

**Draft**  
**Smithfield Planning Board Minutes**  
**Thursday, July 12, 2018**  
**6:00 P.M., Town Hall, Council Chambers**

**Members Present:**

Chairman Stephen Upton  
Vice Chairman-Daniel Sanders  
Michael Taylor  
Eddie Foy  
Teresa Daughtry  
Oliver Johnson  
Mark Lane

**Members Absent:**

Ashley Spain

**Staff Present:**

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

**Staff Absent:**

**CALL TO ORDER**

Mr. Upton asked the Planning Board members to identify themselves and he identified Planning Department staff.

**AMENDMENTS TO THE AGENDA**

None

**APPROVAL OF AGENDA**

Oliver Johnson made a motion to approve the agenda, seconded by Daniel Sanders. Unanimous

**APPROVAL OF MINUTES from May 3, 2018**

Eddie Foy made a motion, seconded by Teresa Daughtry to approve the minutes as written.  
Unanimous

**New Business**

**ZA-18-04 LifeSpring Church:**

LifeSpring Church is requesting a zoning text amendment to Article 7, Section 7.32 of the Town of Smithfield Unified Development Ordinance (UDO) to bring it into conformance with Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). The request is to strike Section 7.32 which is a prohibition of churches/places of worship in major or minor shopping malls and a requirement that they be the principal use on a single parcel of property in the B-2 and B-3 districts.

Mr. Wensman explained that the applicant's attorney presented an argument in their application that explained how our current ordinance is in violation of the Religious Use Act, in

particular that it doesn't treat churches and places of worship similarly to other assembly type uses. In our code, we have fraternal and civic meeting halls being treated differently than churches. Fraternal and Civic meeting halls aren't subject to supplementary standards that churches are subject to. Both are assembly type uses and need to be treated equally. Our Town Attorney agrees with that assessment after reviewing the application and the Town Ordinance. A draft amendment was worked on by the Town Attorney and Stephen Wensman for the two uses to be treated the same. There should be no undue burden placed on assembled uses. In the Town code, there isn't an actual definition of fraternal or civic meeting halls. The closest thing in our code is a club or private lodge. Within it you can see civic and fraternal listed in that definition and he said it fell between club and private lodge. Prior to the adoption of Unified Development Ordinance churches and religious groups were not allowed in the B-1, B-2 or B-3 zoning districts. With the UDO revisions the committee considered the update and did include it, but apparently not quite compliant with the Religious Use Act. The standard was more of a compromise where we allow them with some restrictions and supplementary standards. The UDO committee met Tuesday, July 10, 2018 and basically endorsed staffs recommended changes to Section 7.32.

The applicant has requested we strike 7.32 but rather than strike it, staff is suggesting we add club or private lodges to the supplementary standard and hold both land uses to the same standard. Thereby amending that standard with 7.321 all the way to 7.324 and basically it allows them in shopping centers, but in 7.32 they can't place a decrease in pedestrian or vehicular traffic or inhibit business activities for adjacent commercial businesses.

Mr. Upton asked if the stipulations such as traffic, parking etc. had always been in place.

Mr. Wensman said yes but within the supplementary standards 7.32. If you read 7.32.3, the Town attorney has inserted some language that basically gives some guidance to Council reviewing a conditional use permit and staff saying that upon reviewing a special use permit the use has to be evaluated against the standards. One that they cannot unduly impact pedestrian vehicular traffic on adjacent commercial uses. Sometimes churches may create a dead mall because all the sudden you have non active commercial space during regular business hours that could be deemed a detriment to existing commercial uses. We're not prohibiting them, but we're treating them and other similar uses similarly and evaluating them based on their impact to surrounding commercial users because it's a commercial district.

Mr. Sanders asked if the proposed changes would affect churches in town.

Mr. Wensman said right now places of worship are prohibited in shopping malls. This would allow them if they meet these standards and they are tighter standards. It would also apply to other similar uses. We are not excluding or singling out churches. We're just saying churches and other similar uses are subject to these same standards.

Mr. Foy said it seemed to him we were trying to put our standard in compliance with the RLUIPA standard.

Mr. Wensman said yes, our intent is to make it compliant and to add a layer of language in there so it is defensible when the council makes a decision.

Mr. Wensman said the town attorney has added storage facilities to the supplementary standard because we have storage facilities within shopping malls, which equally cause a detriment to commerce. For instance, Rose Manor is a storage facility; in that case there are no other businesses not in the mall itself. If you placed storage spaces out at the outlet mall it would cause a detriment on adjacent commercial.

Mr. Upton said there will always be changes to the UDO but it's our job to make sure it is business friendly.

Mr. Wensman said the UDO is a living document, it always has to be compliant with the Comp Plan. There will always be new land uses, new trends and new laws. Just by using it on a daily basis we're confronted with situations where part of the code may be problematic. Once you use it, you discover it may be in conflict with another section or doesn't create enough of a standard. It could be overbearing or overreaching, could be any of those things.

Mr. Foy stated the date was incorrect on the UDO Advisory Board Minutes. It should read July 10, 2018 instead of 2017. It was noted and will be brought to Shannan Parrish's attention.

Mr. Lane said he wanted to know what had changed. What can churches do now that they couldn't do before?

Mr. Wensman said if this change were to go in place, churches and similar uses such as civic and fraternal meeting halls which are now going to be used by a different term; they will be subject to the same standard and basically they can go into malls however they cannot be a detriment to adjacent commercial or orderly development in the future.

Mrs. Daughtry asked how we determine if it's a detriment to a business. For example, take the old K-Mart area. All the business went toward Wal-Mart when it came to town. Now that we have the bypass we have the opportunity to expand from Clayton into the Smithfield area. Of course the landowner will make the decision if he wants them in the building or not. How do we reach that fine line of making a decision? You may have an outparcel that is a restaurant or one that is a gas station that joins that parking lot, how do you determine it?

Mr. Wensman said those decisions were somewhat based on expert testimony, because it is a quasi-judicial process but also a judgment call. It was written to mirror the findings of fact so when determining the findings of fact you'll come to the same conclusion.

Mrs. Daughtry said St. Joseph of the Pines for the elderly has bought the old Helig-Myers in West Smithfield. They intend to build on that lot once the State releases funds for Medicare and Medicaid. Their facility would serve as a daycare for the elderly while their loved ones work. Would they be contacted by mail for a Special Use, such as a Church wanting to go in beside them even though they haven't built but own the building.

Mr. Wensman said he didn't know if that would be an assembled use, serving as a daycare facility. But to answer Mrs. Daughtry's question, if a Church came into the building ahead of the daycare he doesn't think it would be an issue because the daycare wouldn't be a commercial use or create commercial impacts. So it shouldn't be impacted by this legislation, but if a church wants to go adjacent to them and there are no other users in that mall that seems like a symbiotic relationship instead of one that would create a problem. It's a judgement call and would have to go through the Special Use Permit process and the Council would determine.

Mrs. Daughtry asked if landscaping would fall under the requirements set forth in the rules as far as changing the use or Special Use.

Mr. Wensman said yes if a use increases the amount of parking or more impervious, there is a threshold in the code where standards have to be met. If it's just changing out the use and there are no changes to be made outside then no additional requirements to improving landscaping would be needed. In many of these businesses landscaping and parking already exist. Even if you get a Special Use Permit, there is still a site plan review process and you need to comply with the UDO.

Mr. Wensman said regarding the Town attorneys' recent edits to the Ordinance, if they were to add storage facilities, it is not a defined term in our code, and we would either add a definition or change that term to one that is defined. If the Planning Board does want to recommend inclusion of that in the Ordinance he would still request that it were ok to work through the correct terminology.

Mr. Johnson asked if the Town of Smithfield was currently out of compliance with the RLUIPA by prohibiting Churches from occupying shopping malls.

Mr. Wensman said yes, according to our town attorney and the applicant's attorney we are. The reasons we are out of compliance are because we don't treat similar land uses similarly in the code. One has to follow a supplementary standard and another doesn't. There's a piece to it that is hard to understand about creating an undue burden to a religious group. On that part he is relying more on Bob Spence as to what that means. He has inserted language into that supplementary standard to address that.

Mr. Johnson said the first order of business then is to bring the Town of Smithfield into compliance with the act, then develop a set of criteria to determine if in fact the Church occupying the shopping center is causing an undue hardship to the other occupants.

Mr. Wensman said that and so that we are not putting an undue hardship on a Church that we wouldn't on other similar uses.

Mr. Johnson said he thought Mr. Wensman said if a Church is occupying space in a shopping center, we want to make sure it doesn't have an adverse effect on the other occupants.

Mr. Wensman said the applicant's attorney thought we'd be in compliance if we struck 7.32 altogether and had no standards. That is an option if we wanted to do what their attorney wanted. The Town is a little less comfortable with having no standards. So we want to present a standard that works giving us some control over the use.

Mr. Foy said what this does is put everyone including Churches under the same standard and secondly it gets us into compliance with the RLUIPA.

Mr. Wensman said we had to react to this land use application. I think there are still refinement to the intent statements to the B-1 district and possibly a greater look at our assembly uses and remove churches from the table all together and call them what they are, assembly uses. There are possibly some better changes we can do to our code that clarifies things even more, which many modern codes have done. We're going to do some amendments article by article, just some refinements to the UDO as time permits.

Mr. Sanders asked if this new ordinance would affect the land owners that rent these spaces out to these Churches and other organizations.

Mr. Wensman said right now if you're a shopping center owner and you have vacant space, you can't rent to a Church under our current code. Now it would at least be an option under a Special Use Permit. It would be a case by case review, subject to the standards we have in place. It may give landowners more option it may not.

Mr. Lane asked if the change was made to the ordinance for Churches to be allowed in shopping malls, would they still would need a Special Use Permit.

Mr. Wensman said yes and it would still go before the Town Council.

Mr. Lane said he didn't see a Church going into the Carolina Pottery Outlets, but there are other areas that have been vacant for years and there's no parking. He doesn't have a problem with that and this change would allow them to come into these vacant spaces.

Mr. Wensman said it depends on the interpretation and expert testimony and the Councils decision. It gives them discretion.

Mrs. Daughtry said she thinks that is what needs to be done and ultimately the land owner will make the decision anyway.

Bob Spence arrived and Stephen Wensman asked him to describe the purpose of the last minute changes to the code that he submitted that same day.

Mr. Spence said he had read through the different uses within the Town in B-1, B-2 and B-3 districts. There are a few places where storage facilities of some type can be used in a B-1, B-2 or B-3 zone but most are restricted, but a couple can. Ultimately we want policies to state that we want business areas not to limit traffic unduly. Obviously there is a balancing test there.

Mr. Foy asked Mr. Spence if the changes would put the Town of Smithfield in compliance with the RLUIPA.

Mr. Spence said he thinks they do.

Mr. Sanders asked who would be responsible for the parking lot should a Church go in the old K-Mart building.

Mr. Wensman said first of all if a Church went into the old K-Mart building it would have to pass the Section 7.32 test that we're proposing. Then as we evaluate the use, we look at how many people would be in the space, how big of a sanctuary it would have and what's the required parking. If they have to add more than 10 parking spaces or more than 10% of what exists they would be required to come into full compliance with landscaping and parking. If they're moving into an existing space that doesn't need additional parking they probably would only need to restripe the parking lot.

Mr. Johnson asked if the Town of Smithfield would be in jeopardy of violating the RLUIPA if a landowner were against allowing a Church to rent their vacant space.

Mr. Wensman said first you need a willing landlord, and then the applicant would come to the Town for a Special Use Permit and comply with the standards.

Mr. Lamar Armstrong the applicant's attorney came forward. He said the Town formed a UDO planning committee and the purpose was to take the overall code, evaluate it and make recommendations and bring it up to what it called the UDO. It stands for the Unified Development Ordinance. Many municipalities around the state have adopted this UDO. The applicant came to him and told him no Churches or religious groups were allowed in any commercial zone in Smithfield. He didn't believe that to be true, not in the Town he grew up in and loved so much. After reviewing the UDO he read that to in fact be true. One of the provisions in that UDO is section 7.32 and it's the one that we're here talking about tonight. We're asking that this section be deleted entirely. It says any religious group or organization at all shall be banned from all shopping centers. Shopping Centers is defined very broadly in the UDO as any building that has two units, is not a freestanding building on its own and has trash pickup of some kind. There are many buildings that would meet that definition in Town. I've had some great conversations with Mr. Spence, and I appreciate his time. The issue and intent behind the amendment is to address negative impact on business traffic, meaning both foot and vehicular traffic. I believe the proposed amendment does a lot to bring it in compliance with the RLUIPA. Essentially it is the federal statute that codifies the first amendment to the United States Constitution, regarding religious freedom and protects against religious discrimination. One of his concerns brought up tonight is how would this amendment be enforced if adopted. It says the Town can deny any Church, Religious group or assembly hall a Special Use Permit, if the town in considering the Special Use Permit determines it to substantially inhibit business activity in the adjacent commercial businesses. The problem is who decides what substantially inhibits neighboring activity and upon what criteria. If this

amendment is in place, then anytime one of these groups wants to lease space in a shopping center they have to apply for a permit through the Town first. Then the Town looks at this and says are they going to substantially inhibit the business of the neighbors. His concern with this later down the road is, if the Town approves Church A, B, and C and Church D gets denied, it puts the Town in a really difficult position. That position is regardless whether the Town thought there were good reasons for approving A, B and C but not D. It gives it an appearance of endorsing the message or purpose behind certain Churches but not others. Because of that reality I would be careful of putting the Town in that position, having to evaluate which Churches or religious groups can open their doors and which ones can't. That creates a very slippery slope. If the concern is foot or vehicular traffic, then my question would be according to who and what this legitimate concern to the Town is. There are likely property owners in shopping centers that would welcome a Church, Assembly Hall or any non-profit for that matter. He even thinks for-profit businesses would likely be in favor of churches coming into shopping centers. Overall he does feel the proposed revision is an improvement over the current Section 7.32, it's not an overall ban but it's going to open up a lot of unintended consequences.

Mr. Foy asked Mr. Armstrong if the current changes in section 7.32 come into compliance with the RLUIPA, yes no or maybe.

Mr. Armstrong said no, he will tread carefully because he has a lot of respect and appreciation for the work Bob Spence has done. There are two parts of the RLUIPA. One is called the Equal Terms Provision and the other is the Substantial Burden Provision. Equal Terms just says you can't treat religious groups any differently than others unless you have a really good reason. That is what the old 7.32 ordinance did and we can agree it violated the Equal Terms if not also the Substantial Burden Provision. The Substantial Burden says even if you have generally applicable code provisions if the effect of the provision is to place a substantial Burden on the exercise of religion, then the Town has to provide really good reasons why it is doing that. So I think with this new code provision is the Substantial Burden piece. The reason I said no, take a Church that comes in and files a Special Use Permit under this new provision. They say please let us exist in this particular shopping center and for whatever reason the Town decides not to and denies them. At that point I would say the fact they've been denied by the Town is a Substantial Burden.

Mr. Foy said shouldn't that be addressed as a specific instance. Generally, this board and other Town boards make decisions regarding this type thing all the time. If we're in compliance with part A, part B should be left to the individual boards to be made on an individual basis. I wouldn't discriminate against a Church any more than I would against any other group. That's why those decisions need to be left to the board instead of discarding the section all together.

Mr. Armstrong said he agreed, whether there is a Substantial Burden placed on an individual group depends on the circumstances of that case.

Mrs. Daughtry asked Mr. Armstrong if he had pulled the restrictive covenants to see what it had to say about LifeSpring going into the proposed location.

Mr. Armstrong said if a tenant wants to make sure a Church or non-profit of any type isn't going to be put next door to you; it's a term you can negotiate with your landlord. That's another reason he feels the decision should be between the tenant and landlord only. In this particular case, he said he did not know the covenants for the proposed Life Spring location.

Mr. Sanders said suppose we go along with this ordinance, someone comes along and wants to get into a place of business and this board denies them. We wind up in court and the judge rules in favor of the Town not in favor of the people.

It depends on the judge and the circumstance; it's a case by case thing. If I were a servant of the Town, I would look at it as every single decision we make could be reviewed by a judge in court. It's a slippery slope, you're opening yourself up, and every situation is different. Essentially every denial of a Special Use Permit could be scrutinized.

Mr. Lane asked if Mr. Armstrong thought the whole Section 7.32 ordinance should be removed.

Mr. Armstrong said yes, I think so for today's purpose and if the Town wants to investigate further and figure out if business traffic is really going to be a concern in the future.

Mr. Lane asked if business traffic was Mr. Armstrong's main concern.

Mr. Armstrong said it is the Town's main concern according to this document.

Mr. Lane asked if business traffic was removed from Section 7.32 would it make a difference.

Mr. Armstrong said no it wouldn't. It is the reason of addressing this amendment. His suggestion would be to strike Section 7.32 in its entirety and if the Town wants to figure out if business traffic is a concern then ask that question and find out.

Mr. Lane asked if Section 7.32 were removed there were still be a Special Use Permit required and followed?

Mr. Wensman said yes because there are still Findings of Fact.

Mr. Lane asked Mr. Spence what difference it would make if Section 7.32 was in the code or not.

Mr. Spence said there were cases where the Town Board had in its code reasons for some of its concerns and the court quoted those reasons. They're not one of the factors a board would vote on, but an explanation that the Town does want to develop business districts where there is a lot of viable business and part of that is foot traffic. The point of having a business district is to attract business.

Mrs. Daughtry asked if she read correctly, that a Church will impact the ability of surrounding business within 50 feet to hold an ABC Permit.

Mr. Spence said yes.

Mr. Sanders asked if we would stay out of trouble if we eliminated the current Section 7.32.

Mr. Spence said we drafted the proposal because we thought it would make your code stronger. We thought it gave more justification in a B-1, B-2 or B-3 zone. This amendment is to put some policies in place. If you have a Special Use you can always be sued. The only way we can prevent that is to not have Special Uses but generally they are considered useful.

Mr. Wensman said he was concerned about storage facilities differentiating between indoor, outdoor or mini storage. He wants clarity either through a new definition or some other means.

Oliver Johnson made a motion to recommend approval to ZA-18-04 seconded by Eddie Foy. Unanimous

This will be presented to the Town Council on August 7, 2018 at 7pm.

**ZA-18-03 Town of Smithfield:**

The Town of Smithfield Planning Department is requesting an amendment to the Unified Development Ordinance (UDO) that will incorporate the Town of Smithfield Code of Ordinances, Chapter 15, Planning, Article III, Historic Properties Commission into the Unified Development Ordinance, Article 3.

Mr. Helmer explained that the proposed ordinance amendment to the Unified Development Ordinance (UDO) would incorporate the Town of Smithfield Code of Ordinances, Chapter 15, Planning, Article III, Historic Properties Commission into the Unified Development Ordinance, Article 3. Other minor changes incorporated into this amendment include:

- Title of the Historic Properties Commission is recommended to be changed to Historic Preservation Commission. Renaming the Commission will be consistent with the title of the Town of Smithfield Historic Preservation Design Guidelines manual and more accurately reflect the intent and mission of the Commission as defined by Section 3.5.1.
- The proposed ordinance amendment will require the Commission to meet a minimum of one time per calendar year.

Mr. Wensman said the administration is going through the administrative part of the code and each department was asked to review it and that's when we discovered that this wasn't in the UDO, because all the other boards are in the UDO. The Historic Preservation Board did review this, there weren't many comments other than they did want to change the name to Preservation.

Mr. Helmer stated the document was probably about 15 years old and it was due a rewrite. As the HPC becomes more active, they will probably want to take a closer look at it and bring any proposed changes back to Planning Board.

Eddie Foy made a motion to approve ZA-18-03 seconded by Teresa Daughtry. Unanimous

**ZA-18-05 Town of Smithfield:**

The Town of Smithfield Planning Department is requesting an amendment to the Unified Development Ordinance (UDO) that would allow for the return of high-rise business identification signs as a permitted use in the B-3 (Highway Entrance Business) zoning district when the property is within 660 feet of the right-of-way of I-95.

Mr. Helmer explained the Planning Department is requesting a text amendment to Article 10 to the Town of Smithfield UDO, to allow for single tenant high rise business identification signs as a permitted use by right in the B-3 zoning district. Everyone is aware of these signs around Smithfield; they can be rather tall between 50 to 100 feet. They're primarily meant to be seen from the I-95 corridor, helps travelers identify us as a destination for hotels, shopping and restaurants. This has been in our ordinance since 1988; currently there are 11 of these signs. For some reason when our current version of the UDO was adopted there wasn't a provision in there to allow for these signs. We're asking this be placed back into the ordinance. We're proposing to allow for them in the B-3 zoning district, and within 660 feet of the I-95 corridor.

Mrs. Daughtry asked if they could be allowed on a case by case basis in case someone was to build in a non B-3 area.

Mr. Helmer stated the business has to meet the criteria and currently it reads B-3 zoning district, and within 660 feet of the I-95 corridor. If a piece of property is rezoned to a B-3 that currently is not zoned that and is within 660 feet then they would qualify. Our current version of the UDO doesn't allow these high-rise signs to be outside 660 feet and part of that reason why, the further you get away from the corridor the higher the sign needs to be it's unlikely that even 100 feet would be high enough to be seen.

Mrs. Daughtry asked if the lots across from Waffle House on Market Street would qualify for that 660 feet rule.

Mr. Helmer said no they wouldn't.

Take Golden Corral for instance, their sign is right by the road. If they were to place it anywhere else on the property, they would be outside of the 660 feet. That was taking a very liberal measurement from the exit ramp.

Anything West of Golden Corral wouldn't qualify for a high-rise sign. It wouldn't meet the criteria.

Mrs. Daughtry said the reason she asked was due to the growth we will see all down through there near Johnston Community College. We will see restaurants and shopping centers.

Mr. Johnson asked who would decide if a restaurant or hotel were quality branded.

Mr. Helmer said he uses the word quality as a well-known brand that can afford such a sign. These high-rise signs are thousands of dollars. Anyone in a B-3 zoning district and 660 feet from the I-95 corridor can be considered for these signs. It's likely smaller businesses would want or could afford them.

Teresa Daughtry made a motion to approve ZA-18-05, seconded by Eddie Foy. Unanimous

Mr. Wensman announced on September 18, 2018 from 6-8pm the Community Town Plan Open House will be held at SRAC. It's an opportunity to show the public what we've been working on, express some ideas and get some feedback from them and this board. He encourages everyone to come and participate.

### **Old Business**

### **Administrative Actions report**

### **Adjournment**

Daniel Sanders made a motion to adjourn, seconded by Teresa Daughtry. Unanimous

Submitted this 16th day of July, 2018

Julie Edmonds  
Administrative Assistant  
Planning Department