

**Town of Smithfield  
Planning Board Minutes  
Thursday, December 2nd, 2021  
Town Hall  
Council Chambers  
6:00 PM**

Members Present:

Chairman Stephen Upton  
Vice-Chairman Mark Lane  
Debbie Howard  
Michael Johnson  
Sloan Stevens  
Ashley Spain  
Alisa Bizzell  
Doris Wallace

Members Absent:

Staff Present:

Stephen Wensman, Planning Director  
Mark Helmer, Senior Planner  
Julie Edmonds, Administrative Assistant

Staff Absent:

**CALL TO ORDER**

**APPROVAL OF AGENDA**

Doris Wallace made a motion to approve the agenda, seconded by Alisa Bizzell. Unanimously approved.

**APPROVAL OF MINUTES FOR NOVEMBER 4<sup>TH</sup>, 2021**

Doris Wallace made a motion to approve the minutes for October 7<sup>th</sup>, 2021, seconded by Sloan Stevens. Unanimously approved.

**APPROVAL of the 2022 MEETING SCHEDULE**

Alisa Bizzell made a motion to approve the 2022 meeting schedule, seconded by Doris Wallace. Unanimously approved.

**NEW BUSINESS**

**RZ-21-04: Twin Creeks Phase 1A:** Michael Stewart, PE, is requesting a zoning map amendment to rezone 1.61 acres of a property (Johnston County ID #15I09011B) from AR (county zoning district) to R20-A Residential-Agriculture (to be annexed into the Town).

Stephen Wensman stated that a portion of the subject property, 21.26 acres, was annexed into the Town on December 5, 2018, and subsequently rezoned to R20-A on February 2019. In 2021, the developer discovered that there was a mistake with the legal description on the title documents which has resulted in an additional 1.61 acres of land associated with the property (Johnston County ID #15I09011B). The original annexation and rezoning by the Town did not include this 1.61 acres of land. With a petition for annexation, and rezoning to R-20A, the developer is requesting preliminary plat approval to create 3 new lots. The preliminary plat of Twin Creeks Phase 1 approval was accepted as part of the annexation of 21.39-acres. Twin Creeks Phase 1A requires major subdivision approval because it will be replating a portion of the Twin Creeks Phase 1 subdivision. The proposed Twin Creeks

Phase 1A seeks to utilize a 0.4-acre portion of the original Twin Creeks Phase 1 open space adding it to the 1.61-acres to create 3 new detached single family residential lots on 2.01-aces with .42 acres of open space. The lots meet the R-20A dimensional requirements.

Doris Wallace made a motion to approve the zoning map amendment, RZ-21-04 finding it consistent with the Town of Smithfield Comprehensive Growth Management Plan and other adopted plans and that the request is reasonable and in the public interest, seconded by Michael Johnson. Unanimously approved.

**S-21-06: Twin Creeks Phase 1A:** The applicant is requesting preliminary subdivision approval for the creation of three lots from a 2.01acre tract of land. The property considered for approval is located on the south side of Black Creek Road approximately 1,650 feet of south west of its intersection with NC Hwy 210 and further identified as Johnston County Tax ID# 15I09052A.

Stephen Wensman said that Stewart-Proctor, PLLC is requesting the preliminary plat approval of Twin Creeks Phase 1A, a 3-lot detached single-family development in the R-20A Zoning District (to be annexed and rezoned to R-20A prior to the preliminary plat public hearing). He is seeking comments or thoughts on this plat, no recommendation from the board. This development is will be within the Town Corporate limits with annexation and will provide property taxes for 3 single family residential lots to serve by Town utilities, police, fire, and trash and other public services.

Mark Lane asked if the board was looking at a total of (3) plats but only looking at one new plat tonight?

Stephen Wensman said correct.

**FINDING OF FACT (Staff Opinion):**

To approve a preliminary plat, the Planning Board/Town Council shall make the following finding (staff's opinion in Bold/ Italic):

1. The plan is consistent with the adopted plans and policies of the town; **The plan is consistent with the adopted plans and policies of the town.**
2. The plan complies with all applicable requirements of this ordinance; **The plan complies with all applicable requirements of this ordinance.**
3. There exists adequate infrastructure (transportation and utilities) to support the plan as proposed. **There is adequate infrastructure.**
4. The plan will not be detrimental to the use or development of adjacent properties or other neighborhood uses. **The plan will not be detrimental to the use or development of adjacent properties or other neighborhood uses.**

**RECOMMENDATION**

Staff will be recommending that the Town Council approve the subdivision with the following conditions:

1. That the driveway aprons be constructed in accordance with the Town's Standard Specifications and Details.
2. That the final plat of Twin Creeks Phase 1A be made after the recording of the Twin Creeks Phase 1 final plat.
3. That the 3 lots be incorporated into the Twin Creeks HOA.
4. That the developer pays the fee-in-lieu of park dedication prior to final plat
5. That all utility fees be paid prior to final plat.

Mark Lane asked if there was any road frontage with plats 1 and 2?

Stephen Wensman said no

Mark Lane asked if they would be required to have sidewalks?

Stephen Wensman said yes, they are showing them on their plans.

Mark Lane asked if street signs were required?

Stephen Wensman said they aren't requesting conditional zoning so we don't have the ability to ask for street signs. Subdivision signs are not a requirement of preliminary plats.

The board voted yes that S-21-06 meets their standards and they would like to recommend it to Town Council.

**RZ-21-05 Kimicka Woodin:** The applicant is requesting to rezone one parcel of land totaling .93 acres from the R-20A (Residential-Agricultural) zoning district to the R-10 (Residential) zoning district. The property considered for rezoning is located on the north side of Laurel Drive approximately 136 feet east of its intersection with Laurelwood Drive. The property is further identified as Johnston County Tax ID# 15078014A.

Mark Helmer stated that Kimicka Woodin is requesting the rezoning of 310 Laurel Drive from R-20A to R 10 in order to run a small child care center out of her home.

Debbie Howard asked if the applicant is wanting to build a separate building for her childcare facility?

Mark Helmer said no, a childcare facility is an accessory use to a single-family dwelling.

Debbie Howard made a motion to approve zoning map amendment, RZ-21-05, finding it consistent with the Town of Smithfield Comprehensive Growth Management Plan and other adopted plans, and that the amendment is reasonable and in the public interest; seconded by Mark Lane. Unanimously approved.

**S-21-08 Galilee Point:** The applicant is requesting preliminary subdivision approval of a 7.5 acre tract of land for the creation of ten residential lots. The property considered for approval is located on the north side of the intersection of NC Hwy 210 and Galilee Road and further identified as Johnston County Tax ID# 15I09034K.

Mark Helmer stated Adams & Hodge Engineering, PC is requesting the preliminary plat of Galilee Point, a 10-lot detached single-family residential subdivision in the R-20A Zoning District. The property owners are Cloudbreak Investments, LLC. The property considered for approval is not within a flood zone and has no environmentally sensitive features.

**FINDING OF FACT (Staff Opinion):**

To approve a preliminary plat, the Town Council shall make the following finding (staff's opinion in Bold/ Italic):

1. The plat is consistent with the adopted plans and policies of the town; **The plat is consistent with the adopted plans and policies of the town.**
2. The plat complies with all applicable requirements of this ordinance: **The plan complies with all applicable requirements of this ordinance.**

3. There exists adequate infrastructure (transportation and utilities) to support the plat as proposed. **There is adequate infrastructure.**
4. The plat will not be detrimental to the use or development of adjacent properties or other neighborhood uses. **The plat will not be detrimental to the use or development of adjacent properties or other neighborhood uses.**

Planning Staff recommends approval of S-21-08 with the following conditions:

1. That park dedication fee-in-lieu be paid prior to final plat in accordance with UDO Section 10.114.8.
2. That a public dedicated right-of-way be constructed to NCDOT standards.
3. That a sidewalk be provided on one side of the proposed street and along NC Hwy 210.
4. The streets connectivity be provided to the property to the south and to the 19.47-acre remainder of the parent parcel.
5. All other requirements of the UDO be met.

Stephen Wensman pointed out that the HOA's are responsible for the upkeep of sidewalks.

Mark Helmer stated this development was received by planning staff prior to the adoption of the requirement for landscaping. Therefore, this subdivision doesn't have to meet our new landscape regulations.

Debbie Howard made a motion to approve zoning map amendment, S-21-08, with 5 conditions of approval found in the staff report, based on the 4 finding of fact for preliminary subdivision, seconded by Alisa Bizzell. Unanimously approved.

**ZA-21-06 Short Term Rental:** The Town of Smithfield is requesting an amendment to Article 6 and Article 7 of the Unified Development Ordinance to allow for short term rental units and to create standards for which they must meet to be considered for approval.

Stephen Wensman said the Town of Smithfield is experiencing unprecedented growth and with-it short-term rentals (STR). At the last check, Smithfield had 4 operating within its corporate limits and several others in the ETJ. STRs are generally rentals of residential homes for a period of less than 6-months but can be defined differently by local zoning codes. STRs are typically conducted online under the shared economy brands like VRBO, HomeAway and Airbnb. Under the Town's UDO, short-term rentals are not permitted. Currently, we have one that was permitted as a Bed and Breakfast that has been receiving some complaints, mostly about pets trespassing, noise, trash roll offs left at the street and concerns that the use is not permitted at all. The Bed and Breakfast ordinance is subject to supplemental regulations including one that requires the owner to reside on the property. The primary difference between traditional Bed and Breakfasts and short-term rentals is that short-term rentals are not usually owner occupied and breakfasts are not prepared for guests.

Municipalities across North Carolina (NC) and the United States have been struggling to address the explosion of STRs and limit and/or eliminate disturbances to adjacent residential property and within established residential communities. Many NC municipalities have drafted ordinances to control or prohibit STRs; some resulting in lawsuits by the industry. Planning staff has reviewed ordinances from Raleigh, Cornelius, Wilmington, Brevard and has drafted an ordinance based on Raleigh's. The draft ordinance amends Section 6.6, Table of Uses and Activities, creates supplementary standards in Article 7, and adds a definition of STRs in Appendix A. The ordinance allows STRs in all districts except R-MH, B-1, LI, HI and AHH with supplemental standards. This includes all conditional zoning districts in residential structures (CZ and PUD Districts). The B-1 District was not included because of the limited parking available. The draft ordinance was created to minimize the potential disturbances created by STRs. The ordinance supplementary standards address:

- Prohibition on site advertising
- Prohibition on large gatherings or special events in a STR
- Ensures appropriate off-street parking
- Ensures trash and recycling is properly managed.
- Minimizes the amount of STR in multifamily buildings.
- Requires a 3-year record of renters

The draft ordinance defines an STR as:

- A dwelling unit that can be used for overnight lodging accommodations that is provided to renters for no longer than 30 days for compensation. A portion of or the entire dwelling unit can be used for lodging, including part or all of an accessory structure.

Stephen Wensman pointed out that Donna Bailey-Taylor (President/CEO of the Johnston County Visitors Bureau) said you can't get rid of these short-term rentals. You're better off trying to regulate them legally and try to put some structure to them.

Mark Lane said so I can buy a 15-room house and rent out rooms to whomever I wish if we approve this?

Stephen Wensman said yes.

The legislature has made it difficult for local government to get rid of these. However, we are able to regulate them.

Debbie Howard said but they haven't made it when we can't prohibit them.

Stephen Wensman said Wilmington tried to prohibit them and they were sued and lost.

Mr. Wensman said the supplementary standards prohibit site advertising. It also prohibits large gatherings or special events in a short-term rental.

Debbie Howard asked what constitutes as a large gathering?

Stephen Wensman said we can put definitions on that.

This change would ensure appropriate off-street parking, that trash and recycling is properly managed, minimizes the amount of short-term rental in multifamily buildings so you don't get an entire building that's all rental. It would also require a record of who comes and goes in case there's crime or neighborhood issues.

Stephen Wensman said we need to put a definition to what a short-term rental is. Allowing up to 6 months seems like a long time. He has it in the draft ordinance up to 30 days. There is a STR out in the towns ETJ that rents the accessory dwelling unit as the rental space. He underlined including all or part of an accessory structure. He asked the board if that was something they wanted to keep or delete.

Debbie Howard asked if there were any stipulations in the draft ordinance that these short-term rentals must have water and sewer?

Stephen Wensman said the county could shut down anyone living in a garage or accessory structure without plumbing, sewer or water.

Pam Lampe of 415 N. Second Street came forward. She said 90% of Smithfield didn't know about all of the short-term rentals in the area. She thinks someone should apply for a special use permit to have a STR.

Stephen Wensman said it can't be permitted because it's not recognized in the code.

Pam Lampe doesn't think short-term rentals should be allowed but bed and breakfasts would be ok.

Stephen Wensman said we could make this a special use permit, but what will it achieve? What conditions would you put in a STR that aren't already in the supplementary standards already?

Pam Lampe asked how this change would affect Homeowner Associations that prohibit this activity?

Stephen Wensman said HOA are responsible for their own association. For instance, East River has an Airbnb in it and they have an HOA. Developer David DeYoung is aware of this, it's a former employee of theirs. No complaints have been received.

Pam Lampe asked if it was fair for homeowners that have a homeowner's association to have more lenient rules than the rest of us? Could this result in a lawsuit against the homeowner's association?

Stephen Wensman said that's how they enforce their HOA's, they sue one another.

Pam Lampe asked if the activities of short-term rentals were subject to the sales and use tax such as hotels?

Stephen Wensman said yes

Pam Lampe asked who kept those records?

Stephen Wensman said Airbnb is required to.

Pam Lampe asked if these rentals are subject to hotel tax?

Stephen Wensman said yes, they are.

Pam Lampe asked if it didn't hurt property values when a community is full of short-term rentals?

Debbie Howard said yes, but you have to disclose if you know.

Pam Lampe asked if these short-term rentals would be inspected?

Stephen Wensman said if we pass this ordinance, anyone wanting to operate a rental such as this would be required to obtain a zoning permit from the town, otherwise they would be in violation.

Mark Lane asked when this draft ordinance would go before Town Council?

Stephen Wensman said it would go to Town Council on January 4<sup>th</sup>.

Pam Lampe asked why the Planning Board/ Planning Staff want to promote short-term rentals?

Stephen Upton asked how the Planning Board was promoting this? He doesn't feel that they are.

Mark Lane asked if the Planning Board could table this for 30 days?

Ashley Spain made a motion to table ZA-21-06, seconded by Debbie Howard. Unanimously approved.

**ZA-21-07 Ethics:** Staff requests the Planning Board to review the draft UDO Amendment amending the Ethics requirement for appointed board members to better align it with State statutes.

Stephen Wensman said on January 5, 2021, the Town adopted amendments to the Unified Development Ordinance (UDO) to comply with NCGS 160D. These amendments included an amendment to Section 3.2 Ethics which was more restrictive than State statutes. This draft amendment more closely aligns Section 3.2 with N.C.G.S. 14-234 and N.C.G.S. 160D-109. The UDO amendment to Section 3.2 Ethics updated the ethics requirements for appointed boards to follow NCGS 160D legislation, however the adopted Town ordinance did not consider exceptions found in the statutes which as a result effectively prohibits any Town Council appointed board member from having a contract with the Town of Smithfield whether the appointed board member had any influence over the contract or not. Currently, one or more of the Town's appointed board members are in violation of the Town's ethics regulations, making them ineligible for reappointed. The proposed amendment to Section 3.2 remedies this by making the Town's ordinance better aligned with State statutes.

Debbie Howard made a motion to approve move to recommend approval of zoning text amendment, ZA-21-07, finding the amendment consistent with the Town of Smithfield Comprehensive Growth Management Plan and other adopted plans, and that the amendment is reasonable and in the public interest, seconded by Ashley Spain. Unanimously approved.

#### **OLD BUSINESS**

None

#### **Adjournment**

Being no further business, Ashley Spain made a motion seconded by Debbie Howard to adjourn the meeting. Unanimously approved.