

DRAFT
Smithfield Planning Board Minutes
Thursday, April 3, 2014
6:00 P.M., Town Hall, Council Room

Members Present:

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

Members Absent:

Eddie Foy

Staff Present:

Mark Helmer, Senior Planner
Veronica Hardaway, Administrative Support Specialist

Staff Absent:

CALL TO ORDER

APPROVAL OF MINUTES FROM MARCH 6, 2014.

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

Public Hearings:

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

ZA-14-01 Hank Daniels, Danbar Ptr:

Mr. Helmer stated the applicant is requesting to amend the Town of Smithfield Unified Development Ordinance, Article 19-6 (B) (7) to specifically state that digital billboard signs shall not change more than one time in eight seconds.

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

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

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

Mr. Helmer stated he understood that most of the Board may have concerns with safety of this matter however NCDOT has had this current standard for over 12 years. During those 12 years they have not had any issues regarding safety.

Mr. Upton asked if anyone had any questions.

Teresa Daughtry asked if the language in the ordinance should read that the Town will follow NCDOT guidelines if they were to ever change their requirements due to safety reasons.

Mr. Helmer stated that if NCDOT was to adopt more stringent standards for signs within their jurisdiction, only permits issued by the Town meeting NCDOT standards would be honored. Therefore, adding additional language stating we will obey any future changes made by NCDOT is really not necessary. Besides, there may come a time when we approve a billboard sign not within NCDOT jurisdiction and any future NCDOT standard may not apply.

Teresa Daughtry stated if the ordinance ever gets to be an issue that it's not only understood but guaranteed that the Town would have to follow NCDOT guidelines.

Mr. Helmer stated that it should be understood that when Town and NCDOT jurisdictions overlap the most stringent regulations apply. This has always been true and will continue to be into the future.

Daniel Sanders asked if everyone has to change their signs.

Mr. Helmer stated this ordinance allows for the maximum or the fastest frequency a sign can change. This ordinance will apply to all existing billboard signs as well as any billboard approved in the future.

Mr. Upton closed the public meeting for ZA-14-01 and asked for a motion.

Teresa Daughtry made a motion, seconded by Jack Matthews, to recommend approval to amend the Town of Smithfield Unified Development Ordinance, Article 19-6 (B) (7) to specifically state that digital billboard signs shall not change more than one time in eight seconds. Unanimous.

ZA-14-02 Town of Smithfield:

Mr. Helmer stated the Town of Smithfield Planning Department is requesting to amend the Town of Smithfield Unified Development Ordinance, Article 5-2 (B), to reflect statutory changes to approval criteria for variances granted by the Town of Smithfield Board of Adjustments.

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

Mr. Helmer stated the Town of Smithfield Planning Department recommends approval of the request to amend the Town of Smithfield Unified Development Ordinance, Article 5-2 (B), to reflect statutory changes to approval criteria for variances granted by the Town of Smithfield Board of Adjustments. The Planning Board is requested to review the petition and make a recommendation to the Town Council for a zoning text amendment that adopts the new approval criteria for variances granted by the Town of Smithfield Board of Adjustments.

Mr. Upton opened the public hearing and asked if anyone had any questions.

Mark Lane asked if the first four findings in the report is the new criteria.

Mr. Helmer stated that was correct and the Planning Department will request that the applicant provide proof that all criteria are met.

Mark Lane asked if the new ordinance includes everything in the old ordinance.

Mr. Helmer stated yes. The old ordinance is more difficult to read and the new ordinance is in more simple terms but the content is the same.

Teresa Daughtry asked why the Planning Board has to make these kinds of decisions when they just make recommendations to the Town Council and they are the ones that essentially make the decision.

Mr. Helmer stated this was brought to the Planning Board because it's a Planning/Zoning issue. If as proposal has anything to do with UDO, zoning map amendments, zoning text amendments, conditional use permit or any other duties given to them by Town Council are all to be considered as part of the Planning Board assigned duties.

Teresa Daughtry asked if this would open up future issues with someone trying to use it for something other than what it means.

Mr. Helmer stated the purpose of this change is just a maintenance issue. It's about maintaining our ordinances and taking care of codes and making sure they reflect the changes made at the State level. Zoning text changes can and should be just as common as a zoning map change and should not automatically be cause for concern.

Teresa Daughtry asked what “unnecessary hardship” meant in the text.

Mr. Helmer stated it is directed towards unnecessary hardship of the land not the individual. Example: If you have a development standard requiring three points of ingress and egress to a site and all of them must cross an environmentally sensitive area like a regulated stream, this could be argued as a hardship to the land and may qualify for a variance to allow for maybe 2 driveways. On the other hand, the applicant seeking relief due to hardship because three driveways cost more than two does not qualify for a variance.

Teresa Daughtry said she was concerned that the text change would loosen up the process and make it easier for people to get variances.

Mr. Helmer stated that the variance procedure serves as a release mechanism for the rigidity that sometimes comes with zoning code and one size does not always fit all because every site is different. However, the variance process should not be used to avoid having to meet minimum development standards set by Town Council. The Board of Adjustment is not set policy, legislate or decide on cases on any other factor other than the approval criteria.

Teresa Daughtry said she was concerned the text amendment would create loopholes that an attorney could get through.

Mr. Helmer stated that anything could be argued but as long as the Board of Adjustment is basing their decisions on factual evidence submitted by credible witness and using criteria approved by the General Statutes, defending their decision should be easier.

Mark Lane asked why the text has to be changed if it’s basically saying the same thing.

Mr. Helmer stated the General Assembly has made the changes and it is recommended we use them exactly as written.

Teresa Daughtry commented that the Board may be giving the applicant ammunition to come in and take advantage of text that isn’t worded properly.

Mr. Helmer stated the revisions to the approval criteria were created by a committee of land use planners and attorneys and approved by the State Legislature.

Teresa Daughtry asked where it specifically states hardship to the land. It doesn’t say specifically the land it just states hardship. That language can mean anything. Anyone can come in the office and claim hardship that has nothing to do with the land.

Mr. Helmer stated criteria number 2 speaks to personal circumstance as not being a valid reason for the Board of Adjustment to approve a variance.

Mark Lane asked if language could be added to satisfy the Planning Boards concerns.

Mr. Helmer stated he does not recommend adding or taking away from the enabling laws set by the General Statutes.

Teresa Daughtry asked how many towns have adopted this new text and was there a time limit when it was supposed to be done.

Mr. Helmer responded he didn't have that information on other jurisdiction but he is confident that any Board of Adjustment using any criteria other than that what State law says they must use is operating on a slippery slope.

Teresa Daughtry asked why would you adopt something that does not specifically state hardship of the land and not individual.

Mr. Helmer stated the courts have ruled in the past that personal circumstance is not a valid reason for the Board of Adjustment to grant a variance.

Teresa Daughtry asked why she and the Town were not notified prior to changes.

Mr. Helmer stated changes made by the State Legislature are adopted after hearings are conducted and that the North Carolina planning community has been involved in its creation from the beginning. Mr. Helmer stated as a Certified Zoning Official, I encourage and will do everything I can to help the Planning Board and the Board of Adjustment to stay current in recent development trends and modern zoning code.

Mr. Helmer stated he was thankful that most of the Planning Board and Board of Adjustment were able to spend the whole day with the North Carolina Association of Zoning Official studying this very text amendment.

Mark Lane asked if the new text is law.

Mr. Helmer stated that the proposed text amendment is identical to the language adopted into law by the State Legislature.

Mr. Lane stated he could not make a recommendation on text amendment that he did not completely understand.

Daniel Sanders asked what if the Planning Board denies this recommendation and the Town Council has the same questions the Planning Board has.

Mr. Helmer stated the Town Council will probably adopt the new language because it's the law as adopted by the State Legislature.

Gerald Joyner stated he didn't understand why the Planning Board would recommend denial of the amendment just because we have no real choice in the matter.

Teresa Daughtry asked if every town has to make the same changes.

Mr. Helmer stated that revising local ordinances to reflect changes in State law is common and not always a cause for alarm and that any Board of Adjustment not using the approval criteria as adopted by the State may find their decisions harder justify and defend if and when an appeal is filed.

Mr. Upton asked what would become of the proposed amendment if no recommendation by the Planning Board was made.

Mr. Helmer stated that the proposed zoning text amendment can go forward to City Council for their decision whether or not the Smithfield Planning Board recommends approval or not.

Mr. Upton closed the public hearing for ZA-14-02 and asked for a motion.

Mr. Upton made a motion to recommend approval of the proposed text amendment. There was no second.

Mr. Lane made a motion to forward the proposed text amendment to City Council without a recommendation. Seconded by Teresa Daughtry Unanimous.

Old Business:

No Report.

New Business:

No Report.

Mr. Sanders made a motion to adjourn, seconded by Mr. Mathews. Unanimous.

Submitted this 3rd day of April, 2014.

Veronica Hardaway
Administrative Support Specialist
Planning Department