

**Draft
Town of Smithfield
Planning Board Minutes
Thursday, January 2, 2020
6:00 P.M., Town Hall, Council Chambers**

Members Present:

Chairman Stephen Upton
Vice-Chair Mark Lane
Teresa Daughtry
Debbie Howard
Michael Johnson
Ashley Spain
Alisa Bizzell
Doris Wallace

Members Absent:

Staff Present:

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

Staff Absent:

CALL TO ORDER

IDENTIFY VOTING MEMBERS

APPROVAL OF AGENDA

Michael Johnson made a motion, seconded by Mark Lane to approve the agenda. Unanimously approved

SWEARING IN OF NEW BOARD MEMBER

Doris Wallace was sworn in by Chairman Stephen Upton

APPROVAL OF THE 2020 MEETING SCHEDULE

Teresa Daughtry made a motion, seconded by Michael Johnson to approve the 2020 meeting schedule. Unanimously approved

APPROVAL OF MINUTES from November 1st, 2019

Ashley Spain made a motion, seconded by Teresa Daughtry to approve the minutes as written. Unanimously approved

NEW BUSINESS

RZ-20-01 Town of Smithfield: The applicant is requesting to rezone 5 tracts of land totaling approximately 66.59 acres from the RMH-CUD (Residential Manufactured Home Conditional Use District) to the R-10 (Residential) zoning district. The properties considered for rezoning are located on the southwest side of Barbour Road approximately 1,100 feet northwest of its intersection with Bella Square. The properties considered for rezoning are further identified as Johnston County Tax ID# 150781995, 15078199Q, 15078199I, 15078199T, 15078199V and 15078199W.

Stephen Wensman stated in 1997 Town Council approved the rezoning of several properties on Barbour Road from AR/R-40 (an old zoning district designation) to RMH-CUD, for a mobile home park. The RMH-CUD was rezoned with a site plan for a manufactured home park and a Special Use Permit for the manufactured home park was approved. Because the development was never constructed, the Special Use Permit expired and therefore, the Conditional Use District rezoning has also expired. The zoning map was never amended to reflect the expiration. Therefore, Staff is requesting an amendment to the Town's zoning map to reflect the expiration. The property is not located within a floodplain and no delineated wetlands exist on or near property considered for rezoning.

Stephen Wensman stated that a Conditional Use District Zoning is a zoning designation with an associated site-specific development plan in conjunction with a special use permit. In this case, the applications were a rezoning from AR/R-40 (an old zoning district designation) to RMH-CUD, for a manufactured home park with a special use permit for the manufactured home park. Since the rezoning and special use permit approval, no construction was completed and therefore the vested rights and special use permit have expired. Normally, the zoning should revert back to the previous zoning district. In this case, the AR/R-40 zoning district does not exist.

Stephen Wensman stated that the current comprehensive growth management plan guides the property for low density residential, which corresponds with the R20-A zoning district. The draft comprehensive growth management plan, "Town Plan", guides these properties for medium density residential, which corresponds with the R-6, R-8 and R-10 zoning districts. The prevailing medium density zoning in the area is R-10. The slightly lower density of the R-10 is in keeping with the density restrictions of the PA-IV Watershed, the overlay zoning district in which these properties are located.

Therefore, Staff recommends the properties be rezoned to R-10. With approval of the rezoning, the Town Council is required to adopt a statement describing whether the action is consistent with the adopted comprehensive plan and other applicable adopted plans and that the action is reasonable and in the public's interest. Planning Staff considers the action to be consistent and reasonable:

Consistency with the Comprehensive Growth Management Plan –The draft Future Land Use Map guides these properties for medium density residential land uses. The R-10 zoning district is a medium residential district.

Consistency with the Unified Development Code - The rezoning will be consistent with

the Town of Smithfield Unified Development Ordinance as all existing and future land uses will need to comply with the UDO

Compatibility with Surrounding Land Uses - The property considered for a rezoning is compatible because many of the properties within the Town's corporate boundary in the immediate area are zoned R-10 and the area is in transition from rural to suburban.

Staff recommends approval of RZ-20-01 finding the rezoning consistent with applicable adopted plans, policies and ordinances.

Mrs. Daughtry asked why the Planning Board should make the decision for the landowner to allow a developer to come in and develop this land.

Mr. Wensman said if a developer wanted to come in and use this property now, the only use is a mobile home park. They would need a special use permit for the multifamily aspect of it. You could put conditions on it but you would have to approve it.

Mrs. Daughtry asked what the landowner thinks about this.

Mr. Wensman said they landowner has been informed. We sent a letter but they didn't show up for tonight's meeting. Hopefully they will show up at the Town Council meeting, He hasn't had any feedback from them.

Mrs. Howard asked if we could rezone this property to R-10 when everything surrounding it is R-20 without saying we're spot zoning.

Mr. Wensman said it's a huge area so he doesn't think it is an issue.

Mrs. Howard asked if the landowner can still continue to use the land as R-10 and use the property as a pasture.

Mr. Wensman said yes.

Mr. Lane asked Mr. Wensman if that was the real reason, he picked the parcels that he did.

Mr. Wensman stated that he picked the parcels because they are currently zoned RMH-CUD he didn't think it was appropriate for it to stay in that zone like it was when the approval has expired.

Mr. Upton thanked the Planning Department staff for bringing this to the Planning Board members attention.

Mr. Wensman said as you well know there is a lot of residential development interest in Town. We want to make sure that we're poised to develop like we want to.

Mr. Lane asked if the current zoning on this property would allow a mobile home park.

Mr. Wensman said yes, but only with a special use permit. You can't deny a special use permit, you can put conditions on it. You would be very limited to how you could restrict it.

Alisa Bizzell made a motion to recommend approval of RZ-20-01, rezoning the subject properties from RMH-CUD to R-10 and recommend approval of a consistency statement declaring the action to be consistent with adopted comprehensive plan and other applicable adopted plans and that the action is reasonable and in the public interest, seconded by Teresa Daughtry. Unanimously Approved

Unified Development Ordinance (UDO), Article 10, Wireless Communication Facilities.

Review and discuss current UDO requirements for wireless communication facilities within the Town of Smithfield planning and zoning jurisdiction and identify possible future UDO amendments.

Mr. Helmer presented the UDO Article 10, Part VIII Wireless Communication Facilities. He stated the purpose of the Wireless Communication Facilities Ordinance is to facilitate the deployment of necessary telecommunication services that are the least visibly intrusive type of installation that is not proven to be commercially or technologically impracticable and that will effectively prohibit the applicant from accomplishing its intended goal(s).

Wireless communications facilities include cell towers, commercial television broadcast towers, commercial radio towers, amateur radio towers and small cell towers. The Town of Smithfield Unified Development Ordinance (UDO) regulates the design, height and placement of all wireless communication towers on private property and within the public right-of-way. The UDO states that small cell antennas when located within the public right-of-way are exempt from zoning approval as required by, and in accordance with, the North Carolina general statutes. The Town of Smithfield allows for amateur radio towers in residential zoning districts, as required by and in accordance with, North Carolina general statutes.

Wireless communications facilities approval processes are set by the UDO Part VIII. Wireless Communication Facilities includes both an administrative review (use by right) and a special use approval process. However, it should be noted that the UDO, Article 6, Section 6.5 Table of Uses and Activities appears to not allow for wireless communications as a use by right.

10.86.2. Administrative Review and Approval states that the following standards must be met to be considered for administrative review and approval:

- New Wireless Support Structures less than fifty (50) feet in height in any zoning district.
- New Wireless Support Structures that are less than two hundred (200) feet in height, in any Industrial district.

- Concealed Wireless Facilities that are one hundred fifty (150) feet or less in height, in any zoning district *except* residential districts
- Monopoles or Replacement Poles located on public property or within utility easements or rights-of-way, in any zoning district.

10.86.3. Special Use Permit states that any application for wireless facilities and/or wireless support structures not subject to administrative review and approval pursuant to this ordinance shall be permitted in any district upon the granting of a special use permit.

10.88.1. Special Use Permit Process states that any wireless facility or wireless support structures not meeting the requirements of Section 10.86.2 above or 10.86.4 (exempt facilities when located in an historic district), may be permitted in all zoning districts upon the granting of a Special Use Permit, subject to:

10.88.1.1. The submission requirements of Section 10.88.1.2. below; and

10.88.1.2. The applicable standards of Section 10.89 below; and

10.88.1.3. The requirements of the special use permit process in Section 4.9.

Mr. Helmer stated the most critical part is 10.89.8. Standards for the R-20A, R-10, R-8, R-6, R-MH, PUDS, and O/I Districts. In the R-20, R-8, R-6, PUD, B-3, and O/I zoning districts and in all other zoning districts on properties located within eight hundred (800) feet of any R-20, R-8, R-6, PUD, B-3, and O/I zoning districts (measured from the base of the tower or other supporting structure to the zoning district line), wireless facilities shall meet all of the following standards:

- 10.89.8.1. Poles must not be metal or concrete. Poles must not conduct electricity.
- 10.89.8.2. Poles shall be no taller than fifty (50) feet.
- 10.89.8.3. All supporting structures and antennae must be a “concealed design” including all cabling and antennae inside a “hollow pole” or mounted on the pole.
- 10.89.8.4. All poles must be non-reflective, matte finish.
- 10.89.8.5. No new structures shall be located directly in front of residences unless replacing an existing pole.
- 10.89.8.6. All antennae must be hidden from view or designed so as not to be identified as antennae by a layperson.
- 10.89.8.7. Installation of all facilities shall be the least visibly intrusive type of installation that is not proven to be commercially or technologically impracticable and that will not serve to effectively prohibit the applicant from accomplishing its intended goal.
- 10.89.8.8. Utility poles are not considered support structures.

- 10.89.8.9. New telecommunication devices and support structures shall not be located closer than eight hundred (800) feet from new and existing structures.
- 10.89.8.10. All radios, network equipment and batteries shall be enclosed in a pedestal cabinet near the pole; or in a pole-mounted cabinet or under a pole mounted shroud.
- 10.89.8.11. Cabinets shall be consistent in size and be no larger than standard NCDOT • streetlight signal cabinets.

Planning staff has reviewed the above standards and finds multiple conflicts within:

10.86.2 Allows for an administrative review with supplemental regulations but Section 6.5 Tables of Uses and Activities allows for wireless communication facilities by Special Use Permit only. 10.86.2. Administrative Review and Approval allows for new wireless support structures that are less than two hundred (200) feet in height, in any Industrial district and concealed wireless facilities that are one hundred fifty (150) feet or less in height, in any zoning district *except* residential districts while 10.89.8 in effect bans allow wireless facilities over 50 feet.

10.86.3. Special Use Permit states that wireless communication facilities shall be permitted in any district upon the granting of a special use permit. But in accordance with Section 6.5 Tables of Uses and Activities, not all (any) zoning districts allow for wireless communication facilities.

10.89.3. Height allows for administrative variances to the maximum height of wireless communication facilities. Variances are discretionary decisions that traditionally made by the Board of Adjustment.

10.88.1. Special Use Permit Process states that any wireless facility or wireless support structures not meeting the requirements of Section 10.86.2 may be permitted in all zoning districts upon the granting of a Special Use Permit while 10.89.8 in effect bans allow wireless facilities over 50 feet.

Planning Staff Request and Recommendation:

1. Consider the effect of Article 10.89.8 which effectively bans all new cells towers over 50 feet in height in within the Town of Smithfield’s Planning and zoning jurisdiction.

2. If the current prohibition of wireless communication towers over 50 feet is not desired, consider alternative standards that will allow for them. Option may include:

- To allow for wireless communication towers over 50 feet in closer proximity to residential zoned property
- To allow for wireless communication towers over 50 feet in closer proximity to residential zoned property and require greater building setbacks or fall zones.
- Allow for wireless communication towers over 50 feet within residential zones and require greater building setbacks or fall zones.

3. Consider the effectiveness of wireless communication tower concealment and the impact, if any, that non concealment may have on the general health, welfare and safety of the public at large.

Mrs. Daughtry asked why there was such a small area these towers are allowed. She said cell tower companies have changed the way they do things.

Mr. Helmer said maybe so but they aren't going to install a 50 ft tower. They want to cover as much area as possible, therefore 200 ft is average for a traditional cell tower.

Mr. Spain asked if there was a stipulation against an applicant that was from a rural area applying and getting a special use permit.

Mr. Helmer said the way the ordinance reads now if the tower is over 200 ft it's not permitted in residential zoning.

Mrs. Daughtry asked if someone owns a large farm, why we should be able to control what they use their land for. Cell tower companies don't want to necessarily be right underneath residences.

Mr. Helmer said cell towers need to be where they need to be to give the service we demand. If that's in a rural area on top of a hill or if it's near the highway. The current ordinance doesn't serve the community well with the way it is written.

Mrs. Daughtry asked what came about to bring this concern with cell towers up.

Mr. Helmer said there hasn't been a cell tower built in the last 18 years plus. People may think we have adequate cover, but there could be dead zones we are unaware of.

Mr. Wensman asked who brought the conflict with cell towers up to Mr. Helmer.

Mr. Helmer said he has been talking with a company that might be interested in building a cell tower on the West side of town to bring better service. They made Mr. Helmer aware that the current ordinance doesn't allow cell towers any longer.

Mrs. Daughtry said we don't have a right to tell a cell tower company what to do. These towers provide our 911 service, as well as residential. You have different companies providing service off of one tower.

Mr. Helmer said you have to take certain things into consideration when designing such an ordinance. He has some options that can be considered to loosen up the current ordinance. The current ordinance regulates setbacks or fall zones. We also have a buffer requirement. These are two of many things you can change to loosen up the current ordinance and allow more cell

towers. You don't want one of these cell towers next door to a house. If the cell tower falls it will destroy the house. The old ordinance didn't have the fall zones but this current one does.

Mr. Spain said when you go to a residential zoning R-20A you could have a 100-acre field. Why should that have any negative bearing on a cell tower coming just because it's in zoning R-20A. Mr. Helmer said exactly, if it's meeting the required setbacks, fall zones and fulfilling the buffer requirement it shouldn't have any negative impact on the community.

Mr. Upton said he knows the Planning Department has their requests and recommendations for cell tower use, but he wants to know if they are agreeable.

Mr. Wensman said the Planning Department staff wants to confirm the Planning Board is ok with cell towers being in residential districts. We also need to know if you want us to eliminate the buffer requirement and rely on fall zones only. We would need to know if you want the fall zones to be the height of the pole or increased by a couple feet to provide separation from a tower and structure.

Mr. Upton said so you're giving us an option.

Mr. Wensman said these are the options we have in the code. Mark and I would probably get rid of the buffers. We would allow it in residential districts. The question here is, how close to an existing structure would you want to allow a cell tower.

Mr. Helmer mentioned the reason he suggested increasing the fall zones in residential is when you get into a small lot situation like an R-20 type subdivision and you have a 100 ft tower and the fall zones are equal to the height of the tower then the smaller the lot the smaller the tower and the closer you are to your neighbors.

Mr. Wensman said if you have a subdivision with ten ½ acre lots. One lot is 5 acres and they decide to put a 200 ft cell tower in their backyard and happens to have a 200 ft fall zone and doesn't hit any structures if it falls, you're ok with your neighbor having a cell tower. You can double or triple the fall zone.

Mr. Helmer closed his presentation by saying State Legislature made some changes last year that exempted small cell antennas in the public right-of-way from any zoning requirements. Zoning doesn't even see small cell antennas; they go straight to public utilities if it's a Town owned pole and straight to Johnston County if it's a County owned pole. We have 5 or 6 small cell antennas now. They start on Brightleaf Blvd near Johnston Health, there's also one on North Street and another in front of the Medical Mall. They blend in well so you barely notice them.

Mr. Upton asked if the board needed to make a motion on the UDO, Article 10, Wireless Communication Facilities.

Mr. Wensman said no, a motion isn't necessary.

Mr. Lane said he received a phone call today from a citizen. She was concerned about two properties in Town under construction that have stopped. She'd like to know why and if it is because of the new Comprehensive Plan awaiting adoption. She also wanted to make sure it couldn't be made multi-family. It is located behind Walgreens off of N. Brightleaf Blvd. The other property in question is on N. Fourth Street.

Mr. Wensman said that's a duplex being built and it's still under construction. The property on N. Fourth Street has a permit to build a house. They just received it so construction is probably just now beginning. There are no projects waiting or on hold due to the Comp Plan. Mrs. Daughtry requested to bring an issue before the Planning Board. She said staff is already aware that our corridor on all four sides is not attractive. We're losing a bank coming into South Smithfield that could be over 4 million dollars because of the way it looks at that side of town. We have rules and regulations but staff as well as Town Council needs to review those codes and consider the nonconforming properties we have. They don't need to worry about who owns the property and who's feelings are going to get hurt. Allowing the U-Haul business at 839 S, Brightleaf Blvd is not helping the looks of that side of town. When you have multiple businesses come to town and say they aren't spending that kind of money when the town isn't taking the responsibility of cleaning up. This building behind Town Hall is as bad or worse than the old K-Mart building people complain about. She said she doesn't understand why it gets put on the agenda but never moves forward unless it is political. Mrs. Daughtry said these investors are going somewhere else with their money. We're not talking thousands of dollars, we're talking millions.

Mr. Lane said you need to come to a Town Council meeting and speak as a citizen.

Mrs. Daughtry said her concern about that is her job and her position on the Planning Board.

Mr. Upton thanked Mrs. Daughtry for her remarks but he agrees with Mr. Lane.

Mr. Wensman said the Planning Board on a quarterly basis is supposed to review its regulations. In our regular review as a Planning Board we need to look at the standards and see if they are working as intended. We have triggers for when a property can come into compliance.

Mr. Lane asked what the Planning Boards role is.

Mr. Wensman said the code has thresholds for when you have to come into compliance. If this Planning Board feels like the code is too lenient maybe there should be stronger triggers when compliance is required. This board should be discussing whether they are adequate or not. Then bring that recommendation before Town Council. Mr. Wensman said if this board would like him to further develop Mrs. Daughtry's concerns he could come back with a discussion for another meeting.

Mr. Upton recommended that this issue be brought before the board in another meeting and addressed.

Mr. Lane asked if any changes made would require Town Council approval.

Mr. Wensman said yes that is correct.

OLD BUSINESS

Mr. Upton asked if Mr. Wensman would give an update on the Conditional Zoning decision and what the hired attorney had come up with.

Mr. Wensman said the Town has hired a separate attorney that specializes in land use to review their request for bringing hearings back before the Planning Board. She has reviewed it and has a conflict. She doesn't think you can require an applicant to do conditional zoning if their trying to do a certain use. You have to give it an option of special use or conditional zoning. Mr. Wensman told her there are several surrounding towns that are doing it. They were recommended by the School of Government that they could do it. He requested the attorney reach out to the School of Government and the attorneys for the Town of Cornelius. She is scheduled to meet with that attorney soon. We are making progress; we want to make sure any changes are done right.

Mr. Lane asked if we had been billed by the attorney yet.

Mr. Wensman said she actually isn't going to bill us. She is learning and gaining research from this experience.

Mr. Lane asked if there was an amount budgeted for it.

Mr. Wensman said he doesn't recall.

Development Report for December 19, 2019

Mr. Helmer stated since this report had been printed, the Planning Department had received an official application for annexation for the new Johnston County Jail site. It will go before Town Council on February 4th. Once they authorize the Town to conduct the study it will then go back to Town Council.

Board Action Report for November 2019

Permit Report for November 2019

Adjournment

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

Next Planning Board meeting is February 6th, 2020 at 6:00 pm.

Respectfully Submitted,

Julie Edmonds

Julie Edmonds
Administrative Support Specialist