

The Smithfield Board of Zoning Appeals held its regular meeting on Tuesday, December 17<sup>th</sup>, 2019. The meeting was called to order at 7:30 p.m.

**Members present:**

Mr. Christopher Gwaltney – Chairman

Mr. Gregory Brown – Vice Chairman

Ms. Catherine Bowden

Mr. Gene Monroe

**Members absent:**

Ms. Faye Seeley

**Staff members present:**

Mr. John Settle – Community Development & Planning Director

Mr. William H. Riddick III - Town Attorney

Mrs. Valerie Butler – Smithfield Town Council

There were two (2) citizens present. The media was not represented. Chairman Gwaltney called the meeting to order at 7:30 p.m. He recognized the new Board member, Mr. Gene Monroe, and thanked him for serving on the Board.

**Community Development & Planning Director's Report:**

Mr. Settle stated that he would be the secretary for the BZA for the foreseeable future. The final draft of the 2019 Isle of Wight County Comprehensive Plan was considered by the Isle of Wight County Planning Commission at its November 26<sup>th</sup>, 2019 meeting. The Comprehensive Plan is available for viewing online. The link was shared with the Board of Zoning Appeals members upon the distribution of the agenda packet.

**Upcoming Meetings and Activities:**

Tuesday, January 7<sup>th</sup> – 6:30 PM – Town Council Meeting

Tuesday, January 14<sup>th</sup> – 4:00 PM – Pinewood Heights Management Team Meeting

Tuesday, January 14<sup>th</sup> – 6:30 PM – Planning Commission Meeting

Tuesday, January 21<sup>st</sup> – 6:30 PM – Board of Historic & Architectural Review Meeting

Tuesday, January 21<sup>st</sup> – 7:30 PM – BZA Meeting

**Public Comments:**

There were no public comments.

**Board Member Comments:**

Mr. Monroe stated that he feels privileged to serve on the Board.

Chairman Gwaltney stated that the items on the agenda were advertised in the Smithfield Times on December 4<sup>th</sup>, 2019. The Board members did not find out there would be a meeting until December 10<sup>th</sup>, 2019. He asked Mr. Settle to notify them of a meeting as soon as the meeting is advertised since they do not typically meet monthly.

Mr. Settle asked if Item 6 could be heard first since the other applicants were not in attendance. The Board members agreed.

**Special Yard Exception (SYE) – 13458 Benns Church Blvd. – Miller Oil Company, Inc., c/o Lauren Sweeney, applicant.**

The applicants wish to make a series of improvements on the premises. These improvements entail the new construction of an approximately 5,185 square foot commercial

structure that will house a convenience store and restaurant (without drive-through facilities) to the rear of the property, the conversion of the existing convenience store located beneath the canopy into additional fuel pumps, the removal of the existing diesel fuel pump and canopy, and the creation of new off-street parking areas on and offsite. Prior to the submission of a site plan amendment application and an application for Entrance Corridor Overlay (ECO) design review, the applicants must first acquire a Special Use Permit (SUP) from the Town Council for a “waiver of parking and loading requirements” pursuant to Smithfield Zoning Ordinance (SZO) Section 3.I.C.30 in order to satisfy the additional parking demands from their proposed improvements. Elements of this waiver will apply to both 13458 Bennis Church Blvd and 13400-13474 Bennis Church Blvd. Additionally, the applicants must apply for a Special Yard Exception (SYE) pursuant to SZO Section 12.F.7.b for a 4.41’ reduction in the required, twenty foot (20’) rear yard setback. This is to accommodate the proposed commercial structure at the rear of the property. The resulting encroachment would total approximately four-hundred (400) square feet and would result in a reduced rear yard setback of 15.59’. Town staff recommends that this application be approved contingent on the applicants’ successful acquisition of all other necessary approvals and permits from the Town and any other regulatory agency. Since agenda packets were distributed, the applicant submitted a revised site plan. Very little differs from the site plan distributed in the packet. Town staff also would like to note that this encroachment abuts a large commercial area. It was a factor in influencing the staff recommendation for approval.

Lauren Sweeney with Kimley Horn gave a brief description of how the layout was decided on. She explained they wanted to keep a minimum depth to keep it as operational as possible for both the convenience store use and the restaurant use. She was available for questions from the Board.

Mr. Monroe had a question about the parking. He wanted to know, when the applicant was loading and unloading the store, where the trucks would park and if the trucks would infringe on the other parking areas for the other merchants.

The applicant explained that, currently, the fuel tractor trailer trucks park right over the tank field. They have other vehicles do the same when making deliveries of items for the convenience store. He stated that there should not be any encroachment into the other merchant’s parking area.

Vice Chairman Brown made the motion to approve the application contingent on the applicants’ successful acquisition of all other necessary approvals and permits from the Town and any other regulatory agency. Mr. Monroe seconded the motion. Chairman Gwaltney called for the vote.

On call for the vote, four members were present. Mr. Monroe voted aye, Ms. Bowden voted aye, Chairman Gwaltney voted aye, and Vice Chairman Brown voted aye. There were no votes against the motion. The motion passed.

**Special Yard Exception (SYE) – 105 North St. – Nicholas & Anita Goerger, applicants.**

The applicants wish to construct a new single-family detached dwelling on the premises. As the property is configured, the applicants would have to build around fifteen foot (15’) side yard setbacks, the one-hundred foot (100’) Resource Protection Area (RPA) and the one hundred (100)

year floodplain to the rear of the property, and a thirty-five (35') front yard setback. These restrictions result in an irregularly shaped building envelope of approximately one-thousand (1,000) square feet and would be constituted by a portion of the attached garage, the front porch, and nearly half of the proposed dwelling's interior living space. The resulting setback would be eighteen feet (18'), leaving enough room to accommodate the two (2) nine foot by eighteen foot (9' x 18') off-street parking spaces required under SZO Sections 8.C.1(b) & 8.E.29. The applicants have selected this permitting avenue due to the following factors:

- (1) The applicants do not wish to install impervious cover or initiate a land-disturbing activity within the RPA out of concerns that this may adversely impact the environment.
- (2) The applicants do not wish to construct any part of their home in the floodplain as they fear that this may endanger their lives and/or the lives of others.

Town staff will note that this lot is an existing legal nonconforming lot of record, having been platted in or prior to 1972, predating both the Chesapeake Bay Preservation Act (CBPA) of 1988, as well as the current zoning ordinance, which was adopted in 1998. This lot was occupied by a single-family detached dwelling until 2008, when it was demolished by the property's previous owner. Town staff recommends that this application be approved as submitted.

The applicant was not present to speak on behalf of the application.

Vice Chairman Brown stated that the house to the left of the proposed dwelling is almost touching the property line already.

Mr. Monroe presented some photographs of the property location.

Ms. Bowden asked if any of the neighbors had raised any concerns. Mr. Settle stated that they had not.

Chairman Gwaltney stated that the lot was right on the edge of the floodplain. He wanted to make sure that the applicant was fully aware of that. He believes they may need to take extra steps for the future to make sure they are protected in that location. Mr. Settle explained that he encourages all applicants, in or near the floodplain, to obtain flood insurance.

Mr. Monroe asked about the thirty-five foot (35') setback off the street. The Town Attorney explained that the thirty-five foot (35') building line is uniform throughout this zoning district. However, this section was developed before it was part of the Town of Smithfield. It was annexed and the Town imposed a new and modern zoning ordinance. It is not unusual for the Town to have situations with this type of conflict. Owners must come and ask for a special yard exception under these circumstances.

Chairman Gwaltney stated that there used to be a house on this property before. It has been demolished. The question for the BZA is whether allowing them to bring the house forward out of the floodplain is beneficial for the applicant and will not adversely affect the character of the neighborhood and the neighbors.

Vice Chairman Brown made a motion to approve the application as submitted. Ms. Bowden seconded the motion. Chairman Gwaltney called for the vote.

On call for the vote, four members were present. Mr. Monroe voted aye, Ms. Bowden voted aye, Chairman Gwaltney voted aye, and Vice Chairman Brown voted aye. There were no votes against the motion. The motion passed.

**Approval of the March 19<sup>th</sup>, 2019 Meeting Minutes**

The Town Attorney reviewed the minutes and made a couple of corrections. He recommends them to be approved as revised and corrected. Chairman Gwaltney made the motion to approve as revised and corrected. Vice Chairman Brown seconded the motion. Chairman Gwaltney asked all in favor say aye, opposed say nay.

On call for the vote, four members were present. Mr. Monroe voted aye, Ms. Bowden voted aye, Chairman Gwaltney voted aye, and Vice Chairman Brown voted aye. There were no votes against the motion. The motion passed.

The meeting adjourned at 7:50 p.m.

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Mr. Christopher Gwaltney  
Chairman

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Mr. John Settle  
Community Development & Planning  
Director