

DRAFT
Smithfield Planning Board Minutes
Thursday, September 4, 2014
6:00 P.M., Town Hall, Council Room

Members Present:

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

Members Absent:

Chairman Eddie Foy

Staff Present:

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

Staff Absent:

CALL TO ORDER

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

APPROVAL OF MINUTES FROM AUGUST 7, 2014.

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

Public Hearings:

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

CUP-14-07 Guy C. Lee Manufacturing Company:

Mr. Helmer stated the applicant is requesting a conditional use permit to operate an automotive sales lot, a manufactured home sales lot and an outdoor storage yard on property located within a B-3 (Business) zoning district. The property considered for approval is located on the west side of West Market Street approximately 350 feet south of its intersection with Wilson's Mills Road and further identified as Johnston County Tax ID# 15078199K.

Mr. Helmer stated the applicant is seeking a conditional use permit to allow for an automobile sales lot and vehicle storage on property located within a B-3 (Business) zoning district. 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 proposed facility may be required to comply with Town of Smithfield storm water regulations to include detention and nitrogen offset payments.

Mr. Helmer stated the applicant has provided a sketch plan for an automobile sales lot or a manufactured home sales lot in the front portion adjacent to West Market Street and a vehicle storage yard in the rear of the lot. Upon staff review of the proposal and in accordance with Article 10 and Article 13 of the Smithfield Unified Development Ordinance (UDO), it does not appear as though manufactured homes sales are a permitted use in the B-3 (Business) zoning district. Therefore, the applicant must remove manufactured home sales from consideration at this time. The applicant may, at a future date, request a formal zoning text amendment. If such a text amendment is approved by Town Council, the applicant may request an amendment to an approved conditional use permit to allow for manufactured home sales at this location. Although a few details are provided on the number of automobiles this 6.04 acre tract will accommodate, it can be estimated that as many as 450 cars can be displayed for sale and stored on the lot after interior landscaping and perimeter buffer yards are taken into consideration.

Mr. Helmer stated buffer yards are shown on the sketch plan and appear to meet minimum development standards as found in Article 17 of the Smithfield UDO. This includes a 15 foot street yard adjacent to West Market Street, 10 foot buffer yard adjacent to Sunset Memorial Cemetery, a 12.5 foot transition yard adjacent to Windsor Place Housing Development, a 40 foot buffer yard adjacent to an undeveloped residential zoned property in the rear and an 8 foot transition yard adjacent to the commercial strip center to the north. Both proposed uses to include automobile sales and vehicle storage are considered commercial parking lots by definition as found in Article 2 of the Smithfield UDO and must be graded and surfaced with blacktop, concrete, brick, or other such surfacing material to ensure a dustless surface condition in accordance with Article 18 of the Smithfield UDO.

Mr. Helmer stated storm water facilities are shown at the rear of the lot. Access will be provided by an NCDOT approved driveway located on West Market Street and will be required to conform to current NCDOT driveway standards. The applicant will be required to submit a detailed landscape plan, lighting plan and storm water plan prior to final site plan approval and zoning permit. The comprehensive growth plan has identified the majority of the property as being suitable for commercial uses and the very rear of the property being reserved for a buffer. Automobile sales and vehicle storage are permitted uses within B-3 (Business) zoning district with a valid conditional use permit. Manufactured homes sales are not and should not be considered for permitting at this time.

Mr. Helmer stated the applicant will be responsible for submitting a preliminary site plan that shows all applicable minimum development standards can and will be met prior to site plan approval and issuance of a valid zoning permit. Compatibilities issues with surrounding land uses can be anticipated given the type size and intensity of the proposed automobile sales lot/vehicle storage given its close proximity to adjacent senior living facility and cemetery. The site has an existing ground sign that appears to qualify for a permit that would allow the sign to be refaced. The Town will provide fire protection as well as water and sewer. Duke Progress Energy will provide electric.

Mr. Helmer stated the Planning Department recommends that the Planning Board make a determination if any adverse impacts on adjacent land uses will occur and that the site plan meets or exceeds all minimum development standards to include adequate buffers as required by the Town of Smithfield UDO.

The applicant has provided a revised plan that was submitted today meeting minimum development standards. Mr. Helmer stated that the applicant has just submitted a revised plan that appears to meet minimum development standards. However, the plan indicates gravel storage area which does not meet minimum development standards.

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

Mark Lane stated it was his understanding that the Planning Board received a letter from Mr. Lampe tonight to withdraw his request for a Conditional Use Permit for used auto sales.

Mr. Ross Lampe, Crescent Drive Smithfield, stated he purchased the above said property in June and since then has been trying to find someone to rent the property to. There has been little success in doing that; however, the only interest that has been received was a possible tenant that wants to store repossessed cars in the back lot. The back lot is fenced off separately from the front lot. He stated he is optimistic to have two people interested in the storage of repossessed cars in the back lot at this time. Mr. Lampe stated he would like to withdraw his request involving a used car sales lot in the front lot due to the lack of decent tenant inquiries. Mr. Lampe also stated he has found out that next year the Town must submit a Phase II small NS4 permit which may or may not change regulations, so now is a good time to delay the front portion of the project since changes may need to be made.

Mr. Lampe stated he has hired Clayton Narron, Landscape Architect, to place a buffer strip around the whole 5.99 acres and would like to proceed with the landscaping at this time as well as pave the back lot and install a retention pond.

Mark Lane asked if a retention pond is required.

Mr. Helmer stated it is required and should be able to hold at least two inches of water.

Mr. Lampe stated he would like to go ahead and install the retention pond and place landscaping in the front as well as the back lots to hide the repossessed cars. Right now West Smithfield has some closed shopping centers and a few used car sales lots that don't present a good picture.

Daniel Sanders asked if the retention pond would be affected if the vehicles had any oil or gas leaks.

Mr. Lampe stated the tenant would be collecting repossessed vehicles not crashed vehicles but cannot guarantee there would be no leaks.

Mr. Upton asked if the vehicles would be stored for longevity or just short periods of time.

Mr. Lampe stated the vehicles would only be there for short periods of time. The tenant is trying to expand their territory and just need space for storage.

Mark Lane stated that according to the site plan, access to the back lot looks pretty difficult to get to from Highway 70 with a tow truck.

Mr. Lampe stated the front driveway has gravel and that all he wants to do right now is install a buffer strip and landscaping to the front lot.

Teresa Daughtry asked if this proposal were to get approved, what would keep the applicant from expanding the land use and just not come back to the Board.

Mr. Helmer stated that any difference made to the site would require the applicant to come back.

Teresa Daughtry asked if the Planning Department goes by the acreage that the applicant tells them he is going to use.

Mr. Helmer stated that was correct. The applicant has to clearly show boundaries on their site plan.

Mr. Lampe stated the area he will be using is fenced in with a screen and a separate gate.

Teresa Daughtry stated that the Planning Board has been through something similar to this in the past, how you would allow someone to go through a parking lot that is unpaved like it is now into one that has to be paved.

Mr. Helmer stated the ordinance clearly states it has to be paved.

Teresa Daughtry asked if the whole parking lot has to be paved.

Mr. Helmer stated that is correct if the parking lot is being used for parked cars.

Teresa Daughtry stated the whole lot should have to be paved, but what the site plan is showing now is that the front driveway will stay as is.

Mr. Helmer stated that according to the site plan submitted before the meeting that was correct.

Mr. Lampe stated the front portion is gravel and flat and would be able to be driven across to get to the back lot.

Mr. Helmer stated that if the applicant is paving the back according to code for this particular Conditional Use Permit the gravel driveway might be sufficient, but internal circulation is lacking.

Teresa Daughtry asked if a retention pond would have to be installed.

Mr. Helmer stated it is unclear at this point.

Teresa Daughtry asked how you can plan for the future if it says you have to have a pond for this piece of property.

Mr. Helmer stated the applicant is planning for the future by showing a location that's reserved for a pond.

Teresa Daughtry asked if the applicant can come back for something different then what he is asking for right now.

Mr. Lampe stated he would come back for the front part of the lot with whoever the tenant may be and whatever their use will be whether it's a strip mall, drugstore, or mini storage.

Mark Lane stated a retention pond is not needed for that site.

Mr. Helmer stated again he is not certain but if the applicant is only doing the back lot at this time he may not trigger storm water regulations. If not, the pond can be removed from the plan.

Mr. Lampe stated he would like to go ahead and do the design for the whole 5.99 acres including the pond because at some point the Town will have to resubmit a plan for Phase II MS4 storm water regulations.

Mr. Spain asked who would be responsible for any leak of antifreeze and such in the soil and river since it will be paved there could be runoff.

Mr. Lampe stated that could be true for any parking lot and a lot of shopping centers have retention ponds.

Mr. Embler stated that the State of North Carolina monitors quantity not quality. The pond would be designed for removal of nitrogen. It's only prudent planning that we include retention pond so that if Mr. Lampe wants to come back for the front. If there is a polluted point of view it will be investigated. For Phase II MS4 permitting we were monitored and audited.

Clayton Narron, 451 South Fourth Street Smithfield, asked if anyone had any questions for him.

Mr. Upton asked just for clarification regarding the access from the Highway to the recovery area if it was going to be paved.

Clayton Narron stated that was not included in the plan and there should not be any problems locating the recovery area from the access driveway. Trees can be moved around according to the UDO.

Teresa Daughtry asked if there is supposed to be some type of screening along with the use of the trees.

Mr. Helmer stated landscape requirements are a little different for storage yards. There has to be a solid visual barrier to include a fence between the storage yard and the cemetery.

Clayton Narron stated evergreen shrubs and small trees so you can't see the vehicles. The site detailed plan will show the names of the plantings.

Teresa Daughtry asked what kind of buffer will be used across the front.

Clayton Narron stated the buffer would run the entire length of the fence and the depth would be about 6-8 feet wide. It will meet the minimum requirements.

Mr. Embler stated that plantings should provide an opaque buffer within two years.

Mark Lane stated he is concerned that the retirement center would have to stare at a lot full of cars.

Clayton Narron stated there are no windows on the backs of those retirement units facing the lot and that there will be more buffer plantings added.

Daniel Sanders asked if someone were in the cemetery would they be able to see the vehicles.

Clayton Narron stated they would not be able to see the vehicles. There are crepe myrtles down the side but evergreens will also be added.

Teresa Daughtry stated she keeps hearing the applicant say meet the minimum requirements. According to the site plan is the applicant going to keep the plan to the bare minimum?

Clayton Narron stated they are meeting the buffer requirements but if Mr. Lampe agrees to widen the buffer according to what the Town would like we can do that. Mr. Narron stated the plan provided is a conceptual plan, if they move forward with the proposal a more detailed plan will be provided to Planning staff.

Gerald Joyner asked if there will be any security to prevent theft of parts or vehicles.

Mr. Helmer stated that would be a good question for the operator of the facility.

Clayton Narron stated there is lighting in the facility as well as a six foot fence with three strands of barbed wire at the top, but that this is something that needed to be addressed with the tenant.

Jack Matthews asked if there would be a size limit of the vehicles being repossessed such as boats, RV's, and trailers.

Mr. Lampe stated he was not sure.

Daniel Sanders asked what the difference was between this plan than the other two plans that came before the Board previously.

Mr. Helmer stated the other two plans previous to this plan were denied due to adverse impacts to adjacent properties.

Mark Lane stated he liked what Mr. Lampe was doing to try to improve the Town.

Teresa Daughtry stated she disagreed although she feels Mr. Lampe means well, she thinks the proposed project should not be within city limits.

Mark Lane asked what the Planning Departments thoughts were about the project.

Mr. Helmer stated the Board needed to find that no impacts on adjacent properties will occur. If so, recommend conditions to alleviate the impacts. A decision must be made based on factual evidence submitted at the hearing.

Daniel Sanders asked if there could be an agreement between Mr. Lampe and the tenant regarding a time limit for how long the vehicles would sit.

Mr. Lampe stated if he knew more about the repo business he would have a better answer for the Board.

Mr. Embler stated that if the Board has any concerns with the proposal they can place conditions on the permit.

Teresa Daughtry made a motion to table the proposed project for thirty days for the Board to have time to review the case. Teresa Daughtry, Gerald Joyner, Jack Matthews, and Stephen Upton voted in favor of the motion. Ashley Spain, Mark Lane, and Daniel Sanders voted against the motion. Motion passed 4-3.

The Planning Board had discussion reviewing Articles 6 through 10 of the Unified Development Ordinance.

14. **This amendment will reduce the burden on staff for notifying complainants in writing.**

Section 7-1: Complaints Regarding Violations

Whenever the Administrator receives a ~~written, signed~~ complaint alleging a violation of this Ordinance, he shall investigate the complaint, take whatever action is warranted, ~~and inform the complainant in writing what actions have been or will be taken.~~

15. **The Planning Board is requested to send written violations**

Section 7-3: Procedures Upon Discovery of Violations

(A) If the Administrator finds that any provision of this Ordinance is being violated, he shall send a written notice to the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. Additional written notices may be sent at the Administrator's discretion.

16. **The Planning Board is requested to have open discussions with staff regarding the need for certified/registered mail. This proposed amendment will allow notice of violation by first class mail.**

Section 7-4: Remedies and Penalties for Violations

(B) Civil Penalty. Violation of this Ordinance subjects the violator to a civil penalty in the amount of one hundred dollars (\$100.00). The Administrator may impose a civil penalty by giving the violator a written citation, either in person or by certified or registered mail, return receipt requested **or first class delivery by US Postal Service.** The citation shall describe the nature of the violation, specify the amount of the civil penalty being imposed, and direct the violator to pay the civil penalty to the Town within ten (10) days of the date the citation is received. If the violator fails to either pay the civil penalty or correct the violation within this time limit, the Administrator may institute a civil action in the nature of a debt in a court of competent jurisdiction to recover the civil penalty.

For purposes of assessing the amount of a civil penalty, each day the violation remains uncorrected after receipt of the correction order (or the receipt of the citation itself in the case of emergency enforcement) shall constitute a separate violation that subjects the violator to additional civil ~~penalty~~ **penalties per violation per day.**

17. **The Planning Board is requested to discuss with staff the following ordinance which sets the clock running for the thirty day window in which an aggrieved party has to file for an appeal to superior court for a review of a Board of Adjustment decisions. The question is whether recorded actions should be included in this list.**

Section 7-6: Judicial Review

(A) Every final decision of the Board of Adjustment shall be subject to review by the Superior Court of Johnston County by proceedings in the nature of certiorari.

(B) The petition for the writ of certiorari must be filed with the Johnston County Clerk of Court within 30 days after the later of the following occurrences:

(1) A written copy of the board's decision (see Section 6-6) has been filed in the office of the Planning Department, and

(2) A written copy of the board's decision (see Section 6-6) has been delivered by personal service or certified mail, return receipt requested **or first class delivery by US Postal Service**, to the applicant or appellant and every other aggrieved party who has filed a written request for such copy at the hearing of the case.

(C) A copy of the writ of certiorari shall be served upon the Town of Smithfield.

- 18. This paragraph appears to empower the Board of Adjustment to issue a use permit for nonconforming use. However, at its core, it is really authorizing the Board of Adjustment to grant a variance from the permitted use chart in violation of North Carolina state law which explicitly forbids use variances.**

Section 8-4: Change in Kind of Nonconforming Use

~~(C) A nonconforming use may be changed to another nonconforming use only in accordance with a use permit issued by the Board of Adjustment. The Board shall issue such a permit if it finds that the proposed use will be more compatible with the surrounding neighborhood than the use or combination of uses in operation at the time the application is made for the permit.~~

- 19. This amendment reflects the City Managers proper title.**

Section 9-4: Maintenance of the Official Zoning Map

Upon notification by the Town Council that a zoning change has been made, the ~~Town~~ **City** Manager shall cause to be made the necessary changes on the official zoning map within fourteen (14) calendar days of notification. The Planning Director shall be responsible for the maintenance and revision of the official zoning map after being notified by the ~~Town~~ **City** Manager.

- 20. This amendment reflects Town Policy by requiring an additional 25% to bond amounts to cover contingencies and inflation.**

Section 19-8: Improvements Bond

No final certificate of occupancy/compliance for a commercial, residential, or manufactured home park or planned building group will be issued until all required site improvements have been completed. In lieu of completion of required site improvements, the developer of the planned group may enter into a contract with the Town of Smithfield providing for the installation of required improvements within a designated period of time. Performance of said contract shall be secured by a cash or surety bond which will cover the total estimated cost of the improvements **plus 25%** as determined by the Town of Smithfield; provided, however, that said bond may be waived by the Town Council within its discretion.

21. This proposed amendment clarifies and makes distinctions between building setbacks yards, landscape yards, and open space.

Section 9-6: Minimum **building setbacks yards, landscape** yards or other open spaces required by this Ordinance, including those provisions regulating intensity of use, for each and every building hereafter erected or structurally altered shall not be encroached upon or considered as meeting the yard or open space requirements or the intensity of use provisions for any other building.

22. The following ordinance will increase the side yard building setbacks for accessory structures from 8 feet to 10 feet.

Article 10-Table of Permitted Uses

Note 5. Accessory Uses or Structures.

...No accessory building or use shall be erected in any required front or side yard or within ten (10) feet of the rear lot line (unless the rear line abuts navigable waters), or within **ten (10)** feet of any side lot line, and no separate accessory building or use shall be erected within ten (10) feet of any other accessory building unless on same property. No accessory building or use may be erected or installed on any lot where a principal building does not exist. No lot shall have in excess of one accessory building. Accessory building numbers limitation on property are exempt if the property is identified as having farm tax identification number. The side and rear setbacks for farm property shall be the same as other accessory buildings.

23. This amendment will call for a variance when varying from the published standard requiring manufactured homes to be placed with the longest side of the home parallel to the front property line.

Note 13: Manufactured Home on Individual Lots

(A) (7) Manufactured homes, Class A shall be placed so that the longest side of the home is parallel to the front property line of the lot. The Board of Adjustment shall be

authorized to consider, as a ~~conditional use~~ **variance request**, a modification to this parallel orientation standard.

24. This amendment eliminates the incorrect paragraph that was inserted by mistake.

~~(B) Existing manufactured homes, Class B, which are located within the R-6 district on the effective date of this Ordinance may be continued and maintained as a nonconforming use provided that any such existing home shall only be replaced by a manufactured home, Class A, which complies with all applicable requirements of this Ordinance. Other manufactured homes existing on the effective date of this Ordinance which are nonconforming uses within the zoning districts in which they are located, may be continued and maintained provided that upon their removal, they shall only be replaced with a use permitted within that district.~~

~~(C)~~ **(B)** Existing manufactured homes, Class A and Class B, which are located within the R-6 district on the effective date of this Ordinance may be continued and maintained as a nonconforming use provided that any such existing home upon their removal, shall only be replaced with a use permitted within the R-6 district. Other manufactured homes existing on the effective date of this ordinance which are nonconforming uses within the zoning districts in which they are located, may be continued and maintained provided that upon their removal, they shall only be replaced with a use permitted within that district.

~~(D)~~ **(C)** Existing manufactured homes, Class A and Class B, which are located within the R-6 district on the effective date of this Ordinance which are damaged or destroyed by fire or an act of God may be replaced and shall comply with the yard, height, parking, loading, access, lot width, lot area, and lot coverage provisions of this Ordinance for the district in which such structure is located unless the structure is situated on a substandard lot of record, in which case the provisions concerning substandard lots of record shall apply, or unless the incomplete nature of the damage would make it more feasible to rebuild in the previous location, in which case the Board of Adjustment is authorized to consider a variance to allow the reconstruction or replacement. In considering the variance, the Board of Adjustment may require appropriate conditions and safeguards in accordance with the provisions of the Ordinance.

25. This amendment reflects the intent of the above paragraph (B).

Section 8-3: Extension or Enlargement of Nonconformities

~~(G)~~ **(F)** Notwithstanding paragraph (E), any structure **(except manufactured homes)** used for single-family residential purposes and maintained as a nonconforming use may be replaced with a similar structure of a larger size, so long as the replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to yard size and setback requirements. ~~In particular, a manufactured home may be replaced with a larger manufactured home, and a "single wide" manufactured home~~

~~may be replaced with a “double wide”. This paragraph is subject to the limitations stated in Section 8-5 on abandonment and discontinuance of nonconformities.~~

Old Business:

Mr. Embler stated the Town Council has approved raises for the Planning Board in the amount of \$50 per month and for the Board of Adjustments \$25 per meeting.

New Business:

Mr. Helmer stated the new committee report will be included in packets every month.

Mark Lane made a motion to adjourn, seconded by Jack Matthews. Unanimous.

Submitted this 4th day of September, 2014.

Veronica Hardaway
Administrative Support Specialist
Planning Department