

The Smithfield Town Council met in regular session on Tuesday, May 4, 2021 at 7:00 p.m. in the Council Chambers of the Smithfield Town Hall, Mayor M. Andy Moore presided.

Councilmen Present:

John Dunn, Mayor Pro-Tem
Marlon Lee, District 1
David Stevens, District 2
Travis Scott, District 3
Dr. David Barbour, District 4
Stephen Rabil, At-Large
Roger Wood, At-Large

Councilmen Absent

Administrative Staff Present

Michael Scott, Town Manager
John Blanton, Fire Chief
Ted Credle, Public Utilities Director
Lawrence Davis, Public Works Superintendent
Gary Johnson, Parks & Rec Director
Tim Kerigan, Human Resources/PIO
Shannan Parrish, Town Clerk
R. Keith Powell, Chief of Police
Greg Siler, Finance Director
Stephen Wensman, Planning Director

(Note: All Town Department Heads were present, but due to Social Distancing and Mass gathering restrictions related to Covid19, they were not present in the meeting room unless an item from their Department was discussed)

Also Present

Bob Spence, Town Attorney

Administrative Staff Absent

CALL TO ORDER

Mayor Moore called the meeting to order at 7:00 pm.

INVOCATION

The invocation was given by Councilman Barbour followed by the Pledge of Allegiance.

APPROVAL OF AGENDA:

Councilman Barbour made a motion, seconded by Councilman Wood, to approve the agenda with the following amendments:

Add to the Consent Agenda:

Item 9. Special Event: Carnival – Consideration and request for approval to allow Donna Inners of Inner Shows, Inc. to hold a Family Days Fun Fest Super Carnival at Carolina Premium Outlets on May 13th through May 23rd. This request included amplified sound.

Item 10. Special Event: Community Outreach Event – Consideration and request for approval to allow Gerard Sanders to hold a community outreach event at Smith Collins Park on June 5, 2021 from 11:00 am until 7:00 pm. This request includes amplified sound.

Item 11. Special Event: Piano Festival – Consideration and request for approval to allow Jonathan Levin to hold a Piano Festival at the Neuse River Amphitheater on June 18, 2021 from 7:30 pm until 9:00 pm. This request includes amplified sound.

Item 12. Special Event: Community Outreach Family Party – Consideration and request for approval to allow Rey de Reyes of First Baptist Church to hold a community outreach family party at the church on May 22, 2021 from 10:00 am until 1:00 pm. This request includes amplified sound.

Add a CLOSED SESSION Pursuant to NCGS 143-318.11 (a) (4)

Move Business Item: 1. Consideration and request for approval to name the new splash park the Eva E. Ennis Park to Consent Agenda Item 13

Move Business Item: 2. Consideration and request for approval to name the Girl Scout Hut the Rachael May Mattox Girl Scout Hut

Unanimously approved.

PRESENTATIONS:

1. Recognition of Public Works Crew Leader Daniel Rodrigue's 21 years of service to the Town of Smithfield

Mayor Moor presented retiring Public Works Crew Leader Daniel Rodriguez with a plaque and a watch honoring his service to the Town of Smithfield. Mayor Moore expressed his appreciation to Mr. Rodriguez for his dedication to the Town of Smithfield.

2. Administration of the Oath of Office to new Police Officer Alyssa Berna

Mayor Moore administered the Oath of Office to new Police Officer Alyssa Berna and welcomed her to the Town of Smithfield.

3. Proclamation: Designating May as Water Safety Month in the Town of Smithfield

Mayor Moore presented the following proclamation to Aquatics Supervisor Laura Crumpler.

**Town of Smithfield
Proclamation
Designating May as Water Safety Month**

Whereas, citizens of the Town of Smithfield recognize the vital role that swimming and aquatic-related activities relate to good physical and mental health and enhance the quality of life for all people; and

Whereas, Town of Smithfield citizens understand the essential role that education regarding the topic of water safety plays in preventing drownings and recreational water related injuries; and

Whereas, we recognize the contributions made by the recreational water industry, as represented by the organizations involved in the National Water Safety Month Coalition, in developing safe swimming facilities, aquatic programs, home pools and spas, and related activities which provide healthy places to recreate, learn, and grow, build self-esteem, confidence and sense of self-worth which contributes to the quality of life in our community; and

Whereas, it is important to communicate water safety rules and programs to families and individuals of all ages, whether owners of private pools, users of public swimming facilities, or visitors to waterpark.

NOW, THEREFORE, I, M. Andy Moore, Mayor of the Town of Smithfield along with the members of the Town Council, do hereby proclaim **May 2021 as Water Safety Month** in Smithfield and encourage all citizens to join me in the worthy observation.

Mayor Moore recognized May 2nd through May 8th as Municipal Clerks Week and expressed his appreciation to Town Clerk Shannan Parrish for all she does for the Council, staff and the citizens of Smithfield.

PUBLIC HEARINGS:

- 1. Conditional Zoning Request: Spring Branch Commons (CZ-21-02):** The applicant is seeking conditional zoning approval to rezone a 1.2-acre tract of land from the R-8 (Residential) zoning district to the R-8 CZ (Conditional Zoning) district for the creation of 10 single family dwellings units. The property considered for rezoning is located on the southeast side of the intersection of South Sixth Street and East Johnston Street. The property is further identified as Johnston County Tax ID#15026060.

Councilman Barbour made a motion, seconded by Councilman Wood, to open the public hearing. Unanimously approved.

Planning Director Stephen Wensman explained that TerraEden Landscape and Design, LLC, was requesting a conditional rezoning request of a 1.21-acre parcel in the R-8 Zoning District to R-8 CZ with a master plan for a 10-lot detached single-family residential development. The site was currently vacant. Sometime before 2005, a +/- 1300 sq. ft. warehouse sat on the corner of S. Sixth and East Johnson along with 3 silo-type structures. That structure is gone, but about 290 feet of valley curb remain at the corner of S. Sixth and E Johnson Street adjacent to where the warehouse once stood. The curbing on the rest of the block is a B6-12 type. Overhead electric utilities run along the right-of-way on S. Sixth Street. Streetlights attached to the power poles are located at both street corners. There were no wetlands or other environmentally sensitive features on the property.

The applicant was proposing to redevelop a 1.21-acre parcel into a 10-detached single-family residential subdivision with the following:

- All single-family homes with minimum 1,290 sq. ft. single-story (average approximately 3,770 sq. ft. in size), with full-width front porch, three bedrooms, and two bathrooms and a small storage closet in the rear of each unit.
- 0.34-acres of common open space providing driveway access to residential parking, guest/handicap parking, mail kiosk, picnic shelter, picnic tables, play structure, and 2 area lights
- The 10-lots range from 3,444 sq. ft. (.079-aces) to 4,343 sq. ft. (.1 acres in size).
- The minimum lot size would be 41' x 84' and the largest lot would be 54.50' x 86'
- A 16' wide driveway was proposed to provide parking access to each of the lots. The driveway will provide access to the rear of each lot. There would be no curb and gutter on the driveway.
- 2 parking spaces per residence as required and six additional guest parking spaces.
- The setbacks are 10' – front, 5.5' -side (11' between homes), 25'-rear.
- Five-foot-wide public sidewalk will be constructed in the public right-of-way along the front

- property line.
- Decorative fencing will be installed along the street frontage on each lot.
- The lots and open space will be landscaped with grass, trees and shrubs which is not a requirement of the Town's UDO.
- No accessory building will be allowed
- The HOA will provide common ownership and maintenance of the shared opened space.

Mr. Wensman pointed out that Johnston Street is a 66' wide side street rather than the normal 60' wide street. That would lessen the effect of the shorter setbacks. He further explained no stormwater management was required because the impervious surface was grandfathered.

Mr. Wensman reminded the Council that the purpose of conditional zoning was to provide flexibility from conventional zoning. This allowed creative projects to occur through a negotiated approach to achieve the desired project for both the Town and the developer.

The requested deviations from the UDO are as follows:

Item	R-8/UDO	R-8 CZ
Min. lot size	8,000 sq. ft. (.18 ac.)	3,444 sq. ft. (.079 ac.)
Min. lot width	70 feet	41 feet
Min. front setback	10 feet	30 feet
Min. Side Setback	10 feet	5.5 feet
Accessory Bldg. Setback	10 feet	None allowed
Min. corner lot setback	15 feet	12 feet
Driveway width	20 feet	16 feet
Sight triangle	25 feet x 25 feet	23 feet x 23 feet

Mr. Wensman explained that the 16' driveway width is meant to make it tighter for cars to come and go and to slow down the traffic. He further explained that staff was supportive of the 23' x23' sight triangle because in the downtown area, there were building directly on the corners.

Mr. Wensman stated the applicant was proposing a compact urban infill development in a distressed part of Smithfield near its downtown. The development supported walkability to downtown with a sidewalk along the street frontages and with attractive pedestrian scale architecture – one-story homes with porches and a fence along the public street frontage. Although the individual lots are small, the common open space provided usable amenities: playground, picnic shelter, picnic tables, trash receptacles, and landscaping that will create a mini-neighborhood within the greater downtown and Brooklyn neighborhoods.

Planning Staff and the Planning Board recommend approval of the zoning text amendment, CZ-21-02 with 3 conditions with a statement declaring the request was consistent with the Town of Smithfield Comprehensive Growth Management Plan and that the request was reasonable and in the public interest. The 3 conditions are as follows:

1. That the driveway aprons be constructed in accordance with the Town's Standard Specifications and Details.
2. That concrete pads for trash bins be shown on the master plan.
3. That the valley curb in the public right-of-way be replaced with B6-12 curb.

Planning Director Stephen Wensman has incorporated his entire record and provided it to the Council in written form in the May 4, 2021 agenda packet.

Mayor Moore asked if there were any questions from Council.

Councilman Scott questioned if the short distance between the houses posed a fire risk. He further questioned if the houses would have fire resistant siding installed.

Paul Embler of Terra Eden Landscaping Design responded that according to state building code, the eaves of the houses must be 6' apart. In the proposed development, the houses would be 11' apart (side wall to side wall). Therefore, no fire rated material would be needed for the homes.

Councilman Scott questioned if there would be windows on the common sides of the houses. Mr. Embler responded windows on the commons side would be minimal.

Mayor Moore questioned the 16' width of the driveway. Mr. Wensman responded the proposed driveway would be tight for two cars passing, but it was unlikely there would be a lot of two-way traffic. This approach would cause drivers to slow down when entering or exiting the area.

Mayor Moore further questioned if parking would be allowed in the driveway area. Mr. Wensman responded there would be two parking stalls for each unit and some guest parking. There was no prohibition for parking on Johnston Street. Mr. Wensman further explained there was additional guest parking in the development so there should be adequate parking.

Councilman Barbour questioned if the driveway would be the responsibility and the ownership of the home owner's association (HOA) and not the responsibility of the Town. Mr. Wensman responded that the driveway did not meet the Town's code as far as the structural road itself therefore it would be the responsibility and ownership of the HOA.

Councilman Barbour questioned if some type of roadway standards should be placed in the code since more of these developments were being requested. Mr. Wensman responded that a typical driveway

is 24 feet wide which was intended for trucks and car to pass. He stated if this were a larger development with more than 10 units, the Town would want at least a 20' wide driveway which was the standard width of an NCDOT road and the Town's alley standard.

Councilman Barbour stated he had the opportunity to visit the site with the developer. The proposed development would fit very well into the community.

Councilman Stevens stated he too had met with the developer and it appeared the plan was above and beyond some of the requirements.

Mayor Moore expressed concerns about parking. Mr. Wensman responded there were 2 dedicated parking stalls for each unit behind the homes. An additional 6 spaces for guest parking were located near the picnic shelter.

Councilman Rabil stated there were 26 spaces for 10 housing units.

Mayor Moore questioned if the home owner's association would restrict parking in the driveway. Mr. Embler responded restricting parking in the driveway was a reasonable request and it could be regulated by the HOA. Mr. Embler further stated that the purpose of the reduced driveway size was to slow the movement of the vehicular traffic through the driveway. He didn't anticipate there would be much through traffic because most people would enter and exit the entrance closest to their home. The intent is to minimize the traffic through the development.

Mayor Moore questioned if the Town could be assured that language restricting parking in the driveway would be added to the HOA contract. Mr. Wensman responded that restricting parking in the driveway could be added as a condition of approval.

Mayor Moore stated he felt this was a wonderful project. He questioned if the proposed fencing at the front of each property would be maintained by the HOA or the property owner. Mr. Embler responded the fencing and landscaping would be the responsibility of the HOA. Mr. Wensman stated that maintenance of the fencing by the HOA could be added as a condition of approval.

Mayor Moore was concerned that the fencing would not be uniform and it would not be maintained. Mr. Embler responded that the intent would be to install a uniform 30" fence along the street side and a 6' screening fence would be installed along the rear access. Mr. Embler stated the developer desired to construct an aesthetically pleasing development as he would like to continue building in the area.

Councilman Scott questioned if the second entrance to the units would be side entrances instead of rear entrances. Mr. Embler responded the side entrance opens into a utility room in the house. There was no access from the back of the house. The other access would be at the front of the house.

Mayor Moore asked if there was anyone in attendance who wished to speak on the matter. There was no one in attendance that wished to speak on the matter.

Councilman Barbour made a motion, seconded by Councilman Stevens, to close the public hearing. Unanimously approved.

Councilman Barbour made a motion, seconded by Councilman Wood, to approve zoning map amendment, CZ-21-02, with 5-conditions finding is consistent with the Town of Smithfield Comprehensive Growth Management Plan as to be and other adopted plans, and that the amendment is reasonable and in the public interest.

Conditions:

1. That the driveway aprons be constructed in accordance with the Town's Standard Specifications and Details.
2. That concrete pads for trash bins be shown on the master plan.
3. That the valley curb in the public right-of-way be replaced with B6-12 curb.
4. That the HOA required no parking in the driveway.
5. That the HOA was responsible for landscaping and fence maintenance.

Unanimously approved.

Mayor Moore asked that the Homeowners Association documents be sent to the Town for the Town Attorney's review to ensure conditions four and five were included. Mr. Wensman responded the attorney's review of the HOA documents was a requirement for the final plat.

Town Clerk Shannan Parrish administered affirmations to those that wished to offer testimony during the Public Hearings.

2. Special Use Permit Request: Bonnie Godwin (21-03): The applicant is seeking a special use permit to allow for a single-family residential dwelling within a OI (Office & Institutional) zoning district. The property considered for approval is located on the north side of Wilkins Street approximately 175 feet east of its intersection with North Seventh Street and further identified as Johnston County Tax ID# 15010038

Councilman Wood made a motion, seconded by Councilman Barbour, to open the public hearing. Unanimously approved.

Planning Director Stephen Wensman testified the applicant was requesting the Council review the

special use permit application to permit the use of a property for detached single-family residential use in the Office/ Institutional District (O/I). Mr. Wensman explained that properties to the left of Ms. Godwin's property were single-family homes and everything to the right and rear of the property were office/institutional uses. Everything across the street was commercial office use.

Mr. Wensman testified the structure was originally constructed and used as a detached single-family home then converted to an office many years ago. When converted, the entire yard was paved with concrete for parking. The paved parking is contiguous to parking in the rear yard of 518 N Seventh Street (a residential property owned by the applicant). There is driveway access in the rear of the property to 601 N. Eighth St. (an office property owned by William and Suzanne Bizzell). The properties to the west were detached single family residential and to the east, north and south are used for offices. According to the applicant, the office has been vacant for a long time and the property is no longer attractive for office tenants. The applicant wants to convert it back to single-family because she knows there is a need for that type of use.

Mr. Wensman explained the property was adjacent to a medical clinic owned by the applicant's daughter. The side yard of the property was paved. The rear yard of the property slopes on the right side to provide driveway access to an adjacent commercial property. The applicant has not proposed any buffers or any changes to the site to accommodate the residential use.

Staff reviewed the application and determined the property no longer had any residential character given the paving and contiguous driveway to the commercial property in the rear. Also, the front yard is paved for driveway access. The return to the residential use for this property is not in harmony with the surrounding development.

Mr. Wensman testified there were no landscape buffers between the property and the adjacent commercial use except for a small strip of grassy vegetation. The UDO requires a Type B bufferyard between commercial and single-family residential uses. The requirement is a 20' wide landscaped buffer with a fence. The applicant is not purposing any buffers. In addition, the UDO only allows 24' wide driveway for residential properties and 36' for commercial properties. This property exceeds both standards.

The Planning Department recommends denial of the SUP-21-03 based on finding of fact.

Mr. Wensman reviewed staff's opinion of the findings. They are as follows:

STAFF'S OPINION ON THE FINDINGS OF FACT

1. With no landscape buffer in place, the residential use of the property would be a detriment to the public health, safety, or general welfare.
2. The Wilkins Street, mid-block to the east, has been transitioning to office uses over the years and has a commercial character. Therefore, a residential use would impede the normal and ordinary development and improvement of the surrounding properties.
3. There are adequate facilities for the proposed use.
4. The use will not be offensive by reason of vibration, noise, odor, dust, smoke, or gas.
5. The ingress and egress to the property infringe on the public right-of-way. The UDO and the Town's Standard Specifications and Details do not allow residential driveways to exceed 24' in width.
6. The use will adversely affect the commercial uses surrounding the property. All the uses are commercial to the north, south, and east.
7. The residential use of the property would not be harmonious with the character of this portion of the block or the street.
8. The special use would not conform to the buffer requirements of the UDO.

Planning Director Stephen Wensman has incorporated his entire record and provided it to the Council in written form in the May 4, 2021 agenda packet.

Mayor Moore asked if there were any questions from Council.

Councilman Barbour questioned if the yard met the suitable requirements for a residential use would the property meet the requirements. Mr. Wensman responded it would be more suitable as the character of the property would have the look of a residential use. He further explained it would blend better with the residential half of the block. Currently, the property has more of a commercial feel because of hard surfaces and is barren of green space.

Councilman Barbour further questioned if the appearance of the property were returned to a residential use, would staff recommend approval of the special use permit. Mr. Wensman responded the staff's findings would be supportive of a residential use in that situation.

Mayor Pro-Tem Dunn questioned when this property was last used as a residential dwelling. Mr. Wensman responded he was unsure, but the applicant may have some knowledge.

Mayor Moore asked the applicant if she agreed with the testimony provided by Mr. Wensman and if she had additional testimony to offer.

Bonny Godwin of 778 Napoleon Road, Selma, NC stated she did not agree with all the testimony offered by Mr. Wensman. Ms. Godwin testified that Mr. Wensman stated her property was adjacent to commercial uses. She stated the only commercial use adjacent to the property was the medical office owned by her daughter. She further stated that her property has not been used as a rental unit in five to seven years.

Ms. Godwin testified there was yard space that was shared with the adjacent property. As for parking, across the street is the same type of parking. She believed that four or five feet were within the Town's right-of-way. The back of the property was used for parking.

Ms. Godwin testified that she investigated removal of the cement on the property. It was estimated to cost between \$15,000 and \$20,000 which was not feasible for her.

Mayor Pro-Tem Dunn questioned when this property was last a residential use. Ms. Godwin responded she was unsure. She explained she has tried to rent this as a commercial use to no avail. There was more demand for residential rental units.

Mayor Pro-Tem Dunn further questioned if Ms. Godwin receive a cost estimate for removal of all the concrete on the property or just a portion. He explained that if the front left side of the concrete were removed it would give the property more of a residential appearance. Ms. Godwin responded she did not receive a cost estimate for only that portion.

Councilman Scott questioned how people accessed the back parking lot. Mr. Wensman responded the only access to that parking lot was through Ms. Godwin's property. Councilman Scott further questioned if there was a designated grassy front yard, could the property return to a residential use. Mr. Wensman responded it would add to a greater residential character. Ms. Godwin stated she has lost a considerable amount of money on this property because she has not been able to rent it as a commercial use.

Mayor Pro-Tem Dunn questioned if the property were returned to a residential use, a 20' buffer was required between the residential use and the commercial use. Mr. Wensman responded that a new use would trigger the need for a buffer. The UDO requires a 20' buffer with a fence and landscaping. Mr. Wensman explained the lack of buffer existed when this was a residential property, and the adjacent property was developed as a commercial use. Since the request is to return it to a residential use, it was appropriate to require the 20' buffer.

Mayor Pro-Tem Dunn questioned if Ms. Godwin would consider removing the front concrete from the left side of the property until it meets the driveway portion. Ms. Godwin responded she would like to obtain a cost estimate for removal of the front concrete because she has already invested a lot of money into the property.

Rene Watson of 4298 Shoe Hill Road, Kenly, NC testified that the area beyond the property line belongs to the Town therefore removal of the concrete in the right-of-way should be the expense of the Town and not Ms. Godwin. Ms. Watson stated she did not feel it was necessary to remove the concrete from the front of the property. She stated as the adjacent commercial property owner, she did not have any issues with the property being a residential use. She stated for her own safety she would like to have someone using the property. She further stated she has personally shown the property for medical uses and no one was interested in the property.

Mr. Wensman clarified that the right-of way that Ms. Watson pointed out was Town property, but the pavement constructed for the property was actual an encroachment in the public right-of-way. They were private improvements in the public right-of-way.

Mayor Moore questioned the required buffer and fencing between the property owned by Ms. Godwin and the adjacent commercial use. Mr. Wensman responded a buffer would be needed between the two properties.

Mayor Moore questioned if Ms. Godwin also owned the residential property to the left of this property. Ms. Godwin responded that she does own that property. Mayor Moore further questioned if Ms. Godwin would be willing to install a fence between her property and the adjacent commercial use. Mayor Moore explained he was concerned about the safety of any children playing on the property. Ms. Godwin responded she would be willing to install a fence between the two properties. She asked that it not be a solid white vinyl fence. Mayor Moore stated that the installation of a fence between the two types of uses was a reasonable request.

Councilman Barbour stated that the key was to make sure the use was safe for children and to make sure the property had the look and feel of a residential use. Ms. Godwin stated if this property were a residential use, she could have rented it and maintained a renter at this property.

Mayor Pro-Tem Dunn questioned if Ms. Godwin's property went from Wilkins Street to 7th Street adjacent to the alleyway of the commercial building behind her property. She responded in the affirmative. Ms. Godwin further stated she would prefer installing a fence then removing cement.

Councilman Scott stated for the record it was important to point out that the concrete was in the right-of-way. Councilman Scott questioned if this property were returned to a residential use, would the tenants be required to park in the rear of the property. Ms. Godwin responded if the tenant has a small vehicle they could park in the front. The safest place for them to park would be at the rear of the property. She explained that when she parks at the property, she must park at an angle, so her vehicle is not in the road.

Mayor Moore questioned if the front parking was unsafe for vehicular parking. Ms. Godwin responded when the previous doctor used the building there was parking in the front of the building.

Councilman Wood questioned if others were using her lot for parking. Ms. Godwin stated most people will park beside her property in the grassy area or in the front parking. Councilman Wood further

questioned how Ms. Godwin would prevent people from parking in the front parking. Ms. Godwin responded that if it were residential, most people would be considerate and not park in the area.

Mayor Pro-Tem Dunn clarified that one of staff's concerns was the appearance of the property being a commercial use because all the concrete in the front makes it look like a commercial use. If the concrete were removed from the front of the property, it would appear more residential in nature. Mr. Wensman responded if there was less pavement there would be less run of. He further stated that if there were less concrete in the front of the property, it would have the character of a residential use. The Mayor's suggestion of a fence addressed the buffer and created a separation between the two uses. Mr. Wensman stated it was a judgement call made by the Council as to what was acceptable.

Ms. Godwin stated she was agreeable to almost anything imposed by the Council, but she was not agreeable to removing the concrete at the front of the property.

Councilman Scott stated that people parking along the streets is more of a Town issue.

Mayor Moore asked if there was in attendance that was duly sworn in who wished to testify on the matter. There was no one in attendance that wished the testify on the matter.

Councilman Barbour made a motion, seconded by Councilman Scott, to close the public hearing. Unanimously approved.

Councilman Barbour stated there were three things were needed for the Council to approve the request. They are as follows:

1. Installation of a fence between the property and the adjacent commercial property to separate the uses.
2. Require No Parking at the front of the building.
3. Removal of small portion of concrete from the front door to the roadway and from the front door to the left line of the part of the property line

Councilman Wood stated he did not agree with the last requirement as that was an added expense to the property owner. Councilman Scott agreed with Councilman Wood's statement.

Councilman Barbour stated that based on the Town's UDO, the proposed use does not meet the Town's requirements. Mr. Wensman responded that staff's findings were suggested findings and if the Council differed from staff's opinion, they could highlight which ones they disagreed with and qualify the statements.

THE WRITTEN FINDING OF FACT

The Town Council shall issue a special use permit if it has evaluated an application through a quasi-judicial process and determined that:

4.9.4.5.1. The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, or general welfare.

Council's Finding: With the addition of the fence, the residential use would not be detrimental to or endanger the public health, safety, or general welfare.

4.9.4.5.2. The establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

Council's Finding: The residential use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

4.9.4.5.3. Adequate utilities, drainage, parking, or necessary facilities have been or are being provided.

Council's Finding: There are adequate facilities for the proposed use with parking only allowed in the rear of the property only.

4.9.4.5.4. The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke, or gas.

Council's Finding: The use will not be offensive by reason of vibration, noise, odor, dust, smoke, or gas.

4.9.4.5.5. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

Council's Finding: Ingress and egress would not infringe on traffic congestion in the public streets because parking for this use would only be allowable in the rear of the property only.

4.9.4.5.6. That the use will not adversely affect the use or any physical attribute of adjoining or abutting property.

Council's Finding: The use will not adversely affect the use or any physical attribute of adjoining or abutting property.

4.9.4.5.7. That the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located.

Council's Finding: The residential use of the property will be harmonious with the character of the portion of the block or street.

4.9.4.5.8. The special use shall, in all other respects, conform to all the applicable regulations of the district in which it is located.

Council's Finding: With the addition of the fence and parking in the rear of the property, the residential use would conform to all the applicable regulations of the district in which it is located.

Councilman Barbour stated that after further review, the Planning Department believes that ingress and egress to the property will infringe upon the public right-of-way. The Town's standards do not allow residential driveways to exceed 24 feet in width. He stated the Council should abide by that standard.

Ms. Godwin stated that the concrete in front of the property was not a part of the driveway. The driveway was the portion of concrete beside the building that accessed the parking in the rear of the property. Mayor Moore stated that the issue was the area in the front of the property which was paved and there was parking which is considered a driveway.

Councilman Stevens questioned if it would be feasible to allow Ms. Godwin two years to remove the concrete in the front of the property and plant grass. This would allow her to rent the property and still meet the Town's residential standards within that time.

Councilman Barbour made a motion, seconded by Councilman Stevens, to reopen the public hearing. Unanimously approved.

Councilman Stevens questioned if Ms. Godwin would be agreeable to removing the concrete from the front of the property and planting grass if the Council gave her a year to make the transition from concrete to grass. The major concern of the Council was the UDO specifies that a driveway cannot exceed 24 feet in width. The driveway/ parking area in the front of the property was 30' feet of concrete pavement.

Councilman Scott stated that the area in question was in the Town's right-of-way. Mr. Wensman stated there were driveways that encroach on the Town's right-of-way. The issue was the UDO does not allow the whole frontage of a home to have paved. Councilman Scott questioned if artificial grass could be installed over the concrete. Mayor Moore responded that was not acceptable.

Ms. Godwin questioned if anything associated with this property was grandfathered. Mayor Moore responded that when a use was changed, it must adhere to the regulations of the UDO.

Ms. Godwin asked for consideration with this property stating it had been vacant for several years. Mayor Moore explained the issue was the property did not have the appearance of a residential use. The concrete at the front of the property makes it appear as a commercial use. Mayor Moore further explained that Councilman Stevens proposed allowing Ms. Godwin eighteen months to remove the front portion of the concrete, so it conformed with the UDO requirements.

Ms. Godwin stated the Council might consider making all the yards on that block concrete due to the conditions of the yards.

Councilman Barbour made a motion, seconded by Councilman Stevens, to close the public hearing. Unanimously approved.

THE WRITTEN FINDING OF FACT

Councilman Barbour made a motion, seconded by Councilman Stevens to approve the 8 findings of fact as stated below. Unanimously approved.

The Town Council shall issue a special use permit if it has evaluated an application through a quasi-judicial process and determined that:

4.9.4.5.1. The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, or general welfare.

Council's Finding: With the addition of the fence, the residential use would not be detrimental to or endanger the public health, safety, or general welfare.

4.9.4.5.2. The establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

Council's Finding: The residential use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

4.9.4.5.3. Adequate utilities, drainage, parking, or necessary facilities have been or are being provided.

Council's Finding: There are adequate facilities for the proposed use with parking only allowed in the rear of the property only.

4.9.4.5.4. The proposed use shall not be noxious or offensive by reason of vibration, noise,

odor, dust, smoke, or gas.

Council's Finding: The use will not be offensive by reason of vibration, noise, odor, dust, smoke, or gas.

4.9.4.5.5. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

Council's Finding: The UDO and the Town's standard specifications and details do not allow residential driveways to exceed 24' in width but adequate measures will provide ingress and egress so designed as to minimize traffic congestion in the public streets by removing the concrete in front of the property within 18 months from May 4, 2021.

4.9.4.5.6. That the use will not adversely affect the use or any physical attribute of adjoining or abutting property.

Council's Finding: The use will not adversely affect the use or any physical attribute of adjoining or abutting property.

4.9.4.5.7. That the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located.

Council's Finding: The residential use of the property will be harmonious with the character of the portion of the block or street.

4.9.4.5.8. The special use shall, in all other respects, conform to all the applicable regulations of the district in which it is located.

Council's Finding: With the addition of the fence and parking in the rear of the property, the residential use would conform to all the applicable regulations of the district in which it is located.

RECORD OF DECISION

Councilman Barbour made a motion, seconded by Councilman Scott, that Based upon satisfactory compliance with the above stated findings and fully contingent upon acceptance and compliance with all conditions as previously noted herein and with full incorporation of all statements and agreements entered into the record by the testimony of the applicant and applicant's representative, I move to approve Special Use Permit Application # SUP-21-03 with the following conditions:

1. Installation of a 6' high fence between the property and the adjacent commercial property to separate the uses. The fence will be installed from the front of the house to the rear property line.
2. Require No Parking at the front of the building.
3. Removal of small portion of concrete from the front door to the roadway and from the front door to the left line of the part of the property line within 18 months of May 4, 2021.

Unanimously approved.

Mayor Moore called for a five-minute recession at this time.

Mayor Moore reconvened the meeting at 9:14 pm.

3. UDO Text Amendment Request: Town of Smithfield (ZA-21-03): The applicant was requesting an amendment to the Town of Smithfield Unified Development Ordinance, Article 7, Section 7.3 Accessory Uses or Structures to allow for fences as an accessory structure in all zoning districts.

Councilman Barbour made a motion, seconded by Councilman Stevens, to open the public hearing. Unanimously approved.

Planning Director Stephen Wensman explained staff was requesting to amend the UDO to create regulations for fences as an accessory structure. Mr. Wensman stated there were no fence regulations in the Unified Development Ordinance. It appeared the regulations were omitted when the UDO was updated in 2016. Uses not listed in the table of permitted are prohibited. The purposed of the fence regulation I to maintain adequate visibility on private property and in public rights-of-way, to maintain the openness of front and street side yards, to protect the light and air to abutting properties, and to provide adequate screening by regulating the height, location, and design of fences and walls. Since 2016, the town has received complaints about fences in front yards and without regulations, code enforcement is unable to provide enforcement.

Mr. Wensman explained the draft ordinance regulates fences and walls such that the height of fences and walls in front yards or in front of principal structures, including along the side lot line cannot exceed 48 inches in height, which is more than 75% solid may be placed in the front of a principal structure. Electric fences and razor wire or barbed wire fences are only allowed on bon-a-fide farms, public and quasi-public institutions for security and industrial uses in the Industrial districts for security purposes. Fences shall be installed such that exposed framing faces the interior yard and not toward adjacent properties or public rights-of-way. The height of fences in residential side and rear yards cannot exceed (7) feet in height. The height of commercial and industrial fences cannot exceed 10 in height and that part of the fence or wall greater than (7) feet must be open similar to woven wire or wrought iron. Fences and walls may exceed the height requirement if authorized by another section of the UDO or by special use permit. Fences are exempt from

setbacks and can be up to the property line. Fences must respect the vision triangle at intersections for public safety reasons. Fences and walls that are less than 7' in height are to be permitted accessory uses and do not requiring a zoning permit. Electric and barbed wire fences are prohibited except when used to enclose livestock on bona fide farm or for public or quasi-public institution for public safety or security purposes.

Mr. Wensman further explained that staff did receive two public comments on the proposed fence ordinance. One was that barbed/razor wire fences be allowed in the Light Industrial and Heavy Industrial. The other comment was that the exposed framing face the interior yard and not towards adjacent properties of public right-of-ways.

Planning Staff and the Planning Board recommend approval of the zoning text amendment, ZA-21-03, with 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.

Planning Director Stephen Wensman has incorporated his entire record and provided it to the Council in written form in the May 4, 2021 agenda packet.

Mayor Moore asked if there were any questions from Council.

Mayor Pro-Tem Dunn questioned if someone needed a fence to be taller than the height requirement, would that request trigger a special use permit. Mr. Wensman responded in the affirmative.

Councilman Scott questioned how the height of the fence was measured. Mr. Wensman responded it was measured from the ground upward.

Councilman Barbour stated he was agreeable to the fence being installed on the property line.

Mayor Moore asked if there was anyone in attendance who wished to speak on the matter.

Sonny Howard of Woodlawn Drive, Smithfield, NC questioned the fence being installed on the property line. He stated that out of respect he typically builds a fence 6 inches off the property line. Within 7 years, the Squatters Law takes effect, and the adjacent property owner can claim that 6 inches of your property. Mr. Wensman responded with this ordinance, one could install a fence on the property line. He questioned if the Town's ordinance would supersede the squatter's law. Town Attorney Bob Spence the squatter's law was complicated, and it was in the best interest of the Town to allow the fence to be installed on the property line.

Councilman Barbour made a motion, seconded by Councilman Wood, to close the public hearing. Unanimously approved.

Councilman Barbour made a motion, seconded by Councilman Wood, to approve zoning text amendment, ZA-21-03, amending Article 7, Section 7.3 to create regulations for fences as accessory structures 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. Unanimously approved.

ORDINANCE # ZA-21-03
AN ORDINANCE TO AMEND THE TOWN OF SMITHFIELD
UNIFIED DEVELOPMENT ORDINANCE
ARTICLE 7 SUPPLEMENTAL REGULATIONS AS IT PERTAINS TO FENCES
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 regulate fences as an accessory structure.
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:
[Revise Article 7, Section 7.3 Accessory Uses or Structures, to regulate fences as an accessory structure.]
PART 1

7.3.3. Fences

Fences and walls that meet these requirements are permitted as accessory uses and shall comply with the following:

- 7.3.3.1. For the purposes of this Section of this ordinance, a fence is a barrier composed of wire, wood, metal, plastic, or a similar material and a wall is a barrier composed of brick, stone, rock, concrete block, or a similar masonry material. Electric fences and fences constructed with razor or barbed wire are prohibited except when used to enclose livestock on bona fide farm, for public or quasi-public institutions for public safety or security purposes, or for industrial uses in the Light or Heavy Industrial Zoning District for security purposes.
- 7.3.3.2. No fence or wall more than 48 inches in height, which is more than seventy-five percent (75%) solid, may be placed in the front of a principal structure.
- 7.3.3.3. Fences shall be installed such that exposed framing faces the interior yard and not toward adjacent properties or public rights-of-way.

- 7.3.3.4. Fences and walls may not exceed seven (7) feet in height, except that in commercial and industrial districts, a fence may not exceed ten (10) feet in height. Fences greater than seven (7) feet in height shall be of an open type similar to woven wire or wrought iron. Fences and walls may exceed the height requirements of this Section if required or specifically authorized in another Section of this ordinance or with a special use permit.
- 7.3.3.5. Fences and walls are exempt from the setback requirements of this ordinance.
- 7.3.3.6. No fence or wall shall impede vision as regulated in Section 2.21 of this ordinance.
- 7.3.5.7. Fences and walls approved with a special use permit shall not adversely impede light or airflow to adjoining properties.
- 7.3.3.8. Fences, if replaced, shall meet the requirements of this Section.
- 7.3.3.9. Fences and walls seven (7) feet or less in height meeting the requirements of this ordinance shall not require a zoning 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

4. **UDO Text Amendment Request: Town of Smithfield (ZA-20-05):** The applicant is requesting an amendment to the Town of Smithfield Unified Development Ordinance, Articles 1, 9 10, and Appendix A to incorporate 160D enabling legislation changes.

Councilman Wood made a motion, seconded by Councilman Stevens, to open the public hearing. Unanimously approved.

Planning Director Stephen Wensman explained staff was requesting to amend Articles 1,9,10 and Appendix A to incorporate 160D legislation. Mr. Wensman explained that the code must be undated and adopted by July 31, 2021. He explained that mot changes are minor in nature.

Planning Staff and the Planning Board recommend approval of the zoning text amendment, ZA-21-03, with 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.

Planning Director Stephen Wensman has incorporated his entire record and provided it to the Council in written form in the May 4, 2021 agenda packet.

Mayor Moore asked if there were any questions from Council. There were no questions from the Council.

Mayor Moore asked if there was anyone in attendance who wished to speak on the matter. There wa no one in attendance that wished to speak on the matter.

Councilman Wood made a motion, seconded by Councilman Stevens, to close the public hearing. Unanimously approved.

Councilman Barbour made a motion, seconded by Councilman Stevens, to approve zoning text amendment, ZA-20-05, 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.

**ORDINANCE # ZA-20-05
 AN ORDINANCE TO AMEND THE TOWN OF SMITHFIELD
 UNIFIED DEVELOPMENT ORDINANCE
 ARTICLES 1, 9, 10 and Appendix A**

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 160D enabling legislation changes.

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:

1. The Articles attached in Exhibit A are amended as set forth by the deletions (strikethroughs) and additions (double underlining)
2. That if this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given separate effect and to that end the

provisions of this ordinance are declared to be severable.

3. That if it be determined that any other Town Ordinance or any part of any other Town Ordinance is in conflict with this Ordinance, said conflicting Ordinance shall be deemed repealed and of no effect and the provisions of this Ordinance shall prevail.

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

{Attached by reference and made a part of these official minutes is Exhibit A which is on file in the Office of the Town Clerk}

CITIZEN’S COMMENTS: None

CONSENT AGENDA:

Councilman Wood made a motion, seconded by Mayor Pro-Tem Dunn, to approve the following items as listed on the Consent Agenda:

1. The following minutes were approved:
 - April 6, 2021 – Regular Meeting
 - April 6, 2021 – Closed Session
2. Special Event: Juneteenth Celebration – Marlon Lee gained approval to conduct an outdoor celebration at Smith Collins Park and short parade/march on Collier Street from the Alumni Center to the Innovation Academy on Saturday, June 19, 2021 from 7:00 am until 8:00 pm. Amplified sound was also approved with this request.
3. Approval was granted to allow employees to donate sick time to a Police Department employee.
4. Promotion: Approval was granted to promote a Master Police Officer to the rank of Police Sergeant.
5. Promotion: Approval was granted to promote a Parks and Recreation employee to Assistant Aquatics Supervisor.
6. Bid award to JLP Carpentry in the amount of \$21,295.00 for improvements/renovations to the Girl Scout Hut.
7. The following advisory board appointments were approved:
 - C. Andrew Byrd IV was appointed to serve a first term on the Recreation Advisory Committee
 - Scott Wright was reappointed to serve a fourth term on the Recreation Advisory Committee
8. New Hire Report

<u>Position</u>	<u>Department</u>	<u>Budget Line</u>	<u>Rate of Pay</u>
P/T Police Officer (Chaplain)	Police	10-20-5100-5100-0200	\$16.85/hr.
P/T SYCC Staff (2 positions)	P&R – SYCC	10-60-6240-5100-0210	\$9.00/hr.

Current Vacancies			
<u>Position</u>	<u>Department</u>	<u>Budget Line</u>	
Assistant Finance Director	Finance	10-10-4200-5100-0200	
Camp Counselors (Part-time)	P&R – Recreation	10-60-6200-5100-0210	
Firefighter I (2 positions)	Fire	10-20-5300-5100-0200	
Fire Inspector (Part-time)	Fire	10-20-5300-5100-0210	
Public Works Director	Public Works	10-60-5500-5100-0200	
Police Officer I (5 positions)	Police	10-20-5100-5100-0200	
Sanitation Equipment Operator	Public Works	10-40-5800-5100-0200	
Utility Line Mechanic	PU – Water/Sewer	30-71-7220-5100-0200	
Zoning Compliance Assistant (Part-time)	Planning	10-10-4900-5100-0200	
9. Special Event: Carnival – Donna Inners of Inners Shows, Inc. gained approval to hold a family Days Fun Fest Super Carnival at Carolina Premium Outlets May 13 through the May 23, 2021. Amplified sound was also approved with this request.
10. Special Event: Community Outreach Event – Gerard Sanders gained approval to hold a community outreach event at Smith Collins Park on June 5, 2021 from 11:00 am until 7:00 pm Amplified sound was also approved with this request.
11. Special Event: Piano Festival – Jonathan Levin gained approval to hold a Piano Festival at the Neuse River Amphitheater on June 18, 2021 from 7:30 pm until 9:30pm. Amplified sound was also approved with this request.

12. Special Event: Community Outreach Family Party – Martha Marcia of Iglesia Bautista Rey De Reyes to hold a community outreach family party at First Baptist Church on May 22, 2021 from 10:00 am until 1:00 pm. Amplified sound was also approved with this request.
13. Approval was granted to name the new splash park at 535 Martin Luther King, Jr. Drive the Eva E. Ennis Park.
14. Approval was granted to name the Girl Scout Hut located at 306 South Second Street the Rachael May Mattox Girl Scout Hut.

Business Items:

1. FY 2021-2022 Budget Discussions

Town Manager Michael Scott stated this item should be tabled until 6:30 pm on Thursday, May 6, 2021 for continued budget discussions. This meeting would be held in the training room of the Fire Station.

Councilmembers Comments: None

Town Manager's Report:

Town Manager Michael Scott gave a brief update to the Council on the following items:

- The Council approved for the Downtown Smithfield Development Corporation to hold the Third Sreatery events every other Friday from May 7th until July30th. They are requesting that the dates in July be changed from July16th and July 30th to July 9th and July 23rd
- A joint meeting will be held on Monday, May 10th at 11:00 in the gym at the SRAC. The meeting will consist of a joint public hearing regarding incentives being offered to Project XD. An announcement, as to the parent company coming to the Project XD site is also anticipated.

Closed Session Pursuant to NCGS 143-318.11 (a) (4)

Councilman Stevens made a motion, seconded by Councilman Barbour, to enter into Closed Session pursuant to the aforementioned statute. Unanimously approved at approximately 9:34 pm

Reconvene in Open Session

Councilman Stevens made a motion, seconded by Councilman Wood, to reconvene in Open Session. Unanimously approved at approximately 10:11 pm.

No action was taken by the Council following the Closed Session

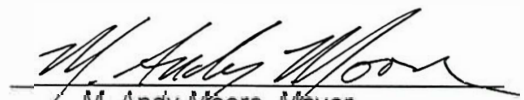
Recess

Councilman Barbour made a motion, seconded by Mayor Pro-Tem Dunn to recess the meeting until Thursday, May 6, 2021 at 6:30 pm in the Fire Station Training Room located at 111 South Fourth Street, Smithfield. Unanimously approved. The meeting recessed at approximately 10:12 pm.

ATTEST:


Shannan L. Parrish, Town Clerk




M. Andy Moore, Mayor