

The Smithfield Town Council and the Planning Board held a Special Meeting on Monday, August 24, 2020 at 6:30 p.m. in the Town Hall Council Chambers located at 350 East market Street, Mayor M. Andy Moore presided.

Councilmen Present:

John Dunn, Mayor Pro-Tem  
Marlon Lee, District 1  
David Stevens, District 2  
Dr. David Barbour, District 4  
Stephen Rabil, At-Large  
Roger Wood, At-Large

Planning Board Members Present

Stephen Upton, Chairman  
Mark Lane, Vice Chairman  
Alisa Bizzell  
Teresa Daughtry  
Michael Johnson  
Debbie Johnson-Howard  
Doris Wallace

Council Absent

Travis Scott, District 3

Planning Board Member Absent

Ashley Spain

Others present

Bob Spence, Jr., Town Attorney  
Michael Scott, Town Manager  
Stephen Wensman, Planning Director  
Mark Helmer, Senior Planner  
Shannan Parrish, Town Clerk

**I. Call to Order**

Mayor Moore called the meeting to order at 6:30

**II. Approval of the Agenda**

Councilman Wood made a motion, seconded by Councilman Stevens to approve the agenda as submitted. Unanimously approved.

**III. Recognition of Planning Board members in attendance**

Mayor Moore recognized those members in attendance.

**IV. Overview of topics:**

**1. Conditional Zoning, the basic concept**

Town Attorney Bob Spence, Jr. provided the members of the Council and the Planning Board with a basis overview of zoning. Mr. Spence explained when zoning began property was in a certain district and it restricted the uses of the property. It did that so that properties would increase in value. The general concept of zoning was general use districts. The court started seeing problems and they needed to restrict the uses and some uses that were inconsistent could still work well together.

The Town's UDO has 8 conditions for Special Use Permit approval. To find those conditions, the law requires a person to be able to appear before the board and receive due process. A fair due process follows certain complex rules. It does not allow the board to speak with the applicant prior to the hearing. The problem the Town has seen has been the adversarial hearings. Often a developer will hire an attorney and present expert witnesses. An average citizen would not know to do that. No one understands the rules unless the professionals. We developed this process in order to protect people and to allow them to have their due process.

Quasi-judicial proceedings are used for special use and conditional use permits. Those permits were allowed statewide and were encouraged so that they could fit evidentiary standards. The process is almost too rigorous. The County implemented conditional use zoning. Basically, the zoning is done and afterwards it allows for conditions to be placed on the property. You rezone the property first and then special use permit second. It's more flexible. A more relaxed discussion can be had since it is a legislative zoning process. Conditional zoning basically allows you to zone into a district and you simply have a conversation about it. There are no evidentiary rules. There are no restrictions on ex parte communication. This allows for the strict rules to be eliminated. The Council would amend the code to

allow conditional zoning. The applicant would be able to choose if they wanted to proceed with the quasi-judicial process or the conditional zoning process.

Mayor Moore questioned if the Town would have to have conditional zoning and the quasi-judicial process. Town Attorney Bob Spence responded you do not have to have both processes. Mayor Moore further questioned who would choose the process an applicant follows. Mr. Spence responded it was the applicant's choice which path they would follow.

Mark Lane stated the Planning Board wanted the ability to be able to discuss these hearings. Mr. Spence responded the Planning Board could act as a mediator to work with the applicant on any issues prior to the application being received by the Council.

Mr. Spence stated the Planning Board used to hold quasi-judicial hearings which limited the Planning Board from having discussions with the developer and anyone who opposed the project. Mr. Spence recommended amending the code to allow the Planning Board to hear conditional zoning cases.

Councilman Barbour stated the Council could eliminate all quasi-judicial hearing. Mr. Spence stated they could be eliminated

Chairman Stephen Upton stated the Planning Board used to hold quasi-judicial hearings. From a legal standpoint, why was the quasi-judicial hearings removed from the Planning Board. Mr. Wensman responded the courts are more particular on procedural errors and also ex parte communication.

## **2. 160D**

## **3. Conditions done right**

## **4. Legal Risks in Planning Board Recommendations in Quasi-Judicial Hearings**

## **5. Subdivision Review: Administrative or Quasi-Judicial**

Town Attorney Bob Spence stated there was not a well-drawn subdivision ordinance in Smithfield. Right now subdivisions come before the Town Council and they have no discretion refuse the subdivision

Vice Chairperson Mark Lane questioned if the applicant has everything in place in accordance with the law and the UDO how would the Town be able to legally deny the request. Mr. Spence responded the Town can add some subjective general criteria that will allow for unusual situations where the applicant would meet the technical requirements, but the Council could deny the request if they deemed it unsafe. The Council needs to determine if it wants subdivision review to be a quasi-judicial proceeding and an administrative proceeding

Teresa Daughtry asked for Mr. Spence's recommendation on how to address the subdivision review process given that if it meets all the requirements, it cannot be denied. Mr. Spence responded he and Planning Staff would present to the board a subdivision ordinance with quasi-judicial standards. This would be done at the preliminary plat stage.

## **6. Spot Zoning: What is it?**

Town Attorney Bob Spence explained that an article on Spot Zoning was included in everyone's packet.

# **V. UDO Changes Summary**

Planning Director Stephen Wensman informed the Council and the Planning Board that there were proposed changes in Articles 3, 4, 5, 6 and 7 of the UDO.

## **1. Conditional Zoning**

Planning Director Stephen Wensman explained a conditional zoning option was as a parallel zoning district to each of the primary zoning districts. Conditional zoning was a negotiated approach to a legislative decision (rezoning) which allows maximum flexibility to tailor regulations to a site and project. Conditional Zoning Districts are zoning districts in which all the site-specific standards and conditions are incorporated

into the zoning district regulations. Our current PUD regulations are a form of conditional zoning for mixed use developments. Conditional Zoning is a similar process but for developments that are not mixed use. The conditional zoning can only be for a land use that is permitted in the primary zoning district and the only the land use shown on the approved site plan. Staff's intent was to amend the UDO to make many land uses that require SUPs to be permitted land uses with strict supplementary standards to encourage Conditional Zoning as an alternative.

## **2. Quasi-Judicial Approvals of Subdivision Preliminary Plats**

Planning Director Stephen Wensman explained the major change would be major preliminary plat approvals would move from administrative approval to quasi-judicial. This would allow the Council to conditionalize subdivision approval and provide for expert comment. The change would also allow the developers to submit a preliminary plat without complete engineered construction plans as is currently required. This would be more development friendly. The Council approval will allow for conditions to be incorporated into the preliminary plat approval, such as requiring construction drawings to conform to the UDO.

## **3. Adopt 160 D Enabling Legislation Changes into the UDO**

Planning Director Stephen Wensman explained the Town would have to adopt required changes to the UDO as a result of changes to the new combined enabling legislation both Counties and Towns, 160D. 160D requires Towns to adopted 160D changes into local regulations no later than July 1, 2001. The changes affect all Articles of the UDO; but only those in Articles 3 ,4, 5, 6 and 7 are being addressed at this time.

## **4. Adopt HPC regulations into UDO**

Planning Director Stephen Wensman explained the Historic Properties Commission would be moved from the Administrivia Code of Ordinance into the UDO

# **VI. Discuss Key Issues**

Planning Director Stephen Wensman explained he needed feedback from the Council and the Planning Board of some key issues.

Mr. Wensman asked What role should the Planning Board have in quasi-judicial subdivision review? Should they hold quasi-judicial hearings? Should they hold informal public meetings with feedback for the developer without ex-parte communication to Council? Staff is proposing the meeting be noticed similar to a public hearing for the Planning Board. Those discussion would be for the benefit of the developer and the neighborhood and not the Council as it would be considered ex parte communication. A workshop type meeting could be held to get all the issues out into the open to have a meaningful conversation.

It was the consensus that no recommendations from the Planning Board will be made to the Council.

Mr. Wensman asked should the Planning Board review Special Use Permits? Should they hold quasi-judicial hearings? Should they hold informal public meetings with feedback for the applicant without ex-parte communication to Council, or should they hold informal public meetings with recommendation forwarded to the Town Council? Mr. Wensman explained the Town was trying to be developer friendly by eliminating unneeded meetings. It was his recommendation to have the Town Council to continue to hear all quasi-judicial hearings for the remaining special uses. Hopefully, most developers will choose the conditional zoning process so the Planning Board can be involved in the process.

Mr. Wensman stated Mr. Spence questioned if the Special Use Permit finding of fact be updated. Mr. Spence stated he would like to go back to using the old Finding of Fact.

Mr. Wensman asked What should the expiration of abandoned Special Uses be? As drafted, if a special use ceases for 6-months or more, the special use is void. This would help the Town eliminate many non-conforming sites, such as used car dealerships. There was no objection to this recommendation.

Mr. Wensman asked should the Town allow rezoning to R-6, reversing a previous policy, in order to accommodate market demand? The South 2nd Street lots are a recent example of recent R-6 development. Mr. Wensman stated that market demand is wanting small lot. He was recommending opening up the R-6 zoning district. There

was no resolve to this recommendation

Mr. Wensman stated Multi-family residential development currently requires a special use permit and there are no standards. Should multi-family be a permitted use with supplementary standards, to encourage Conditional Zoning with a site-specific plan? Mr. Wensman was recommended detailed standards for multi-family. The consensus was to follow the recommendation.

Mr. Wensman stated the changes to the table of uses should be carefully considered by the Planning Board and Town Council. Mr. Wensman further stated that all supplementary standards be reviewed.

Teresa Daughtry questioned if the changes would be submitted to the Planning Board and the Town Council. Mr. Wensman responded the changes will be submitted to the Planning Board and the Planning Board will work through it until is completed. Once completed it would be submitted to the Council for approval

Mark Lane stated when he got on the Planning Board, he was told that the Board made recommendations to the Town Council and they do no longer do that. Mr. Spence responded if the Planning Board hears quasi-judicial cases, it cannot provide any information to the Council. With several zoning issues the Planning Board can act as more of a mediator and have more informal conversation to help resolve issues prior to the application being sent to the Council.

Teresa Daughtry asked for Mr. Spence's recommendation on the Planning Board holding quasi-judicial hearings without an attorney present. Mr. Wensman responded for quasi-judicial hearings; an attorney needs to be present. If the Planning Board held more of the informal meetings, there would be no need to have an attorney present. Mr. Spence stated the informal process would help immensely.

Mr. Wensman played a video from the School of Government for the Town Council and the Planning Board.

## **Adjourn**

Councilman Barbour made a motion, seconded by Councilman Rabil, to adjourn the meeting. The meeting adjourned at approximately 8:45 pm.

ATTEST:

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M. Andy Moore, Mayor

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Shannan L. Parrish, Town Clerk