ways or for the following reasons:

The proposed residential land use at this location does not conform to standards and practices of sound land use planning and the Town of Smithfield Unified Development Ordinances because:

3. Finding Three of Four:

CUP-16-10

A. Approval:

Based on the 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 proposed residential land use at this location 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 because:

B. Denial: (If denied, must include facts supporting denial)

Based on the evidence and testimony presented it is the finding of the **Planning Board** that the application, if approved, will substantially injure the value of adjoining or abutting property and/or will be detrimental to the use or development of adjacent properties or other neighborhood uses in the following ways or for the following reasons.

The proposed residential land use at this location may be detrimental to the adjacent land uses because:

4. Finding Four of Four:

Circle One

A. Approval:

Based on the 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 proposed residential land use at this location will not adversely affect the adopted plans and policies of the Town of Smithfield, or violate the character of existing standards for development because:

B. Denial: (If denied, must include facts supporting denial)

Based on the evidence and testimony presented it is the finding of the **Planning Board** that the application, if approved, would 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 in the following ways or for the following stated reasons: (Applicant fails to meet the criteria necessary for approval.)

The proposed residential land use lot at this location will adversely affect the adopted plans and policies of the Town of Smithfield, and violate the character of existing standards for development because:

4. Once all findings have been decided one of the two following motions must be made:

Motion to Approve: *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 I move to recommend approval of Conditional Use Permit Application # CUP-16-10*

Motion to Deny: *Based upon failure to meet all of the above four stated findings and for reasons stated therein, I move to recommend denial of Conditional Use Permit Application # CUP-16-10 for the following stated reason:*

5. Record of Decision:

Based on a motion and majority vote of the Town of Smithfield Planning Board Conditional Use Permit Application Number CUP-16-10 is hereby:

_____ recommended for approval upon acceptance and conformity with the following conditions; or,

_____ recommended for denial for the noted reasons.

Decision made this ____ day of _____, 20__ while in regular session.

Eddie Foy, Planning Board Chairman

ATTEST:

Mark E. Helmer, AICP, CZO
Senior Planner



Town of Smithfield
 Planning Department
 350 E. Market St Smithfield, NC 27577
 P.O. Box 761, Smithfield, NC 27577
 Phone: 919-934-2116
 Fax: 919-934-1134

CONDITIONAL USE PERMIT APPLICATION

Pursuant to Article 13, of the Town of Smithfield Unified Development Ordinance, an owner of land within the jurisdiction of the Town (or a duly authorized agent) may petition the Town Council to allow a Conditional Use. Conditional Uses are uses that may be appropriate in a particular district, but has the potential to create incompatibilities with adjacent uses.

Conditional Use Permit applications must be accompanied by nine (9) sets of the application, nine (9) sets of required plans, an Owner's Consent Form (attached) and the application fee. The application fee is \$300.00. All fees are due when the application is submitted.

SITE INFORMATION:

Name of Project: _____ Acreage of Property: 0.290

Parcel ID Number: 4353488 Tax ID: 15077025

Deed Book: 3534 Deed Page(s): 0647

Address: 1441 W. market st. smithfield NC 27577

Location: southeast side of the west Market street approximately 186 feet southeast of its intersection with park Ave.

Existing Use: Beauty Salon Proposed Use: RESIDENCE

Existing Zoning District: B-3

Requested Zoning District B-3

Is project within a Planned Development: Yes No

Planned Development District (if applicable): _____

Is project within an Overlay District: Yes No

Overlay District (if applicable): _____

FOR OFFICE USE ONLY

File Number: <u>CUP-16-10</u>	Date Received: _____	Amount Paid: _____
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OWNER INFORMATION:

Name: Victor Hugo Garcia Rizo
Mailing Address: 1441 W. Market St. Smithfield NC 27577
Phone Number: 919 634 5596 Fax: _____
Email Address: VHGR5596@gmail.com

APPLICANT INFORMATION:

Applicant: Victor Hugo Garcia Rizo
Mailing Address: 1441 W. Market St. Smithfield NC 27577
Phone Number: 919 634 5596 Fax: _____
Contact Person: Victor Hugo GARCIA RIZO
Email Address: VHGR5596@gmail.com

REQUIRED PLANS AND SUPPLEMENTAL INFORMATION

The following items must accompany a Conditional Use Permit application. This information is required to be present on all plans, except where otherwise noted:

- All required plans (please see the plan requirements checklist).
- A signed and sealed traffic impact analysis.
- Verification of wastewater allocation (granted or requested).
- Driveway permits (Town of Smithfield or NCDOT encroachment with associated documentation).
- Other applicable documentation: _____

STATEMENT OF JUSTIFICATION

Please provide detailed information concerning all requests. Attach additional sheets if necessary.

No impact on traffic due to conversion to residential

No impact on wastewater because becoming a single family residence would result in a lower waste load than commercial use

DRIVEWAYS HAVE BEEN ESTABLISHED FOR MANY YEARS and will not be altered

REQUIRED FINDINGS OF FACT

Article 13, Section 13-17 of the Town of Smithfield Unified Development Ordinance requires applications for a Conditional Use Permit to address the following findings. The burden of proof is on the applicant and failure to adequately address the findings may result in denial of the application. Please attach additional pages if necessary.

- 1. That the use will not materially endanger the public health, safety, or general welfare if located where proposed and developed according to the plan as submitted and approved;

This is a request to approve 1441 W Market St. Smithfield as Residential

- 2. That the use meets all required conditions and specifications;

For a single family home

- 3. That the use will not adversely affect the use or any physical attribute of adjoining or abutting property, or that the use is a public necessity; and

improve the usage of this property for residential use.

- 4. That the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located. The conditional use shall demonstrate conformance to the Land Use Plan or other plan in effect at the time and address impacts of the project as required by GS 160A-382(b).

no impact on this or adjacent properties can be anticipated

APPLICANT AFFIDAVIT

I/We, the undersigned, do hereby make application and petition to the Town Council of the Town of Smithfield to approve the subject Conditional Use Permit. I hereby certify that I have full legal right to request such action and that the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related material and all attachments become official records of the Planning Department of the Town of Smithfield, North Carolina, and will not be returned.

Print Name

Signature of Applicant

Date



Town of Smithfield
 Planning Department
 350 E. Market St Smithfield, NC 27577
 P.O. Box 761, Smithfield, NC 27577
 Phone: 919-934-2116
 Fax: 919-934-1134

OWNER'S CONSENT FORM

Name of Project: _____ Submittal Date: _____

OWNERS AUTHORIZATION

I hereby give CONSENT to _____ (type, stamp or print clearly full name of agent) to act on my behalf, to submit or have submitted this application and all required material and documents, and to attend and represent me at all meetings and public hearings pertaining to the application(s) indicated above. Furthermore, I hereby give consent to the party designated above to agree to all terms and conditions which may arise as part of the approval of this application.

I hereby certify I have full knowledge the property I have an ownership interest in the subject of this application. I understand that any false, inaccurate or incomplete information provided by me or my agent will result in the denial, revocation or administrative withdrawal of this application, request, approval or permits. I acknowledge that additional information may be required to process this application. I further consent to the Town of Smithfield to publish, copy or reproduce any copyrighted document submitted as a part of this application for any third party. I further agree to all terms and conditions, which may be imposed as part of the approval of this application.

Signature of Owner *Print Name* *Date*

CERTIFICATION OF APPLICANT AND/OR PROPERTY OWNER

I hereby certify the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related material and all attachments become official records of the Planning Department of the Town of Smithfield, North Carolina, and will not be returned.

Signature of Owner/Applicant *Print Name* *Date*

FOR OFFICE USE ONLY

File Number:	Date Received:	Parcel ID Number:
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1400 Block of West Market Street



Project Name:
Residential Land Use
in a B-3 Zoning District

Proposed Use:
SFD-Residential

File Number:
CUP-16-10

Owner:
Victor Rizo

Applicant:
Victor Rizo

Location:
West Market Street

Tax ID#
15008046C

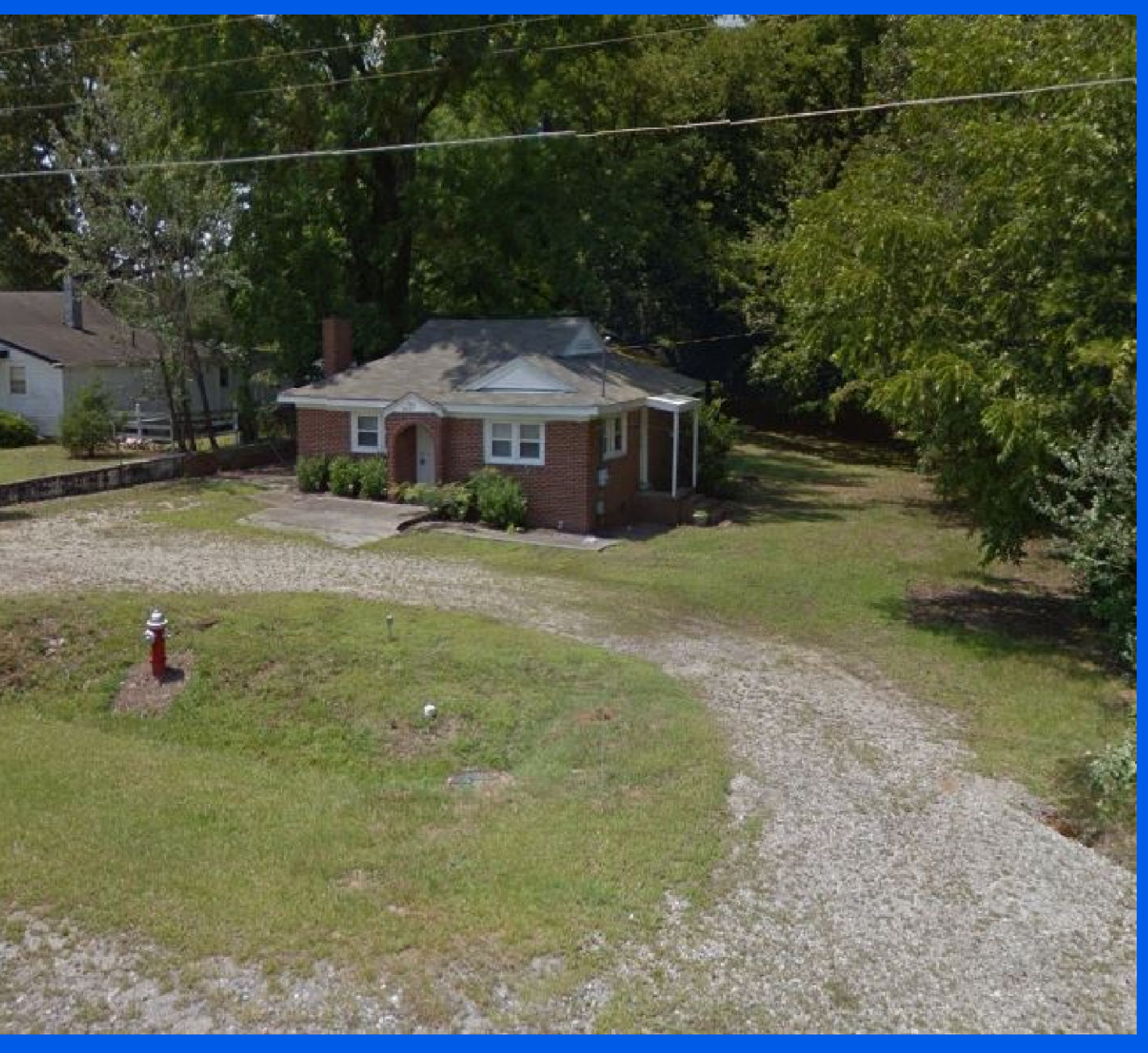
Zoning District:
B-3

Map created by the
Mark E. Helmer, AICP
Senior Planner,
GIS Specialist
on 9/29/2016

1 inch = 50 feet
0 25 50 100 150 Feet



Location of Residential Land Use in a B-3 Zoning District



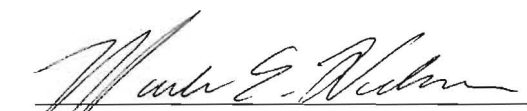


PLANNING DEPARTMENT

Paul C. Embler, Jr., Director

ADJOINING PROPERTY OWNERS CERTIFICATION

I, Mark E. Helmer, hereby certify that the property owner and adjacent property owners of the following petition, CUP-16-10, were notified by First Class Mail on 9-23-16.



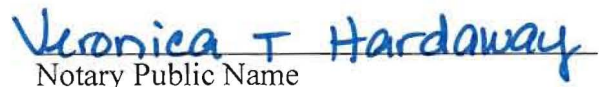
Signature
Johnston County, North Carolina

I, Veronica Hardaway, Notary Public for Johnston County and State of North Carolina do hereby certify that Mark E. Helmer personally appeared before me on this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal, this the

23rd day of September, 2016

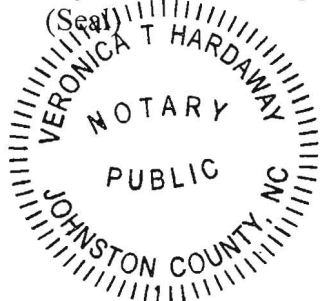


Notary Public Signature



Notary Public Name

My Commission expires on 1-14-18



Adjacent Property Owners of
CUP-16-10

TAG	PIN	NAME1	ADDRESS1	CITY	STATE	ZIPCODE
15077024D	168408-87-5927	MARTZ, JOEL RAY	1429 W MARKET ST	SMITHFIELD	NC	27577-0000
15077028I	168412-87-3058	WELLONS INC	P O BOX 52328	DURHAM	NC	27717-2328
15077025	168408-88-4083	ITS THUNDERTIME LLC	501 TRYON RD	RALEIGH	NC	27603-3405
15077023B	168408-87-5835	SHERMAN, MICHAEL J	PO BOX 1322	FOUR OAKS	NC	27524-0000
15089011	168408-88-8180	SUBURBAN REAL ESTATE INC	P O BOX 759	SMITHFIELD	NC	27577-0000
15089018	168408-88-7348	RIGVED LLC	320 STANCIL STREET	SMITHFIELD	NC	27577-0000
15077028E	168408-88-4292	ROSE MANOR LLC	815 NEW BERN AVENUE	RALEIGH	NC	27601-0000



Town of Smithfield
Planning Department
350 East Market Street
P.O. Box 761
Smithfield, NC 27577
Phone: 919-934-2116
Fax: 919-934-1134

STAFF REPORT

Application Number: RZ-16-03
Project Name: John A Whitley
TAX ID number: 15030016
Town Limits / ETJ: Smithfield Corporate Limits
Applicant: John A. Whitley
Owners: John A. Whitley
Agents: none
Neighborhood Meeting: none

PROJECT LOCATION: Northeast side on the intersection of South Third Street and Woodall Street.

REQUEST: Rezone one tract of land totaling approximately .11 acres from the R-8 (Residential) zoning district to the OI (Office-Institutional) zoning district

SITE DATA:

Acreage: .11 acres
Present Zoning: R-8 (Residential)
Proposed Zoning: OI (Office - Institutional)
Existing Use: Single family dwelling
Proposed Use: Office uses

DEVELOPMENT DATA:

Proposed Use: N/A - All uses permitted within the OI (Office-Institutional) zoning district may be considered for future site plan approval and permitting.

ENVIRONMENTAL: There are no known environmentally sensitive areas to include wetlands and 100 year floodplain. The property is not located within the watershed protection area of the Town of Smithfield.

ADJACENT ZONING AND LAND USES:

North:	Zoning:	OI (Office-Institutional)
	Existing Use:	Office Use / A Travel Odyssey
South:	Zoning:	R-8 (Residential)
	Existing Use:	Single Family Dwelling
East:	Zoning:	R-8 (Residential)
	Existing Use:	Single Family Dwelling
West:	Zoning:	R-8 (Residential)
	Existing Use:	Single Family Dwelling

STAFF ANALYSIS AND COMMENTARY:

The property considered for rezoning is a .11 acre tract of land with an existing single-family dwelling that has approximately 55 feet of street frontage on South Third Street. The subject property has approximately 88 feet of street frontage on Woodall Street and can be used to access the properties on-site parking needs. The adjacent property to the south, east and west are currently zoned for residential uses. The adjacent property to the north was rezoned OI in 1990. Two other properties to include the property owned by Terra Dunn and First Presbyterian Church were rezoned to the OI zoning district in 2004 and 2007 respectively.

Consistency with the Strategic Growth Plan

The proposed rezoning to the OI (Office-Institutional) district is not consistent with the Strategic Growth Plan which identifies this property as being in a conservation overlay area due to its close proximity to Spring Branch.

- **Consistency with the Unified Development Code**

The rezoning will be consistent with the Town of Smithfield Unified Development Ordinance provided that all proposed future land uses and developments are constructed in accordance with minimum development standards.

- **Compatibility with Surrounding Land Uses**

The property considered for a rezoning is located on a busy portion of South Third Street and is adjacent to the Downtown Municipal Service District. Potential compatibility issues should be minimal given the probable uses of the OI district and size of the property and structure contained therein.

OTHER:

FIRE PROTECTION: The Town of Smithfield will provide fire protection.

SCHOOL IMPACTS: There will be no additional impacts on the school system

PARKS AND RECREATION: There will be no additional impacts on the parks and recreation system.

ACCESS/STREETS: Approximately 55 feet of road frontage along South Third Street and approximately 88 feet of road frontage on Woodall Street.

WATER/SEWER PROVIDER: Town of Smithfield water and sewer allocation.

ELECTRIC PROVIDER: Town of Smithfield

FINDINGS:

In connection with a legislative decision for a rezoning request, the Planning Board and the Town Council may consider certain approval criteria. Please refer to attached "Approval Criteria". Planning Staff generally accepts these findings as fact as part of a complete application submitted by the petitioner.

Planning Department Recommendations: The Planning Department recommends approval of the request to rezone approximately .11 acres of land from the R-8 (Residential) zoning district to the OI (Office-Institutional) zoning district

Planning Board Actions: The Planning Board is requested to review the petition and make a recommendation to Town Council in accordance with the approval criteria for the rezoning of approximately .11 acres of land from the R-8 (Residential) zoning district to the OI (Office – Institutional) zoning district

Town of Smithfield

Rezoning Permit Application

Approval Criteria

Application No. RZ-16-03 Name: John A. Whitley

Request: Zoning reclassification from R-8 (Residential) to OI (Office-Institutional) zoning district.

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.

The Council has the responsibility to determine if the zoning map amendment is warranted. The 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. Finding One of Eight:

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

Circle One

A. Agree

The rezoning request from the low density residential zoning district to a commercial zoning district is consistent with the recommendations of the Future Land Use Plan because...

B. Disagree

The rezoning request from the low density residential zoning district to a commercial zoning district is **NOT** consistent with the recommendations of the Future Land Use Plan because...

2. Finding Two of Eight

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

Circle One

A. Agree

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

B. Disagree

The rezoning petition is **NOT** compatible with established neighborhood patterns of the surrounding area because...

3. Finding Three of Eight

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

Circle One

A. Agree

The rezoning request from the low density residential to highway entrance business zoning districts is consistent with changing neighborhood conditions because...

B. Disagree

The rezoning request from the low density residential to highway entrance business zoning districts is **NOT** consistent with changing neighborhood conditions because...

4. Finding Four of Eight

...The rezoning request is in the community interest...

A. Agree

The rezoning request is in the community interest because...

B. Disagree

The rezoning request is **NOT** in the community interest because...

5. Finding Five of Eight

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

A. Agree

It is unlikely an argument could be made for "spot zoning" or "small scale" because...

B. Disagree

It is **likely** an argument could be made for "spot zoning" or "small scale" because...

6. Finding Six of Eight

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

A. Agree

Do present regulations deny or restrict the economic use of the property...

B. Disagree

Present regulations deny or restrict the economic use of the property because...

There are no considerations for residential development in the light industrial zoning district. Residential uses should be pursued in more depth prior to rezoning to light industrial.

7. Finding Seven of Eight

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

A. Agree

Is Water and sewer available at the site?

B Disagree

Water and Sewer not available at the site?

8. Finding Eight of Eight

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

A. Agree

There physical characteristics of the site prohibit development under present regulations?

B. Disagree

There physical characteristics of the site prohibit development under present regulations?

9. Once all findings have been decided one of the two following motions must be made.

Motion to Approve: Based upon satisfactory compliance with the above stated eight findings and fully contingent upon full incorporation of all statements entered into the record by the testimony of the applicant and applicant’s representative I move to approve the Rezoning Petition RZ-16-01.

Motion to Deny: Based upon the failure to adequately address all of the above stated eight findings and for the reasons stated therein, I move to deny the Rezoning Petition RZ-16-01.

10. Record of Decision:

Based on a motion and majority vote of the Town of Smithfield Planning Board, Rezoning Petition RZ-16-01 is hereby recommended for approval:

Check one

_____ **Approved for the following reasons:**

_____ **Denied for the following reasons:**

Decision made this _____ day of _____, 20____ while in regular session.

Mr. Eddie Foy, Planning Board Chairman

Attest:

Mark E. Helmer, AICP, CZO
Senior Planner



Town of Smithfield
 Planning Department
 350 E. Market St Smithfield, NC 27577
 P.O. Box 761, Smithfield, NC 27577
 Phone: 919-934-2116
 Fax: 919-934-1134

REZONING APPLICATION

Pursuant to Article 4, Section 4-1 of the Unified Development Ordinance, proposed amendments may be initiated by the Town Council, Planning Board, Board of Adjustment, members of the public, or by one or more interested parties. Rezoning applications must be accompanied by nine (9) sets of the application, nine (9) sets of required plans, an Owner's Consent Form (attached) and the application fee. The application fee is \$300.00 for a rezoning to a Standard District.

Name of Project: John A. Whitley, Attorney Acreage of Property: Fraction of acre
 Parcel ID Number: 15-0-30-016 Tax ID: 169418-119
 Deed Book: 4749 Deed Page(s): 529-530
 Address: 317 S. Third Street, Smithfield, NC 27577
 Location: 317 S. Third Street, Smithfield, NC 27577

Existing Use: Residential Proposed Use: Commercial
 Existing Zoning District: R-8
 Requested Zoning District: O&I
 Is project within a Planned Development: Yes No
 Planned Development District (if applicable): Not applicable
 Is project within an Overlay District: Yes No
 Overlay District (if applicable): Downtown Development Corporation

FOR OFFICE USE ONLY

File Number: RZ-16-03 Date Received: 9/2/16 Amount Paid: \$300.⁰⁰

OWNER INFORMATION:

Name: John A. Whitley and wife, Barbara B. Whitley
Mailing Address: 219 Johnston Street, Smithfield, NC 27577
Phone Number: (c) 919-210-6475 **Fax:** 919-934-5110
Email Address: jwhitleylaw@embarqmail.com

APPLICANT INFORMATION:

Applicant: John A. Whitley and wife, Barbara B. Whitley
Mailing Address: 219 Johnston Street, Smithfield, NC 27577
Phone Number: (c) 919-210-6475 **Fax:** 919-934-5110
Contact Person: John A. Whitley
Email Address: jwhitleylaw@embarqmail.com

REQUIRED PLANS AND SUPPLEMENTAL INFORMATION

The following items must accompany a Conditional Use Permit application. This information is required to be present on all plans, except where otherwise noted:

- A map with metes and bounds description of the property proposed for reclassification.
- A list of adjacent property owners.
- A statement of justification.
- Other applicable documentation: _____

STATEMENT OF JUSTIFICATION

Please provide detailed information concerning all requests. Attach additional sheets if necessary.
See attachment

REQUIRED FINDINGS OF FACT

Article 13, Section 13-17 of the Town of Smithfield Unified Development Ordinance requires applications for zoning map amendment to address the following findings. The burden of proof is on the applicant and failure to adequately address the findings may result in denial of the application. Please attach additional pages if necessary.

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

The physical structure will not be altered in any way but for a projected awning over the back door, signage beside the front door and/or signage within the private yard beside the sidewalk compatible with that of Travel Odyssey. Interior and exterior improvements promote the public health, safety and general welfare; vehicular access will not materially endanger the public health, safety, or general welfare in that sufficient public parking is available along and on either side of Third Street from Courthouse Square south to the subject property

- 2. *The zoning petition is compatible with established neighborhood patterns of the surrounding area:*

The subject property is the only property fronting on the eastern side of S. Third Street from Woodall Street north to Johnston Street which is not zoned commercial (O&I). Because the subject property corners on S. Third Street and Woodall Street, the roadways are man-made divides between home owners immediately across Third Street and Woodall Street. All properties fronting the western side of South Third Street south of Johnston Street to the creek are zoned commercial (O&I). The pattern of commercial properties in areas outlying the Courthouse area must grow to accomodate expansion warranted by the ever expanding County Government.

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

Reference is hereby made to the discussion in numbered paragraph 2 hereinabove for this applicant's response to this issue.

- 4. *The rezoning request is in the community interest:*

The renovation and restoration of the subject property certainly enhances the curb appeal of South Third Street and Woodall Street. Both of these roadways have enjoyed a substantial structural renaissance of most of the fixtures thereon but for the subject property formerly and just a few remaining properties. The impetus to well maintain a commercial property - I submit - is much greater than that to well maintain a tenement. Bordering on an area of residential repose, I can assure you that this general legal practitioner of nearly 64 years age will not be engaging in a raucous night life upon the premises.

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

While this request may technically constitute "Spot Zoning", that being the application of zoning to a specific parcel within a larger zoned area when the rezoning is at odds with a city's master plan and current zoning restrictions; courts have held that "Spot Zoning" is only invalid when there is an "arbitrary, capricious and unreasonable treatment of a specific parcel within a larger zoned area. As previously discussed, while the predominate zoned use of the property surrounding the subject property is residential (R-8), all but one property fronting South Third Street on either side from Johnston Street south to Woodall Street is zoned commercial (O&I). (SEE ATTACHMENT)

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

The subject property is presently zoned residential (R-8). While the subject property certainly can be readily rented, the projected goal for the said property has always been that of relocating my law office.

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

Utility and trash collection demands will be less from this property for commercial use than they would be for residential use. As previously discussed there is sufficient public parking for this sole proprietorship. (Although not previously discussed, this attorney and his secretary would park both of their cars within a at the rear of the subject property).

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

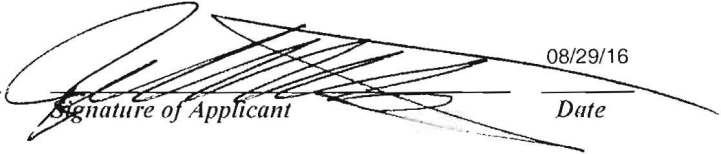
As previously discussed, the physical structure upon the subject premises has not and will not be expanded. I submit that the subject property is presently suitable for either residential or commercial use.

APPLICANT AFFIDAVIT

I/We, the undersigned, do hereby make application and petition to the Town Council of the Town of Smithfield to approve the subject zoning map amendment. I hereby certify that I have full legal right to request such action and that the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related material and all attachments become official records of the Planning Department of the Town of Smithfield, North Carolina, and will not be returned.

John A. Whitley

Print Name



Signature of Applicant

08/29/16

Date

ATTACHMENT TO REZONING APPLICATION
OF JOHN A. WHITLEY, ATTORNEY

STATEMENT OF JUSTIFICATION

I am a native son of West Smithfield and Smithfield. I will have continuously engaged in the general practice of law in Smithfield for 37 years as of September, 2016. Although I have office-shared with the Levinson Law Firm for over two decades, I have been a sole practitioner for my entire tenure as a lawyer but for several years that I was a partner in the firm of Ashley, Holland, Wellons, and Whitley. Although it has always been a dream of mine to manifest my independence by practicing in my own stand-alone structure, I was formerly content to finish my tenure as an attorney at the address at which I now practice, 219 Johnston Street, owned by Jim Levinson. However, Jim is very nearly retired, has sought to sell 219 Johnston Street for the past several years without signage on the building, is now more aggressively attempting to sell the building with signage thereon, and I now therefore have been forced to attempt to realize my dream. Given my entrepreneurial real estate background, my quest to find a suitable stand-alone building within the proximity of the Courthouse has been exciting even if frustrating. I bid for, but was unable to purchase, the Mozzelle Ellis estate home located on Johnston Street. Having previously approached David Stubbs about the prospects of purchasing his property on Johnston Street, David later approached me with an offer to sell his premises which I could not justify.

I truly feel that my finding 317 S. Third Street was provident. While I love to eat at the White Swan on any given day, I rarely ride out that far at lunch and usually only stop there to eat if I am coming back from Benson District Court on Friday. On this one particular day after having explored the above described opportunities and several others, I simply decided that I needed to leave Courthouse Square for lunch for no particular reason. When I passed by 317 S. Third Street and I saw a FOR SALE sign in front of it, I had a flashback as I recalled the home when it was not in disrepair in my much younger years. I was genuinely saddened to see this dilapidated "period piece" now at the perimeter of a business district with a pastoral setting across the street in front of it and surrounded by restored, warm homes along Third Street south of it and along Woodall Street east of it. My very next vision of the house was as it could be, not as it was. I am now just weeks from that vision! Time has flown since I purchased the house on April 14, 2016! Please forgive my tardy Rezoning Application. It happens that upon the failure of the seller to sell this house by private sale, Fannie Mae began a sealed bid process for the sale and purchase of the home. I wanted the home so badly that I offered a sealed bid greater than the Multiple Listing price when told by the seller that even a full price offer would not be considered a contract by the seller. There obviously was not time to explore the possibility of rezoning during the seller's attempt at a quick sale through the sealed bid process. Moreover, the Application would not have been ripe

unless I were the owner of the home. Since all I do is push paper and hot air in my vocation, I have relished the opportunity to renovate and restore this home regardless of its permitted purpose. But please be assured that I have always purposed to use it as an office for my sole proprietorship. I invite any Town agent to view the home inside and out to witness its revival and up-fitting. There are relatively minor and cosmetic modifications and additions left to do to the exterior and interior, but I have almost completed the resurrection.

I do not believe that a sale of 219 Johnston Street is imminent but I must now be proactive to ensure my continuous and uninterrupted practice. I hope and trust that my hometown will embrace this native son as he has attempted to restore this "period piece" and become an uplifting piece of the fabric of its neighborhood. I do feel that Jim's more aggressively attempting to sell 219 Johnston Street through a realtor's posting a sign on the premises will result in a sale of the property short term. I therefore hope and trust that I can be in a position to move to 317 S. Third Street to relocate my practice the first of November, 2016.

PARAGRAPH 5 (CONTINUED):

Moreover there is in the very least a mixed commercial and residential use along the South Third Street corridor from Johnston Street to the intersection of Third Streets and 301 Highway. As previously discussed, commercial use (O&I) is trending south along Third Street from Johnston Street.

Filed in JOHNSTON COUNTY, NC
CRAIG OLIVE, Register of Deeds
Filed 04/18/2016 03:56:05 PM
DEED BOOK: 4749 PAGE: 529-530
INSTRUMENT # 2016486286
Real Estate Excise Tax \$0.00
Deputy/Assistant Register of Deeds dcarter

Prepared by: John A. Whitley, Attorney
219 Johnston St.
Smithfield, NC 27577

Hold For: John A. Whitley, Attorney

STATE OF NORTH CAROLINA

PARCEL ID NO.: 15030016

COUNTY OF JOHNSTON

REVENUESTAMPS: \$-0-

Brief description for the Index: 317 S 3RD ST., SMFLD

GENERAL WARRANTY DEED

THIS DEED made this 18TH day of APRIL, 2016, by and between JOHN A. WHITLEY, hereinafter referred to as GRANTOR, and JOHN A. WHITLEY AND WIFE, BARBARA B. WHITLEY, hereinafter referred to as GRANTEE, whose address is 219 JOHNSTON ST., SMITHFIELD, NC 27577.(The designation GRANTOR and GRANTEE as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context.);

WITNESSETH, that the GRANTOR, for a valuable consideration paid by the GRANTEE, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the GRANTEE in fee simple, all of that certain lot or parcel of land situated in the City of SMITHFIELD, SMITHFIELD Township, Johnston County, North Carolina and more particularly described as follows:

BEGINNING at a stake on the East side of South Third Street in the Town of Smithfield, between Church and Woodall Street, Layton McGoogan's corner and runs in a southerly direction with South Third Street, 52.5 feet to the intersection of South Third Street and Woodall Street; thence in an easterly direction with Woodall Street, 90.2 feet to a stake; thence in a northerly direction parallel with South Third Street, 52.5 feet to a stake, McGoogan's corner; thence in a westerly direction with McGoogan's line, 90.2 feet to the BEGINNING, containing a fractional part of an acre.

ATTACHMENT TO REZONING APPLICATION
OF JOHN A. WHITLEY, ATTORNEY

A LIST OF ADJACENT PROPERTY OWNERS:

<u>Property owners</u>	<u>Mailing address</u>	<u>Parcel ID#</u>
Thomas & Vicki Berkau	604 W. Hood Street, Smithfield, NC	15-0-30-018
Eleanor Faye Medlin	304 Woodall St., Smithfield, NC	15030019
H. Landis Whitley	208 W. Langdon Ave., Smithfield, NC	15030020
Barbara P. King	315 S. Third St., Smithfield, NC	150 30017
Tara M. Dunn	307 S. Third St., Smithfield, NC	15030025
Barry W. Long	302 E. Church St., Smithfield, NC	15030026
Spring Branch Corners Assoc.	300-C S. Third St., Smithfield	15029023
Aspect Properties LLC	312 S. Third St., Smithfield	15029026
Jonathan D. Gaskins	404 S. Third St., Smithfield, NC	15029040 15029041
Carole & William Wells, Jr.	P.O. Box 2179, Smithfield, NC	15030001
Eleanor Faye Medlin	304 Woodall St., Smithfield, NC	15030002
Paul & Louise Moore	306 E. Woodall St., Smithfield, NC	15030003
June Creech	3848 Antioch Ch. Rd., Middlesex, NC 27557-8612	15030004

300 Block of South Third Street



Project Name:
317 South Third Street Rezoning

Proposed Use:
N/A

File Number:
RZ-16-03

Owner:
John A. Whitley

Applicant:
John A. Whitley

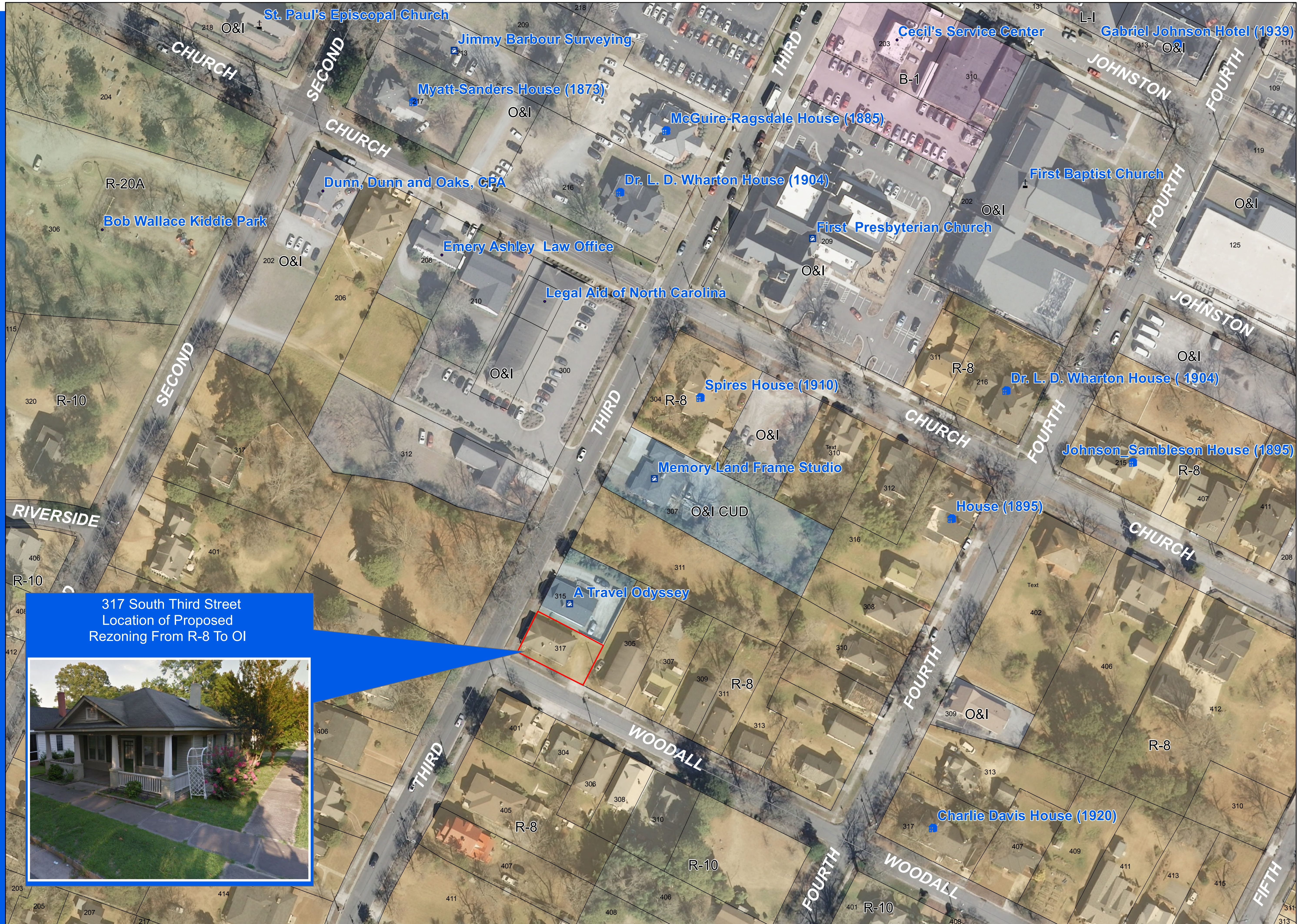
Location:
317 South Third Street

Tax ID#
15030016

Zoning District:
Existing = R-8
Proposed = OI

Map created by the
Mark E. Helmer, AICP
Senior Planner,
GIS Specialist
on 9/29/2016

1 inch = 50 feet
0 25 50 100 150 Feet



317 South Third Street
Location of Proposed
Rezoning From R-8 To OI



Adjacent Property Owners of
RZ-16-03

TAG	PIN	NAME1	ADDRESS1	CITY	STATE	ZIPCODE
15029040	169418-30-7225	GASKINS, JONATHAN D	404 SOUTH THIRD ST	SMITHFIELD	NC	27577-0000
15029041	169418-30-7396	GASKINS, JONATHAN D	404 SOUTH THIRD ST	SMITHFIELD	NC	27577-0000
15030001	169418-30-9116	WELLS, WILLIAM S JR	PO BOX 2179	SMITHFIELD	NC	27577-0000
15030017	169418-40-0302	KING, BARBARA P	315 S 3RD ST	SMITHFIELD	NC	27577-0000
15030016	169418-30-9275	GRIFFIN, BETH CAPPS	161 CREEKWOOD CIR	SMITHFIELD	NC	27577-9411
15030002	169418-30-9173	MEDLIN, ELEANOR FAYE	304 WOODALL ST	SMITHFIELD	NC	27577-4568
15030018	169418-40-0266	BERKAU, THOMAS S	604 W HOOD ST	SMITHFIELD	NC	27577-3601

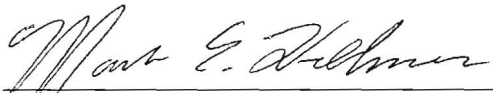


PLANNING DEPARTMENT

Paul C. Embler, Jr., Director

ADJOINING PROPERTY OWNERS CERTIFICATION

I, **Mark E. Helmer**, hereby certify that the property owner and adjacent property owners of the following petition, **RZ-16-03**, were notified by First Class Mail on **9-23-16**.


Signature

Johnston County, North Carolina

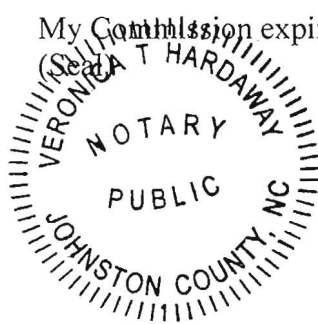
I, Veronica Hardaway, Notary Public for Johnston County and State of North Carolina do hereby certify that Mark E. Helmer personally appeared before me on this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal, this the

23rd day of September, 2016


Notary Public Signature


Notary Public Name

My Commission expires on 1-14-18





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, October 6, 2016 at 6:00 P.M., in the Town Hall Council Chambers located at 350 East Market Street to consider the following requests:

RZ-16-03 John A Whitley: The applicant is requesting to rezone one tract of land totaling approximately .11 acres from the R-8 (Residential) zoning district to the OI (Office-Institutional) zoning district. The property considered for rezoning classification is located on the northeast side on the intersection of South Third Street and Woodall Street. The property is further identified as Johnston County Tax ID# 15030016

CUP-16-10 Victor Hugo Garcia Rizo: The applicant is requesting a conditional use permit to allow for a residential use within a B-3 (Business) zoning district. The property considered for a conditional use permit is located on the southwest side of West Market Street approximately 190 feet southeast of its intersection with Park Avenue. The property is further identified as Johnston County Tax ID# 15077025.

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 9/21/16 and 9/28/16



PLANNING DEPARTMENT

Paul C. Emblar, Jr., Director

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You have been identified as a property owner in the area specified above and are being advised of this meeting as you may have interest in this matter. You are welcome to attend; however, you are not required to in order for the Board to act on this request. Additional information may be obtained by contacting the Town of Smithfield Planning Department at 919-934-2116.