

**Smithfield Planning Board
Minutes
Thursday, October 5, 2006
7:00 P.M., Town Hall, Council Room**

Members Present:

Max Gardner
Joe Patterson
Suzanne Carter
Ed Self
Leo Fetzer
Mike Gibbons
Chris Howell

Members Absent:

Eddie Foy

Staff Present:

Mark Helmer
Latanya Merritt

Chairman Gardner opened the public meeting and was followed by the Pledge of Allegiance and Invocation led by Chairman Gardner.

APPROVAL OF MINUTES FROM AUGUST 3, 2006.

Mr. Fetzer made a motion that was seconded by Mr. Gibbons to approve the minutes as written. The vote was unanimous.

All persons wishing to speak were duly sworn.

SUP-06-12 Eduardo Garcia

Mr. Helmer addressed the Board stating that the applicant is requesting a special use permit to operate a private nightclub on property located within a B-3 (Business) zoning district. The property is located on West Market Street, approximately 725 feet north of its intersection with Wilson's Mills Road. The property is further identified as NCPIN# 1694-05-6948.

Mr. Helmer stated that in accordance with Section 307.1 of the Town of Smithfield Zoning Ordinance, the Town Council may approve a special use permit for clubs, whether public or private, providing entertainment, whether live or programmed, for an admission charge, membership fee, or other form of compensation.

Mr. Helmer stated that the Planning Board is requested to review the petition and make a recommendation to Town Council based on the finding of fact for a special use permit for a private nightclub.

Chairman Gardner opened the public hearing.

Chairman Gardner asked if anyone wanted to speak for or against the case?

Being none, Chairman Gardner closed the public hearing.

Mr. Patterson asked what does the parking lot landscaping, street yard landscaping and vehicular surface screening be installed in accordance with current development regulations consist of (Planning Staff Recommendations #3 in Agenda Packet)?

Mr. Helmer stated what allows us to request this is a formal change in use. The building is going from retail to assembly. According to Towns standards, the site has to come into full compliance with zoning. Therefore, we are requesting that the parking lot be brought into compliance with, landscape islands, removal of pavement, adding trees and scrubs, and re-stripping the parking lot. Mr. Helmer stated that the Planning Department wants to see improvements to the property.

Mr. Gibbons asked if there was a site plan and security was an issue that needs to be addressed.

Mr. Helmer stated that there was no site plan and the town does not have a policy that requires nightclubs to hire off duty police officers to serve as security.

Mr. Gibbons stated that an assumption is being made that Smithfield Police providing security will be for the benefit of the people.

Mr. Helmer stated that the applicant statement does commit the Town of Smithfield Police Department, and the County Sheriff Department for security. Mr. Helmer stated that he was not sure if the departments are in agreement with that.

Mr. Gibbons stated that the Board should table this, until we have a site plan to look at, and know what type of security measures will be provided.

Ms. Carter stated that the application states that a detailed site plan, which is in compliance with the land use policies of the Town of Smithfield, must be accompanied with application. We have an outline but we do not have a detailed site plan. Therefore, they are out of compliance.

Mr. Helmer stated that is correct. Prior to customer making application, we discussed the change in use and the zoning requirements that would be expected of them. We do need to see that in site plan form.

Ms. Carter stated that there should also be a certain amount of facilities for restrooms and there is nothing showing an upgrade at this time.

Mr. Helmer stated that there is no floor plan or anything showing upgrades.

Ms. Carter stated that the application should be tabled.

Chairman Gardner asked if there was a motion from the Board to table the application?

Mr. Gibbons made a motion that was seconded by Ms. Carter to table the application until a completed site plan has been submitted to the Planning Department Staff.

Mr. Howell stated that (f) is not satisfied in the Findings of Fact. We need to decide if tabling will cover what we need or if (f) will render our decision.

Ms. Carter stated based on (F) in the Findings of Fact Evaluation Form, the motions should be withdrawn.

Mr. Gibbons and Ms. Carter withdrew their motions.

Mr. Howell made motion that was seconded by Ms. Carter, to move to the Findings of Fact.

After reviewing the Findings of Fact:

- (a) All applicable specific conditions pertaining to the proposed use have been or will be satisfied; *all members stated no.*
- (b) Access roads or entrance and exit drives are or will be sufficient in size and properly located to ensure automotive and pedestrian safety and convenience, traffic flow, and control and access in case of fire or other emergency; *all members stated no..*
- (c) Off-street parking, loading, refuse and other service areas are located so as to be safe, convenient, allow for access in case of emergency and to minimize economic, glare, odor, and other impacts on adjoining properties and properties in the general neighborhood; *all members stated no.*
- (d) Utilities, schools, fire, police and other necessary public and private facilities and other services will be adequate to handle the proposed use; *all members stated yes.*
- (e) The location and arrangement of the use on the site, screening, buffering, landscaping, and pedestrian ways harmonize with adjoining properties and the general area and minimize adverse impacts; *all members stated no.*
- (f) The type, size and intensity of the proposed use, including such considerations as the hours of operation and number of people who are likely to utilize or be attracted to the use, will not have significant adverse impacts on adjoining properties or the neighborhood; *all members stated no.*

Mr. Howell made motion that was seconded by Mr. Gibbons to deny approval of this Special Use Permit.

The vote was unanimous.

SUP-06-14 Johnston County

Mr. Helmer addressed the Board stating that the applicant is requesting a special use permit to construct and operate a wastewater treatment facility on 148 acres of property within an R-20A (Residential-Agricultural) zoning district. The property is located approximately 3400 northeast of the intersection of Wildberry Road and Galilee Road and further identified as NCPIN# 1683-45-4782 and 1683-24-5857.

Mr. Helmer stated that in support of the special use request, Johnston County has submitted sketch plans for a Flow Equalization Facility and a Parallel Treatment Facility. The plans as submitted appear to limit negative impacts on wetlands and floodway along the Neuse River. The plans also include a fifty-foot buffer along the perimeter of the site. Prior to issuance of a special use permit, it is recommended that access to the site be shown on the plan that will be adequate to serve the needs of the proposed use.

Mr. Helmer stated that the Board is requested to review the petition and make a recommendation to Town Council for a special use permit for wastewater treatment facility. Mr. Helmer stated that Johnston County representatives are present and he would answer any question.

Chairman Gardner asked if there were any question from the Board?

Mr. Howell asked Mr. Helmer if he had any ideas or recommendations as to where ingress and egress to the site will occur.

Mr. Helmer stated that Paul Embler informed him that Johnston County would have an access plan for tonight.

Chairman Gardner opened the public hearing.

Mr. Rick Hester, of Service County Manager, being duly sworn, stated that the county serves Smithfield, Selma, Four Oaks, Pine Level, and some of Claytons wastewater treatment needs. We are looking at long range planning for infrastructure facility needs in terms of wastewater, recreation, schools, and partnering with the NCDOT on roads.

Mr. Hester stated that the current wastewater treatment facility off of 301 S. and Huntley Drive can handle the wastewater treatment needs we have until 2016. Therefore, we felt that it was important to start planning for the future.

Mr. Hester stated that for the past two years we have been talking and negotiating with landowners in the community and we do have options for the property. We are here tonight to ask for your favorable recommendation for a special use permit on this property.

Mr. Tim Broome, Johnston County Engineer, being duly sworn, stated that we are requesting a special use permit to give flexibility for options. One option is to have a parallel treatment facility, which is ultimately going to have to happen. There could be an inter-media phase. We're not talking about ponds or lagoons; we're talking about

basins that are air-rated that will be used only during wet weather periods, for short periods of time. The larger ponds would be used in a catastrophic event.

Ms. Melinda Holmes, being duly sworn, a resident at 108 Spring Branch Drive, stated that her concern was the holding ponds giving off odor.

Mr. Broome stated that there would not be odor.

Mrs. Pat Johnson, a resident at 58 Wildberry Road, being duly sworn asked would the facility cause a decrease in the property value and how far from the river are the holding ponds going to be?

Mr. Broome stated the experience with homes in South Smithfield that are between 1200-1800 feet from exiting plant. In my view, they are the most highly valued residential real estate in the town of Smithfield. Mr. Broome stated that the holding ponds would be 900 feet from the river.

Mr. Broome stated that the ponds would be used 98 percent of the time and would be lined so that there is no leakage. We will be designing odor control facilities for the influent flow coming in for either a parallel treatment facility or a flow equalization facility.

Mrs. Judith Kolcum, a resident at 1603 Galilee Road, being duly sworn stated that there are many unanswered questions that need to be answered. This proposal should be studied further. No decision should be made until our questions are answered.

Mrs. Kolcum asked why the wastewater treatment facility could not be built on the landfill property? She stated to the Board, before you approve this request let the residents get some of these guarantees in writing.

Mr. Broome stated that we have explored using the landfilled area but it would be cost prohibited to pump the wastewater into the river.

Mr. Howell made motion that was seconded by Ms. Carter to close the public hearing.

The public hearing was closed.

Ms. Carter made motion to move to the Finding of Fact.

After reviewing the Findings of Fact:

- (a) All applicable specific conditions pertaining to the proposed use have been or will be satisfied; *members stated yes.*
- (b) Access roads or entrance and exit drives are or will be sufficient in size and properly located to ensure automotive and pedestrian safety and convenience, traffic flow, and control and access in case of fire or other emergency; *members stated yes.*

- (c) Off-street parking, loading, refuse and other service areas are located so as to be safe, convenient, allow for access in case of emergency and to minimize economic, glare, odor, and other impacts on adjoining properties and properties in the general neighborhood; *members stated yes.*
- (d) Utilities, schools, fire, police and other necessary public and private facilities and other services will be adequate to handle the proposed use; *members stated yes.*
- (e) The location and arrangement of the use on the site, screening, buffering, landscaping, and pedestrian ways harmonize with adjoining properties and the general area and minimize adverse impacts; *members stated yes.*
- (f) The type, size and intensity of the proposed use, including such considerations as the hours of operation and number of people who are likely to utilize or be attracted to the use, will not have significant adverse impacts on adjoining properties or the neighborhood; *members stated yes.*

Chairman Gardner asked after reviewing the finding of fact, do we have a motion from the Board?

Mr. Fetzer stated that since he was a neighbor of the proposed project he wanted to recruise his position at this point.

Chairman Gardner accepted Mr. Fetzer recruisal.

Ms. Carter made motion that was seconded by Mr. Patterson to recommend approval of the Special Use Permit.

The vote was unanimous.

Case SUP-06-14 Johnston County, will go before Town Council on Tuesday, November 7, 2006.

SUP-06-15 Greenwood Development Co.:

Mr. Helmer stated that the applicant is requesting a special use permit to construct a drive-thru window at an existing commercial development within the B-3 (Business) zoning district. The property is located on the southeast side of the intersection of North Bright Leaf Boulevard and Peedin Road. The property is further identified as NCPIN# 2604-23-1624.

Mr. Helmer stated the applicant is requesting to modify an existing site to accommodate a 12-foot, drive-thru widow that will run up the eastern side of the property. The site plan indicates modification to the existing parking lot. The applicant will bring the site into compliance for landscaping.

Mr. Helmer asked the Board to review the request and take action according to the Finding of Fact for a special use permit for commercial development with a drive-thru window.

Mr. Howell asked if the case had gone before the Board of Adjustment?

Mr. Helmer stated no. The case will go before the Board of Adjustment before going to Town Council.

Mr. Howell asked do we know what the intent of the usage is?

Mr. Helmer stated there has been no formal application made to the Planning Department for a use.

Chairman Gardner opened the public hearing.

Mr. John Greenwood of Greenwood Development Company, being duly sworn, stated that in terms of the formal intent of the property. We are in discussions and have the property under contract to close in the next few months. Mr. Greenwood stated that his goal and intent is to improve the property so it could better serve the community. Our landscaping and architect design teams are planning to landscape 1 1/2 times what the ordinance requires and brick the front of the building.

Mr. Gibbons asked where the drive-thru fits in?

Mr. Greenwood stated that it serves as a function for the tenant to allow convenient service to their customers.

Mr. Helmer stated there has been some discussion about should a drive-thru request be enough to warrant a special use permit. However, there are situation where thorough consideration of the site plan needs to be taken, such as stacking of vehicles. This site plan appears that there will be plenty of room to stack vehicles.

Mr. Gardner closed the public hearing.

Ms. Carter motioned to move to the finding of facts.

After reviewing the Findings of Fact:

- (a) All applicable specific conditions pertaining to the proposed use have been or will be satisfied; *members stated yes.*
- (b) Access roads or entrance and exit drives are or will be sufficient in size and properly located to ensure automotive and pedestrian safety and convenience, traffic flow, and control and access in case of fire or other emergency; *members stated yes.*

- (c) Off-street parking, loading, refuse and other service areas are located so as to be safe, convenient, allow for access in case of emergency and to minimize economic, glare, odor, and other impacts on adjoining properties and properties in the general neighborhood; *members stated yes.*
- (d) Utilities, schools, fire, police and other necessary public and private facilities and other services will be adequate to handle the proposed use; *members stated yes.*
- (e) The location and arrangement of the use on the site, screening, buffering, landscaping, and pedestrian ways harmonize with adjoining properties and the general area and minimize adverse impacts; *members stated yes.*
- (f) The type, size and intensity of the proposed use, including such considerations as the hours of operation and number of people who are likely to utilize or be attracted to the use, will not have significant adverse impacts on adjoining properties or the neighborhood; *members stated yes.*

Mr. Howell made motion that was seconded by Mr. Gibbons for approval with conditions that the planning staff has made. Those conditions are for protection of existing landscaping on adjacent property and curbing of the drive-thru surface.

The vote was unanimous.

SUP-06-16 Rebecca Garcia:

Mr. Helmer stated that the applicant is requesting a special use permit to operate a mobile food truck on undeveloped land within a B-3 (Business) zoning district. The property is located on the west side of South Third Street, approximately 150 feet south of its intersection with Brogden Road. The property is further identified as NCPIN# 1693-27-7654.

The applicant has submitted a site plan for a mobile food cart/restaurant on an undeveloped lot located on South Third Street. A trailer will be used in lieu of a traditional permanent structure and the proposed location is shown on the site plan.

Mr. Helmer stated that the public restrooms are shown on the site plans but no utility connections or architectural details are shown on the plan. A shelter is proposed in lieu of a traditional dining room. But again, no architectural details are provided. It is unclear as to whether this will be an aluminum carport or a wooden gazebo type structure.

Mr. Helmer stated that the dumpster locations are shown but no detail on the type of required screening is provided. It is not clear as to whether they will be using masonry, vegetation or a combination thereof. Parking is shown on the plan but does not meet minimum parking standards to include paving of required parking. However, it is encroaching into the required 8 foot landscape transition yard.

From the information provided by the applicant, planning staff was unable to make a determination as to which of the above is to be considered a principle structure as required by Section 206, Accessory Uses.

Mr. Helmer stated that the Planning Board has made favorable recommendation in the past on mobile food carts. But in every instance, it has always been an accessory use to something greater such as snow cone stand in front of Wal-mart; hotdog stand in front of Lowe's, and even a taco stand in front of the M& B Super Market. They have all been accessory to an existing land use. But in this case we are talking about an undeveloped track of land.

Mr. Howell asked if the applicant has any type of permit to operate at the present time:

Mr. Helmer stated that the Planning Department has issued a permit for the applicant to operate on a temporary bases as allowed by temporary use section, which states that the applicant can operate two days a week for 14 days. The permit will expire on November 5, 2006.

Mr. Self stated that the mobile cart looks like a 26-foot travel trailer that has been converted into a store and should not be qualified as a food cart. With so many negatives, no more time should be spent on this case until more finalization has been done.

Mr. Helmer stated that if a mobile food cart/restaurant special use permit is granted, planning staff recommends the applicant submit a revised plan showing the site coming into full compliant with current development standards. The minimum development standards require the parking lot to be paved. Also, a 16-foot buffer needs to be shown on plan between this property and the residential property towards the rear. All structures need to be removed from this buffer. A landscape plan will also need to be submitted before a zoning permit is issued.

Mr. Helmer requested for the Planning Board to review the petition and make a recommendation to Town Council based on the finding of fact for a special use permit for a mobile food cart/restaurant.

Mr. Helmer sated that he would answer any questions, and the applicant is present.

Chairman Gardner opened the public hearing.

Mrs. Rebecca Garcia owner of Tacos Corral, being duly sworn stated that the mobile food cart that they have is permitted through Johnston County. It is all stainless steel and equipped to keep all foods at their proper temperature. We will do whatever the Board asks us to do, to get approved. We will pave the parking lot, we will landscape, whatever is asked we will do. The owner of the property said that he would allow us to do whatever we need to do, as long it is meets the requirements of the Town of Smithfield.

Mr. Jesus Garcia, being duly sworn, stated that the mobile food units are made and ship from the factory just as they are pictured. They meet and exceed health codes. We have

a total of five mobile food units. We have one that we use in Wake County, at the Alltel Pavilion and we have one at the flea market in Fuquay Varina. We have had customers in Johnston County that say they are glad we are here, so they will not have to travel so far to get our food.

Mr. Manuel Garcia, being duly sworn, stated that he works at the Watson Flea Market in Raleigh. A lot of the customers ask us to come to Smithfield. We want to come to Smithfield since there is a large community of Hispanic's in this area.

Mr. Howell asked if all the mobile food units were yellow?

Mr. Manuel Garcia stated that they have two units that are red and two units that are yellow. We want to make all of the units yellow so our customers will know that we are one and the same. Our logo is on all the trailers, and the logo is registered.

Mr. Gibbons stated that you mentioned that you have hot water access. Do your customers have access to the hot water?

Mr. Manuel Garcia stated yes. If customers want to wash their hands we have a sink at the door for that purpose. There are also porter potties for our customers. The mobile units return to our restaurant in Benson everyday were we discharge the dirty water and restock food supply.

Mr. Bill Phillips, being duly sworn, stated that he was the property owner. He would love to have the Garcia's serve the community.

Mr. Gibbons asked Chairman Gardner how could we maintain the quality of this particular site if this special use permit is passed?

Chairman Gardner stated that the recommendation that the planning department has made would implement the requirements of the applicant. The applicant has invested a lot of money. Therefore, they are showing that they would be good tenants.

Mr. Howell asked if the taco stand at the super market had closed?

Mr. Helmer stated no. The permit at the taco stand beside the M&B Market is still valid. You will have two taco stands back to back.

Ms. Carter asked if more information could be given about the conditions or remarks section of the Permit/Transitional Permit for Pushcart or Mobile Food Unit. It stated that the front reach-in cooler could not be used until it was properly operating and approved by Johnston County Health Department. Is it in compliance or out of compliance?

Mrs. Garcia stated that a sandwich cooler was not working properly when we received the unit from the factory. It has since be fixed and was inspected by Johnston County Health Department. It is now in compliance with code.

Mr. Howell asked what are the estimated hours of operation and does the mobile unit leave everyday? What about Sundays?

Mrs. Garcia stated we would operate on Friday, Saturday and Sunday between 10:00 a.m. to 10:00 p.m. The unit leaves every day. We go back to our restaurant in Benson everyday to sterilize the unit and restocked for the next day.

Chairman Gardner closed the public meeting.

Mr. Helmer stated to the Board that he would answer any questions about Section 206 Accessory Uses they may have.

Chairman Gardner asked how does this incorporate with the UDO.

Mr. Helmer stated this project has a problem with the Zoning Ordinance, Section 206. Which states in order to have an accessory use, you must have a principle use. If the principal use is the food cart and the food cart drives away every day, then what is left are two accessory uses, the porter-potties and the carport. Without a principle use, these accessory structures are in conflict with Section 206.

Mr. Helmer read Section 206 to the Board.

Mr. Jesus Garcia asked if we are on the same lot as the owners machinery company, could that not be considered accessory to that use?

Mr. Helmer stated that you are on a vacant lot.

Ms. Carter asked about the time frame of the permit.

Mr. Helmer stated the applicants permit would expire.

Mr. Howell asked would it be in the best interest of the Planning Department to get an interpretation of Section 206 from the Towns Attorney?

Mr. Helmer stated that we have been communicating with the Towns Attorney trying to get feedback on this section.

Mr. Fetzer stated that what you have is a portable structure. Not a piece of real estate. This is a legal issue and not a question for the Board. He stated that the Towns Attorney should address this issue.

Mr. Howell stated that he agreed with Mr. Fetzer. We need the Town's Attorney ruling in writing on this issue before we make our decision.

Mr. Helmer stated that the Board could make their recommendation for or against the use with the condition that it is determined by the City Council and Town's Attorney not to be in conflict with Section 206.

Mr. Fetzner asked if the applicant's current permit could or would be extended until a resolution has been made?

Mr. Helmer stated yes.

Mr. Howell made motioned that was seconded by Ms. Carter to table the request until we can get a formalized writing interpretation of Section 206 from our attorney and the Garcia's continue to operate under the current permit for an additional 14 days.

The vote was unanimous.

New Business.

There was none.

Adjournment.

Being nothing further, the meeting was adjourned.