

Draft
Smithfield Planning Board Minutes
Thursday, August 2, 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
Ashley Spain

Members Absent:

Staff Present:

Mark Helmer, Senior Planner
Julie Edmonds, Administrative Assistant

Staff Absent:

Stephen Wensman, Director

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 July 12, 2018

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

New Business

ZA-18-06 Town of Smithfield: Mark Helmer stated that The Town of Smithfield Planning Department is requesting an amendment to the Unified Development Ordinance (UDO) to update/make corrections to the development review process contained in Article 5. In October 2017 the Town of Smithfield updated the UDO to simplify the Code and to provide specific updates. On January 2, 2018 the Town of Smithfield approved an ordinance amendment to allow for administrative site plan approval by the UDO Administrator when they are found to meet or exceed minimum development standards. Since that time, planning staff has become more familiar with Article 5 and has determined that an additional amendment is needed to improve the planning process.

Mark Lane asked if this would also go before council.

Mr. Helmer said yes, zoning text amendments are a legislative decision so Council approval would be required.

Mr. Foy asked if site plans would come before the Planning Board.

Mr. Helmer said no, they don't now but we did find some additional text that needed to be changed.

Mr. Lane asked how this change was going to help.

Mr. Helmer said most site plans are technical in nature.

Mr. Lane asked how they are approved now.

Mr. Helmer said right now they are staffed approved.

Mr. Lane asked if all site plans would be administrative approval.

Mr. Helmer said they are administratively approved unless there is some other mechanism in place such as a special use permit that would require a site plan as an "exhibit" and even then the site plan review is still a separate process that's only approved by town staff.

Mrs. Daughtry asked if it's in house, where does the responsibility fall when mistakes are made that are not picked up or corrected. The department changes hands or everyone is different.

Mr. Helmer asked what kind of mistakes would we be talking about.

Mrs. Daughtry said I am just saying in general.

Mr. Helmer said let's say for instance a multi-part site type plan is submitted for review. Let's say it has a stormwater, utility, landscape, grading, parking and lighting plan. You have all these various components. Are you asking what if details are overlooked?

Mrs. Daughtry answered yes.

Mr. Helmer said the burden of meeting the requirements of the codes, does not fall on the staff, it falls on the applicant.

Mrs. Daughtry said no that is not what I am saying. I am saying more than one set of eyes is better when you're reviewing some of this stuff. Let's just say it is a mistake that was overlooked by planning department.

Mr. Helmer stated, say a department makes a particular mistake, as in they overlooked something or it was omitted from the plan that we didn't catch and the plan is approved. The applicant is not automatically relieved from meeting the requirements of the law. The responsibility falls on the applicant to submit a plan that meets minimum requirements. I am not excusing staff for overlooking omissions or approving poorly drawn plans. But ultimately, we review what is in front of us and sometimes if it's not there we don't always pick up on it. It doesn't relieve the applicant of meeting the requirements UDO.

Mrs. Daughtry said she disagreed with staff and that if staff doesn't catch errors in the plan then it's not the applicant's problem.

Mr. Johnson asked if errors are made, will it fall back on the Planning Board.

Mr. Helmer and Mr. Upton said no.

Mr. Helmer said code can be complicated, and looked at differently. To not catch a glaring error the applicant has made on their plan is not excusable; but ultimately it is the applicant not meeting ordinance requirements and not staff.

Mrs. Daughtry said I sell property for a living. People don't understand when they come in to apply for permits; they always tell me how difficult it seems to get things through. Then they are told to change this when something may be different when they go online. It is just a mess. I would like to see us be business friendly but also want to be sure we don't see something was done because someone locally owned it and it was done that way because it was done in house after the fact. I remember when Murphy Gas Station was put in beside Applebee's and so many people were asked me how it passed like that being so close to the road.

Mr. Helmer stated that site development is very technical and sometimes complicated. It can be a daunting task for those projects that have limited funding and that are unwilling to hire professional site planners and engineers. The average person can't always see the value of minimum development standards when these standards are in conflict with their vision for the property. Take Murphy Gas Station for an example, which meets a 50 foot setback and an ordinance that allows for canopies to overhang into the 50 foot setback. A person that knows nothing about site planning may say why is that building not required to meet setbacks when mine is? An average person doesn't understand the nuances of a modern development code and this misunderstanding can be viewed as business unfriendly to the untrained eye.

Mr. Helmer advised the BOA members to be aware that the code says what it says for a reason and you can't deviate from that without having a variance process. I have said for years that 99.9 % of variances should be denied. If you're interested in enforcing the development code, you have to do it equally across the board to everyone. The only time you should vary from it, is if there is some circumstance on the ground that is actually the problem, not just because the applicant prefers it done differently. You must have a very good understanding of your development code and administer it consistently.

Mr. Foy asked if this was an administrative issue changing the verbiage to comply with what we are doing or actually changing the responsibilities of the Planning Board.

Mr. Helmer said that the Planning Board no longer conducts site plan review. We tried it for a few months and it just wasn't working. Major site plans are once again staff approved like it was before the UDO rewrite of 2016.

Mr. Foy said so basically this is an administrative issue changing the verbiage.

Mr. Helmer said yes we're trying to change this additional verbiage to reflect the changes made several months ago.

Mr. Lane asked if the Town Council looked at any site plans.

Mr. Helmer said they look at sketch plans when associated with special use permits and major subdivisions.

Mr. Lane said so if we make changes tonight the Council won't look at sketch plans.

Mr. Helmer said no they will still need a complete application, whatever the application may require.

Mr. Lane said I don't want it all to fall on planning staff and they have full control.

Mr. Helmer said with a special use permit application they will show a good sketch plan, maybe not all the detail. That early in the planning process the applicant may not have engineered all of the details. Usually they come back after Council but you get an idea of what they are doing by the drawing they have submitted. We try to get as much detail as we can of course. Once the concept and the special use is approved by council they come back with a full set of drawings and they come back for a full on technical review.

Mr. Helmer stated that major site plans are reviewed for compliance with all of town ordinances by the technical review committee which is made up of very technically proficient members of each town department and led by the Town Manager. The Planning Board does not need to worry about having too much influence in this process.

Mr. Sanders asked if the planning board had the right to bend the rules for certain people.

Mr. Helmer said no, by state law staff is not authorized to vary from the ordinance. That is why Town of Smithfield choses the Board of Adjustment to be the variance approving authority. The code should be black and white. Discretionary decisions are to be avoided but, when necessary they should be made by elected officials.

Mr. Sanders asked what if the applicant fixes the error.

Mr. Helmer said for many years, the zoning ordinance has required sites to come into full compliance when triggered. That's usually when the size of the building or number of parking spaces increase. When the old stuff was not built to standards, they have to be reconfigured to meet current standards. That's usually the hardest part for property owners to understand.

Mrs. Daughtry asked why this proposed change was being done first before anything else.

Mr. Helmer said because of process, it's important because we can't stumble. When the applicant comes to planning department, I must, with confidence, know how to advise them. This is near impossible to do if the process portion of the code is in error.

Planning Staff recommends the Planning Board recommend approval of zoning text amendment ZA-18-06 with a consistency statement declaring the request is consistent with the Town of Smithfield Comprehensive Growth Management Plan and that the request is reasonable and in the public interest with the following motion:

Eddie Foy made a motion to recommend the Town Council approve ZA-18-06 amending the Town of Smithfield Unified Development Code, Article 5 to eliminating the requirement for Planning Board review of final plats, finding the amendment consistent with the Town of Smithfield Comprehensive Growth Management Plan and other adopted plans, and that the amendment is reasonable and in the public interest, seconded by Oliver Johnson. Unanimous

ZA-18-07 Town of Smithfield: The Planning Department is requesting an ordinance amendment to the Town of Smithfield Unified Development Ordinance, Article 9 to amend the nonconforming situations regulations as it pertains to the Board of Adjustment issuing permits.

Mr. Helmer stated in an ongoing review of the UDO approved in October 2017 Planning Staff has identified procedural issues, textual errors, and has identified nonconforming situation regulations in Article 9 that should be amended. In reviewing Article 9, the following issues were identified: The Board of Adjustments (BOA) does not issue permits (Article 3, Section 3.4.1 Powers and Duties). Section 9.5.4 essentially allows the BOA to issue a use variance through a permit.

The BOA does not issue permits and is not allowed to issue use variances as per State Statute. Planning Staff recommends the Planning Board recommend approval of zoning text amendment ZA-18-07 with a consistency statement declaring the request is consistent with the Town of Smithfield Comprehensive Growth Management Plan and that the request is reasonable and in the public interest with the following motion:

Mr. Lane asked if the UDO reads that the Board of Adjustments issues permits.

Mr. Helmer said yes and all we are doing is changing the verbiage to reflect what state law says and that is the Board of Adjustment doesn't approve permits.

Mr. Sanders asked how often the Board of Adjustment meets.

Mr. Helmer said as often as necessary, which he thinks will be a lot more frequent. As staff we try not to offer a variance but an applicant has the right to request one. You'll see more requests for variances, as well as more recommendations for denials from staff so be prepared for that.

Mr. Foy said so staff will continue to not be business friendly.

Mr. Helmer said no, I disagree with your take on that. We are about enforcing the code, if at some point you don't like the code then let's change it. If a particular ordinance is not business friendly then let's change the ordinance.

Mr. Foy said I don't think you understand the difference between requesting a variance and the code.

Mr. Helmer said I do understand the difference.

Mr. Foy said obviously you don't.

Mr. Helmer said some communities say if a variance is requested 3 times within a certain time frame it automatically triggers the code being considered changed. It means that code is not working if people continue to vary from it.

Mr. Foy said then we should have fixed some codes a long time ago.

Mrs. Daughtry said she knows the Town can't control who stays and who leaves on staff, when you put all the responsibility to one department and Council doesn't have to even put their eyes to approve. That is too much power within a department. One set of eyes is not enough.

Mr. Helmer stated that a multi-department technical review committee to include the City Manager reviews all major site plans for compliance with town ordinances and state laws. Mr. Helmer said to remember we also have an appeals process. If an applicant disagrees with the town's interpretation of an ordinance, the applicant can appeal to the Town of Smithfield Board of Adjustment.

Oliver Johnson made a motion to recommend the Town Council to approve ZA-18-07 amending the Town of Smithfield Unified Development Code, Article 9 to amend the nonconforming situations regulations as it pertains to the Board of Adjustments issuing permits, finding the amendment consistent with the Town of Smithfield Comprehensive Growth Management Plan and other adopted plans, and that the amendment is reasonable and in the public interest and seconded by Eddie Foy. Unanimous

Old Business

Mr. Upton announced that Planning Board member Michael Taylor recently relocated to Pender County and would no longer serve as a member on the Planning Board. He asked that Julie Edmonds send him a letter of thank you from the board.

Oliver Johnson asked if he would be moved from an alternate to a regular board member. He will be moved once his position has been filled. The Town Clerk has advertised the board vacancies

Adjournment

Ashley Spain made a motion to adjourn, seconded by Teresa Daughtry. Unanimous

Submitted this 6th day of August, 2018

Julie Edmonds
Administrative Assistant
Planning Department