

**Town of Smithfield
Planning Board Minutes
Thursday, February 13, 2020
6:00 P.M., Town Hall, Council Chambers**

Members Present:

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

Members Absent:

Alisa Bizzell
Ashley Spain

Staff Present:

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

Staff Absent:

CALL TO ORDER

IDENTIFY VOTING MEMBERS

APPROVAL OF AGENDA

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

APPROVAL OF MINUTES from January 2, 2020

Doris Wallace made a motion, seconded by Debbie Howard to approve the minutes as written. Unanimously approved

NEW BUSINESS

RZ-20-02 True Line Surveying: The applicant is requesting to rezone a 1.81-acre tract of land from the R-10 (Residential) zoning district to the R-6 (Residential) zoning district. The property considered for rezoning is located on north side of the intersection of South Second Street and East Holding Street and further identified as Johnston County Tax ID# 15058003F.

Mr. Wensman stated that there had been an update to the agenda packet that was originally handed out. The GIS data showed it as one lot but after further investigation it's actually 8 lots across from the Civitan. It was checked by going back and looking at the deeds. They are 60 feet apart from one another. They were planted in 1963 as part of the EJ Wellons plat and again the GIS map is incorrect. These 8 lots are legal nonconforming buildable lots in the R-10 zoning

district. There is no plat following this rezoning. The total land of this lot is 1.8 acres. It's all wooded and zoned for single family residential. All residential properties around this are R-10 residential. The Civitan Field beside it, is zoned for O&I. R-6, R-8 and R-10 zoning districts are all considered medium density by current standards. The maximum single-family density in the R-10 district is 4.356 units per acre, in the R-6 district it is 7.26 units per acre. Lot frontage requirements are 75 feet wide and 10,000 sq. foot lots. These lots are legal, nonconforming and legal as long as they meet the current setbacks. These 8 lots mostly conform to the R-6 districts. If they rezoned to R-6 they would have reduced side yard setbacks from 10ft to 8 ft, all of these lots are roughly 59 ft in frontage. In the R-6 district zoning description it does have a statement that reads:

6.3.4. R-6 High Density Single, Two, and Multi-Family Residential District.

The purpose of this district is to provide for older areas which have developed with a mixture of housing types at fairly high densities. Except in unusual circumstances, it will not be used in new areas, and additional property will not be considered for rezoning to this district.

That statement was put in there generally to discontinue the R-6 district for new development and they must have gone to larger lots from that point on. There is the escape clause highlighted above and this would constitute as an unusual circumstance. You have lots that meet the R-6 lot size. The R-6 is also serving as a buffer to the remaining R-10.

Mr. Lane asked if that was the way it was worded in the most recent Unified Development Ordinance or is it the way it's always been?

Mr. Wensman said it's the way it has always been.

Mr. Lane asked if it needed to be changed.

Mr. Wensman said that's a discussion we will be having with other ordinance changes. The reason is East River actually developed lot sizes smaller than that. It is the trend right now for smaller lots and larger homes. It's something the town should consider to be development ready.

Mr. Wensman said staff recommends that the Planning Board recommend approval of RZ-20-02 finding the rezoning consistent with applicable adopted plans, policies and ordinances.

Mr. Upton reminded the Planning Board that this was a rezoning only case. He asked if anyone had questions or comments for Mr. Wensman.

Mr. Lane asked if any adjoining property owners had contacted the Planning Department about this request.

Mr. Wensman said no, I've had no feedback whatsoever.

Mark Lane made a motion to recommend approval of RZ-20-02, to rezone the property with the Johnston County Tax ID# 15058003F, from R-10 to R-6 with a consistency statement declaring the request to be consistent with the Town of Smithfield Comprehensive Growth Management Plan and that the request is reasonable and in the public interest, seconded by Debbie Howard. Unanimously approved.

Old Business

Planning Board review of Unified Development Ordinance Section 10.8, Applicability

Mr. Wensman stated at the January 2nd, 2020 Planning Board meeting, the Planning Board expressed concern about nonconforming properties along our corridors and requested that Staff facilitate a review of the triggers for compliance with the UDO requirements for parking, buffers and dumpster enclosures. If you look at UDO Article 10, Part I, Off-Street Parking and Loading According to 10.2.1, with any new construction, building expansion, or conversion from one use to another, or change in occupancy, the provision for off-street parking is required.

10.2.1. Off-Street Parking Requirements

There shall be provided at the time of the erection of any building, at the time an existing structure is demolished in order to permit new construction, or at the time any principal building is enlarged or increased in capacity by adding dwelling units, guest rooms, seats, or floor area; or before conversion from one type of use or occupancy to another, permanent off-street parking space in the amount specified by this ordinance. Such parking space may be provided in a parking garage or properly graded open space. All parking areas shall be designed so that ingress to and egress from such area shall be established and maintained so that all vehicular traffic shall enter and leave the lot by forward motion of the vehicle. Except for multi-family and single-family uses, all off-street parking and loading in the Entry Corridor Overlay District shall be provided in the rear of the principal structure. No off-street parking or loading shall be permitted in a required yard or open space, except in the case of a single- or two-family dwelling. No required off-street parking shall be located on any public right-of-way or encroach by more than 50% on any required setback, or into any required street yard. Under no circumstances shall parking be located within five feet of a right-of-way line.

Mr. Wensman pointed out that he highlighted one type of use or occupancy to another because typically if an office use moves into a building and it becomes vacant and another office use moves in, there's nothing required. There's no analysis of the application. It's just a zoning permit so that we get the name change and they keep doing business. It's problematic in this section that it says or occupancy, because an office use changing over to a car dealership; that's a very different land use. At that point it would trigger compliance with this section.

For a long time, staff has interpreted this section to allow existing nonconforming ingress and egress, and nonconforming required parking within public rights of way, and parking closer than five feet to a right of way to persist unless conformance was triggered by Section 10.8. (i.e. Whitley Law Office rezoning, Ortiz Tire SUP, Market Street Auto SUP, Classic Touch Auto Sales). Other parking requirements such as paving, curbing and striping are not enforced in these situations. A change in occupancy in the Town of Smithfield requires a zoning permit. Typically, a

change in occupancy may not result in a change in use, rather it may just be a change in ownership. This should not impact the site in anyway and should be stricken from the text above.

UDO Article 10, Part II, Section 10.8 Applicability (for landscaping requirements for parking facilities, bufferyards and dumpsters)

Section 10.8 contains triggers for when compliance is required for landscaping of parking lots, bufferyards and dumpsters.

Mr. Wensman stated that the Town has been using that as a trigger for paving and compliance for parking. The parking is always required and this is for the landscaping of the parking. It's been misinterpreted for a longtime. Part II of Article 10 deals with triggers for landscaping. We're talking about landscaping of parking facilities, bufferyards and dumpsters. All along staff has been using that for a trigger for parking and landscaping. We weren't requiring people to improve their parking lots and meet all these requirements unless we met these triggers and that's not what the code says. If we really start following the ordinance it will indeed impact property owners.

Mrs. Howard asked if it will only impact land owners of the future or change of use in the future.

Mr. Wensman said yes.

Mrs. Howard asked Mr. Wensman if he was saying that instructions were already in place.

Mr. Wensman said they are, but there are some problems changing occupancy.

Mrs. Howard said could we ask that it be removed and just put one type of use to another.

Mr. Wensman said that's what he would recommend. He thinks that is implied but change in occupancy is problematic because we don't always know when an occupancy changes unless they pull a zoning permit.

Article 9, Section 9.5 addresses change of use where a nonconforming situation exists.

Mr. Wensman said that there are conflicts between Article 9 and these previous two sections as well. If a nonconforming situation exists and there is a change in use, the site shall come into conformance with UDO requirements. This section conflicts with Section 10.8 which allows nonconforming to persist until thresholds are met. We have landscaping requirements but they aren't required unless you have a 20% increase in the parking demand or 20% increase in the building size.

Mrs. Daughtry said if we have someone come into Town and open a car lot, we already know their requirements. She said the way the current code is reading it can be interrupted many ways and we need to clean it up where if you change uses you have to go with the new code.

Mr. Wensman stated the landscape code has these triggers when you need to provide landscaping. Either this section should reflect that with an exception for landscaping following 10.2 but it should reference the other section so that it's clear.

Mr. Wensman said looking ahead at 9.5.4 he read:

9.5.4. If the intended change in principal nonconforming use is to another principal use that is also nonconforming in the district where the property is located, then the change in nonconforming use is permissible if the Board of Adjustment issues a permit authorizing the change. The Board of Adjustment may issue the permit if it finds, in addition to other findings that may be required by this Ordinance, that:

Staff interrupts this as use variances are illegal, and this section should be stricken from the code.

Mr. Wensman said when looking at 9.6.2 of Section 9.6, it states:

The Board of Adjustment may issue a use permit to allow a nonconforming use that has been discontinued for more than 180 consecutive days to be reinstated if it finds that (1) the nonconforming use has been discontinued for less than two years, and (2) the discontinuance resulted from factors that, for all practical purposes, were beyond the control of the person maintaining the nonconforming use.

Mr. Wensman said the Board of Adjustments are allowed to issue permits in statue but the Town of Smithfield BOA doesn't do that. They only issue variances of appeals. That language was updated when the duties changed 20 years ago. So that needs to be fixed in the UDO.

Mr. Wensman wanted to go back to the beginning of the discussion where they were discussing the parking situation. He asked the board if they were comfortable with requiring compliance with Part I Off-Street parking and loading. The entire section deals with paving, curbing and striping. If you have an office space turning into a retail space, they'd have to comply completely with parking. Because it will have an impact on business owners that think they will keep renting out their building for a different use.

Mrs. Daughtry said it is more necessary now than ever with all the growth that's coming. For instance, the tire companies that come to town, come to any building that is available. By requiring compliance as mentioned earlier it would help cut down on that tremendously. She asked Mr. Wensman to please bring the most important concerns to the Town Council first.

Mr. Wensman said the number one topic is conditional zoning. For those that aren't familiar with it, it's a legislative process not quasi-judicial. Quasi-judicial is where the board acts as a court. In that scenario people can't talk freely. Only the evidence gets spoken and listened to. If you're a neighbor to a daycare and something is wrong with the proposal and it's a special use permit request, you have no standing in that court case because you're not an expert. To get around that, the town has been looking at conditional zoning. Mr. Wensman prepared a draft ordinance where to do certain uses you would have to rezone to a conditional zone. It's a zoning district

where you can place conditions on the rezoning. It comes with a map, so if I want to do that daycare in a conditional zone, I need to show the site plan. Then the Planning Board or the Town Council can put conditions on that site plan and it becomes a district. A zoning district rezoning with conditions. It allows free discussion because it's legislative. We hired an attorney to draft this and they said this had to be optional, it can't be mandatory. Mr. Wensman is now trying to restructure the table of uses to make conditional zoning compelling. This means increasing the standards on certain uses and making them permitted in very limited zoning districts. We hope to put a draft together soon.

Mr. Lane asked if there were any landscaping standards for residential.

Mr. Wensman said no, only in multi-family.

Mrs. Howard said that could bring on ramifications from a single-family resident that's paying taxes. If you make them plant trees, bushes or shrubs they may be allergic to them.

Mr. Wensman told the board they would receive a draft of any changes made. It will go back to the Planning Board first, before being presented to Town Council.

Mrs. Daughtry asked if Town Council wanted to hear this at their regular monthly meeting.

Mr. Wensman said he believes they want to do it in a workshop setting.

Adjournment

Being no further business, Doris Wallace made a motion seconded by Teresa Daughtry to adjourn the meeting. Unanimously approved

Next Planning Board meeting is March 5th, 2020 at 6:00 pm.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Julie Edmonds".

Julie Edmonds
Administrative Support Specialist