

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

Members Present:

Chairman-Eddie Foy
Vice-Chairman Stephen Upton
Mark Lane
Daniel Sanders
Gerald Joyner

Members Absent:

Teresa Daughtry
Jack Matthews
Ashley Spain

Staff Present:

Mark Helmer, Senior Planner
Veronica Hardaway, Admin

Staff Absent:

CALL TO ORDER

APPROVAL OF MINUTES FROM SEPTEMBER 1, 2016.

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

Public Hearings:

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

RZ-16-03 John A Whitley:

Mr. Helmer stated 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.

Mr. Helmer stated all permitted uses within the OI (Office-Institutional) zoning district may be considered for future site plan approval and permitting. 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. 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.

Mr. Helmer stated 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. 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 a busy portion of South Third Street and is adjacent to 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. The Town of Smithfield will provide fire protection, electric and water/sewer services.

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.

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.

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

Mr. Foy asked if there was any opposition to the proposal.

Mr. Helmer stated he has not heard any opposition and there isn't anyone present to speak against the proposal.

Mr. Upton asked if this proposal is for a rezoning only.

Mr. Helmer stated that is correct.

Mr. Upton asked if further site planning on this project would be brought to the planning staff or before the board.

Mr. Helmer stated any further site planning would be administrative in nature and would be approved by planning staff.

Mr. Upton expressed his concerns with parking on the street and obstructing view of oncoming traffic.

Mr. Helmer stated due to the type of business operating at this location, traffic would probably not be an issue. As long as there is no sign that stated "no parking", vehicles may park there.

Mr. Upton requested to view the site plan when it becomes available.

John A. Whitley, 219 Johnson St Smithfield, stated he has been an attorney for 37 years and is currently located in Levinson's office building. He stated he is looking for a standalone office. Mr. Whitley invited the board to tour the proposed office and assured them he takes care of his properties. He stated there will be no parking on Woodall Street and will tell clients as such. He stated he agreed on street parking could prove to be dangerous. He stated he rarely has 2-3 clients at one time and the majority of his business is conducted via phone. He stated vehicle traffic is not heavy and should not pose a problem.

Being no further questions, Mr. Foy closed the public meeting for RZ-16-03.

Stephen Upton made a motion, seconded by Daniel Sanders, 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 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. *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 rezoning 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 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 S. 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 accommodate 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 S. 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 is much greater than that to well maintain a tenement. Bordering on an area of residential repose, this general ledger practitioner of nearly 64 years of 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 the 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 S. Third Street on either side from Johnston Street south to Woodall Street is zoned commercial (O&I).

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 the 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 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. The subject property is presently suitable for either residential or commercial use.

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;

Stephen Upton made a motion, seconded by Daniel Sanders to rezone one tract of land totaling approximately .11 acres from the R-8 (Residential) zoning district to the OI (Office-Institutional) zoning district.

CUP-16-10 Victor Hugo Garcia Rizo:

Mr. Embler stated 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.

Mr. Helmer stated 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. 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.

Mr. Helmer stated 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 been 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. 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.

Mr. Helmer stated 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. A residential use at this location should not pose a compatibility issue with surrounding land uses. The proposed residential use at this location will not qualify for a sign. Town of Smithfield will provide fire protection and water/sewer services. Duke Progress Energy will provide electric.

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.

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.

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

Mr. Foy asked if there was any opposition to the proposal.

Mr. Helmer stated he has not heard any opposition and there isn't anyone present to speak against the proposal.

Daniel Sanders asked if this would be a working permit to run renovations.

Mr. Helmer stated there is existing parking on the site and would be used as a single family dwelling. No construction would be required; if so the applicant would have to acquire a building permit.

Mr. Upton asked what the building is next to the proposal.

Mr. Helmer stated it is an existing residential single family dwelling.

Being no further questions, Mr. Foy closed the public meeting for CUP-16-10.

Stephen Upton made a motion, seconded by Daniel Sanders, 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.**

- 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.

- 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.***

- 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.***

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;

Daniel Sanders made a motion, seconded by Stephen Upton to allow for a residential use within a B-3 (Business) zoning district.

Old Business:

New Business:

By nomination and vote, it was the consensus of the Board to induct Stephen Upton as the new Chairman of the Board and Daniel Sanders as the new Vice Chairman of the Board.

Eddie Foy made a motion to adjourn, seconded by Daniel Sanders. Unanimous.

Submitted this 6th day of October, 2016.

Veronica Hardaway
Administrative Support Specialist
Planning Department