

**Draft**  
**Smithfield Planning Board Minutes**  
**Thursday, April 5, 2018**  
**6:00 P.M., Town Hall, Council Chambers**

**Members Present:**

Chairman Stephen Upton  
Vice Chairman-Daniel Sanders  
Oliver Johnson  
Michael Taylor  
Eddie Foy  
Teresa Daughtry  
Ashley Spain

**Members Absent:**

Mark Lane

**Staff Present:**

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

**Staff Absent:**

**CALL TO ORDER**

Mr. Upton identified the Planning Board members as well as, Planning Department staff.

**AMENDMENTS TO THE AGENDA**

None

**APPROVAL OF MINUTES from March 1, 2018**

Ashley Spain made a motion, seconded by Eddie Foy to approve the minutes as written.

Unanimous

**New Business**

**Article 9 of the Unified Development Ordinance:**

Article 9 of the Unified Development Ordinance (UDO) regulates nonconforming situations. Nonconforming situations are those which legally exist but fail to comply with the current provisions of the UDO. Structures, lots and uses can be nonconforming.

The stated intent of Article 9 is to permit to continue until they are removed, discontinued, or destroyed, but not to encourage such continued use, and to prohibit the expansion of any nonconformance.

The current Article 9 is problematic from staff's perspective. It is overly complicated, subjective, and allows for authorizations or permits by the Board of Adjustments (BOA) that is not within their listed powers in Article 3. In several places, Article 9 states that the Board of Adjustments (BOA) is allowed to "authorize" or "issue permits" to allow nonconforming situations, while Article 3 of the UDO does not specifically grant these powers to the BOA. Also, Article 9 does

not distinguish what type of permit the BOA should grant, and in practice, the Town of Smithfield BOA only issues variances and appeals.

The current UDO Article 9 allows the BOA to issue permits under the following sections:

- In Section 9.2.3.6 the BOA can issue a permit to allow major renovation of nonconformities.
- In Section 9.2.3.9 the BOA can issue a permit to rebuild a structure that is destroyed if the work exceeds 10 percent of the appraised value if the work will not be more incompatible than the original.
- In Section 9.5.4, the BOA can issue a permit authorizing a change from a nonconforming use to a lesser nonconforming use.
- In Section 9.6.2, the BOA can issue a permit to a nonconforming use that has been discontinued for more than 180 consecutive days with findings.

The current UDO Article 9 allows the BOA to authorize nonconforming situations, but it is unclear whether this is by permit or variance:

- In section 9.3.2, a nonconforming structure can be enlarged, extended, reconstruct, moved or altered if it will be used for a conforming use after authorization of the BOA.

In Section 9.6.1 and 9.6.3 the BOA is to consider “intent” of the applicant in making its decision. It is difficult to regulate intent and often the intent of a property owner is difficult to know.

Section 9.5.3.2 allows the UDO Administrator to waive requirements of the UDO when compliance is not reasonably possible. This is a very subjective criterion. Within Article 10, there are several sections that address nonconformities such as 10.32, 10.91.4.7, 10.93.9.2. These sections should be reviewed to determine whether the regulations belong in Article 9.

#### **UDO UPDATE:**

Article 9 of the UDO was updated on August 2, 2017 with the overhaul of the entire UDO. Since its codification, Staff has found a number of issues with the UDO and has brought them to the attention of Dale Holland, the UDO Consultant who has agreed to review and make some limited revisions to the Code. One section he will be reviewing is Article 9. Because of the complexity of this Article and because of its potential impact on property owners with nonconforming property, of which there are many in the Town, Staff felt it should begin the discussion with the Planning Board about the need for revisions in order to prepare for a future zoning text amendment.

Mr. Stephen Wensman stated we had an example in the office today. Someone wanted to go from being an automotive repair to used car sales. It is just a building sitting on a lot without any landscaping and they're encroaching in the right-of-way. There are probably other nonconforming situations as well. If you read section 9, they need to comply with the UDO for us to issue a permit. However if you read section 10.8.2 it states in 10.8.2.2. when there is a change from an existing use to a new use, which requires additional parking, then the new use requires ten (10) or more parking spaces.

I've asked Dale Holland to take a look at several parts of our code that I think are incomplete. He agreed to do it; I don't know what he will come up with. He will focus on Article 9 in particular. He stated it was compliant with legislation, but it doesn't mean it complies with the rest of our code.

Teresa Daughtry asked if it were correct that changes could be made to the UDO, but once legislation makes decisions then we have to move forward in what they put in place.

Mr. Wensman said legislation does allow the Board of Adjustments to issue permits, but it doesn't mean ours has to.

Mr. Foy asked if the older UDO mentioned the Board of Adjustments issuing permits.

Mr. Helmer said there were some typos still in the older version, so yes it did.

Mr. Upton suggested the Planning Staff pursue this topic in question with Mr. Holland and get back to the board.

Mr. Wensman said where he is from in Minnesota, you aren't allowed to issue use variances. Our UDO has a section that allows you to issue a permit. You can go from one nonconforming use to another nonconforming use with only a permit. An example of this would be a residential district with an auto repair shop; instead someone wants to put in a retail store. It is less nonconforming because it isn't as intrusive. However in our UDO, instead of calling it a variance they call it a permit that the Board of Adjustment is supposed to issue. Dale Holland said it is allowed by the legislation. Mr. Wensman said to him that is whole other section. It is a use variance by another name and he thinks it would be thrown out of court. It doesn't mean our UDO has to allow it. How do you phase out nonconforming if you continue to allow them to persist? If the use goes away in a stipulated amount of time, it should just go away. I have talked to the Town Manager about this and I don't know how this will sit with the Town Council. It would be a big change if we suddenly got tough on nonconformities because there are a lot of them out there.

Mrs. Daughtry reminded everyone that the reason the UDO study was more detailed than others, was because we wanted to raise the bar on the Town's appearance and the future of the town. At one time you could pretty much do whatever you wanted, so that is why we felt the need to raise the bar.

Mr. Sanders asked if this change would create a conflict with this board, Board of Adjustment and Town Council, somewhere down the line.

Mr. Wensman said if Planning Board decided to get tough on nonconformities yet the Council doesn't want to take away people rights, then yes because they are the ones getting the phone calls.

Mr. Johnson stated that raising the bar is a worthy goal; I think it is also incumbent on us to make sure there are no inconsistencies or conflicts that are part of raising the bar.

**Article 10, Part IX, Section 10.91:**

This section contains the performance standards for properties within the Entry Corridor Overlay District. The overlay district purpose and standards should be reviewed to determine whether the purposes are still relevant and make sense. Also whether the standards reinforce the overlay's intended purpose.

Mr. Wensman stated we have what you call an entry corridor overlay district. I thought it was mandatory but it appears to be optional. I don't understand who would ever use it unless it worked in their favor. I think what would happen; we would end up on corridor variable setbacks. You would have those that took advantage of it and built up to the street; creating a downtown look. Then the next guy who doesn't want to take advantage of entry corridor will decide, I'll put the parking in front. We then would have a mixed look on any corridor. I don't think we are creating the vision of any corridor. Which corridor are we trying to emulate or what look are we looking for? The corridor extends from Market Street over the river from downtown all the way down pass the outlet mall and then both ways on Hwy 301. That is not a uniformed looking corridor. We have one overlay district stipulating some alternatives. Essentially a developer can utilize this to create a look that is different from any parts of the corridor that exist right now. What are we trying to achieve for that corridor? You would want it to be uniformed in setback. I don't know that I would tackle this issue until after the update is done on the Comprehensive Plan.

Mrs. Daughtry asked if we were going to be developing a new Comp Plan soon. She thought it was going to be done before the UDO was updated, but it didn't happen in that order.

Mr. Wensman said yes, usually you update the Comp Plan then codify the UDO afterwards. We need to come up with a vision for our corridors. How would we want them to look? What setbacks or features would be want in the zoning code to make sure it gets built that way? If the setbacks are optional, then you're not really achieving any specific corridor.

Mrs. Daughtry asked how long it would take to make a new Comp Plan.

Mr. Wensman said it was a 14 month process.

Mrs. Daughtry asked if someone presented a plan that didn't meet the current Comp Plan and we knew it didn't meet what our goals are for the future, where would it leave us legally if we denied that plan.

Mr. Wensman said well right now our current Comp Plan is all we have. It is recommended but not required in this state.

## **Connectivity Report:**

The Town of Smithfield Planning Board is requested to review the document and supporting information as it pertains to street connectivity and to provide direction on any needed changes in the Town plans or ordinances.

Mark Helmer said the subject of connectivity and sidewalks are components of a larger concept called Complete Streets and are one of the most studied topics in the Urban Planning profession. Complete Streets can be thought of as streets that are for everyone. They are designed and operated to enable safe access for all users, including pedestrians, bicyclists, motorists and transit riders of all ages and abilities. Complete Streets make it easy to cross the street, walk to shops, and bicycle to work. They allow buses to run on time and make it safe for people to walk to various local destinations.

The term “street connectivity” suggests a system of streets with multiple routes and connections serving the same origins and destinations. Connectivity not only relates to the number of intersections along a segment of street, but how an entire area is connected by the transportation system. A well-designed, highly-connected network helps reduce the volume of traffic and traffic delays on major streets (arterials and major collectors), and ultimately improves livability in communities by providing parallel routes and alternative route choices. By increasing the number of street connections or local street intersections in communities, bicycle and pedestrian travel also is enhanced. A well-planned, connected network of collector roadways allows a transit system to operate more efficiently.

Local street connectivity provides for both intra- and inter-neighborhood connections to knit developments together, rather than forming barriers between them. The street configuration within each parcel must contribute to the street system of the neighborhood. Research has shown that high roadway connectivity can result in:

- Reduction in travel distance (VMT) for drivers**
- Reduction in travel times for drivers;**
- Better and redundant emergency vehicle access;**
- More efficient public services access (mail, garbage, transit)**
- Improved bicycle and pedestrian routes and accessibility.**
- Higher percentage mode share for transit, bicycling and walking**
- Safer roads**

Mr. Helmer said the whole concept of street connectivity through complete streets was embraced by N.C. Department of Transportation in July 2009 as well as our Comprehensive Plan and Unified Development Ordinance. The method Town of Smithfield uses for connectivity particularly with stub streets to adjoin properties is a link and node ratio. Ours is set at 1.45 and if you meet that ratio it will almost always include a stub street to adjacent properties. If you come up short on your ratio, it's because you don't have a stub. You can also have that ratio higher, just a stub may or may not satisfy this ratio.

Mr. Helmer provided a separate handout showing the various communities connectivity requirements such as Smithfield, Clayton, Knightdale, Wendell, and Fuquay-Farina.

Mrs. Daughtry said Fuquay-Varina and Wendell are two of the fastest growing areas. Fuquay-Varina says they may be required, whereas Wendell says new development shall connect so it's giving that developer the option. If you build a subdivision and you have an \$80,000 dollar home at the end of that subdivision where the stub out is, and someone comes in and says they want to build \$150,000 dollar or more homes, I imagine you will have someone unhappy to be sitting beside that. A commercial project is totally different than a residential. If Belk's and Wal-Mart weren't connected it would be a disaster. When you take a subdivision in the county that is coming up in 5 or 6 phases and these streets have to connect, the people who bought in the first, second or third phase are going to lose out. We need to be careful how we word this so it isn't mandatory.

Mr. Helmer said some ordinances are wishy washy and say if the way you stub out and connect cause more traffic, then your subdivision was developed poorly.

Mr. Wensman said the Town Council waived these requirements for the upcoming PUD development on Buffalo Rd. The Comp Plan is loaded with information about it; we have an appendix that talks about street connectivity to our Comp Plan. It's definitely going to be a topic area for our new Comp Plan. We need to step back and present this to the community and get community input and revalidate what we have in our Comp Plan or strike it from our Comp Plan if the community feels otherwise. The UDO is a tool to implement the vision of the community which is the Comp Plan and in this instance the UDO is right on. It's doing what it is supposed to do to implement our Comp Plan. We need to use the community, process the next 14 months to raise this issue before the public and ask how you feel about this. If people like the idea, we either need to leave it in the Comp Plan or make it clearer. If people don't like it then it shouldn't be in the Comp Plan.

Mr. Upton asked if the public really knows how to make this kind of determination.

Mr. Wensman said they don't know but we are going to do as much as possible in this public participation process to reach out to people we don't normally meet. There will be visual preference surveys, those would be ways to find out what people like and don't like.

Mr. Wensman stated that the Comprehensive Planning process will be a 14 month process. We will have a steering committee as part of the public engagement piece. The steering committee will be made up of various stakeholders and one of them would be a representative of the Planning Board. The Steering Committee will meet 8 times over the 14 month process.

Mr. Upton said personally he didn't feel that he would be qualified to serve on the Steering Committee on behalf of the Planning Board.

Mrs. Daughtry asked what would be expected of the person who represented the Planning Board.

Mr. Wensman said we hired a consulting team for both Comprehensive and Transportation Planning. They're teaming up and working together and we decided to have a joint steering committee. They will have exercises with the committees to gather feedback. Also as they reach out to the communities for ideas then bounce those off the Steering Committee. They will help the Steering Committee come up with a vision statement, setting goals and guiding principles and all the implementation items.

Mrs. Daughtry agreed to serve on the Steering Committee on behalf of the Planning Board.

### **Old Business**

#### **Administrative Actions report**

Land Use Permit Report for February, 2018

Board Actions Report for February, 2018

#### **Adjournment**

Ashley Spain made a motion to adjourn, seconded by Daniel Sanders. Unanimous

Submitted this 6th day of April, 2018

Julie Edmonds  
Administrative Assistant  
Planning Department