

TOWN OF SMITHFIELD PLANNING BOARD AGENDA PACKET



Chairman: Stephen Upton

Vice-Chairman: Daniel Sanders

Members:

Mark Lane

Ashley Spain

Michael Taylor

Eddie Foy

Teresa Daughtry

Oliver Johnson (Alt)

Stephen Wensman, AICP, ALA, Planning Director

Mark Helmer, AICP, CZO, Senior Planner

Julie Edmonds, Administrative Assistant

Meeting Date: *Thursday, July 12, 2018*

Meeting Time: *6:00 p.m.*

Meeting Place: *Council Chambers, Smithfield Town Hall*

**AGENDA
PLANNING BOARD
REGULAR MEETING
July 12, 2018
MEETING TIME: 6:00 PM
TOWN HALL**

Call to Order.

Identify voting members

Approval of the agenda.

Approval of the minutes for May 3, 2018

New Business

ZA-18-04 LifeSpring Church: The applicant is requesting an ordinance amendment to the Town of Smithfield Unified Development Ordinance, Article 7, Section 7.32 Churches / Places of Worship to allow for churches and places of worship within retail shopping centers that are located in B-3 (Business) zoning districts.

ZA-18-03 Town of Smithfield: The Planning Department is requesting an ordinance amendment that will move the Town of Smithfield Code of Ordinances, Chapter 15, Article III, Historic Properties Commission to a new section titled Town of Smithfield Unified Development Ordinance, Article 3, Administrative / Legislative / Quasi-Judicial Authority, Section 3.5, Historic Preservation Commission.

ZA-18-05 Town of Smithfield: The Planning Department is requesting an ordinance amendment to the Town of Smithfield Unified Development ordinance, Article 10, Part III, Regulations for Signs, to allow for on-site highrise identification signs on properties located within the B-3 zoning district and that are within 660 feet on the Interstate 95 right-of-way.

Items for discussion

Old Business

Administrative Actions report

Land Use Permit Report for May, 2018
Board Actions Report for May, 2018

Adjournment

Draft
Smithfield Planning Board Minutes
Thursday, May 3, 2018
6:00 P.M., Town Hall, Council Chambers

Members Present:

Chairman Stephen Upton
Vice Chairman-Daniel Sanders
Michael Taylor
Eddie Foy
Teresa Daughtry
Ashley Spain
Mark Lane

Members Absent:

Oliver Johnson

Staff Present:

Stephen Wensman, Planning Director
Julie Edmonds, Administrative Assistant

Staff Absent:

Mark Helmer

CALL TO ORDER

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

AMENDMENTS TO THE AGENDA

None

APPROVAL OF AGENDA

Ashley Spain made a motion to approve the agenda, seconded by Mark Lane. Unanimous

APPROVAL OF MINUTES from April 5, 2018

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

New Business

RZ-18-05 Landis Bullock:

The applicant is requesting to rezone a 1.43 acre portion of a 2.91 acre tract of land from the HI (Heavy Industrial) zoning district to B-3 (Highway Entrance Business) zoning district. The property considered for rezoning is located on the southwest side of West Market Street approximately 180 feet southwest of its intersection with Whitley Drive. The property is further identified as a portion of Johnston County Tax ID# 15044023A.

Mr. Wensman said the rezoning was consistent with the Growth Management Plan. If developed, it will be done so using the Unified Development Ordinance. It would be compatible with surrounding land uses. Planning Department staff is recommending approval of the rezoning. They request the Planning Board review the petition, make a recommendation to the

Town Council, whether to approve or deny and make a declaration regarding its consistency with the Town plan.

Mr. Foy stated that in all his years on the Planning Board he had never seen a HI zoning change to a B-3.

Mr. Foy made a motion that the Planning Board recommends approval for RZ-18-05 from HI (Heavy Industrial) to B-3 finding the amendment reasonable in the public interest. He moves to recommend to the Town Council to approve RZ-18-05 based on Staff finding and recommended consistency statement, seconded by Mark Lane. Unanimous.

Mrs. Daughtry recused herself from RZ-18-06 due to a conflict of interest.

Mr. Wensman spoke up and said after talking with Shannan Parrish Town Clerk, the Town Councils process is that someone request to be recused then the Planning Board vote on it to be consistent with how the Town Council practices it. Town Attorney Bob Spence has also requested it be carried out in this process as well.

Mr. Upton stated that this issue had been handled previously and the Institute of Government had been contacted.

Mr. Foy said according to Frayda Bluestein at the Institute of Government in Chapel Hill, it is the responsibility of each board to determine how they would handle these situations. This particular board had decided that an individual can recuse themselves without the consent of the board. Foy said he has had long discussions with Mr. Bob Spence about this.

Mr. Wensman said he was ok with that.

RZ-18-06 W. Frank Lee

The applicant is requesting to rezone four tracts of land totaling approximately 2.26 acres from the R-20A (Residential-Agricultural) zoning district to the PUD (Planned Unit Development) zoning district. The properties considered for rezoning are located on the east side of Buffalo Road approximately 160 feet south of its intersection with Booker Dairy Road and further identified as Johnston County Tax ID# 14075030G, 14075030F, 14075027 and 14075028.

Mr. Wensman stated the applicant; Frank Lee had previously wanted B-3 zoning. The Planning Board recommended denial, Town Council affirmed that denial. He is now back as guided by the Comp Plan seeking a PUD. The Future Land Use Map guides this property and the surrounding properties as a Commercial Service Node. A Commercial Service Node is envisioned as a mixed use limited commercial focus area to service the neighborhood. It offers more neighborhood density, buffering, adjacent commercial and residential uses. The applicant is showing a Sheetz gas station, surrounded by residential apartments with a combination mixed use commercial on the ground floor and townhouses on the second floor. The uses appear to be of a neighborhood scale. Pedestrian connections are abundant in the plan. The private street will provide a shared internal access to all the lots and uses in the site. Mr. Paul

Embler and Mr. Frank Lee have done a great job turning this project into what staff is looking for. The first phase would be the Sheetz gas station. Future phases would be residential. Staff is saying this is consistent with the Growth Management Plan it will be consistent with the UDO. We're asking that the Planning Board make a recommendation to approve RZ-18-06 to the Town Council.

Mr. Upton asked if this project would be done in phases. Would they be reviewed in phases?

Mr. Wensman said yes, each phase will be reviewed against the Master Plan.

Mr. Sanders asked if there had been a drainage study done.

Mr. Wensman said there hasn't been a drainage study done but the applicant had provided some Storm water ponding areas. That level of detail will come with the Preliminary Plat.

Mr. Sanders asked if this case would be brought back before the Planning Board again.

Mr. Wensman said a Preliminary Plat would come back before the board.

Mr. Spain asked if the entrance to this project would be off of Booker Dairy Rd. He thought that property belonged to DOT.

Mr. Wensman said the entrance way would likely be a right in and a right out.

Mr. Spain asked how it works when this rezoning is being brought back before the Board so quickly.

Mr. Wensman said he checked the UDO and a rezoning could be brought back before the board. It would be different if it were another type of request.

Mr. Lane asked if there was any difference in the Master Plan from the B-3.

Mr. Wensman said with the B-3 there was no Master Plan. They just wanted a straight B-3 zoning, which would allow any type of uses that fall in the B-3 zoning. The PUD process allows us to have a Master Plan. The uses don't change but how they fit the land does matter.

Mr. Taylor asked if there are any preliminary traffic impact statements.

Mr. Wensman said nothing has been determined at this time. NCDOT will have an opportunity to comment on this project at some point.

Mr. Spain asked how it would work if the applicant came back with a changed plan. What if they change the use from townhouses to a doctor's office?

Mr. Wensman said on the ground floor they're proposing retail or office, it is the same. It would be different if they came back with apartments.

Mr. Wensman said the board will be notified if the applicant proposes something that isn't consistent with the Master Plan.

Mr. Lane said he was most worried about the traffic. He said when school lets in and lets out it is really backed up. Considering it is at certain hours of the day it may not be such an issue.

Mr. Wensman said NCDOT will also have the same concerns. They look at traffic counts and congestions. The right in and right out and turn lanes would help out with congestion. Until we have a real project in front of us we don't know how NCDOT will address it.

Mr. Sanders asked what the community was saying about this project.

Mr. Wensman said the public hearing will take place at the Town Council meeting on June 5th. So far he hasn't received any comments from the public since being advertised.

Mr. Taylor said the portion of the property where the Booker Dairy access is, isn't included in the rezoning. Is there a special agreement there?

Mr. Wensman said that is a NCDOT property. The applicant will have to get cooperation from the DOT.

Paul Embler came forward and said the entrances off of Booker Dairy and Buffalo Road have been preliminary proposed to DOT and they have given preliminary review to it. The driveway permit is part of the process that will be going through for the site development. Both of those roads are DOT roads, they would issue the driveway and encroachment permit. They will do that in coordination with the Town. They will require a traffic impact assessment for this. As you already know Booker Dairy Rd will eventually be a four lane road. That would have an impact on how the entrance and exit to this project is decided on. Buffalo Rd is also on the short term plan and it will be funded for a four lane improvement with a median. It will be a super street and probably receive funding in the next three years. Storm water is a requirement of site development. It is NC law, it will be addressed. It will meet the Town's ordinances as well as the State requirements. Currently we're proposing three ponds on the property in order to capture all the water. Parking and landscaping on this site exceeds the Town's requirements. The density shown on the property as far as impervious is better than the Town's requirements. It isn't as impervious as the Town allows it to be, there could be more pavement.

Mr. Spain asked what will happen to the project if DOT denies the proposed entrance and exit plan.

Mr. Embler said they have an indication from DOT they will accept it. If they didn't it would definitely change the plan. They could maybe say the driveway on Buffalo Road needs to be

moved to the South by 50 feet. That wouldn't be a major change, staff could deal with that. If they said we had to remove the driveway on Buffalo Road which would be a major change. We would then need to bring it back before the Planning Board.

Mr. Sanders asked if trucks coming in and out of this site would cause a problem with the housing around there.

Mr. Embler said he couldn't say trucks wouldn't try to cut through but with the way they have designed this plan it wouldn't be easy.

Mr. Taylor said if there are no left turns into this project then he would have to take Brightleaf Blvd. to Hospital Road onto Buffalo Rd to gain access to this business.

Mr. Embler said with the super street concept the DOT will put on the project; it will change that because it will force traffic crossovers at certain points. It is all about safety. That is why DOT does it. They are going to be doing it to US 301. As a matter of fact there is a project designed to carry you from Ricks Road in Selma to Booker Dairy Road.

Mrs. Tucker Twisdale of 1755 Buffalo Road came forward to speak. She asked that Paul Embler come forward with her to answer any questions. She stated she lives on Buffalo Road and most mornings the car lined up to the stoplight, trying to get into the school parking lot. She said most kids travel by car and not school bus. She asked Mr. Embler to show her where the storm water ponds would be located on the property. Mr. Embler pointed each pond out to everyone. Mrs. Twisdale said when the SECU they designed their water run off to go in an unnatural way and that will cause a problem with water unless these three ponds hold a lot.

Mr. Embler stated that all the water on the side this project is planned on will go toward the Park.

Mr. Upton stated this water issue has been addressed.

Mrs. Twisdale said she doesn't understand how things get approved before a traffic study is done.

Mr. Wensman said this is a master plan, a concept plan. The details will come when they try to develop the site. They need to conform to the UDO. This gives us a reasonable idea of how the site will be used. The details will come with the actual platting of the property.

Mr. Foy made a motion to recommend the Town Council approve RZ-18-06 based on staff findings and recommended consistency statement. There was no second.

Mr. Wensman asked for feedback from the board as to why no one would give a second.

Mr. Lane stated he is still concerned about the traffic issue. He knows DOT will be addressing it.

Mr. Foy said the DOT will address this. You will eventually have 2 four lanes to help with traffic issues.

Mr. Spain asked how that will work with the proposed 2 four lane roads. How can you cross four lanes of traffic to get to this proposed site?

Mr. Wensman said that is why a right in and a right out are being proposed. There would be more lanes of traffic to help carry that load. This is being designed for future growth so they are anticipating future development along that corridor. We potentially have a 300 unit subdivision going in up the road. There is going to be more traffic, they're trying to design and plan for it.

Mr. Spain said he would second, Mr. Foy's previous motion to recommend that the Town Council approve RZ-18-06 based on staff findings and recommended consistency statement. Unanimous.

Mr. Wensman said he would gladly bring before the Town Council the concerns about traffic congestions and hesitancy to approve it.

We held Stakeholder Interviews on May 2nd for the Comprehensive Plan. We had a good turn out and great discussions. It was the first part of the engagement process of the Comp Plan. We're going to have a booth at the Ham and Yam festival this weekend. We will talk about the Comp Plan and there will be small exercise provided by the consultants.

We mentioned at our last meeting about code amendments. I did get some feedback from Dale Holland. He offered some changes he would be willing to draft up. I also added changes I wanted to make. I plan to bring those back to you article by article starting in June. As a board you can review them and make a recommendation for Town Council to pass. The following month we will do the same thing. There have been significant changes to the Planning Department Webpage. It is intended to help new businesses understand the process. We're trying to make the website more digestible and user friendly.

Mrs. Daughtry asked if it would be possible to review and make changes to the Comp Plan first before reviewing and making changes to the UDO.

Mr. Wensman said there are some changes that need to happen to the UDO. Some things could wait but since we're going to have to change some I just assume make a recommendation of all those things we know need to be changed. After the comprehensive plan there will be addition changes. Those will be part of the implemental strategy steps.

Mr. Lane asked if the committee did something wrong when they did the UDO.

Mr. Wensman said no, but there are still a lot of conflicts in the code. You have it saying one thing in a section of the UDO then saying something totally different in another section. The Historic Properties Commission is in the administrative code still, it is being updated and we

need to find a home for that. It belongs in Chapter 3 along with other commissions. It wasn't migrated over.

Mr. Sanders asked if someone from the Planning Board could sit down when the codes are updated.

Mr. Wensman stated he would be happy to sit down with a committee and discuss the recommended changes.

Old Business

Administrative Actions report

Land Use Permit Report for February, 2018

Board Actions Report for February, 2018

Adjournment

Michael Taylor made a motion to adjourn, seconded by Mark Lane. Unanimous

Submitted this 4th day of May, 2018

Julie Edmonds
Administrative Assistant
Planning Department



Request for Planning Board Action

Agenda
Item: ZA-18-04
Date: 7/12/18

Subject: Zoning Text Amendment
Department: Planning
Presented by: Stephen Wensman, Planning Director
Presentation: Business Item

Issue Statement

Lifespring Church is requesting an amendment to the UDO Article 7, Section 7.32

Financial Impact

Potential loss of tax base if properties are owned by places of worship.

Action Needed

The Planning Board is respectfully requested to review the request for the zoning text amendment and to make a recommendation to the Town Council.

Recommendation

Planning Staff recommends the Planning Board recommend approval of the zoning text amendment ZA-18-04 with a statement declaring the request consistent with the Town of Smithfield Comprehensive Growth Management Plan and that the request is reasonable and in the public interest.

Approved: Town Manager Town Attorney

Attachments:

1. Staff report
2. Draft Zoning Text Amendment
2. Consistency Statement
3. Application and submittals



Staff Report

Agenda Item: ZA-18-04

Request:

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.

Analysis:

The applicant's attorney, Armstrong Law Firm, P.A., makes the argument that the Town's current Article 7, Section 7.32 is in violation of the RLUIPA. The Armstrong Law Firm argues that RLUIPA is being violated because the Town is not treating similar uses equally.

Article 6, Section 6.5, Table of Uses and Activities lists "Churches and Places of Worship" as special uses in the B-2 and B-3 subject to Section 7.32. Similar uses, such as "Clubs and Private Lodge meeting halls" as special uses, but with no supplementary standards. Both uses are assembly uses and under RLUIPA, should be treated equally.

History:

- Prior to the adoption of the current UDO, churches/religious groups were not permitted in any commercial zones (B-1, B-2, or B-3).
- In 2016 and 2017, the Smithfield UDO committee considered updates and revisions to its outdated UDO including the RLUIPA issue.
- The UDO adopted in October, 2017 included supplementary standards (7.32) which appear to be in violation of RLUIPA.

Pros and Cons of Churches in Shopping Malls:

There have been numerous arguments identified for allowing or disallowing churches in shopping centers. Here is a summary of some pros and cons:

Pros:

- Adequate parking infrastructure may exist with no traffic or noise nuisance for adjacent land uses.

- When church is in session (mostly on Sundays), there is little competition for space because there are relatively few shoppers on Sunday mornings.
- Vacant retail space being leased.
- There is an over-abundance of commercial zoning in the Town of Smithfield and churches are likely to seek out the lower rent in marginal commercial areas.
- In many cities, churches are becoming mixed use centers. Some churches function more as community centers. According to a Wall Street Journal analysis of August 2017 data from the Directory of Major Malls that tracks about 8,200 retail centers in the country, at least 111 malls and open-air centers have a church in them. Some have two or more.

Cons:

- Religious organizations may not be a good match for the standard mall business model. A mall's tenant mix is supposed to be self-supporting. What goes into one space must be a positive for what goes into the other spaces. Shopping center owners typically prefer tenants that draw foot traffic on a daily basis and often consider churches to be second-tier tenants because they aren't typically open all week.
- If an entire strip mall were purchased by a church, there would be subsequent loss of tax base, though no different than if an individual retail building were converted to a church – already allowed by the UDO.
- A church will impact the ability of surrounding business within 50 feet to hold an ABC Permit.
- Allowing churches in shopping malls might postpone or make difficult the ability to redevelop or regenerate a shopping area.
- If Churches were in shopping malls and if rents aren't paid, landlords might find it harder to evict a church than another tenant.

Recommendation:

Rather than delete Section 7.32, Staff recommends the following amendment to 7.32 which adds supplemental regulations common to both Churches/Places Worship and Club or Private Lodge Meeting Halls in order to regulate them equally under the UDO.

7.32 Churches/Places of Worship and Club or Private Lodge Meeting Halls.

7.32.1 Churches/Places of Worship and Club or Private Lodge Meeting Halls shall have adequate parking meeting Article 10, Section 10.3.

7.32.2 The land use will not significantly increase traffic on local roadways within a residential neighborhood.

7.32.3 In B-2 and B-3 zoning districts, the land use will not substantially decrease vehicular and/or pedestrian traffic or inhibit business activity for adjacent commercial businesses particularly during normal business hours. The Town recognizes that businesses in these zoning districts need active adjacent business space to attract customers to B-2 and B-2 zoning districts. The town intends for planning policies to encourage business traffic in these zoning districts. If a special use, due to inactivity during business hours or otherwise, substantially decreases commercial traffic then that special use will not be in harmony with the existing development and uses with the area in which it is to be located.

7.32.4 The land use will not impede the normal and orderly development of the surrounding property for uses permitted in the district. If a substantial portion of a commercial center is closed or not attracting traffic during normal business hours then that absence of activity would likely impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

Staff also recommends amending **Article 6, Section 6.5 Table of Uses and Activities** adding a reference to the Supplementary Standards 7.32 (SS) for Club or Private Lodge Meeting Halls.

DRAFT ORDINANCE # ZA-18-04
AN ORDINANCE TO AMEND THE TOWN OF SMITHFIELD
UNIFIED DEVELOPMENT ORDINANCE ARTICLE 7, SECTION
7.3 CHURCHES / PLACE OF WORSHIP AND AMEND ARTICLE 6
ZONING DISTRICTS, SECTION 6.5 TABLE OF USES AND
ACTIVITIES

WHEREAS, the Smithfield Town Council wishes to amend certain provisions in the Unified Development Ordinance by making changes to the Town of Smithfield Unified Development Ordinance to allow for churches/places of worship and clubs or private lodges meeting halls within shopping centers providing additional supplemental standards can be met.

WHEREAS, it is the objective of the Smithfield Town Council to have the UDO promote regulatory efficiency and consistency and the health, safety, and general welfare of the community;

NOW, THEREFORE, be it ordained that the following Articles are amended to make the following changes set forth in the deletions (strikethroughs) and additions (double underlining) below:

PART 1

[Revise Article 7.32, to create supplemental standards for churches /places of worship and clubs or private lodge meeting halls.]

SECTION 7.32 CHURCHES /PLACES OF WORSHIP AND CLUB OR PRIVATE LODGE MEETING HALLS.

~~When located in the B-2 and B-3 zoning districts, churches/places of worship shall be the principal use on a single parcel of property. Churches/places of worship shall not be located in a major or minor shopping center.~~

7.32.1 Churches/Places of Worship and Club or Private Lodge Meeting Halls shall have adequate parking meeting Article 10, Section 10.3.

7.32.2 The land use will not significantly increase traffic on local roadways within a residential neighborhood.

7.32.3 In B-2 and B-3 zoning districts, the land use will not substantially decrease vehicular and/or pedestrian traffic or inhibit business activity for adjacent commercial businesses particularly during normal business hours. The Town recognizes that businesses in these zoning districts need active adjacent business space to attract customers to B-2 and B-2 zoning districts. The town intends for planning policies to encourage business traffic in these zoning districts. If a special use, due to inactivity during business hours or otherwise, substantially decreases commercial traffic then that special use will not be in harmony with the existing development and uses with the area in which it is to be located.

7.32.4 The land use will not impede the normal and orderly development of the surrounding property for uses permitted in the district. If a substantial portion of a commercial center is closed or not attracting traffic during normal business hours then that absence of activity would likely impede the normal and orderly development and improvement of the surrounding property for

uses permitted in the district.

AND, be it ordained that the following Articles are amended to make the following changes set forth in the deletions (strikethroughs) and additions (double underlining) below:

[Revise Article 6, Zoning Districts, Section 6.5 Table of Uses and Activities that reference the supplemental standards found in Section 7.32 to which clubs or private lodge meeting halls shall adhere to.]

Excerpt of Article 6, Zoning Districts, Section 6.5 Table of Uses and Activities to be amended as follows.

Uses	B-2	B-3	Supplemental Regulations
Civic Club or <u>Private</u> Fraternal <u>Private</u> Lodge meeting halls	<u>SS</u>	<u>SS</u>	Section 7.32

PART 2

That the Unified Development Ordinance shall be page numbered and revision dated as necessary to accommodate these changes.

PART 3

That these amendments of the Unified Development Ordinance shall become effective upon adoption.

Duly adopted this the ____ day of _____, 20__.

M. Andy Moore, Mayor

ATTEST

Shannan L. Parrish, Town Clerk

**THE TOWN OF SMITHFIELD
UNIFIED DEVELOPMENT ORDINANCE
TEXT AMENDMENT CONSISTENCY STATEMENT
BY THE SMITHFIELD PLANNING BOARD
ZA-18-04**

Whereas the Smithfield Town Council, upon acting on a text amendment to the *Unified Development Ordinance* and pursuant to NCGS §160A-383, is required to approve a statement describing how the action is consistent with the Town of Smithfield *Comprehensive Growth Management Plan*; and

Whereas the Smithfield Town Council, upon acting on a text amendment to the *Unified Development Ordinance* and pursuant to NCGS §160A-383, is required to provide a brief statement indicating how the action is reasonable and in the public interest.

NOW THEREFORE, BE IT RECOMMENDED FOR ADOPTION BY THE SMITHFIELD TOWN COUNCIL AS APPROPRIATE:

IN THE EVENT THAT THE MOTION TO RECOMMEND APPROVAL OF THE ORDINANCE IS ADOPTED,

That the recommended approval of text amendment ZA-18-04 is based upon review of and consistency with, the Town of Smithfield *Comprehensive Growth Management Plan* and any other officially adopted plan that is applicable, along with additional agenda information provided to the Town Council and information provided at the public meeting; and

It is the objective of the Town of Smithfield Town Council to have the *Unified Development Ordinance* promote regulatory efficiency and consistency and the health, safety, and general welfare of the community. The text amendment promotes this by offering fair and reasonable regulations for the citizens and business community of the Town of Smithfield as supported by the staff report and attachments provided to the Town Council and information provided at the public meeting. Therefore, the amendment is reasonable and in the public interest.

IN THE EVENT THAT THE MOTION RECOMMEND APPROVAL THE ORDINANCE FAILS,

That the recommended approval of text amendment ZA-18-04 is based upon review of, and consistency, the Town of Smithfield *Comprehensive Growth Management Plan* and other officially adopted plans that are applicable; and

It is the objective of the Planning Board to have the *Unified Development Ordinance* promote regulatory efficiency and consistency and the health, safety, and general welfare of the community. The text amendment does not promote this and therefore is neither reasonable nor in the public interest.



Town of Smithfield
 Planning Department
 350 E. Market St Smithfield, NC 27577
 P.O. Box 761, Smithfield, NC 27577
 Phone: 919-934-2116
 Fax: 919-934-1134

Petition for Amendment to the Unified Development Ordinance

Pursuant to Article 4 of the Town of Smithfield Unified Development Ordinance, Proposed amendments may be initiated by the Town Council, Planning Board, Board of Adjustment, members of the public, or by one or more interested parties. The application for any amendment shall contain a description of the proposed zoning regulation. SEE ENCLOSED LETTER AND "STA

APPLICANT INFORMATION:

<u>Lifespring Church</u>	<u>P.O. Box 2859</u>
Petitioner's Name	Address or PO Box
<u>Smithfield, NC 27577</u>	<u>919-222-6275</u>
City, State, Zip Code	Telephone

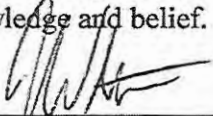
Proposed amendment to the Town of Smithfield Unified Development Ordinance:
delete "Section 7.32 - Churches / Places of Worship"

(Attach additional sheets as necessary)

This application must be accompanied by a Statement of Justification which addresses the following:

1. How the amendment proposed would serve the public interest or correct an obvious error in the existing ordinance.
2. How the amendment proposed will enhance or promote the purposes and goals of the adopted plans and policies of the governing body.

The undersigned hereby authorizes the filing of this petition and certifies that the information contained herein stands alone based on the merits of this request and is accurate to the best of their knowledge and belief.

	<u>1 June 2018</u>
Signature of Petitioner	Date

FOR OFFICE USE ONLY

File Number: _____	Date Received: _____	Amount Paid: _____
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Marcia High Armstrong
Board Certified Specialist in Family Law
American Academy of Matrimonial Lawyers

L. Lamar Armstrong, Jr.
American Board of Trial Advocates



The Armstrong Law Firm, P.A.
T r i a l A t t o r n e y s

L. Lamar Armstrong, III
Eason Armstrong Keeney
Daniel K. Keeney

Friday, June 01, 2018

Town of Smithfield
Planning Department

Via Hand-Delivery to:
350 E. Market St.
Smithfield, NC 27577

Via U.S. Mail to:
P.O. Box 761
Smithfield, NC 27577

Re: *Petition for Modification of the Smithfield UDO*

To Whom it May Concern:

I represent Lifespring Church (Lifespring) in its efforts to find a suitable, permanent location within Smithfield City Limits. Please allow this letter as Lifespring's "Statement of Justification" requested in the enclosed petition for amendment to Smithfield's Unified Development Ordinance (UDO).

Lifespring has reached an agreement in principal to lease available space within the _____ shopping center located at _____ in Smithfield. This _____ shopping center is zoned B-3.

Lifespring's ability to lease this space should not depend on the content of its speech and purpose. Our founding fathers decided hundreds of years ago that the government cannot arbitrarily deprive its citizens of fundamental freedoms of speech, religion, and assembly.

Yet Section 7.32 of the UDO currently does exactly that by arbitrarily singling out "churches" and "places of worship" in certain areas, including _____ location:

SECTION 7.32 CHURCHES /PLACES OF WORSHIP.

When located in the B-2 and B-3 zoning districts, churches/places of worship shall be the principal use on a single parcel of property. Churches/places of worship shall not be located in a major or minor shopping center.

(“Section 7.32”).

Smithfield’s Planning Director recently encouraged Lifespring to submit applications for a special use permit and to amend the UDO. Lifespring is not obligated to submit any applications. Smithfield can change the UDO anytime it wants, so long as it follows applicable procedures. Smithfield does not need its residents to prompt it to comply with the law.

Furthermore, the UDO does not provide any exceptions (special use, conditional use, or otherwise) to Section 7.32. As long as Section 7.32 exists, religious groups cannot exist in any shopping centers or as the principal use on a single parcel. If Section 7.32 is removed, then religious groups can so exist. Either way, any special use permit application Lifespring submits is superfluous.

Having said the above, and though Lifespring would be justified in immediately filing a lawsuit, Lifespring has carefully deliberated and decided to go above and beyond and submit the requested applications before filing a lawsuit. Lifespring risks losing this important opportunity if Smithfield delays or denies the enclosed petition, but Lifespring has made the difficult decision to nonetheless trust that Smithfield will timely correct this problem.

Lifespring’s trust in Smithfield is also especially difficult considering Smithfield’s long history of unwillingness to follow religious freedom laws. Although this history is far too long to comprehensively summarize, a brief summary may be helpful for anyone reading this who are not aware of it:

- Until last October, Smithfield’s Land Use Code banned all churches/religious groups from all commercial zones (B-1, B-2, and B-3). No exceptions, other than churches grandfathered in before this rule was enacted decades ago. This clearly violated religious freedom laws (including the Federal 1st Amendment and the RLUIPA¹).

¹ Religious Land Use and Institutionalized Persons Act, full copy enclosed.

- In 2016 and 2017, Smithfield (through a committee) considered updates and revisions to its outdated Land Use Code, including adoption of the UDO.
- Lifespring attended most of this committee's monthly public meetings and respectfully urged it to make necessary changes to cease religious discrimination, in particular by treating religious groups equally with non-religious groups.
- Lifespring provided the committee members my letter (enclosed) explaining religious freedom laws and how Smithfield's Land Use Code clearly violated those laws.
- Instead of fully complying with these laws, the committee chose a "compromise" solution that included Section 7.32.

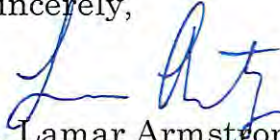
Section 7.32 still violates the 1st Amendment and RLUIPA. Enclosed is a letter that the U.S. Department of Justice sends to municipalities like Smithfield who violate RLUIPA. Smithfield cannot justify a per se ban of all religious groups from all shopping centers. Smithfield cannot justify allowing non-religious non-profits (for example, Rotary Club) but not religious non-profits (for example, Lifespring) to occupy space in shopping centers. There simply is no compelling reason for excluding all religious groups from all shopping centers, or otherwise treating religious groups differently than non-religious groups.

Smithfield must comply with the Constitution, regardless of whether Smithfield believes doing so will "serve the public interest" or "enhance or promote the purposes and goals of adopted plans and policies". Nevertheless, to address these questions raised in the enclosed petition for amendment, please see the enclosed "statement of justification". Lifespring takes its commitment to serve the Smithfield community seriously and believes it can best accomplish that mission at and through the above location.

If Smithfield refuses or unreasonably delays, Lifespring is prepared, as a last resort, to file a lawsuit pursuant to the RLUIPA and 42 U.S.C. § 1983. Lifespring implores Smithfield to fix this problem by deleting Section 7.32 so

that Lifespring can focus its resources on continuing to make a difference in this community.

Sincerely,



L. Lamar Armstrong, III

Attorney for Lifespring Church

Enclosures



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 15, 2016

Re: The Religious Land Use and Institutionalized Persons Act

Dear State, County, and Municipal Officials:

I am writing to you today to highlight the obligation of public officials to comply with the various provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA), and to inform you about documents previously issued by the Department of Justice (Department) that may be of assistance to you in understanding and applying this important Federal civil rights law.

The freedom to practice religion according to the dictates of one's conscience is among our most fundamental rights, written into our Constitution and protected by our laws. In our increasingly diverse nation, the Department continues to steadfastly defend this basic freedom and ensure that all people may live according to their beliefs, free of discrimination, harassment, or persecution.

Over the years Congress has passed a number of laws that protect the religious liberties of those who live in America, including the landmark Civil Rights Act of 1964 and the 1996 Church Arson Prevention Act. In 2000 Congress, by unanimous consent, and with the support of a broad range of civil rights and religious organizations, enacted the Religious Land Use and Institutionalized Persons Act. 42 U.S.C. § 2000cc et seq. In enacting RLUIPA, Congress determined that there was a need for Federal legislation to protect religious individuals and institutions from unduly burdensome, unreasonable or discriminatory zoning, landmarking, and other land use regulations.¹ Congress heard testimony that houses of worship, particularly those of minority religions and start-up churches, were disproportionately affected, and in fact often were actively discriminated against, by local land use decisions. Congress also found that, as a whole, religious institutions were treated worse than secular places of assembly like community centers, fraternal organizations, and movie theaters, and that zoning authorities frequently violated the United States Constitution by placing excessive burdens on the ability of congregations to exercise their faiths.

¹ RLUIPA also contains provisions that prohibit regulations that impose a "substantial burden" on the religious exercise of persons residing or confined in an "institution," unless the government can show that the regulation serves a "compelling government interest" and is the least restrictive way for the government to further that interest. 42 U.S.C § 2000cc-1.

RLUIPA includes a private right of action, which allows private individuals to enforce its provisions. Congress also gave the U.S. Attorney General the authority to enforce RLUIPA, and the Department of Justice has been active in enforcing this important civil rights law since its enactment. To date, the Department has opened nearly 100 formal investigations and filed nearly 20 lawsuits related to RLUIPA's land use provisions.² Through these efforts, as well as those by private parties, RLUIPA has helped secure the ability of thousands of individuals and institutions to practice their faiths freely and without discrimination.

Yet, sixteen years after RLUIPA's enactment, far too many people and communities remain unaware of the law, or do not fully understand the scope of its provisions. Earlier this year, the Department's Civil Rights Division launched *Combating Religious Discrimination Today*, an initiative bringing together community leaders around the country to discuss challenges regarding religious discrimination, religion-based hate crimes, and religious freedom, and to discuss possible solutions. One of the issues raised repeatedly from participants was that municipal, county, and other state and local officials are insufficiently familiar with the land use provisions of RLUIPA and their obligations under this Federal civil rights law. Participants also reported that houses of worship, particularly those from less familiar religious traditions, often face unlawful barriers in the zoning and building process. Additionally, participants explained that, in their experience, litigation frequently was avoided when the communities informed local officials of their obligations under RLUIPA early in the process. Participants recommended that the Department take proactive measures to ensure that state and local officials are properly educated about RLUIPA's land use provisions.³

In light of this, we are sending this letter to you and other officials throughout the country to remind you about the key provisions of RLUIPA. Ensuring that our constitutional protections of religious freedom are protected requires that Federal, state, and local officials work together, and to that end, we encourage you to share this letter with your colleagues. We hope that you will continue to work with the Department of Justice going forward and view us as a partner and ally in ensuring that no individuals in this country suffer discrimination or unlawful treatment simply because of their faiths.

² This work is detailed in reports on enforcement issued in September 2010 (available at https://www.justice.gov/crt/rluipa_report_092210.pdf) and July 2016 (available at <https://www.justice.gov/crt/file/877931/download>).

³ The *Combating Religious Discrimination Today* report is available at https://www.justice.gov/Combating_Religious_Discrimination.

1. RLUIPA provides broad protections for religious individuals and institutions.

RLUIPA's land use provisions provide a number of protections for places of worship, faith-based social service providers and religious schools, and individuals using land for religious purposes. Specifically, RLUIPA provides for:

- *Protection against substantial burdens on religious exercise:* Section 2(a) of RLUIPA prohibits the implementation of any land use regulation that imposes a "substantial burden" on the religious exercise of a person or institution except where justified by a "compelling government interest" that the government pursues using the least restrictive means.⁴
- *Protection against unequal treatment for religious assemblies and institutions:* Section 2(b)(1) of RLUIPA provides that religious assemblies and institutions must be treated at least as well as nonreligious assemblies and institutions.
- *Protection against religious or denominational discrimination:* Section 2(b)(2) of RLUIPA prohibits discrimination "against any assembly or institution on the basis of religion or religious denomination."
- *Protection against total exclusion of religious assemblies:* Section 2(b)(3)(A) of RLUIPA provides that government must not totally exclude religious assemblies from a jurisdiction.
- *Protection against unreasonable limitation of religious assemblies:* Section 2(b)(3)(B) of RLUIPA provides that government must not unreasonably limit "religious assemblies, institutions, or structures within a jurisdiction."

While the majority of RLUIPA cases involve places of worship such as churches, synagogues, mosques, and temples, the law is written broadly to cover a wide range of religious uses. The "substantial burden" provision in Section 2(a) of the statute applies to burdens on "a person, including a religious assembly or institution." The remaining provisions apply to any religious "assembly or institution." Thus, RLUIPA applies widely not only to diverse places of worship, but also to religious schools, religious camps, religious retreat centers, and religious social service facilities such as group homes, homeless shelters, and soup kitchens, as well as to individuals exercising their religion through use of property, such as home prayer gatherings or Bible studies.

To be clear, RLUIPA does not provide a blanket exemption from local zoning or landmarking laws. Rather, it contains a number of safeguards to prevent discriminatory, unreasonable, or unjustifiably burdensome regulations from hindering religious exercise. Ordinarily, before seeking recourse from RLUIPA, those seeking approval for a religious land

⁴ Section 2 of RLUIPA is codified at 42 U.S.C § 2000cc.

use will have to apply for permits or zoning relief according to the regular procedures set forth in the applicable ordinances, unless doing so would be futile, or the regular procedures are discriminatory or create an unjustifiable burden. While zoning is primarily a local matter, where it conflicts with Federal civil rights laws such as the Fair Housing Act or RLUIPA, Federal law takes precedence.

Each of the aforementioned protections in RLUIPA are discussed in greater detail below.⁵

2. RLUIPA protects against unjustified burdens on religious exercise.

Land use regulations frequently can impede the ability of religious institutions to carry out their mission of serving the religious needs of their members. Section 2(a) of RLUIPA bars imposition of land use regulations that create a “substantial burden” on the religious exercise of a person or institution, unless the government can show that it has a “compelling interest” for imposing the regulation and that the regulation is the least restrictive way for the government to further that interest. A mere inconvenience to the person or religious institution is not sufficient, but a burden that is substantial may violate RLUIPA. For example, in a case in which the United States filed a friend-of-the-court brief in support of a Maryland church’s challenge to a rezoning denial, a Federal appeals court ruled that the church had “presented considerable evidence that its current facilities inadequately serve its needs,” and that the “delay, uncertainty and expense” in looking for a different property may create a substantial burden on the church’s religious exercise in violation of RLUIPA.⁶ The court relied on facts including that the church had to hold multiple services, turn away worshipers, and curtail a number of important activities at its current location, and that it had a reasonable expectation that it could develop its new property. Similarly, the Department of Justice filed suit in a California Federal district court alleging that a city’s denial of zoning approval for a mosque to take down the aging and inadequate structures in which it had been worshipping and construct a new facility imposed a substantial burden on the congregation.⁷ The mosque, which was grandfathered for its current use, consisted of a group of repurposed buildings for its various activities and a large tent for overflow from the prayer hall. However, the city prohibited the mosque from replacing the buildings and tent with a single building. The case was resolved by a consent decree in Federal court.

If imposition of a zoning or landmarking law creates a substantial burden on religious exercise, such imposition is invalid unless it is supported by a compelling governmental interest pursued through the least restrictive means. RLUIPA does not define “compelling interest,” but

⁵ Further information may be found in the *Statement of the Department of Justice on Land Use Provisions of the Religious Land Use and Institutionalized Persons Act* (available at https://www.justice.gov/crt/rluiipa_q_a_9-22-10.pdf), and at the Department of Justice Civil Rights Division RLUIPA information page (<https://www.justice.gov/crt/religious-land-use-and-institutionalized-persons-act>).

⁶ *Bethel World Outreach v. Montgomery Cnty. Council*, 706 F.3d 548, 557-558 (4th Cir. 2013).

⁷ *United States v. Lomita*, No. 2:13-CV-00707 (E.D. Cal. filed March 3, 2013).

the U.S. Supreme Court has previously explained that compelling interests are “interests of the highest order.”⁸

3. RLUIPA protects equal access for religious institutions and assemblies.

Section 2(b)(1) of RLUIPA – known as the “equal terms” provision – mandates that religious assemblies and institutions be treated at least as well as nonreligious assemblies and institutions. For example, a Federal appeals court ruled that zoning restrictions that a city applied to places of worship but not to lodges, union halls, nightclubs, and other assemblies, violated the equal terms provision.⁹ This included a requirement that places of worship, but not other assembly uses, obtain the permission of 60% of neighbors in a 1,300-foot radius. The Department of Justice filed a friend-of-the-court brief arguing that the distinction violated RLUIPA. Similarly, the Department brought suit under RLUIPA’s equal terms provision against a town in Illinois that permitted clubs, lodges, meeting halls, and theaters in its business districts, but excluded places of worship.¹⁰ The case was prompted after the town served notice of violation on four small churches operating in locations where these nonreligious assembly uses were permitted. The case was resolved by consent decree.

4. RLUIPA protects against religious discrimination in land use.

Section 2(b)(2) of RLUIPA bars discrimination “against any assembly or institution on the basis of religion or religious denomination.” Thus if an applicant is treated differently in a zoning or landmarking process because of the religion represented (e.g., Christian, Jewish, Muslim), or because of the particular denomination or sect to which the applicant belongs (e.g., Catholic, Orthodox Jewish, or Shia Muslim), then RLUIPA will be violated. The Department of Justice filed suit alleging that a mosque in Georgia was discriminated against in violation of Section 2(b)(2), based on statements by city officials indicating bias, evidence that the city sought to appease citizens who had expressed bias, and evidence that the city had previously approved numerous similarly sized and located places of worship of other faiths.¹¹ The case was resolved by consent decree. Similarly, the Department filed suit in order to challenge a zoning change enacted by a New York municipality that prevented the construction of a Hasidic Jewish boarding school.¹² The case was resolved by consent decree.

⁸ *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993).

⁹ *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279 (5th Cir. 2012).

¹⁰ *United States v. Waukegan*, No. 08-C-1013 (N.D. Ill. filed February 19, 2008).

¹¹ *United States v. City of Lilburn* 1:11-CV-2871 (N.D. Ga. filed August 29, 2011).

¹² *United States v. Village of Airmont*, 05 Civ. 5520 (S.D.N.Y. filed June 10, 2005).

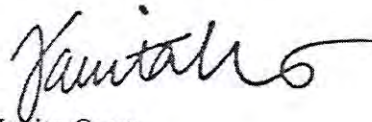
5. RLUIPA protects against the total or unreasonable exclusion of religious assemblies from a jurisdiction.

Under section 2(b)(3) of RLUIPA, a zoning code may not completely, or unreasonably, limit religious assemblies in a jurisdiction. Thus, if there is no place where houses of worship are permitted to locate, or the zoning regulations looked at as a whole deprive religious institutions of reasonable opportunities to build or locate in the jurisdiction, this provision will be violated. For example, a Federal district court in Florida granted summary judgment to a synagogue on its unreasonable limitations claim, holding that RLUIPA was violated where “there was limited availability of property for the location of religious assemblies, religious assemblies were subject to inflated costs in order to locate in the City, and religious assemblies were subject to more stringent requirements than other similar uses.”¹³

* * * *

The Department of Justice is committed to carrying out Congress’s mandate and ensuring that religious assemblies and institutions do not suffer from discriminatory or unduly burdensome land use regulations. We look forward to working collaboratively with you and all other stakeholders on these important issues. Should you have questions about the contents of this letter, or other issues related to RLUIPA, I encourage you to contact Eric Treene, Special Counsel for Religious Discrimination, at 202.514.2228 or Eric.Treene@USDOJ.gov.

Sincerely,



Vanita Gupta
Principal Deputy Assistant Attorney General
Civil Rights Division

¹³ *Chabad of Nova, Inc. v. City of Cooper City*, 575 F. Supp. 2d 1280, 1290 (S.D. Fla. 2008).

42 USCS § 2000cc

Current through PL 115-108, approved 1/8/18, with gaps of PL's 115-91 and 115-97.

United States Code Service - Titles 1 through 54 > TITLE 42. THE PUBLIC HEALTH AND WELFARE > CHAPTER 21C. PROTECTION OF RELIGIOUS EXERCISE IN LAND USE AND BY INSTITUTIONALIZED PERSONS

§ 2000cc. Protection of land use as religious exercise

(a) Substantial burdens.

(1) General rule. No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution--

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

(2) Scope of application. This subsection applies in any case in which--

(A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

(B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

(b) Discrimination and exclusion.

(1) Equal terms. No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) Nondiscrimination. No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

(3) Exclusions and limits. No government shall impose or implement a land use regulation that--

(A) totally excludes religious assemblies from a jurisdiction; or

(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

History

(Sept. 22, 2000, *P.L. 106-274*, § 2, *114 Stat. 803*.)

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42 USCS § 2000cc-1

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United States Code Service - Titles 1 through 54 > TITLE 42. THE PUBLIC HEALTH AND WELFARE > CHAPTER 21C. PROTECTION OF RELIGIOUS EXERCISE IN LAND USE AND BY INSTITUTIONALIZED PERSONS

§ 2000cc-1. Protection of religious exercise of institutionalized persons

(a)General rule. No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 2 of the Civil Rights of Institutionalized Persons Act (*42 U.S.C. 1997*), even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person--

- (1)is in furtherance of a compelling governmental interest; and
- (2)is the least restrictive means of furthering that compelling governmental interest.

(b)Scope of application. This section applies in any case in which--

- (1)the substantial burden is imposed in a program or activity that receives Federal financial assistance; or
- (2)the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

History

(Sept. 22, 2000,*P.L. 106-274*, § 3, *114 Stat. 804*.)

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42 USCS § 2000cc-2

Current through PL 115-108, approved 1/8/18, with gaps of PL's 115-91 and 115-97.

United States Code Service - Titles 1 through 54 > TITLE 42. THE PUBLIC HEALTH AND WELFARE > CHAPTER 21C. PROTECTION OF RELIGIOUS EXERCISE IN LAND USE AND BY INSTITUTIONALIZED PERSONS

§ 2000cc-2. Judicial relief

(a)Cause of action. A person may assert a violation of this Act as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

(b)Burden of persuasion. If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2 [42 USCS § 2000cc], the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff's exercise of religion.

(c)Full faith and credit. Adjudication of a claim of a violation of section 2 [42 USCS § 2000cc] in a non-Federal forum shall not be entitled to full faith and credit in a Federal court unless the claimant had a full and fair adjudication of that claim in the non-Federal forum.

(d)[Omitted]

(e)Prisoners. Nothing in this Act shall be construed to amend or repeal the Prison Litigation Reform Act of 1995 (including provisions of law amended by that Act).

(f)Authority of United States to enforce this Act. The United States may bring an action for injunctive or declaratory relief to enforce compliance with this Act. Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the United States, or any agency, officer, or employee of the United States, acting under any law other than this subsection, to institute or intervene in any proceeding.

(g)Limitation. If the only jurisdictional basis for applying a provision of this Act is a claim that a substantial burden by a government on religious exercise affects, or that removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, the provision shall not apply if the government demonstrates that all substantial burdens on, or the removal of all substantial burdens from, similar religious exercise throughout the Nation would not lead in the aggregate to a substantial effect on commerce with foreign nations, among the several States, or with Indian tribes.

History

(Sept. 22, 2000,*P.L. 106-274*, § 4, *114 Stat. 804*.)

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42 USCS § 2000cc-3

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United States Code Service - Titles 1 through 54 > TITLE 42. THE PUBLIC HEALTH AND WELFARE > CHAPTER 21C. PROTECTION OF RELIGIOUS EXERCISE IN LAND USE AND BY INSTITUTIONALIZED PERSONS

§ 2000cc-3. Rules of construction

- (a) Religious belief unaffected. Nothing in this Act shall be construed to authorize any government to burden any religious belief.
- (b) Religious exercise not regulated. Nothing in this Act shall create any basis for restricting or burdening religious exercise or for claims against a religious organization including any religiously affiliated school or university, not acting under color of law.
- (c) Claims to funding unaffected. Nothing in this Act shall create or preclude a right of any religious organization to receive funding or other assistance from a government, or of any person to receive government funding for a religious activity, but this Act may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.
- (d) Other authority to impose conditions on funding unaffected. Nothing in this Act shall--
- (1) authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government as a condition of receiving funding or other assistance; or
 - (2) restrict any authority that may exist under other law to so regulate or affect, except as provided in this Act.
- (e) Governmental discretion in alleviating burdens on religious exercise. A government may avoid the preemptive force of any provision of this Act by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.
- (f) Effect on other law. With respect to a claim brought under this Act, proof that a substantial burden on a person's religious exercise affects, or removal of that burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, shall not establish any inference or presumption that Congress intends that any religious exercise is, or is not, subject to any law other than this Act.
- (g) Broad construction. This Act shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution.
- (h) No preemption or repeal. Nothing in this Act shall be construed to preempt State law, or repeal Federal law, that is equally as protective of religious exercise as, or more protective of religious exercise than, this Act.

(i) Severability. If any provision of this Act or of an amendment made by this Act, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provision to any other person or circumstance shall not be affected.

History

(Sept. 22, 2000, P.L. 106-274, § 5, *114 Stat. 805*.)

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42 USCS § 2000cc-4

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United States Code Service - Titles 1 through 54 > TITLE 42. THE PUBLIC HEALTH AND WELFARE > CHAPTER 21C. PROTECTION OF RELIGIOUS EXERCISE IN LAND USE AND BY INSTITUTIONALIZED PERSONS

§ 2000cc-4. Establishment Clause unaffected

Nothing in this Act shall be construed to affect, interpret, or in any way address that portion of the first amendment to the Constitution prohibiting laws respecting an establishment of religion (referred to in this section as the "Establishment Clause"). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this Act. In this section, the term "granting", used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

History

(Sept. 22, 2000,*P.L. 106-274*, § 6, *114 Stat. 806*.)

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42 USCS § 2000cc-5

Current through PL 115-108, approved 1/8/18, with gaps of PL's 115-91 and 115-97.

United States Code Service - Titles 1 through 54 > TITLE 42. THE PUBLIC HEALTH AND WELFARE > CHAPTER 21C. PROTECTION OF RELIGIOUS EXERCISE IN LAND USE AND BY INSTITUTIONALIZED PERSONS

§ 2000cc-5. Definitions

In this Act:

- (1) Claimant. The term "claimant" means a person raising a claim or defense under this Act.
- (2) Demonstrates. The term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion.
- (3) Free Exercise Clause. The term "Free Exercise Clause" means that portion of the first amendment to the Constitution that proscribes laws prohibiting the free exercise of religion.
- (4) Government. The term "government"--
 - (A) means--
 - (i) a State, county, municipality, or other governmental entity created under the authority of a State;
 - (ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and
 - (iii) any other person acting under color of State law; and
 - (B) for the purposes of sections 4(b) and 5 [*42 USCS §§ 2000cc-2(b) and 2000cc-3*], includes the United States, a branch, department, agency, instrumentality, or official of the United States, and any other person acting under color of Federal law.
- (5) Land use regulation. The term "land use regulation" means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.
- (6) Program or activity. The term "program or activity" means all of the operations of any entity as described in paragraph (1) or (2) of section 606 of the Civil Rights Act of 1964 (*42 U.S.C. 2000d-4a*).
- (7) Religious exercise.
 - (A) In general. The term "religious exercise" includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

(B)Rule. The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.

History

(Sept. 22, 2000, *P.L. 106-274*, § 8, *114 Stat. 806*.)

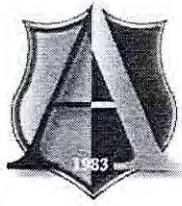
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Marcia High Armstrong
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The Armstrong Law Firm, P.A.
Trial Attorneys

L. Lamar Armstrong, III
Eason Armstrong Keeney
Daniel K. Keeney

Tuesday, October 04, 2016

Delivered via US Mail and hand delivery at 11 Oct. 2016 committee meeting
To all Members of the UDO Planning Committee

Re: *Reasonable zoning accommodations for religious organizations*

Dear Committee Member:

I write you as a partner of LifeSpring Church and as a concerned citizen. We appreciate your thoughtful deliberation and willingness to consider our concern that Smithfield's current zoning code (and future code as proposed in your materials) does not reasonably accommodate religious organizations.

In prior meetings, I and others have raised practical concerns about this issue. The purpose of this letter is to supplement those practical concerns with a summary of the law on this issue. We hope that you will use this information to assist in your decisions. We respectfully request that the official minutes of the 11 October 2016 committee meeting reflect that a copy of this letter was provided to all present committee members, and that a copy of this letter is attached to the official minutes of this meeting.

The Supreme Court of the United States, as well as other courts around the Country, have uniformly and consistently ruled that local governments shall provide reasonable accommodations to religious organizations, treat them fairly along with non-religious organizations, and the failure to do so violates the freedoms of assembly and religion provided by the First Amendment to the Constitution.

These Constitutional protections are encapsulated and enforced by the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), which provides the following rules:

(a) Substantial burdens.

(1) General rule. No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution--

- (A) is in furtherance of a compelling governmental interest; and
- (B) is the least restrictive means of furthering that compelling governmental interest.

* * *

(b) Discrimination and exclusion.

(1) Equal terms. No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) Nondiscrimination. No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

(3) Exclusions and limits. No government shall impose or implement a land use regulation that--

- (A) totally excludes religious assemblies from a jurisdiction; or
- (B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

42 U.S.C.S. § 2000cc.

Federal Courts and the RLUIPA have made clear that local governments must do everything in their power to accommodate churches under the Constitution and the RLUIPA:

- "The least-restrictive-means standard [of the RLUIPA] is exceptionally demanding,' and it requires the government to 'sho[w] that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting part[y].'" Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751, 2780 (2014).
- "[I]f a less restrictive means is available for the Government to achieve its goals, the Government must use it." Holt v. Hobbs, 135 S. Ct. 853, 864 (2015).
- "[The RLUIPA] shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution." 42 U.S.C. § 2000cc-3(g).

- An ordinance that expressly differentiates religious land uses from nonreligious land uses establishes a claim for violating the equal terms provision of the RLUIPA (paragraph (b)(1) above); and the government must prove that its unequal treatment is the least restrictive means to accomplish legitimate goals. Opulent Life Church v. City of Holly Springs Miss., 697 F.3d 279, 291 (5th Cir. 2012).

In applying these rules and standards, Courts across the Country have determined that adverse treatment of churches or religious organizations under local ordinance codes violates the RLUIPA and is unconstitutional:

- An ordinance excluding churches from the commercial district was unlawful because other noncommercial, non tax-generating uses were permitted in the commercial district. The ordinance permitted libraries, museums, art galleries, exhibitions, and "similar facilities" in the commercial district. Opulent Life Church v. City of Holly Springs Miss., 697 F.3d 279, 293-94 (5th Cir. 2012).
- A city's "retail corridor" justification where the ordinance excluded churches but permitted "many nonreligious, *nonretail* buildings" including private lodges and clubs was ruled unlawful. Elijah Grp., Inc. v. City of Leon Valley, 643 F.3d 419 (5th Cir. 2011).
- "[S]hould a municipality create what purports to be a pure commercial district and then allow other uses, a church would have an easy victory if the municipality kept it out." River of Life Kingdom Ministries v. Vill. of Hazel Crest, 611 F.3d 367, 374 (7th Cir. 2010).
- "[I]ncluding private clubs and lodges as permitted business district uses while excluding religious assemblies violated RLUIPA's principles of neutrality and general applicability because private clubs and lodges endangered the city's retail synergy interest as much or more than churches and synagogues. The city's improper targeting of religious assemblies violated RLUIPA..." Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214, 1218 (11th Cir. 2004).
- A city's zoning ordinance was over-inclusive with respect to the city's objectives of promoting retail activity and synergy because synagogues contributed to retail and commercial activity of the business district, but was also under-inclusive because the stated goal of retail synergy was pursued only against religious assemblies, but not other non-commercial assemblies, thus devaluing religious reasons for assembling. Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214, 1234 (11th Cir. 2004).

- A city ordinance, which allowed a range of different uses in a downtown area, including a restaurant, a variety store, and an assembly hall, but prohibited a church, violated the equal terms provision of the RLUIPA, because it was not apparent from the allowed uses why a church would cause greater harm to regulatory objectives than an assembly hall. Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch, 510 F.3d 253 (3d Cir. 2007).
- "[E]ven where the government has declared a policy of promoting aesthetics and traffic safety . . . restrictions intended to accomplish those interests have failed to pass strict scrutiny and have been struck down." Murphy v. Zoning Comm'n, 148 F. Supp. 2d 173, 190 (D. Conn. 2001), citing City of Ladue v. Gilleo, 512 U.S. 43, 114 S. Ct. 2038 (1994).
- In ruling that a city's justification in controlling the volume of traffic and parking did not pass the RLUIPA's strict scrutiny standard, the Court reasoned: "In passing RLUIPA, Congress required local governments to be sensitive to the values of religious freedom and expression. It directed that substantial burdens be placed on the exercise of religion only to the extent necessary to accomplish compelling governmental interests. Even absent a federal statute, one would expect that, before banning an ongoing private religious gathering, public officials in a free and tolerant society would enter into a dialogue with the participants to determine if the legitimate safety concerns of the neighbors could be voluntarily allayed. Particularly where the participants are enjoined by religious teachings to "do unto others" as they would have done unto them, it is not unreasonable to expect the parties to be able to agree on means of reducing the impact of weekly prayer meetings on this small cul-de-sac without undermining the benefit that participants seek to derive from the practice of their faith." Murphy v. Zoning Comm'n, 148 F. Supp. 2d 173, 191 (D. Conn. 2001).
- A preliminary injunction was issued against a city to enjoin it from enforcing its zoning ordinance against a religious temple because the city's zoning ordinance discriminated between religious assemblies and nonreligious assemblies in violation of the First Amendment and the RLUIPA, and the city failed to articulate a compelling interest that required it to treat churches and religious assemblies differently than private clubs. Vietnamese Buddhism Study Temple in Am. v. City of Garden Grove, 460 F. Supp. 2d 1165 (C.D. Cal. 2006).
- In violation of the RLUIPA, a city's land use code prohibited religious assembly in all business districts, but permitted numerous non-religious assembly uses within business districts. Chabad of Nova, Inc. v. City of Cooper City, 533 F. Supp. 2d 1220 (S.D. Fla. 2008).

- Evidence was sufficient under the RLUIPA's "unreasonable limitations provision" (section (b)(3)(b) above) to support a jury's determination that churches other than plaintiff church faced a county's site plan review and special permitting process which unreasonably limited opportunity of churches to find a suitable location and thus practice their religion in violation of the RLUIPA. Rocky Mt. Christian Church v. Bd. of Cty. Comm'rs, 612 F. Supp. 2d 1163, 1177 (D. Colo. 2009).

In light of the above law, it is apparent that Smithfield's current (and proposed) ban on all religious organizations in commercial districts violates our citizens' First Amendment freedoms of assembly and religion, as well as the RLUIPA.

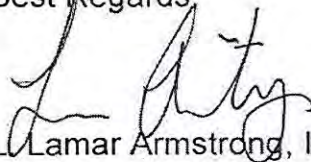
More than anything, it is our desire as a local church to be helpful to the town and the people which we serve. We believe that as the growth from the greater Raleigh area comes this way, and along with it greater religious diversity, the ordinance as written and as proposed may, in the long run, be harmful to the town, especially considering the following:

- An affected person may file a lawsuit against a government that violates the RLUIPA. See 42 U.S.C. § 2000cc-3(g).
- Money damages are available under RLUIPA against political subdivisions of states, such as municipalities and counties. Centro Familiar Cristiano Buenas Nuevas v. City of Yuma, 651 F.3d 1163, 1168-69 (9th Cir. 2011).
- A government who unsuccessfully defends a lawsuit under the RLUIPA may be required to pay the affected person's attorney's fees. Layman Lessons, Inc. v. City of Millersville, 550 F. Supp. 2d 754 (M.D. Tenn. 2008).

Given these facts under the law, we sincerely hope and urge the committee to fix this problem and allow reasonable accommodation for religious organizations at this time.

Thank you again for your consideration.

Best Regards,



Lamar Armstrong, III

LLA:la



Request for Planning Board Action

**Application
for Unified
Development
Ordinance
Text
Amendment
ZA-18-03
Date: 07/12/2018**

Subject: Unified Development Ordinance Text Amendment
Department: Planning
Presented by: Mark E. Helmer, AICP, CZO Senior Planner
Presentation: Business Item

Issue Statement

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.

Financial Impact

There will be no financial impact to the Town.

Action Needed

To review the requested application and to make a recommendation to the Town Council for the proposed Unified Development Ordinance text amendment.

Recommendations

The Planning Department recommends approval of the proposed amendment to Article 3 of the UDO and recommends that the Planning Board approve a 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.

Approved: City Manager City Attorney

Attachments:

1. Staff Report
2. Ordinance
3. Application and Petition for Amendment to the UDO



Staff Report

Application
for Unified
Development
Ordinance
Text
Amendment
ZA-18-03

Public Meeting:

Purpose:

The proposed ordinance amendment to the Unified Development Ordinance (UDO) that 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.

Consistency Statement:

The zoning text amendment as proposed is 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.

Recommended Motion:

Staff recommends the Planning Board make the following affirmative motion:

“Move to recommend the Town Council approve ZA-18-03, amending Article 3 to move the Historic Properties Commission into the Unified Development Ordinance and rename the Commission to Historic Preservation Commission, 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.”

**DRAFT ORDINANCE # ZA-18-03
AN ORDINANCE TO AMEND ARTICLE 3
OF THE TOWN OF SMITHFIELD
UNIFIED DEVELOPMENT ORDINANCE
TO INCLUDE THE HISTORIC PRESERVATION COMMISSION.**

WHEREAS, the Smithfield Town Council wishes to amend certain provisions in the Unified Development Ordinance by making changes to the Town of Smithfield Unified Development Ordinance to incorporate the Town of Smithfield Code of Ordinances, Chapter 15, Planning, Article III, Historic Properties Commission into the Unified Development Ordinance.

WHEREAS, it is the objective of the Smithfield Town Council to have the UDO promote regulatory efficiency and consistency and the health, safety, and general welfare of the community;

NOW, THEREFORE, be it ordained that the following Articles are amended to make the following changes set forth in the deletions (strikethroughs) and additions (double underlining) below:

Part 1

[Revise Article 3, ADMINISTRATIVE / LEGISLATIVE / QUASI-JUDICIAL AUTHORITY, to create a section titled Section 3.5, Historic Preservation Commission. All text is carried over from the Town of Smithfield Code of Ordinances, Chapter 15, Planning, Article III. Historic Properties Commission with the exception of the commission's formal name to be changed to Historic Preservation Commission.]

SECTION 3.5 HISTORIC PRESERVATION COMMISSION.

3.5.1. Intent. The purpose of this district is to promote and provide for land use activities which will reflect and preserve the heritage of the district through the cultural, educational, architectural and economic elements of the district.

3.5.2. Commission Designated. The State of North Carolina authorizes cities to safeguard the heritage of the town by preserving any historic site therein that embodies important elements of its cultural, social, economic, political, archaeological or architectural history and to promote the use and conservation of such site for the education, pleasure and enrichment of the residents of the town, county, and state as a whole. Pursuant to G.S. chapter 160A, article 19, part 3C, and the provisions of this chapter, the Town Council of Smithfield designates a commission to be known as the Smithfield Historic Preservation Commission.

3.5.3. Qualification of Members; Terms, Appointments, and General Duties.

3.5.3.1. Effective May 3, 2005, the commission shall consist of seven (7) members appointed by the Town Council. All members shall reside within the city limits. In addition, all members shall have demonstrated special interest, experience or education in history, architecture, archaeology or related fields. The commission shall serve without compensation except that they may be reimbursed for actual expenses incident to the performance of their duties within the limits of any funds available to the commission.

3.5.3.2. Commission members shall serve overlapping terms of two (2) years. The terms

of office for all initial reappointments after the adoption of this section shall be configured as follows:

3.5.3.2.1 Three (3) commissioners, with terms to expire on June 30 of odd years.

3.5.3.2.2. Four (4) commissioners, with terms to expire on June 30 of even years. Thereafter, all appointments shall be for three-year terms.

3.5.3.3. The commission shall select from among its members a chairperson and vice-chairperson who shall be elected annually by the commissioners.

3.5.3.4. Upon its first formal meeting, and prior to performing any duties under this article or under G.S. chapter 160A, article 19, part 3C, the commission shall adopt rules of procedure governing the commission's actions which are not governed by this article or the General Statutes. The commission shall also adopt principles and guidelines for new construction, alterations, additions, moving and demolition of designated historic landmarks and properties in historic districts. The guidelines may be amended by the Historic Preservation Commission. All guidelines and amendments shall be subject to approval by the Town Council.

3.5.4. Attendance at Meetings. Any member of the commission who misses more than three (3) consecutive regular meetings or more than four (4) meetings in a calendar year shall lose his or her status as a member and shall be replaced or reappointed by the Town Council. The council shall act within sixty (60) days to fill vacancies on the commission. Absence due to sickness, death in the family or other emergencies of like nature shall be recognized as approved absences and shall not affect the member's status on the commission, except that in the event of a long illness or any other such cause for prolonged absence, the member shall be replaced.

3.5.5. Meetings. The commission shall establish a meeting time and shall meet at least one time per year in the first quarter of the year and more often as it shall determine and require.

3.5.6. Minutes. The commission shall keep permanent minutes of all its meetings, which shall be a public record. The minutes shall record attendance of commission members and the commission's resolutions, findings, recommendations and actions.

3.5.7. Receipt of Gifts and Authority to Acquire Historic Properties. The Town Council shall have the right to accept gifts and donations in the name of the town for historic preservation purposes. It is authorized to make appropriations to the commission in any amount necessary for the expenses of the operation of the commission, and acquisition, restoration, preservation, operation, and management of historic buildings, structures, sites, areas, or objects designated as historic landmarks or within designated historic districts, or of land on which such buildings or structures are located, or to which they may be removed.

3.5.8. Role of Council. The designation of a historic landmark or district shall be effected through the adoption of an ordinance by the Town Council. No landmark or district shall be recommended for designation unless it is deemed to be of special significance in terms of its historical, prehistoric, architectural or cultural importance, and to possess integrity of design, setting, workmanship, materials, feeling and/or association. The landmark or district must lie within the planning and zoning jurisdiction of the town.

3.5.8. Overlay District Established; Boundaries; Permitted Uses. An overlay district is hereby established to overlap with other zoning districts established by this Code. The boundaries of the historic district are established as indicated on the official zoning map of the town, which is on file for public inspection in the office of the department of planning and development. All uses

permitted within zoning districts established by the town, whether by permitted use or by special use, shall be permitted within this overlay district according to procedures established by this section. No historic district or districts shall be designated until:

3.5.8.1. An investigation and report describing the significance of the buildings, structures, features, sites or surroundings included in any such proposed district, and a description of the boundaries of such district has been prepared, and

3.5.8.2. The department of cultural resources, acting through the state historic preservation officer or his or her designee, shall have made an analysis of and recommendations concerning such report and description of proposed boundaries. Failure of the department to submit its written analysis and recommendations to the Town Council within thirty (30) calendar days after a written request for such analysis has been received by the department of cultural resources shall relieve the municipality of any responsibility for awaiting such analysis, and said council may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

The Town Council may also, in its discretion, refer the report and the proposed boundaries to any other interested body for its recommendation prior to taking action to amend the zoning ordinance. With respect to any changes in the boundaries of such district subsequent to its initial establishment, or the creation of additional districts within the jurisdiction, the investigative studies and reports required by subsection (1) shall be prepared by the commission and shall be referred to the local planning agency for its review and comment according to procedures set forth in the zoning ordinance. Changes in the boundaries of an initial district or proposal for additional districts shall also be submitted to the department of cultural resources in accordance with the provisions of section 3.5.8.2. Upon receipt of these reports and recommendations, the town may proceed in the same manner as would otherwise be required for the adoption or amendment of any appropriate zoning ordinance provisions.

3.5.9. Designation of Landmarks. Upon complying with the landmark designation procedures as set forth in this article, the Town Council may adopt and from time to time amend or repeal an ordinance designation one or more historic landmarks.

3.5.9.1. No property shall be recommended for designation as a landmark unless it is deemed and found by the Historic Preservation Commission to be of special significance in terms of its historical, prehistoric, architectural or cultural importance and to possess integrity of design, setting, workmanship, materials, feeling and/or association.

3.5.9.2. The ordinance shall describe each property designated in the ordinance, the name or names of the owner or owners of the property, those elements of the property that are integral to its historical, architectural, or prehistoric value, including the land areas of the property so designated and any other information the Town Council deems necessary. For each building, structure, site, area or object so designated as a historic landmark, the ordinance shall require that the waiting period set forth in G.S. part 3C be observed prior to its demolition. For each designated landmark, the ordinance may also provide for a suitable sign on the property indicating that the property has been so designated. If the owner consents, the sign shall be placed upon the property. If an owner objects, the sign shall be placed on a nearby public right-of-way.

3.5.10. Required Landmark Designation Procedures. As a guide for the identification and evaluation of landmarks, the commission shall undertake at the earliest possible time, and

consistent with the resources available to it, an inventory of properties of historical, architectural, prehistoric and cultural significance within its jurisdiction. Such inventories and any additions or revisions thereof shall be submitted as expeditiously as possible to the division of archives and history. No ordinance designating an historic building, structure, site, area or object as a landmark nor any amendment thereto may be adopted, nor may any property be accepted or acquired by the commission or the Town Council, until all of the following procedural steps have been taken:

3.5.10.1. The Historic Preservation Commission shall prepare and adopt rules of procedure, and prepare and adopt principles and guidelines, not inconsistent with this part [article], for altering, restoring, moving, or demolishing properties designated as landmarks.

3.5.10.2. The commission shall make or cause to be made an investigation and report on the historic, architectural, prehistoric, educational or cultural significance of each building, structure, site, area or object proposed for designation or acquisition. Such investigation or report shall be forwarded to the Division of Archives and History, North Carolina Department of Cultural Resources.

3.5.10.3. The department of cultural resources, acting through the state historic preservation officer, shall either upon request of the department or at the initiative of the Historic Preservation Commission be given an opportunity to review and comment upon the substance and effect of the designation of any landmark pursuant to this part [article]. Any comments shall be provided in writing. If the department does not submit its comments or recommendation in connection with any designation within thirty (30) days following its receipt of the investigation and report of the commission, the commission and the Town Council shall be relieved of any responsibility to consider such comments.

3.5.10.4. The Historic Preservation Commission and the Town Council shall hold a joint public hearing or separate public hearings on the proposed ordinance. Reasonable notice of the time and place thereof shall be given. All meetings of the commission shall be open to the public in accordance with the North Carolina Open Meetings Law.

3.5.10.5. Following the joint public hearing or separate public hearings, the Town Council may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance.

3.5.10.6. Upon adoption of the ordinance, the owners and occupants of each designated landmark shall be given written notification of such ordinance and all amendments thereto shall be filed by the commission in the office of the register of deeds of the county in which the landmark or landmarks are located, and the copy shall be made available for public inspection at any reasonable time. Each designated landmark shall be indexed according to the name of the owner of the property in the grantee and grantor indexes in the register of deeds office, and the commission shall pay a reasonable fee for filing and indexing. A second copy of the ordinance and all amendments thereto shall be given the town building inspector. The fact that a building, structure, site, area, or object has been designated a landmark shall be clearly indicated on all tax maps maintained by the town for such period as the designation remains in effect.

3.5.10.7. Upon the adoption of the landmarks ordinance or any amendment thereto, it shall be the duty of the commission to give notice thereof to the tax supervisor of the county in which the property is located. The designation and any recorded restrictions

upon the property limiting its use for preservation purposes shall be considered by the tax supervisor appraising it for tax purposes.

3.5.11. Powers of the Commission. The commission shall be authorized, within the planning and zoning jurisdiction of the town, to:

3.5.11.1. Undertake an inventory of properties of historical, prehistoric, architectural and/or cultural significance;

3.5.11.2. Recommend to the Town Council structures, buildings, sites, areas or objects to be designated by ordinance as "historic landmarks" and areas to be designated by ordinance as "historic districts;"

3.5.11.3. Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to any such properties designated as landmarks, to hold, manage, preserve, restore and improve the same, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions which will secure appropriate rights of public access and promote the preservation of the property;

3.5.11.4. Restore, preserve and operate historic properties;

3.5.11.5. Recommend to the Town Council that designation of any area as a historic district or part thereof, of any building, structure, site, area or object as a historic landmark be revoked or removed;

3.5.11.6. Conduct an educational program with respect to historic landmarks and district within its jurisdiction;

3.5.11.7. Cooperate with the state, federal and local government in pursuance of the purpose of this article; to offer or request assistance, aid, guidance or advice concerning matters under its purview or of mutual interest. The Town Council, or the commission when authorized by the council, may contract with the state or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with state or federal law;

3.5.11.7. Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee, or agent of the commission may enter any private building or structure without express consent of the owner or occupant thereof;

3.5.11.8. Prepare and recommend the official adoption of a preservation element as part of the town's comprehensive plan;

3.5.11.9. Review and act upon proposals for alterations, demolition, or new construction within historic districts, or for the alteration or demolition of designated landmarks pursuant to this section;

3.5.12.10 Negotiate at any time with the owner of a building, structure, site, area or object for its acquisition or its preservation when such action is reasonable, necessary or appropriate; and

3.5.11.11. Approve all design plans and sketches so insure that they meet the guidelines of the Historic Preservation Commission as established by the Smithfield Town Council.

3.5.12. Certificate of Appropriateness Required. From and after September 6, 2005, no exterior architectural features of any building or structure shall be altered, restored, erected or moved within the district until a certificate of appropriateness is issued by the Historic Preservation Commission; or under special circumstances, its staff person. For the purposes of this article, "exterior features" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant features. In the case of outdoor advertising signs, "exterior features" shall be construed to mean the style, material, size and location of all such signs. Such "exterior features" may, at the discretion of the Town Council, include historic signs, color and significant landscape, archaeological, and natural features of the area.

3.5.12.1. Except as provided in subsection (2) below, the commission shall have no jurisdiction over interior arrangement and shall take no action under this section except to prevent the construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant features, or outdoor advertising signs or other significant features in the district of the landmark which would be incongruous with the special character of the landmark or district.

3.5.12.2. Notwithstanding subsection (1) above, the jurisdiction of the commission over interior space shall be limited to specific interior features of architectural, artistic or historical significance in publicly owned landmarks; and of privately owned historic landmarks for which consent for interior review has been given by the owner. Said consent of any owner for interior review shall bind future owners and/or successors in title, provided such consent has been filed in the office of the register of deeds of the county and indexed according to the name of the owner and the specific nature of the commission's jurisdiction over the interior.

All of the provisions of this article are applicable to the construction, alteration, moving, and demolition by the state, its political subdivisions, agencies and instrumentalities, provided however that they shall not apply to interiors of buildings or structures owned by the state. The state and its agencies shall have a right of appeal to the North Carolina Historical Commission or any successor agency assuming its responsibilities under G.S. 121-12(a) from any decision of the local commission. The decision of the North Carolina Historical Commission shall be binding upon both the state and the Historic Preservation Commission.

3.5.12.3. The town and all public utility companies shall be required to obtain a certificate of appropriateness prior to initiating work in a historic district for any changes in the character of street paving, sidewalks, trees, utility installations, lighting, walls, fences, structures and buildings on property, easements or streets owned or franchised by the town or public utility companies.

3.5.13. Requirements for Issuance of Certificate of Appropriateness. An application for a certificate of appropriateness shall be obtained from, and when completed, filed with the responsible staff person.

3.5.14. Contents of Application for Certificate of Appropriateness. The application shall, in accordance with the commission's rules of procedure, contain data that is reasonably necessary to determine the nature of the application. An application for a certificate of appropriateness shall not be considered complete until all required data has been submitted. Applications shall be considered by the commission at its next regular meeting, provided the applications have been

filed, complete in form and content, at least fifteen (15) calendar days before the regularly scheduled meeting of the commission. Otherwise, they shall be deferred until the next meeting or considered at a special called meeting of the commission. Nothing shall prevent the applicant from filing, with the application, additional relevant information bearing on the application.

3.5.15. Notification of Commission and Affected Property Owners. Upon receipt of an application the responsible staff person shall notify the commission at least seven (7) days before the regularly scheduled meeting. Prior to any action taken on a certificate of appropriateness application, the owners of any property likely to be materially affected by the application shall be notified in writing, and the applicant and such owners shall be given an opportunity to be heard.

3.5.16. Public Hearing. When an application is presented to the commission a public hearing may be held when deemed necessary. All meetings of the commission shall be open to the public, in accordance with the North Carolina Open Meetings Law, G.S. chapter 143, article 33C.

3.5.17. Action on an Application. The action on an application shall be approval, approval with amendments, or denial.

3.5.17.1. Prior to any final action on an application, the review criteria in subsection (m) shall be used to make findings of fact indicating the extent to which the application is or is not congruous with the historic aspects of the district or landmark.

3.5.17.2. All applications for certificates of appropriateness shall be reviewed and acted upon within a reasonable time as defined by the rules of procedure, and not exceeding ninety (90) days from the date the application is filed. As part of its review procedure, the commission may view the premises and seek the advice of the department of cultural resources or other such experts as it may deem necessary under the circumstances.

3.5.18. Appeals. An appeal may be taken to the board of adjustment from the commission's action in granting or denying any certificate, which appeal:

3.5.18.1. May be taken by any aggrieved party,

3.5.18.2. Shall be taken within times prescribed by the commission in the rules of procedure, and

3.5.18.3. Shall be in the nature of certiorari.

Any appeal from the board of adjustment's decision in any such case shall be heard by the Superior Court of Johnston County.

3.5.19. Submission of New Applications. If a certificate of appropriateness is denied, a new application affecting the same property may be submitted only if substantial change is made in plans for the proposed construction, reconstruction, alteration, restoration, or moving.

3.5.20. Review Criteria for Certificates of Appropriateness. To provide reasonable standards to assist in the review of the application for a certificate of appropriateness, the commission shall take into account the following elements to ensure that they are consistent with the historic or visual character or characteristics of the district:

3.5.20.1. The height and width of the building in relation to the height and width of adjacent, opposite and surrounding buildings.

3.5.20.2. The setbacks and placement of the building in relation to the setback of adjacent, opposite and surrounding buildings.

3.5.20.3. Exterior construction materials, including textures, but not to include color.

3.5.20.4. Architectural detailing such as lintels, cornices, brick bond and foundation materials.

3.5.20.5. Roof shapes, forms and materials.

3.5.20.6. Proportions, shapes, positions and locations, patterns and sizes of any elements of fenestration.

3.5.20.7. General form and proportions of buildings and structures.

3.5.20.8. Appurtenant fixtures and other features such as lighting and fencing.

It is the intention of these regulations to insure, so far as possible, that buildings or structure shall be in harmony with other buildings or structures located herein. It is not the intent of these regulations to require the reconstruction or restoration of individual or original buildings.

3.5.21. Minor Works. A certificate of appropriateness application, when determined to involve a minor work, may be reviewed and approved by the responsible staff person in the department of planning and development according to specific review criteria and guidelines. Minor works are defined as those exterior changes that do not involve substantial alterations, additions or removals that could impair the integrity of the property and/or the district as a whole. Such minor works shall be limited to those listed in the commission's rules of procedure. No application involving a minor work may be denied without the formal action of the commission.

3.5.22. Certain Changes Not Prohibited. Nothing in this article shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature of a historic landmark or in a historic district which does not involve a change in design, materials, or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, or demolition of any such feature which the building inspector or similar official shall certify is required by the public safety because of an unsafe or dangerous condition. Nothing herein shall be construed to prevent a property owner from making any use of his property not prohibited by other statutes, ordinances, or regulations. Nothing in this ordinance shall be construed to prevent (1) the maintenance or (2) in the event of an emergency, the immediate restoration of any exiting above-ground utility structure without approval by the commission.

3.5.23. Conflict with Other Laws. Whenever any ordinance adopted for the designation of landmarks or districts requires a longer waiting period or imposes higher standards with respect to a designated landmark or district than are established under any other statute, Charter provision, or regulation, this article shall govern. Whenever the provisions of any other statute, Charter provision or regulation require a longer waiting period or impose higher standards than are established under this article, such other statute, Charter provision, ordinance, or regulation shall govern.

3.5.24. Enforcement and Remedies. Compliance with the terms of the certificate of appropriateness shall be enforced by the responsible staff person. Failure to comply with the certificate of appropriateness shall be a violation of the zoning ordinance and is punishable according to established procedures and penalties for such violations.

3.5.24.1. A certificate of appropriateness shall expire one (1) year after the date of issuance if the work authorized by the certificate has not commenced.

3.5.24.2. If after commencement, the work is discontinued for a period of six (6) months the permit shall immediately expire.

3.5.24.3. No work authorized by any certificate which has expired shall thereafter be performed until a new certificate has been secured.

In case any building, structure, site area or object designated as a historic landmark or located within a historic district established pursuant to this article is about to be demolished whether as a result of deliberate neglect or otherwise, materially altered, remodeled, removed or destroyed, except in compliance with the article, the town, the commission, or other party aggrieved by such action may institute any appropriate action or proceeding to prevent such unlawful demolition, destruction, material alteration, remodeling or removal, to restrain, correct or abate such violation, or to prevent any illegal act or conduct with respect to such a building, structure, site, area or object. Such remedies shall be in addition to any others authorized for violation of a municipal ordinance.

3.5.25. Delay in Demolition of Landmarks and Buildings.

3.5.25.1. An application for a certificate of appropriateness authorizing the demolition or destruction of a designated landmark or a building, structure, or site within the district may not be denied except as provided in subsection (3) below. However, the effective date of such a certificate may be delayed for a period of up to three hundred sixty-five (365) days from the date of approval. The maximum period of delay authorized by this section shall be reduced by the commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period the commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site. If the commission finds that a building or site within the historic district has no special significance or value toward maintaining the character of the district, it shall waive all or part of such period and authorize earlier demolition or removal.

If the commission has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not been made by the Town Council, the demolition or destruction of any building, site or structure located on the property of the proposed landmark or in the proposed district may be delayed by the commission for a period of up to three hundred sixty-five (365) days or until the Town Council takes final action on the designation, whichever occurs first.

3.5.25.2. The Town Council may enact an ordinance to prevent the demolition by neglect of any designated landmark or any building or structure within an established historic district. Such ordinance shall provide appropriate safeguards to protect property owners from undue economic hardship.

3.5.25.3. An application for a certificate of appropriateness authorizing the demolition or destruction of a building, site, or structure determined by the state historic preservation officer as having statewide significance, as defined in the criteria of the National Register of Historic Places, may be denied except where the commission finds that the owner would suffer extreme hardship or be permanently deprived of all

beneficial use or return by virtue of the denial.

And

[Revise Article 3, ADMINISTRATIVE / LEGISLATIVE / QUASI-JUDICIAL AUTHORITY, to relocate the text of Section 3.5 Town Council to a new section titled Section 3.6 Town Council.]

SECTION 3.5 6 TOWN COUNCIL.

3.5-6.1 The Town Council, in considering special use permit applications, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements set forth in Sections 4.11.1 through 4.11.4.

3.5-6.2. In considering proposed changes in the text of this Ordinance or in the zoning map, the Council acts in its legislative capacity and must proceed in accordance with the requirements of Section 4.10.1.

3.5-6.3. Unless otherwise specifically provided in this Article, in acting upon special use permit requests or in considering amendments to this Article or the zoning map, the council shall follow the regular, voting, and other requirements as set forth in other provisions of the Town code, the Town charter, or general law.

3.5-6.4. The Town Council, in considering the approval of a site-specific development plan (as defined in Section 4.7, Establishment of Vested Rights), shall follow the procedural requirements set forth in Section 4.9 for the issuance of a special use permit.

PART 2

That the Unified Development Ordinance shall be page numbered and revision dated as necessary to accommodate these changes.

PART 3

That these amendments of the Unified Development Ordinance shall become effective upon adoption.

Duly adopted this the ___ day of _____, 20__.

M. Andy Moore, Mayor

ATTEST

Shannan L. Parrish, Town Clerk

DRAFT

**THE TOWN OF SMITHFIELD
UNIFIED DEVELOPMENT ORDINANCE
TEXT AMENDMENT CONSISTENCY STATEMENT
BY THE SMITHFIELD PLANNING BOARD
ZA-18-03**

Whereas the Smithfield Town Council, upon acting on a text amendment to the *Unified Development Ordinance* and pursuant to NCGS §160A-383, is required to approve a statement describing how the action is consistent with the Town of Smithfield *Comprehensive Growth Management Plan*; and

Whereas the Smithfield Town Council, upon acting on a text amendment to the *Unified Development Ordinance* and pursuant to NCGS §160A-383, is required to provide a brief statement indicating how the action is reasonable and in the public interest.

NOW THEREFORE, BE IT RECOMMENDED FOR ADOPTION BY THE SMITHFIELD TOWN COUNCIL AS APPROPRIATE:

IN THE EVENT THAT THE MOTION TO RECOMMEND APPROVAL OF THE ORDINANCE IS ADOPTED,

That the recommended approval of text amendment ZA-18-03 is based upon review of and consistency with, the Town of Smithfield *Comprehensive Growth Management Plan* and any other officially adopted plan that is applicable, along with additional agenda information provided to the Town Council and information provided at the public meeting; and

It is the objective of the Town of Smithfield Town Council to have the *Unified Development Ordinance* promote regulatory efficiency and consistency and the health, safety, and general welfare of the community. The text amendment promotes this by offering fair and reasonable regulations for the citizens and business community of the Town of Smithfield as supported by the staff report and attachments provided to the Town Council and information provided at the public meeting. Therefore, the amendment is reasonable and in the public interest.

IN THE EVENT THAT THE MOTION RECOMMEND APPROVAL THE ORDINANCE FAILS,

That the recommended approval of text amendment ZA-18-03 is based upon review of, and consistency, the Town of Smithfield *Comprehensive Growth Management Plan* and other officially adopted plans that are applicable; and

It is the objective of the Planning Board to have the *Unified Development Ordinance* promote regulatory efficiency and consistency and the health, safety, and general welfare of the community. The text amendment does not promote this and therefore is neither reasonable nor in the public interest.



Town of Smithfield
 Planning Department
 350 E. Market St Smithfield, NC 27577
 P.O. Box 761, Smithfield, NC 27577
 Phone: 919-934-2116
 Fax: 919-934-1134

Petition for Amendment to the Unified Development Ordinance

Pursuant to Article 4 of the Town of Smithfield Unified Development Ordinance, Proposed amendments may be initiated by the Town Council, Planning Board, Board of Adjustment, members of the public, or by one or more interested parties. The application for any amendment shall contain a description of the proposed zoning regulation.

APPLICANT INFORMATION:

_____	_____
Petitioner's Name	Address or PO Box
_____	_____
City, State, Zip Code	Telephone

Proposed amendment to the Town of Smithfield Unified Development Ordinance:

(Attach additional sheets as necessary)

This application must be accompanied by a Statement of Justification which addresses the following:

1. How the amendment proposed would serve the public interest or correct an obvious error in the existing ordinance.
2. How the amendment proposed will enhance or promote the purposes and goals of the adopted plans and policies of the governing body.

The undersigned hereby authorizes the filing of this petition and certifies that the information contained herein stands alone based on the merits of this request and is accurate to the best of their knowledge and belief.

_____	_____
Signature of Petitioner	Date

FOR OFFICE USE ONLY

File Number: _____	Date Received: _____	Amount Paid: _____
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Request for Planning Board Action

**Application
for Unified
Development
Ordinance
Text
Amendment
ZA-18-05
Date: 07/12/2018**

Subject: Unified Development Ordinance Text Amendment
Department: Planning
Presented by: Mark E. Helmer, AICP, CZO Senior Planner
Presentation: Business Item

Issue Statement

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.

Financial Impact

There will be no financial impact to the Town.

Action Needed

To review the requested application and to make a recommendation to the Town Council for the proposed Unified Development Ordinance text amendment.

Recommendations

The Planning Department recommends approval of the proposed amendment to Article 10 of the UDO and recommends that the Planning Board approve a 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.

Approved: City Manager City Attorney

Attachments:

1. Staff Report
2. Ordinance
3. Application and Petition for Amendment to the UDO



Staff Report

**Public
Meeting:** Application
for Unified
Development
Ordinance
Text
Amendment
ZA-18-05

The Planning Department is requesting a text amendment to Article 10 of the Town of Smithfield Unified Development Ordinance (UDO) that will allow for single tenant high-rise business identification signs as a permitted use by right when the property is within the B-3 (Highway Entrance Business) zoning district and within 660 feet of the right-of-way of I-95.

History:

High rise business identification signs are very tall signs designed to be seen from the I-95 corridor. The purpose of high-rise business identification signs is to help the traveling public identify our local retailers while approaching the exit needed to be taken to reach the desired destination. Because they are permitted for on-site advertising only, high-rise signs are not affected by the State prohibition on outdoor advertising signs adjacent to the Interstate Highway System.

High-rise signs have been permitted within the Town of Smithfield since the 1990's but were inadvertently removed from the current UDO that was adopted in 2017. There are currently nine permitted high-rise signs located near exit 95 and 2 located near exit 93.

High rise business identification signs were originally permitted to have a maximum height of 100 feet and a maximum sign area of 400 feet per side and were available to single tenant developments within 660 feet of the I-95 corridor regardless of the zoning district with a conditional use permit issued by the Town of Smithfield Board of Adjustment.

In 2015, an ordinance amendment was adopted that set the minimum height of high-rise signs to 50 feet. This minimum height limit was put in place to discourage the practice of calling a traditional ground mounted sign that exceeds the maximum height a "high-rise" sign.

The proposed high-rise sign ordinance will serve to promote quality branded restaurants, hotels and retailers and will insure that the Town of Smithfield remains North Carolina's premier stop along the I-95 corridor. The proposed high-rise business identification sign ordinance will allow for:

- High-rise signs to advertise activities conducted on the property upon which it is located only.
- An expedited administrative approval process for high-rise business sign applications.
- A single tenant development to qualify for one high-rise business identification sign if the property is located within a B-3 zoning district AND is within 660 feet of the right-of-way of Interstate 95.
- A maximum height of 100 feet and a minimum height of 50 feet.
- Up to 400 square feet of sign area per side.
- Ground mounted, free standing and of mono-pole design only.
- One High-rise identification sign to be permitted in addition to all other allowable signs.
- Existing high-rise signs to be repaired or replaced if substantial damage occurs.

The proposed ordinance amendment will also create a definition of a high-rise business identification sign and provide a photograph of a typical installation.

Consistency Statement:

The zoning text amendment as proposed is consistency with the Town of Smithfield Comprehensive Growth Management Plan and other adopted plans, and that the amendment is reasonable and in the public interest.

Recommended Motion:

Staff recommends the Planning Board make the following affirmative motion:

“Move to recommend the Planning Board recommend approval of ZA-18-05, amending Article 10, to create a new section 10.23.9 High-Rise Business Identification Signs, 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.”

DRAFT ORDINANCE # ZA-18-05
AN ORDINANCE TO AMEND THE TOWN OF SMITHFIELD
UNIFIED DEVELOPMENT ORDINANCE ARTICLE 10, SECTION
10.23 DISTRICT SIGNS and APPENDIX A, TO ALLOW FOR
HIGH-RISE BUSINESS IDENTIFICATION SIGNS

WHEREAS, the Smithfield Town Council wishes to amend certain provisions in the Unified Development Ordinance by making changes to the Town of Smithfield Unified Development Ordinance to allow for high-rise identification signs through the creation of a new section 10.23.9 High-Rise Business Identification Signs (Single Tenant).

WHEREAS, it is the objective of the Smithfield Town Council to have the UDO promote regulatory efficiency and consistency and the health, safety, and general welfare of the community;

NOW, THEREFORE, be it ordained that the following Articles are amended to make the following changes set forth in the deletions (strikethroughs) and additions (double underlining) below:

PART 1

[Revise Article 10, to create a new section 10.23.9 High-Rise Business Identification Signs.]

SECTION 10.23.9 High-Rise Business Identification Signs (Single Tenant).

High-rise business identification signs may be permitted as a use by right for single tenant developments when located in the B-3 (Highway Entrance Business) zoning district and located within 660 feet of Interstate 95. A zoning permit may be granted providing the following minimum standards are met.

10.23.9.1 High-rise signs shall only advertise activities conducted on the property upon which it is located.

10.23.9.2 Maximum sign height shall not exceed a total height of 100 feet and shall be a minimum total height of at least 50 feet.

10.23.9.3 Maximum sign area shall not exceed 400 square feet of sign area per side.

10.23.9.4 No part of a high-rise sign shall be closer than 10 feet to a property line.

10.23.9.5 High-rise signs shall be free standing, ground mounted and of mono-pole design.

10.23.9.6 Only one high-rise identification sign may be permitted per property and is in addition to all other allowable signs.

AND, be it ordained that the following Articles are amended to make the following changes set forth in the deletions (strikethroughs) and additions (double underlining) below:

[Revise Appendix A. Section A.3 Definitions, to create a new definition for high-rise business identification signs.]

Appendix A. Section A.3

Sign, high-rise business identification

A very tall sign, usually between 50 feet to 100 feet in total height and designed to be viewed from a great distance.



PART 2

That the Unified Development Ordinance shall be page numbered and revision dated as necessary to accommodate these changes.

PART 3

That these amendments of the Unified Development Ordinance shall become effective upon adoption.

Duly adopted this the ____ day of _____, 20__.

M. Andy Moore, Mayor

ATTEST

Shannan L. Parrish, Town Clerk

**THE TOWN OF SMITHFIELD
UNIFIED DEVELOPMENT ORDINANCE
TEXT AMENDMENT CONSISTENCY STATEMENT
BY THE SMITHFIELD PLANNING BOARD
ZA-18-05**

Whereas the Smithfield Town Council, upon acting on a text amendment to the *Unified Development Ordinance* and pursuant to NCGS §160A-383, is required to approve a statement describing how the action is consistent with the Town of Smithfield *Comprehensive Growth Management Plan*; and

Whereas the Smithfield Town Council, upon acting on a text amendment to the *Unified Development Ordinance* and pursuant to NCGS §160A-383, is required to provide a brief statement indicating how the action is reasonable and in the public interest.

NOW THEREFORE, BE IT RECOMMENDED FOR ADOPTION BY THE SMITHFIELD TOWN COUNCIL AS APPROPRIATE:

IN THE EVENT THAT THE MOTION TO RECOMMEND APPROVAL OF THE ORDINANCE IS ADOPTED,

That the recommended approval of text amendment ZA-18-05 is based upon review of and consistency with, the Town of Smithfield *Comprehensive Growth Management Plan* and any other officially adopted plan that is applicable, along with additional agenda information provided to the Town Council and information provided at the public meeting; and

It is the objective of the Town of Smithfield Town Council to have the *Unified Development Ordinance* promote regulatory efficiency and consistency and the health, safety, and general welfare of the community. The text amendment promotes this by offering fair and reasonable regulations for the citizens and business community of the Town of Smithfield as supported by the staff report and attachments provided to the Town Council and information provided at the public meeting. Therefore, the amendment is reasonable and in the public interest.

IN THE EVENT THAT THE MOTION RECOMMEND APPROVAL THE ORDINANCE FAILS,

That the recommended approval of text amendment ZA-18-05 is based upon review of, and consistency, the Town of Smithfield *Comprehensive Growth Management Plan* and other officially adopted plans that are applicable; and

It is the objective of the Planning Board to have the *Unified Development Ordinance* promote regulatory efficiency and consistency and the health, safety, and general welfare of the community. The text amendment does not promote this and therefore is neither reasonable nor in the public interest.



Town of Smithfield
 Planning Department
 350 E. Market St Smithfield, NC 27577
 P.O. Box 761, Smithfield, NC 27577
 Phone: 919-934-2116
 Fax: 919-934-1134

Petition for Amendment to the Unified Development Ordinance

Pursuant to Article 4 of the Town of Smithfield Unified Development Ordinance, Proposed amendments may be initiated by the Town Council, Planning Board, Board of Adjustment, members of the public, or by one or more interested parties. The application for any amendment shall contain a description of the proposed zoning regulation.

APPLICANT INFORMATION:

<u>Town of Smithfield</u>	<u>350 East Market Street</u>
Petitioner's Name	Address or PO Box
<u>Smithfield, NC 27577</u>	<u>919-934-2116</u>
City, State, Zip Code	Telephone

Proposed amendment to the Town of Smithfield Unified Development Ordinance:
 Amends section 10.23.9 to add provisions for High-Rise Business Identification Signs
 on properties located within the B-3 zoning districts and within 660 feet of I-95
 (Attach additional sheets as necessary)

This application must be accompanied by a Statement of Justification which addresses the following:

1. How the amendment proposed would serve the public interest or correct an obvious error in the existing ordinance.
2. How the amendment proposed will enhance or promote the purposes and goals of the adopted plans and policies of the governing body.

The undersigned hereby authorizes the filing of this petition and certifies that the information contained herein stands alone based on the merits of this request and is accurate to the best of their knowledge and belief.

 Signature of Petitioner

5/3/18
 Date

FOR OFFICE USE ONLY

File Number: ZA-18-05 Date Received: 5/3/18 Amount Paid: \$00.00



Town of Smithfield
Planning Department
350 E. Market St Smithfield, NC 27577
P.O. Box 761, Smithfield, NC 27577
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Permit Issued for May 2018

		Permit Fees	Permits Issued
Site Plan	Minor Site Plan	25.00	1
Zoning	Land Use	\$950.00	12
Zoning	Sign	\$250.00	5
Report Period Total:		\$1,225.00	18
Fiscal YTD Total:		\$15,200.00	219

Z18-000075	Zoning	Land Use	A T Mart Food Store Inc.	608 Buffalo Road
Z18-000076	Zoning	Land Use	Auto Sales	100 Computer Drive
Z18-000077	Zoning	Sign	Exxon	836 West Market Street
Z18-000079	Zoning	Land Use	Kobe House of Steaks & Seafood	101 Venture Drive
Z18-000080	Zoning	Land Use	Adams Roadside BBQ Restaurant	728 N Brightleaf Blvd
Z18-000078	Zoning	Land Use	Jorval Properties	15 Bradford Street
Z18-000081	Zoning	Land Use	TNT Fireworks	1299 N Brightleaf Blvd
Z18-000082	Zoning	Sign	TNT Fireworks	1299 N Brightleaf Blvd
Z18-000083	Zoning	Land Use	Existing SFD Garage Addition	211 North Second Street
Z18-000085	Zoning	Land Use	Existing SFD Metal Carport Addition	1009 First Street
Z18-000086	Zoning	Land Use	24'x48' Above Ground Pool	191 Fox Chase Lane
Z18-000087	Zoning	Sign	Luxury Nails & Spa	150 Suite B South Equity Drive
Z18-000084	Zoning	Sign	Sound Station & Security	713 East Market Street
SP16-000050	Site Plan	Minor Site Plan	Accessory Structure	944 Galilee Road
Z18-000088	Zoning	Land Use	SFD New Construction	331 Pace Street
Z18-000089	Zoning	Land Use	Combine Mindz Tattoo Productions	181 Venture Drive
Z18-000090	Zoning	Sign	Arby's Restaurant	1720 East Market Street
Z18-000091	Zoning	Land Use	Coldstone Creamery	150-A South Equity Drive



Town of Smithfield
 Planning Department
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BOARD ACTIONS REPORT - 2018

	May	Calendar Year to date
Town Council		
Zoning Map Ammendments	0	5
Special Use Permit	2	5
Zoning Ordinance Amendments	0	5
Major Subdivisions	0	0
Annexations	0	0
Special Events	2	8
Site Plan	0	0
Planning Board		
Zoning Map Amendments	2	6
Zoning Ordinance Ammendments	0	5
Major Subdivisions	0	0
Board of Adjustment		
Variance	0	0
Admin Appeal	0	0
Historic Properties Commission		
Certificate of Appropriateness	0	0
Historic Landmarks	0	0