

The Smithfield Town Council held its regular meeting on Tuesday, April 1<sup>st</sup>, 2025. The meeting was called to order at 6:30 p.m.

**Members present:**

Michael Smith – Mayor  
Bill Harris – Vice Mayor  
Valerie Butler  
Jeff Brooks  
Steven G. Bowman  
Mary Ellen Bebermeyer  
Darren Cutler

**Staff present:**

Michael Stallings – Town Manager  
William H. Riddick, III – Town Attorney  
Lesley King – Town Clerk  
Tammie Clary – Community Development & Planning Director  
Ed Heide – Director of Public Works  
Judy Winslow – Director of Tourism  
Laura Ross – Treasurer  
Alonzo Howell – Chief, Smithfield Police Department  
Chris Meier – Deputy Chief, Smithfield Police Department  
Ashley Rogers – Director of Human Resources  
Amy Novak – Director of Parks and Recreation  
Dr. Thomas Pope – Board Member, Planning Commission  
Charles Bryan – Board Member, Planning Commission  
Leigh Abbott-Leaman – Board Member, Board of Historic and Architectural Review (BHAR)

**Press:**

Stephen Faleski – “The Smithfield Times”

**Citizens:** 18

Mayor Smith welcomed all attendees to the meeting and asked all present to stand for the Pledge of Allegiance.

**Manager’s Report:**

The Town Manager reported that the previous month’s activity and summary reports were contained in the information packet provided and he would answer any questions the Town Council had.

**Presentations:**

**Public Comments:**

Robert Small reported that he had come to speak regarding the blighted property, and would comment when the subject was reached in the agenda.

Eric Leaman of 111 Thomas Street in Smithfield reported that he wanted to speak about the subject of growth. He stated that the novelist William Burrows had written “When you stop growing, you start dying” and emphasized that there was no such thing as staying the same. He applied that saying to the subject of small towns and quoted Edward McMahon, an authority on sustainable development, land conservation, and Urban Design, as saying “Growth is inevitable and desirable, but the destruction of community character is not. The question is not whether your part of the world is going to change, the question is how it is going to change.” He continued that small towns across America, like Smithfield, faced a delicate balance between welcoming new and returning residents and businesses while preserving their character, resources, and infrastructure. Mr. Leaman reported that those who adopted a “no growth” stance were condemning their towns to eventual and assured decline. He stated that it was essential that the leadership and citizenship of Smithfield recognize that striking the proper balance between population growth and business development and no growth was critical to preserving the Town’s charm, sustainability, and its future prosperity. He related that he was stating what he felt should be obvious to everybody because he wanted to ensure that the current Council wasn’t more “no growth” than “proper growth.” Mr. Leaman recalled that during the last election, four candidates framed their campaigns on a shared platform of reigning in growth, stating that they were opposed to high-density projects in order to preserve Smithfield’s small-town character. He reported that statement had presented a negative and narrow perspective to himself and many others. He continued that many citizens would have preferred to hear from candidates, and also the current leadership, was a forward-thinking approach. He said that an example of that type of approach was supporting well-planned housing and new businesses that aligned with Smithfield’s smalltown character while meeting the needs of the growing community. Mr. Leaman reported that the Smithfield Town Council had both the opportunity and the obligation to shape the Town’s future in a way that balances preservation with progress through sensible growth. He added that was the only way to enhance Smithfield’s economic opportunities, infrastructure, and quality of life while also maintaining its historical charm, cultural identity, and sense of community. He said that constantly opposing any growth was naïve, and fostered a mindset of resistance to change that discouraged innovation and civic engagement. He noted that they should remember that good can always be better, and the Town could always be better. Mr. Leaman pointed out that like all towns, Smithfield relied on new and old businesses, infrastructure projects, and residential development to create jobs and generate tax income and investment. He observed that the Town risked economic stagnation if every proposal faced negativity and resistance, with new residents and businesses sometimes made to feel unwelcome. He stated that without responsible growth Smithfield’s revenue streams would shrink, which could lead to higher taxes on residents in order to maintain services. He added that the rejection of proposals also resulted in missed opportunities to improve the quality of life for everyone. Mr. Leaman reported that, like many small towns, Smithfield struggled with the lack of affordable housing, and blocking growth initiatives exasperated housing shortages across all income levels. He speculated that businesses and investors could move their plans elsewhere if the Town developed a reputation for being hostile to sound financial growth

and development. He concluded that that growth was not something to be feared but welcomed and shaped with care and vision with community input.

Leigh Abbott-Leaman of 111 Thomas Street in Smithfield recapped that at the March 4<sup>th</sup> Town Council meeting there had been a text amendment that was proposed, and Vice Mayor Harris had mentioned that he felt an obligation to make sure that the Historic District stayed as it was. She continued that it was clear that he had been conflicted during the discussion, adding that she was unsure if it had been due to the idea of setting precedent or because the developer was Smithfield citizen, Mr. Carollo. She additionally recalled that Councilman Cutler had reported that the citizens were very knowledgeable and understood zoning ordinances and the decisions that followed. She stated that was 100% correct, and was why she was speaking to the Council. She stated that they had asked that the Council members not besmirch the citizen's intelligence, acknowledging that she respected his comment; however, part of the problem was that they were besmirching the way that neighborhood currently existed. She observed that several of the Council members had actually chosen to move into that neighborhood. Mrs. Abbott-Leaman reported that the conversation had made it clear how disconnected some people's understanding of what Smithfield's downtown was in regard to density. She stated that during that meeting while speaking on Mr. Carollo's behalf, Mr. Hopke had reported that the five unit per acre maximum made it impossible to replicated existing historic residential fabric, character, and scale. She stated that he was 100% correct as five units per acre was artificially low when applied to Smithfield. She continued that Town Staff would have been the best source to provide those accurate details; however, she did not want to contact them after they were chastised in a public forum for their proactive research. Mrs. Abbott-Leaman reviewed that Vice Mayor Harris had asked if research had been done on Grace, Clay, or James Streets as a representation of what the citizen's wanted to see replicated. She reported that she had completed her own research online and in-person, and though she had done lower estimates to be on the safe side, she thought five units per acre was not representative of the Town that they lived in but was an idealized version. She gave the example of the density of South Church Street from the park up to the Gwaltney House of having nine units per acre. She added that the long-established streets off of Cedar Road also had densities between nine and eleven units per acre. She related that she was not including Cedar Road Apartments in that calculation. Mrs. Abbott-Leaman continued that when they moved across Main Street to Cary and Grace Streets the density was over nine units per acre. She related that if they considered the blocks at the site of the proposed development at Washington Street there were stretches that had five or six units per acre, but there were also areas with ten units per acre. She added that there was nearly ten units per acre on Riverview. She reviewed the question raised of whether two-story duplexes belonged in the Historic District. She said that the question was surprising because she lived two doors down from a two-unit home, and there were several along South Church Street. She asked if they truly did not fit in or did they fit in so well that they went unnoticed. Mrs. Abbott-Leaman reported that the Board of Historic and Architectural Review (BHAR) had updated the Historic District guidelines and they did not only preserve a colonial charm on the widest and greenest lots as the Town was so much more than that. She noted that the guidelines managed improvement outcomes for an area beginning with the Colonial era and covering ten different architectural eras spanning nearly 300 years. She stated that as it stood, the restriction of five units

per acre constituted “down-zoning,” which had dangerous consequences. She stated that down-zoning created a massive incentive to low-density builders to maximize their returns by development of larger homes. She related that the effects of that included widening the already large housing gap, contributing more school and traffic growth, and also diminish the current homes by reducing their property values. Mrs. Abbott-Leaman stated that it was time to think beyond the five per acre limit. She asked that the Council members not change the Historic District with their efforts to preserve it. She related that the Smithfield Historic District was not like the Cypress Creek neighborhood or the waterfront lots in Goose Hill. She said that everyone was very concerned with downtown looking like the Bridgeport community in Suffolk, when in a way that argument fostered incentive for construction of affluent, cookie-cutter homes bursting on their lots like Chesapeake. She related that the Council was elected to preserve Smithfield, not to actively reshape and empower its gentrification. She asked them to please maintain the district and its density as it stood currently.

Mayor Smith reported that next to speak was Bob Livengood.

Councilman Bowman related that he had spoken to Mr. Livengood earlier in the day and he was also present to speak about the blighted property. He said that it was up to the Mayor whether he should speak in the public comments or during the public hearing about the property.

Mayor Smith stated that Mr. Livengood could speak during the public comments, and he would like to speak later that would also be fine.

Mr. Livengood reported that he lived next to the blighted property at 1504 McGruder in Smithfield. He stated that it had been over five months since the house at 1502 had burned, and nothing had been touched at the property since the day of the fire. He said that he had called the Town of Smithfield and spoke with Josphe Reisch after having not seen any work completed at the site for two or three months. He passed out pictures he had taken of what the property looked like to the Council. He continued that after speaking with Mr. Reisch at the County he had been directed that he should call Mark Drumhiller with Isle of Wight County. He said that Mr. Drumhiller had told him that he had nothing to do with the issue and he attempted to contact Town Staff. Mr. Livengood reported that he had called the Town Manager on three occasions and left voicemails but did not receive a call back until the day of the Council meeting. He added that Mr. Reisch had also come to the property on the day of the Council meeting. He said that he had been trying to contact the Town regarding the issue for over a month and half to no avail. He observed that it was not just that the house had been burned, but there were other issues over the last ten years since the house had not been lived in. He reported that there was a swimming pool in the backyard that was filled with water but had no fence that the neighborhood kids visited in addition to their looking at the burned out house. He stated that it was a hazard and had been for the past five months. He related that they were trying to be good neighbors, but five months was too long for condition that the property was in. Mr. Livengood reported that he was a marine contractor, and when he had moved in they cleared the brush by the water with a power rake. He said that Mr. Reisch had written him up, and he had to replant \$2600 worth of plants back into the Resource Protection Area (RPA) line. He stated that his title was in codes and compliance, but he had told him that he couldn't do anything about the house. He suggested that maybe there were cuts in Town to make.

Judy Eure, vendor with the Smithfield Farmer's Market, stated that she had been present in December of 2024 to speak to the Council about the proposal to have a new home for the Farmer's Market. She stated that she was still in support of giving the Farmer's Market a permanent home. She recalled that when she previously spoke, she had mentioned that there was only a year-to-year lease on the market using the Bank of Southern Virginia's (BSV) parking lot and they didn't know what the future had held for that. Mrs. Eure stated little did she know that the lease would then be lost so quickly. She said that they were now faced with the situation where they were on their last year at that location, and needed to find a new site for the market. She reported that she served on the Board for the Farmer's Market and had for a number of years, with their recently having start the brainstorming of locations where the market could move to. She noted that the market would need a new site starting in April of 2026. She said that they had come up with about ten ideas for spots the market could possibly go, and every single one of them was a worse location than their very challenging location at the BSV. Mrs. Eure reported that she was even more concerned now not only with finding a permanent location for the market, but where they would go in the meantime. She said that her fear was that they would end up in a parking lot with a couple of port-a-potties. She observed that the Farmer's Market had been in existence for twenty years with her being a participating vendor for thirteen, and it had been very successful by creating a lot of revenue Town while also bringing a lot of visitors in. She reported that the market ran at very low cost to the Town as it had been designed to be self-sustaining through membership and sponsorships. Mrs. Eure reiterated her fear that it would all fizzle away because the market would be homeless if a solution was not found. She encouraged that Council to give a good amount of consideration to the proposed project at the end of Main Street that would provide a home for the Farmer's Market. She reasoned that a permanent home would offer them the flexibility to offer more goods at more times without their having to worry about their lease getting terminated. Mrs. Eure asked for the Council's assistance in the process of trying to locate a site they could use for next year where they could continue to do as well and not have a worse location than their current spot. She announced that Saturday, April 5<sup>th</sup>, was the Farmer's Market opening day 9 am to 12 pm and invited all of the meeting's attendees to come see them there.

Carrie Robertson of Suffolk reported that she was the owner of Peanut City Candle Company and was present to speak in support of the Grange project. She stated that she had participated as a vendor at the Farmer's Market for the past five years, and she owed a vast majority of her business's success to the Town of Smithfield and the Smithfield Farmer's Market. She said that she would always claim that the Peanut City Candle Company would not exist if it was not for the Farmer's Market. She related her experience of having participated in several other fine farmer's markets and events during her five years in business, and concluded that what the Town of Smithfield had was very special. Mrs. Robertson reported that there were no other small towns within a 50-mile radius that she could think of that possessed the charm, the cleanliness, and reputation that Smithfield had. She complimented the Town for having small businesses along Main Street that were staples of their community, having existed for long periods of time with little turn-around. She observed that their success was due to two things: the correct support from the Town government and its citizens. Mrs. Robertson said that Downtown Suffolk would do itself service to take notes from Smithfield. She asked the Council members if they were aware that the

Smithfield Farmer's Market was voted into the top 101 Farmer's Markets in North America. She said that might not seem like a very exciting number to people; however, it should be considered that was when Smithfield Farmer's Market was compared to 8400 other markets. Mrs. Robertson reported that in 2026 the market would lose its lease for its current location that had served it best. She said that as an active member on the Advisory Board she could tell them two things: they were actively looking for a suitable location that would be convenient to the market's patrons and allow the vendors to continue their symbiotic relationship with the downtown businesses, and that none of the identified options were at all ideal. She observed that failure of the local government and its citizens to secure a permanent home for the Farmer's Market would mean its death. She noted that in today's world people were wired to consume convenience, but the market showed that if people were given a way to engage in their community and engage in a way that recalls a simpler time. Mrs. Robertson said that the decision to provide a permanent home for the Farmer's Market will help keep the community together. She reported that farmer's markets stimulated the local economy, supported minority and woman-owned businesses, supported communities from a nutritional and mental health standpoint, and they helped preserve rural livelihoods and farmland

**Council Comments:**

There were no Council Comments.

**Consent Agenda:**

**C1. Resolution to Appropriate Funds from Historic Smithfield into the General Funds Operating Budget for Proposed Scope of Work for Grace Street Streetscape**

**C2. Invoices Over \$20,000 Requiring Council Authorization:**

- |                             |             |
|-----------------------------|-------------|
| a. Lewis Construction of VA | \$23,000.00 |
| b. Tri-State Utilities      | \$32,954.00 |

\*Received since Finance Committee

Councilman Bowman made a motion to approve the consent agenda as presented. Councilman Cutler seconded the motion.

Mayor Smith called for the vote. Seven members were on call for the vote. Councilwoman Butler voted aye, Councilwoman Bebermeyer voted aye, Councilman Brooks voted aye, Councilman Cutler voted aye, Councilman Bowman voted aye, Vice Mayor Harris voted aye, and Mayor Smith voted aye. The motion passed unanimously.

**Action Section:**

**PUBLIC HEARING: 803 South Church Street - Water Connection**

Tammie Clary, Community Development and Planning Director, reported that as part of the applicants' Special Use permit, Comprehensive Plan Amendment, and Official Zoning Map Amendment applications, on April 10th, 2020, the applicants provided a phasing plan that



indicated they would connect to Town water by 6/1/2022 and install driveway improvements by 6/1/2022. She continued that the applicants then received additional Entrance Corridor Overlay (ECO) approvals and Special Use Permits (SUPs) in 2021, that were conditionally approved under the following conditions: (a) The pavement of the parking lot with asphalt by June of 2022, in accordance with your approved phasing plan. (b) Connecting to the public water system by June of 2022, in accordance with your approved phasing plan.

Mrs. Clary stated that at the Tuesday, October 2<sup>nd</sup>, 2024, Town Council meeting, a SUP for a waiver of parking and loading requirements was granted to the applicants, allowing a gravel parking and drive area, provided they return with an SUP request for a private structure connected to a private well. She said that at the February 11<sup>th</sup> meeting, the Planning Commission unfavorably recommended this application to Town Council, with two dissenting votes. She reported that Town Staff recommended Town Council deny the application for the private well connection, as it is in conflict with our current Town Code and current Design Standards. She summarized that the applicants had received multiple SUPs and approvals contingent on them connecting to Town water.

Mayor Smith reported that the matter was subject to a public hearing and opened the floor to public comment. He asked if there was anyone who wished to speak for or against the application.

The applicants, Tim Ryan of 11220 Shelter Cove in Smithfield and Nick Hess of 223 South Church Street in Smithfield, were present to speak on the matter.

Mr. Ryan summarized that they were requesting relief from their commitment to connect to Town water as was included in the zoning application dated December 2<sup>nd</sup>, 2019. He stated that the reason for the request was when they had applied in 2019 they had been told by the Town Planner at the time, John Settle, that in order to be compliant with Town guidelines they would need to connect to Town water and pave the parking lot. He acknowledged that they had included it in the zoning application as a phase plan as Mrs. Clary had noted. He continued that they had since found out that they did not need to connect to Town water in order to be compliant with Code, and also when they had agreed to the terms they did not know the expense involved. He said at the time there had seemed to be other options, for example connecting to the Animal Hospital next door's water line. Mr. Ryan added that the Town had reported that they were going to extend a bike path in front of the business, which would have caused the Town to purchase part of their property in order to do so and they thought it would offset the cost. He added that they had also learned that the cost to complete the connection would be over \$30,000, and that connection did nothing to enhance his business in any way. He calculated that cost would have 40% of their profits in 2023 and all of their profits last year due to the bridge closure.

Mr. Hess reported that when they first started their business they had thought that water connection would be somewhere in the range of \$5,000 to \$6,000 but not \$30,000. He recognized that they had agreed to complete the action, and had since sold the business, but they still owned the building and were still involved in the brewing. He stated that they were invested in the continuing success of Redpoint and bringing tax revenue to the Town. He related how difficult the restaurant business was and the many hours they devoted to it. He calculated that a \$30,000

connection cost would not keep the business running with the small profit margin for their size restaurant.

Mayor Smith asked if there were any other members of the public who wished to speak. Hearing and seeing none, he closed the hearing.

Councilwoman Bebermeyer stated that she had reviewed their information from their start in 2019, and noted that in April 2020 when they opened the business, the pandemic had just begun. She said that she felt it was courageous and innovative for them to open a business at that time when so many businesses were closing. She reported that she felt that it was important for the Town Council to support small businesses, especially considering the larger events of the last five years. She speculated that neither the applicants nor the Town knew the expense of the water connection when the business started, and she thought that it was fitting for the Council to continue to support them, especially with the consideration of pandemic issues and the bridge closure.

Councilman Bowman recalled that last time the applicant's had been present before the Council they had indicated that the cost to connect to the Town's water would cause them to go out of business. He recapped that since that time the applicants had sold that business, and the issue of the bridge closure has no impact on their business because it was not theirs anymore. He explained that Mr. Ryan had been very direct with the Council when he stated that their requiring the connection would kill their business, and asked if that statement was correct

Mr. Ryan verified he was correct.

Councilman Bowman repeated that they had since sold the business.

Mr. Ryan reported that they had sold it, but there were two different companies with owning the restaurant business and the other owning the property.

Councilman Bowman reported that the first document that Mr. Hess and Mr. Derek Joyner had provided included that once rezoning was completed they "would like to add an outdoor patio by 09/01/2020." He continued that the next statement read "we will hook up to the Town of Smithfield water by 06/01/2022," and the last statement reported that they "would like to add our lot improvements by 06/01." He asked them to clarify why they used the wording "would like" in certain scenarios and "we will" in others. He stated that it sounded as if they had reasonable certainty all the way back in 2022.

Mr. Hess confirmed that Councilman Bowman had read from their words on the application. He reported that he could show emails that were written during that time between themselves and John Settle. He stated that every time he would send something to Mr. Settle, he would reply that they needed to word it how he recommended. He said that all of the wording in the applications got changed back and forth several times. He reported that he had the email trail for all of the correspondence.

Councilman Bowman said that he wished he had seen it because he had asked for the entire package today. He continued that he wanted to address the cost, and recapped that Councilwoman Bebermeyer indicated that they had no way of knowing what the cost for water connection would be. He reported that he had a hard time understanding that astute businessmen went into a business proposition without having some idea of cost. He asked if it was true that the cost was estimated to be around \$60,000 or \$70,000 and then the Town came to their assistance to find a way to reduce the cost to \$30,000.



Mr. Hess reported that the Town's price was to bring the water across the street, which did not include the meter or getting the water to the building. He said that in the beginning of the process a gentleman from public works came to the site numerous times and said that they could connect to the Animal Hospital, not knowing that the right answer.

Councilman Bowman asked who the public works employee was.

Mr. Hess said that he could not remember the gentleman's name. He related that as he did not have experience with public works, they thought it was perfect.

Mr. Ryan stated that they had known what the Town of Smithfield had paid for other parcels of land to accommodate the bike path and thought the cost to purchase the land in front of their building would offset the cost to them.

Councilman Bowman reported that he had been a patron at Redpoint Taphouse and enjoyed the food and hospitality. He stated that his concern was with consistency and the precedent that would be involved. He related that their duty was to impartially discharge their duties as members of the Council. He added that everyone wanted to do the right thing, but it called them to question when dealing with regulations.

Mayor Smith thanked Mr. Ryan and Mr. Hess.

Mr. Hess asked to add a point. He stated that the building had been used commercially since 1929, with Town water not being brought to the area until 1969. He stated that the property was annexed in 1966 with seven buildings, six homes and the commercial building, remaining on the well. He explained that the structure had never been residential, but had always been a commercial business. He noted that they had to complete the rezoning application because the business had closed for 30 consecutive days, which was something he felt needed to be changed. Mr. Hess acknowledged that they had taken a gamble in the situation and stated that they would connect, but asked that they apply logic and save a small business. He pointed out that all of the homes in that area had water supply, and it worked.

Councilman Bowman asked the Mayor to be able to follow up on the statement. He asked Mrs. Clary if it was true that if they had not closed for the 30 days that they would not have had to apply for rezoning.

Mrs. Clary reported that the property had been zoned as Residential Office, and eating establishments were not a permitted use in the Residential Office Zoning District. She said that it needed to be rezoned to the Highway Retail Commercial (HRC) District.

Councilman Bowman asked Mrs. Clary to confirm that the fact it was changed to a restaurant was the rationale behind the rezoning and not that it had been closed for 30 days due to Covid.

Mrs. Clary confirmed that was correct.

Councilman Bowman related that he had been in the area since 1982 and had gotten his haircut at the property, noting that it had also been a Poodle Parlor. He said that he had seen everything else there, but did not recall seeing a restaurant.

Mrs. Clary said that his statement was correct and reiterated that in order to have an eating establishment at the site there would need to be rezoning from Residential Office to Highway Retail Commercial.

Mr. Ryan repeated that they had been told that they had to have a connection to Town water in order to be compliant with Tow Code 8245 per what Mrs. Clary had said. He stated that the fact was that 8245 did not say that had to hook to Town water, but quoted it as saying “where public water supply is available in the Town it shall be unlawful to connect a residential or commercial structure to a private well.” He said that when they reviewed the code it says that it was unlawful to connect to a private well, where their property had been connected to the same private well since before Town water had been made available to them and they were not asking for a waiver or variance for connection. Mr. Ryan said that what they were guilty of was saying yes to the requirement to connect to Town water based on the belief from the Town Planner at the time had given them that they had to in order to be compliant with the Town code. He noted that there should not be a moral question of whether they would set a precedent and have to do it again as they were actually in compliance currently.

Councilwoman Butler asked the Town Attorney if he could give legal interpretation of the matter.

The Town Attorney explained that the property had come into Town as a result of annexation and it was on a private well. He noted that the discussion about who extended water into that area, well the Town never pays for water but the developer for those surrounding neighborhoods do. He reported that the structures on the well were lawfully grandfathered, and there were instances where the Town did not make people connect. He observed that in this case the water had not been extended across the street. The Town Attorney reported that impetus for the action was the rezoning as Mrs. Clary had explained, and eating establishments were not permitted in Residential Office zoning. He summarized that the applicants had stated that they would connect to Town water, and the Town had standards that had to be adhered to for that process. He said that the Town Staff had taken the applicants at their word that they would connect, and that they would complete the action in a certain way. He added that when it said that the connection into the water main would be a 2-inch connection, that meant that it would be reduced down to what was an equivalent to a residential water line with the tap fee for connection charged for that size. The Town Attorney continued that the Town was not asking the six residential homes to connect because water had not been extended to that area.

Councilwoman Butler stated that she understood his point, but questioned whether they had been grandfathered in when the property was still zoned at Residential Office.

The Town Attorney clarified that the use was not grandfathered as it was not being used as a restaurant, though it was being used commercially. He repeated that the applicants request to use the property as an eating establishment was what had prompted the requirement to change the zoning designation. He reported that the Residential Office zoning had been established twenty years earlier so that there would be a transitional zoning option, notably in that area. He explained that as mandated by the Town Council and Planning Commission, as these structures were updated from residential to commercial they were required to come up to code, hence Redpoint’s need to connect to Town Water and have their lot paved.

Councilman Bowman gave the hypothetical example of the owners deciding to demolish the building since it had been zoned Highway Retail Commercial. He asked if the next owner wanted to put a restaurant at the site would they have to complete the rezoning process.

The Town Attorney stated that they would not, clarifying that zoning followed the property not the owner.

Councilman Bowman stated he understood, but questioned what would happen in regard to the water connection.

The Town Attorney related that the water issue was unresolved because the current zoning required them to connect, and the SUP they were requesting was for the ability to not to have to connect. He reviewed that the paving requirement had gone through the same process, however, the applicant's had been given approval for relief from the paving requirement.

The Town Manager reported that the Town's current Design Standards required commercial structures to have a two-inch connection.

The Town Attorney added that requirement was for new buildings.

The Town Manager acknowledged that was correct and also a two-inch connection was required if the renovation threshold was reached.

Councilman Brooks reported that this was the one instance where he was in support of the use of an SUP. He stated that he believed that the applicants had to commit to completing the requirements with a gun to their head. He continued that they likely thought that the work would be a couple thousand dollars, as the building had been in existence for many years and had already been connected to a well. He said that he felt that it was the Town's responsibility to bring water to a building that had been there that long. He speculated that if the water was on their side of the street, they would have no problem connecting to it, but the situation required that they have the water run under the road for them to have access.

Mr. Hess reported that they had since metered the water at Redpoint, and he paid the same amount as the guy across the street who was on the Town's water and sewer. He affirmed that he paid for every gallon that came in and out of the property.

Vice Mayor Harris asked for clarification of the timeline of events from the applicants. He stated that in the original application they had agreed to connect. He continued that then two years later they had submitted an SUP application so that they did not have to pay, and at that time they again agreed to connect to the Town water supply.

Mr. Hess clarified that the two issues had initially started on the same timeline. He recapped that the original application for the business they agreed to paving and connecting the water, then in June of 2022 they had applied for relief from the paving requirement which was granted.

Vice Mayor Harris reported that he was fine with the driveway, but asked for verification that at that time they had again made the pledge.

Mr. Hess acknowledged that the issue had extended into the last 3 years.

Vice Mayor Harris said that as he was understanding the situation, the applicants were saying that they were in compliance because of the new ordinance that did not take effect until after their previous agreements to connect.

Mr. Ryan reported that he did not know what the ordinance was prior to that. He said his point was that the current ordinance was dated November of 2024 and it said that they were in compliance. He repeated that the ordinance said that it was unlawful to connect to a private well, where they had already been connected to a private well and were not asking to be able to connect.

He stated that they had been told that they had to connect to Town water and that had been bad information.

The Town Attorney related that he would not enter an argument, but the applicant could not misstate the law and what was said was not correct. He explained that the applicant was not compliant, but was grandfathered and there was a difference between the two classifications. He clarified that there was a non-conforming use of the property that did not meet the Town's current zoning standards, but they had not required him to meet compliance. He reported that the applicants had voluntarily agreed to the terms as part of their application.

The Town Manager reiterated that the current Design Standards required commercial structures to have a two-inch connection so that was not in compliance.

Vice Mayor Harris said that was where he was heading with his line of questions.

The Town Manager agreed that they did not want to enter into argument with the applicants but it had not been a valid statement.

Vice Mayor Harris confirmed that the Planning Commission and Town Staff were recommending denial of the application.

The Town Manager repeated that the recommendation was based on the issue that the property was not in compliance with current Design Standards.

Councilwoman Bebermeyer said that the information was new to her. She recalled that when the applicants first got their permits they had made the following proffers: improve and maintain the driveway easement accessing the rear panel, facilitate and volunteer use of the property to local charitable organizations, and lastly repurpose and revitalize the historic building or structure. She said that she was in agreement with Councilman Brooks that it was an appropriate use of an SUP.

Councilman Brooks made a motion to approve the SUP to waive water connection to the Town. Councilwoman Bebermeyer seconded the motion.

Mayor Smith called for the vote. Seven members were on call for the vote. Vice Mayor Harris voted nay, Councilman Brooks voted aye, Councilwoman Bebermeyer voted aye, Councilman Bowman voted nay, Councilwoman Butler voted nay, Councilman Cutler voted aye, and Mayor Smith voted nay. The motion was denied by a vote of 3/4.

Councilwoman Butler asked to address comments made during the discussion. She reported that she took offense to the statement made by Councilman Brooks that the applicants had made their decision with "a gun to his head." She reported that the Town's Staff were highly qualified people and she didn't want to think of any of them acting in that way. She added that maybe there had been a misunderstanding at the time, but she did not like that description being used for that process.

Councilman Brooks apologized and stated the phrase had been used several months ago in regard to the situation. He reiterated that he had heard it described that way, and that the applicants had felt pressured.

Vice Mayor Harris thanked Councilwoman Butler for her statement as he was going to say the exact same thing. He observed that the Public Works Department did a tremendous job consistently, and they were very supportive of many aspects of the process that had occurred, particularly with the other SUPs. He related that he did not know why they had been told that the

bike path would follow that route as it was always going to come down Lumar Road. He reiterated his thanks to Councilwoman Butler and to the Public Works department.

### **PUBLIC HEARING: 313 Grace Street - BHAR Appeal**

Mrs. Clary reported that the applicant was appealing the Board of Historic & Architectural Review's (BHAR) February 18<sup>th</sup>, 2025, decision to deny the application for the installation of twenty-one (21) rooftop mounted solar panels on the single-family dwelling at 313 Grace Street. She explained that the BHAR believed the solar panels were not in conformance with the Historic District Guidelines, while the applicant believed she met the criteria outlined for solar panel installation as included in the 2025 Historic District Design Guidelines. Mrs. Clary reported that the applicant filed an application appealing the BHAR's decision. She said that according to the appeals process, the application was then forwarded to Town Council for their review and decision.

Mayor Smith reported that the matter was subject to a public hearing and opened the floor to public comment. He asked if there was anyone who wished to speak for or against the application.

Kelly Payne of 313 Garce Street in Smithfield reported that she was the applicant in question. She reported that the home was built in 1909, and as such the house had been built using true 2 x 4's as was true to that era. She reported that as they had remodeled over the years many people could attest to the solidity of the home. She said that she had begun the process in 2024 when she had been notified that the Historic District Guidelines had been updated with an emphasis on solar installations, and she returned with an application in January 2025. She acknowledged that she had not reviewed the updated guidelines, but had reviewed BHAR minutes from a previous meeting that included an application for solar panel installation in the Historic District. She stated that application had been denied by the BHAR in December 2024. Mrs. Payne read from the minutes of that meeting that a board member had noted that the previous applicant's placement was prominent on the front of their home, and if it was planned for placement anywhere else he would have been all for it. She said that at that point the only requirement she knew was that the panels could not be forward facing. She reported that the company, Ion Solar, was present and would discuss the issue further. She expressed regret that she did not request a large display for the information but pointed out that it was available in the agenda packet. Mrs. Payne held up a picture of 313 Grace Street and noted that there were metal shingles on the home. She added that the porch roof had standing seam roofing and was the only front-facing roof, but she was not asking for placement at that location. She stated that she was requesting for the panels to be placed on the rear-facing roof of the home. She pointed out the aerial photo of the home in the packet appeared to show the house as having a light grey roof, when in reality it was black and the solar panels were also black. Mrs. Payne pointed out that her home was three-stories high and was a very tall building adding that the thought that the panels would be very visible was not correct. She asked to bring up the representatives from Ion Solar.

Tom Dettloff, Director for Virginia at Ion Solar, explained that the panels were fastened to the roof and were wind-rated to withstand up to 155 mph, which met the Dominion Energy requirement. He continued that the panels did not create leaks on roofs, there was a significant roof penetration warranty, and they implemented structural engineering on 90 % of every install in



Virginia. He read from a report completed a Professional Engineer, Luke Rowley, in regard to the home, and noted that “it was there recommendation that the existing roof framing is adequate to safely and sufficiently support custom design loads and weight of the new solar system as is, alteration or replacement of existing structural elements is not required.” He related the number of solar installations their company completed in the State, and offered to answer additional questions.

Mr. Payne noted that wind came from the direction of the Pagan River down Grace Street, and added that she had previously experienced a tree falling on her roof during Hurricane Isabel. She explained the process that they went through during the repair of her home from that damage, and especially the strength of the replacement wood which had made her roof incredibly strong. She stated that she did not know when the first Historic District Guidelines were put in place, but she knew that that most current revision was made in 2025. She pointed out that there had been guidelines addressing the use of solar energy in the Historic District for quite a few years. Mrs. Payne directed the Council members to page 76 of the Historic District guidelines and read “should be located on the side or rear of a building where they are less visible from the right-of-way.” She said that she was requesting to put the panels on the side and rear of the house. She read from page 98 “should be installed in such a manner that their visual impact is minimized from the right-of-way...the side and rear of a building’s roof is often the most appropriate setting for solar panels.” She observed that when driving up Grace Street when traveling away from Main Street several of the Town Council member’s roofs were partially visible, but hers was not visible. She related that the side of the home that she wanted to install the solar panels was blocked from view by a magnolia tree until driving past it. She noted that the visibility of that side was only present for a very short period when driving down the street. Mrs. Payne displayed another portion of the Historic District guidelines that listed things to avoid and read “avoid installing solar panels in locations that are visible from the street or public rights-of-way such as the primary façade of a building.” She stated that with the way that statement read, she was unsure why they would have solar guidelines included at all because she could not think of a house in Smithfield where a solar panel could not be seen from somewhere. She reiterated that she was not requesting to have placement on the front of the house. She continued reading from the guidelines “avoid removing historic features of a building or site when installing solar panels.” She explained that they would not be removing anything from the structure. She read “avoid installing solar panels in a manner that obstructs the view of historic architectural features of a building or site” and reported that there would not be any obstructions associated with the installation, adding that they were not erecting any ground-mounted arrays. She continued that another item to avoid was “installing solar panels on primary Landmark buildings,” adding that her house was not classified as a Landmark Building. Mrs. Payne moved on to the best practices for solar panels and outlined that they should be mounted less than or equal to 6 inches above the surface of the, should be set at angles consistent with the slope of the supporting roof, should be hidden behind existing architectural elements such as dormers and cross gables, should be arranged in an organized configuration that blended in with respect to the color of the panels etc., any support structures or hardware should be installed on the rear of the building or areas with limited visibility from the public right-of-way, should be removed in a way to allow them to be easily removed without causing permanent damage or



alteration. She reported adherence with all of the best practices as being in her plan. She outlined that with the type of metal roof she had, the panels would not have to be taken down in order to replace the roof. Mrs. Payne noted that the top paragraph stated that though solar panels were a modern invention, they may be installed on historic buildings under certain circumstances. She asked the Council if they had any questions regarding the product or proposal.

Councilman Bowman asked for confirmation that the magnolia tree in question did not have any negative effect on the ability of the panels to collect energy.

Mrs. Payne reported that the tree did not shade the roof.

The Town Manager suggested that the public hearing be closed before they got into further questions that they might have.

Mayor Smith stated that if there were no other comments from the public he would close the public hearing.

Mrs. Payne added that she would like to speak further.

The Town Attorney advised that they should ask if there were any other members of the public who wished to speak.

The Town Manager stated that Mrs. Payne could finish her presentation.

Mrs. Payne stated that she saw nothing in the guidelines that the project she was proposing violated; however, there had been no rooftop solar projects that had been approved by the Board, which would mean that they were setting precedence. She acknowledged she had no idea how many other applications there had been for solar installations prior to hers, except for the one that had been denied due to proposing front-facing panels. She questioned that if there was no intent to approve a project that met the requirements in the guidelines, then why were they developed, then revised, and then approved. Mrs. Payne reported that she had been hesitant to follow through with the appeal process because she felt that it seemed that the guidelines had been developed with the intent to never allowing approval for use. She asked why she would go through the appeals process if they were written with no intent of allowing success. She related that she had called the Town and asked if anyone had ever appealed a Board decision and had it reversed, to which she had been told “yes.” She pointed out that they would not be setting precedence to overturn the decision, adding that she did not know any specific information about that successful appeal. Mrs. Payne reported that Smithfield’s approved guidelines on solar were based on the guidelines for Arlington, Virginia and their guidelines had been approved in 2015. She recalled that there seemed to be concern shown by the Board members that approving her project would open the floodgates for people installing solar panels. She stated that she had researched what happened in Arlington as a result, and reported that only five projects had been approved in the last 10 years. She speculated that if it didn’t open the floodgates in Arlington, then it would not do so in Smithfield either.

Mayor Smith asked if there were any other members of the public who wished to speak regarding the matter. Hearing and seeing none, he closed the public hearing.

Councilman Cutler asked the Town Manager if there was information from the meeting provided by BHAR to support their denial.

The Town Attorney explained that he had been present at the meeting in question. He noted that prior to the application by Mrs. Payne, there had been a previous application that had been denied as that house had a very different roofline and the applicant had proposed placing the panels

on the roof facing the street. He stated that the application had been made prior to the guidelines approval by the BHAR and Town Council. He recalled that Mrs. Payne had agreed that since the new guidelines had not been adopted at the February meeting that the application would be continued for a month. He noted that they could refer back to the minutes, but the basis for the denial was that the panels would be seen from the street, adding that there had been a split vote by the Board members.

The Town Manager reported that Mrs. Clary did have a copy of the minutes from the meeting.

Mrs. Clary reported that the BHAR's concern was that something would be seen from the street and the Board was willing to not follow their own guidelines as written. She continued that there was concern expressed about the amount of panels, and that the Board had acknowledged that if they were willing to allow panels in the Historic District that the applicant had done everything that they had asked in order to minimize the panels appearance. She noted that there had been consideration given to the placement and trying to hide the panels as much as was feasible. Mrs. Clary reported that there were mixed feelings expressed by members of the Board on the matter. She stated that there had been the recommendation to consult with a structural engineer as there was worry about the way the house was framed and the possibility of it the panels causing the roof to sink.

The Town Manager observed that the vote had been tied, which had resulted in its failure.

Councilman Brooks reported that he lived diagonally from Mrs. Payne of Grace Street. He pointed out that the front-side of her roof was extremely visible from the street, and there were 13 panels proposed for that location. He reviewed the amount of time that the Board and Council had taken in its consideration of the updated guidelines, and he felt that the application was glaringly not in accordance with what they had put forth. He clarified that he was not opposed to the application solely because he was a neighbor, but that in looking to the future when that street became a thoroughfare once the Grange was developed and the bridge was reopened. He reiterated that it would be very glaring, and he could unfortunately not think of a worse place to put the panels.

Vice Mayor Harris stated that he could not argue with the science behind the action, but he was in agreement with Councilman Brooks that the side for the proposed placement of panels was extremely visible on the street. He noted that they would possibly not be seen by someone passing in car, but as Grace Street was one of the Town's most walked streets by visitors. He stated that as a Historian Preservationist he thought it was incredibly important to maintain the historical integrity of the Downtown Historic District. He continued that the National Trust for Historic Preservation had written an article in combination with two or three solar companies with their recommendations mirroring the recommendation in the guidelines that solar panels should be installed in a location not visible from the ground or the public right-of-way. Vice Mayor Harris stated that as visitors were walking up and down Grace Street the panels would be staring them in the face. He pointed out that the magnolia tree discussed earlier could get sick and come down at any time in the future. He expressed that one of the responsibilities of the council was to protect the Town's historical setting and its cultural climate. He noted that the Town had already lost some

significant historical structures, and adding visible solar panels in the district would dilute its historical nature further.

Councilwoman Bebermeyer asked staff for confirmation between the classifications for Landmark and Contributing properties, specifically if it was based on age.

Mrs. Clary read from the Smithfield Zoning Ordinance: “Structures from the 18<sup>th</sup> century to pre-Civil War, or structures with architectural significance from the period after the Civil War shall be considered as Landmark or Landmark Structures.” And “Properties which contribute to the historic character of the Town but which do not contain landmarked structures shall be known as Contributing Properties. Properties designated as Non-Contributing are vacant lots or those which feature a primary building with one or more of the following features: less than 50 years of age, alterations to such an extent that it is no longer representative of the period in which it was constructed, degradation to such a poor condition that preservation is difficult, does not have any sort of architectural style and has no architectural merit.”

Councilwoman Bebermeyer stated that even though the house was built in the early 1900’s and was listed as Contributing it was still in the Historic District. She said that her concern was also with the statement that “solar panels should not be visible from the ground or the public right-of-way.” She agreed with the statement made by Vice Mayor Harris that while walking on the sidewalk the panels would be visible. She said that it was unrealistic to think that if someone was only looking at the front of the house the panels would not be visible. She observed that one of the pictures of the house taken from the side showing the roof where placement would be was actually taken from the sidewalk and would clearly be visible.

Mayor Smith asked if there was any additional Council questions, and notified the audience that they could not speak further.

Councilwoman Butler asked Mrs. Clary if the guidelines had been written by Town Staff in conjunction with BHAR.

Mrs. Clary reported that during the guideline updating process they provided BHAR with samples of various localities design standards for solar panel usage. She said that what was chosen was the sample that was most representative of what the BHAR wanted to see in Smithfield’s guidelines, and that was what Town Staff asked the consultants to include.

Councilwoman Butler asked for confirmation whether the Smithfield Historic District had solar guidelines prior to the matter they were discussing.

Mrs. Clary reported that what was included was very minimal and had been lumped in with mechanical equipment.

The Town Attorney added that there had been no detail included.

Mayor Smith asked what the will of the Council was on the matter of the appeal.

Councilman Bowman reported that he had considered the testimony given by the Mrs. Payne, adding that she had gone into depth to lay out her case and had done a great job. He observed that the area in question was very unique, and noted that in the diagrams displayed he did not see that the panels would not be very visible. He made a motion that they uphold the BHAR’s decision to deny the installation of solar panels.

The Town Attorney clarified that the decision of the BHAR had been split, and so it had failed, making the Council’s decision a trial de novo, or new trial.

Councilman Bowman made a motion to deny installation of solar panels. Councilwoman Bebermeyer seconded the motion.

Mayor Smith called for the vote. Seven members were on call for the vote. Councilman Brooks voted aye, Councilwoman Bebermeyer voted aye, Councilman Bowman voted aye, Vice Mayor Harris voted aye, Councilman Cutler voted aye, Councilwoman Butler voted nay, and Mayor Smith voted nay. The motion to deny passed by majority vote of 6/1.

### **PUBLIC HEARING: Text Amendment Article 13 of the Zoning Ordinance**

Mrs. Clary reported that the application had been favorably recommended to Town Council by the Planning Commission, and included a proposed text amendment to Article 13 of the Zoning Ordinance to bring the definitions in alignment with the new definitions approved with Article 3.P for the Chesapeake Bay Preservation Overlay.

Mayor Smith opened the public hearing and asked if there was anyone present who wished to speak for or against the matter. Hearing and seeing none, he closed the public hearing.

Councilman Cutler made a motion to approve the text amendment as presented. Vice Mayor Harris seconded the motion.

Mayor Smith called for the vote. Seven members were on call for the vote. Councilman Cutler voted aye, Councilwoman Butler voted aye, Councilman Brooks voted aye, Councilwoman Bebermeyer voted aye, Vice Mayor Harris voted aye, Councilman Bowman voted aye, and Mayor Smith voted nay. The motion passed unanimously.

### **Blighted Property - 1502 Magruder Road**

Mrs. Clary stated that the Town of Smithfield had received a complaint concerning the partially burned down structure located at 1502 Magruder Road, Smithfield VA 23430 (TPIN:21A-28-007). She reported that Town Staff sent a notice on January 29th, 2025 requesting an update on the cleanup and repair of the structure within thirty (30) days, in accordance with Smithfield Town Code (STC) Section 22- 2.b.1, and a plan was provided as requested. She continued that in accordance with Section 22-2.b.2, Town staff requested that Town Council determine that the Plan was acceptable.

The Town Manager directed the Council members to a copy of the letter received that day from the property owner's attorney.

The Town Attorney recapped that at the previous week's committee meeting, the Council had instructed him to contact the attorney for the property owner, Mr. Small, who was present with the property owner. He summarized that the letter received dated February 28<sup>th</sup> was considered to be the plan received in response to Town Staff's notice, and it stated that they were relying on the insurance company to approve a claim and then remove the property. The Town Attorney related that he had called Mr. Small and advised him that the letter was not the plan that would be accepted by the Town Council, and that the matter was on the Town Council's agenda for discussion. He added that he had additionally discussed that the property was unsecured and that at the very minimum a fence should be erected. He reported that Mr. Small said that he would speak to his client about the matter, and when advised that the plan would not be accepted he had said that he would get back to the Town Attorney on Friday. The Town Attorney reported that he did not hear

back from Mr. Small and that he had called Mr. Small on the day of the Council meeting. He said that Mr. Small was responsive and he immediately sent another letter, but it did not include a timeline for debris removal, but there was a timeline included for the installation of a fence by Rosenbaum Fence Company by April 18<sup>th</sup>. The Town Attorney stated that it would be the decision of the Town Council whether the plan was acceptable or not.

Mayor Smith asked Mr. Small to come forward.

Mr. Small explained that the homeowners, Lenny and Chrissy Harris, were present at the meeting and reiterated that he was their attorney. He reviewed that the house had burned down when the homeowners were in the process of finishing home renovations and the home was listed for sale. He explained that the owners had left one evening, the fire had started during that night, and it was a total loss, leaving the homeowners devastated. He continued that they then turned the matter over to their homeowner's insurance carrier immediately and have also fully cooperated with the fire department and Virginia State Police. Mr. Small pointed out that fire had occurred at the end of October 2024, and when the homeowners received the letter on January 29<sup>th</sup> they turned it over to him in order to respond to the Town. He said that the insurance company started making requests for information from the Harris's almost immediately, to which they have cooperated with. He continued that the most recent request from the insurance company's attorney was a letter that asked for approximately 24 separate things that they wanted in preparation for a sworn statement under oath before their attorney, which had now been scheduled for April 14<sup>th</sup>. He noted that the insurance company was still investigating the Harris's claim, and therefore had they wanted to remove anything from the property they could not do so. Mr. Small reported that the homeowner's insurance would cover somewhere over \$600,000 of the loss, and they were stuck since the insurance company was continuing to demand information. He said that his personal belief was that the matter should have been settled long ago, and the property should have been cleared. He added that if they did not comply with every request from the insurance company, then they would give an excuse for the insurance company to deny the claim. Mr. Small reported that when they received the letter he had called Mrs. Clary to relate that they had thought they were near the end of the process and there was coverage in the policy to cover clearing the property. He said that his response letter had explained that their thought was that the Town knew that there was a plan in place where insurance would cover removal and that explanation was sufficient. He continued that Attorney Riddick had called him and brought up the concern of security of the property. He noted that the Harris's were in a difficult position that they did not want to be in, but when they discussed the use of a fence they had agreed to have one constructed. Mr. Small reported that Rosenbaum Fence Company was well-respected in the area and was aware that time was of the essence. He stated that he was asking the Council to approve the plan that would be to install a security fence, post no trespassing signs, and then allow the insurance claim to be completed before any further destruction of the property. He said that if the Town takes its authority as a blighted property and moves in to destroy the structure before the homeowner's insurance claim was resolved, then they would deny the Harris's the right to recover under their homeowner's insurance policy. He reported that he did not think that was what the determination of a blighted structure was intended to do, and emphasized that the property in question had not been ignored. He pointed out that the total loss was devastating to the homeowners, and carried an emotional toll



as it was the home in which Mr. Harris's parents had lived as well. Mr. Small acknowledged that the structure was not pretty to look at and if he was a neighbor he would want it cleaned up as well, but in that case he would also hope that neighbors understood the issues with the insurance company. He reported that they hoped that the Town Council would approve the current plan to install a 6 foot high security fence that would surround the destroyed part of the property. He added that they would move forward to press the insurance company to resolve the claim and clean the property up. He gave the reminder that it had only been 5 months since the fire, and related that this was the first time in all his years as an attorney that an insurance company gave a homeowner as difficult a time to recover their policy without giving reason. He reiterated that if the Town went forward to remove the blighted property, insurance would not cover them. He assured the Council that the homeowner's were doing everything possible to get the mess cleaned up, they fully understood that it was not pleasant for their neighbors to look at, and they fully understood the concern about security of the property. Mr. Small reported that there had not been security issues that they had been made aware of at the property, and at one time there had been "No Trespassing" signs posted, but without the fence.

Councilman Bowman reported that he was also a neighbor of the property in question. He reviewed that they were asking the Council not to move forward with the blighted property ordinance, but asked if Mr. Small would agree or disagree that if the Council were to take action, he could then forward the information to the insurance company which might prompt them to move along with their process.

Mr. Small reported that he thought that action might have the opposite effect, and that the company may use it to their advantage to decline coverage under the policy.

Councilman Bowman asked if there had been any finding from the investigating entities as to what had occurred that would give the Council pause to think that there may be a remedy to the situation soon.

Mr. Small stated that the fire department reports did not indicate the location of the fire, but the Harris's were told that the location of the fire was presumed to start on the back wall of the living room sometime during the night. He reported that during the fire suppression they had to take down a wall and it was his understanding that the wall impacted the ability to investigate. He noted that he had talked with the Virginia State Police Investigator, and as of then there was, to his knowledge, no information that there was anything untoward about the fire other than it had occurred. He stated that in other words there were no claims that the Harris's were responsible for the fire.

Councilman Bowman questioned when they may get a decision that would move the issue along, and recalled the concerns of Mr. Livengood.

Mr. Small repeated that they were supposed to complete sworn statements with their attorney on April 14<sup>th</sup>, and though he had not memorized the policy, they had already gone through the step of dealing with the initial adjuster and had given statements to the secondary adjuster. He continued that now they turned the matter over to the attorney and they had provided every bit of evidence requested. He said that it was his hope that after giving their sworn statements, a decision would quickly follow from the insurance company. Mr. Small did not deny that it was a blighted property in the sense that it was a terrible eyesore, but he also understood that the Harris's could



not tear it down until the insurance company was satisfied. He stated that the best way to get the insurance company to move along was to accept the plan he had presented, which included the installation of the fence, and then set the issue out for 90 days.

Councilman Bowman commended the Town Attorney for notifying Mr. Small of what needed to be done and the stop gap measure he had suggested was one step along the way of securing the property. He asked the Town Attorney if the Council declared that it was a blighted property, then would they have 90 days to take action.

The Town Attorney confirmed that number was correct, but suggested that they go into closed session so that they may discuss legal matters further.

Councilman Bowman made a motion to go into closed session to discuss legal matters with counsel. Vice Mayor Harris seconded the motion.

*The Town Council went into closed session at 8:45 p.m.*

*The Town Council returned to open session at 8:56 p.m.*

Councilman Bowman made a motion that they reconvene normal session and certify that only discussion of pertinent legal information had been discussed with legal counsel during closed session. Councilman Cutler seconded the motion.

Mayor Smith called for a collective vote. Seven members were on call for the vote, with all members voting aye and none opposed. The motion passed unanimously.

Mayor Smith asked the Town Attorney to advise on how they should proceed.

The Town Attorney said that based on their discussion he would like to recommend that the Town Council adopt the following resolution: the Council would defer action on the pending matter concerning the blighted property at 1502 Magruder Road provided that the owner would agree to the erection of the fence as proposed to include the damaged structure, the debris field, and the swimming pool, and further that the Town shall receive and be copied on correspondence from the owner's legal counsel to the insurance company advising them of the current status of that action pending before the Town Council and the urgent nature attached to it by the Council.

Mr. Small stated that the answer to both of the conditions was yes, and Mr. Harris had made certain of, at his request, that the fence would go completely around the property and include the back deck that was not damaged.

Mayor Smith observed that they had been given a recommendation by the Town Attorney and asked if there was a motion from the Council.

Councilman Bowman made a motion to adopt the recommendation as explained by the Town Attorney and agreed to by the Counsel of the respondent. Councilman Cutler seconded the motion.

Councilman Cutler stated that they needed to ensure that there was actually a plan so that it did not end in a blighted property offence.

The Town Attorney addressed the concern to Mr. Small by notifying him that the concern of Council had been that if they were going to submit a plan that it not simply be that the insurance company would handle the matter, and that they needed to know to the greatest degree possible what the plan was once the claim was approved.

Mr. Small recognized the Council's concern about the timeline involved. He reiterated that it was their hope that once the sworn statement session that was set for April 14<sup>th</sup> was held they would receive a decision with regard to the insurance coverage not long after. He acknowledged that ultimately if the insurance claim was denied then the homeowner's would have to figure out a way to deal with the blighted property and at least clear it. He said that they appreciated the Council's deference to allow them to at least exhaust the insurance coverage issue. He offered that they would report back to Council within 60 days.

The Town Attorney clarified that the Town Council was deferring action on the issue until May, with the idea that they would be hearing from the insurance company, the fence would be constructed, and they would hear a status report.

Councilman Bowman clarified that they were referencing the Town Council meeting for May which would be held the first Tuesday of the month.

Mr. Small stated that he would be happy to appear at May's meeting and give a status report.

Vice Mayor Harris asked for clarity regarding the second paragraph in the letter. He read "the fire-damaged portion will be surrounded at the above address pending conclusion of the insurance claim." He continued that later in the letter it states that the fence would be erected "on or before no later than April 18<sup>th</sup>, 2025." He noted that there seemed to be confusion between the two.

Mr. Small stated that they were stating that the fence would be installed no later than April 18<sup>th</sup>, and Rosenbaum Fence Company knew that it should be done as soon as possible. He clarified that the fence would remain in place until the insurance claim was resolved, as the claim should cover the cost of the debris removal. He stated that they would not remove the fence until the property was cleared. He reported that the contract for the fence had been signed for a year minimum, with it remaining up while the clearing was completed. He said that they would be happy to consult with Mrs. Clary to ensure that the clearing process met with the requirements of the Town.

Mayor Smith confirmed the motion and second. He called for the vote, with seven members on call. Councilman Bowman voted aye, Vice Mayor Harris voted aye, Councilwoman Butler voted aye, Councilman Brooks voted aye, Councilman Cutler voted aye, Councilwoman Bebermeyer voted aye, and Mayor Smith voted nay. The motion passed unanimously.

The Town Attorney addressed Mr. Small and stated that he hoped that he understood that the matter would be on the Town Council agenda for consideration every month until it was resolved.

Mr. Small stated that he fully understood and imparted to the Council that the Harris's were distraught by the whole situation. He promised to be at every Council meeting until the matter was resolved, and in-between to answer any questions that the Town Attorney may have.

#### **Approval of Town Council Summary Minutes from March 4<sup>th</sup>, 2025**

The Town Attorney said that he had reviewed the minutes and there was a correction needed for one speakers name, but otherwise recommended that they be approved.

Councilman Cutler made the motion to approve the summary minutes as revised. Vice Mayor Harris seconded the motion.

Mayor Smith called for the vote. Seven members were on call for the vote. Councilman Cutler voted aye, Vice Mayor Harris voted aye, Councilman Bowman voted aye, Councilwoman Butler voted aye, Councilman Brooks voted aye, Councilwoman Bebermeyer voted aye, and Mayor Smith voted aye. The motion passed unanimously.

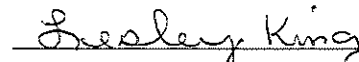
**New Business:**

There was no New Business discussed.

**Old Business:**

The meeting adjourned at 9:05 pm.

  
\_\_\_\_\_  
Michael Smith - Mayor

  
\_\_\_\_\_  
Lesley King – Town Clerk