

The Smithfield Board of Zoning Appeals (BZA) held a continued meeting on Tuesday, March 22<sup>nd</sup>, 2022. The meeting was called to order at 6:30 p.m.

**Members present:**

Gregory Brown – Chairman

Tristan Barnes– Vice Chair

Faye Seeley

**Members absent:**

Gene Monroe

Christopher Gwaltney

**Staff present:**

Tammie Clary – Community Development & Planning Director

William H. Riddick III - Town Attorney

Russell Hill – Board of Historic and Architectural Review

**Press:** 0

**Citizens:** 6

Chairman Brown called the meeting to order at 6:30 p.m.

**Election of Officers for 2022**

The Town Attorney opened the floor to nominations for the Chairman of the Board of Zoning Appeals (BZA).

Chairman Brown verified that the Board members could not nominate themselves. The Town Attorney stated that this was correct.

Mrs. Barnes made the motion to re-nominate Gregory Brown as Chairman. The motion was seconded by Vice Chair Seeley. The Town Attorney called for a collective vote, all members present were in favor, with no one opposed. The motion passed.

The Town Attorney then called for nominations for Vice Chair of the BZA.

Chairman Brown asked Mrs. Barnes and Vice Chair Seeley if either of them would be willing to serve as Vice Chair. He nominated Tristan Barnes. Vice Chair Seeley seconded the motion. The Town Attorney called for a collective vote, all members present were in favor, with no one opposed. The motion passed.

Chairman Brown asked the Town Attorney if they would also need to appoint a Clerk.

The Town Attorney stated that they did.

Chairman Brown made a motion to reappoint Lesley King as the Clerk for the BZA. Vice Chair Barnes seconded the motion. The Town Attorney called for a collective vote, all members present were in favor, with no one opposed. The motion passed.

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

Tammie Clary, Community Development & Planning Director, offered to postpone the group photo of the BZA members that had been planned for after the meeting until all members were present.

Chairman Brown questioned if they would be able to take one as the BZA did not meet frequently.

Mrs. Clary followed up with the Board on information spoken about at the last BZA meeting regarding available trainings. She reported that the Virginia Commonwealth University has a Board of Zoning Appeals Program which will run from June 6<sup>th</sup> through August 8<sup>th</sup>.

Chairman Brown reported that there was an introductory class, then classes were self-directed, and had a closing class at the end.

The Town Attorney asked if it was held online.

Chairman Brown stated that when he checked it out a few years ago most of it had been online, with in-person sessions at the start and close.

Mrs. Clary stated that she was unsure if Covid had made them switch to an all-virtual curriculum.

Chairman Brown stated to the other members that if anyone was interested in taking the class, they would look into it.

### **Public Comments:**

Chairman Brown stated that there was one sign up for public comments, and the board would be happy to hear about any subject other than the subject of the scheduled public hearing for the Special Yard Exception.

Tracy Hayes stated that she had signed up to speak about the public hearing item and did not have any additional comments.

Chairman Brown called for any other comments, hearing none he closed the public comment section.

### **Board Member Comments:**

There were no Board member comments.

### **\*Public Hearing\* Special Yard Exception Application – Lot 182A Riverview Avenue (TPIN:21A-01-182A), Marvin Smith, applicant.**

Mrs. Clary stated that the applicants have applied for a Special Yard Exception (SYE) for an encroachment into the required (pursuant to Smithfield Zoning Ordinance (SZO) Section 3.D.F.2.A.2), ten foot (10'), side yard setback. This proposed encroachment would provide a side yard setback of six inches. This encroachment is constituted by a portion of the rear corner of the proposed single-family dwelling.

She reported that the encroachment would accommodate the proposed dwelling while also ensuring the least amount of encroachment of the dwelling on a Town easement; therefore, recognizing the obstacles present on this parcel, staff recommended the BZA make an accommodation for this parcel.

The Town Attorney asked the members if they understood the nature of the application, as it was a complicated issue.

Chairman Brown summarized that the applicants were building on an irregularly shaped parcel at the end of Riverview Avenue. He added that the second plat provided illustrated a line highlighted in yellow that showed a storm drain.

The Town Attorney stated that the applicant and the property owner were present, and he had been able to speak with them after the last meeting was continued. He reported that in the discussion held with Mrs. Clary and the applicant he was able to get a better understanding of the situation. The Town Attorney continued that the applicant had gone through a long process, and it was discovered that the Town of Smithfield has a drainage line that runs through their property.

Chairman Brown stated that he was familiar with this type of situation.

The Town Attorney reported that the Town did not have an easement for the drainage line. He stated that the solution would be either the Town remove it at great expense, difficulty, and duration, or give the applicant relief. He continued that the applicant had stated that they were willing to move the proposed dwelling over 5 feet so as not to encroach on the drainage line. He added that the applicant is willing to grant an easement to the Town of Smithfield for the existing drain line. He stated that in order to complete this the applicant cannot encroach on the easement and needed to move their dwelling over.

Mrs. Clary clarified that they would need to move the dwelling over by 10 feet.

The Town Attorney stated that the applicant adhering to this puts the dwelling 6 inches from the property line. He acknowledged that this was not much of a setback but added that the accommodation the Town of Smithfield is willing to convey the applicant with a strip of land to increase the size of the property in exchange for the easement. The Town Attorney stated that this situation was not of the applicant's making and it was the Town's fault, they were asking for relief so that they may proceed with construction.

Chairman Brown clarified that the second plat provided that included a sketch of the drainage line had the proposed dwelling prior to it being moved the 10 feet discussed.

The Town Attorney reiterated that the original application had shown the dwellings compliance with zoning guidelines, until the drainage line was discovered.

Chairman Brown summarized that to in order to get the proposed dwelling 10 feet from the drainage line so the Town could get an easement if there is ever maintenance needed, the house would need to be moved over which then makes it encroach into the side-yard setback.

The Attorney stated that this was correct and added that he wanted to explain it to them as it had to be explained to him as well.

Marvin Smith, the applicant, relayed that it had been a long process.

Chairman Brown stated that the first plat provided showed the storm drain, but not the drain line. He added that the house had been moved in the first plat, and inquired if the garage had been moved back in this plat as well.

The Town Attorney stated that he would be able to ask the applicant after the public hearing.

Chairman Brown asked Mrs. Clary if the 20 foot easement on the other side of the Lot 182A belongs to the Town.

Mrs. Clary stated that this was correct, it was Town property.

Chairman Brown stated that it was his understanding that 10 feet of the 20 foot easement would be conveyed to the property owner.

Mrs. Clary confirmed this and reported that it would be 10 feet from the point of the hour-glass shape going to Riverview Avenue. She continued that the Town would retain an easement on that 10 feet so they could access the property. She added that the Town would also be granted a 20 foot easement across the storm pipe, or 10 feet on either side of the pipe.

Chairman Brown asked how long the drainage line had been on the property.

The Town Attorney stated that they didn't know.

Vice Chair Barnes asked if the drainpipe was functional.

The Town Attorney confirmed that it was.

Chairman opened the public hearing on the Special Yard Exception Application. He stated the Board would hear from the applicant first as they had some questions.

Marvin Smith came forward to represent Mr. and Mrs. Owens, the property owners. He stated that they wanted to work with the Town of Smithfield so they would not have to move the pipe from the property. He expressed that it had been a lengthy process, they had even had a camera sent through the length of the pipe, and had surveyors map the exact location. He stated that they did not necessarily want to move the house to the left, but given that it is Town property adjacent they wanted to work it out so that they pipe would not have to be dug out and moved.

Chairman Brown confirmed with Mr. Smith that the garage would be moved back as a result of the pipe's discovery as well.

Mr. Smith stated that he would work with the Town Staff in ensuring that they are happy with the distance that the structures are off. He relayed that they had move it that far to the left and were just barely out of the way of the pipe.

Chairman Brown acknowledged that due to the shape of the lot, moving the structure back does not help as it gets narrower and the further back it goes the closer it gets to the Chesapeake Bay protection area. He inquired if the relocation of the garage was outside the resource area.

Mr. Smith confirmed that it was.

Chairman Brown asked the Board if they had any more questions for Mr. Smith. He asked Mr. Smith if the portion of the dwelling closest to the line was going to be a porch.

Mr. Smith stated that it would be the very corner of the house. He added that they had approval to put up a privacy fence which they needed to consider as well. He stated that they were looking for the extra land so that the corner of the house and fence would not cut off the property. He added that 6 inches of property between a house and fence was not enough to walk by.

Chairman Brown agreed with this and added that the footer would be sticking out.

Mr. Smith stated that essentially they were trying to help the community by getting the house looking nice, adding that they had been through the Board of Architectural and Historic Review (BHAR) approval process and then they ran into the drainage pipe issue.

Chairman Brown opened the public comments for the public hearing.

Tracey Hayes, property owner of 210 Riverview Avenue, came forward to discuss concerns she had with the stormwater pipe. She stated that the Town was going to grant an easement, and typically with easements permanent structures were not allowed to be built on them. She continued that it looked like the driveway was going to be built over the drainage pipe.

Mrs. Hayes continued that her concern was also with sea level rise and stated that the stormwater drain was important, adding that she did not want to see her neighborhood under water one day. She stated that she did not feel it was realistic to have a 6 inch setback on the property line. She continued that if they wanted to something else on the property, as 6 inches was not much space at all. Mrs. Hayes continued that she was concerned about the setback on that side of the property due to the community's use of that entrance to access Riverview Park. She added that she wasn't sure who was supposed to maintain this area, but the shrubbery was overgrown. She stated with the change in the property line it would be difficult to access the park from this area, and she speculated that the residents could use the entrance on Washington Avenue. She reviewed that the 10 feet that the Town would give the property owner was more of a trench, and she questioned if the residents of Riverview Avenue would be able to access the park from this area.

Mr. Smith stated that there would absolutely still be access as the Town of Smithfield would still own 10 feet of that property into the park. He reported that all of the lots on the cul-de-sac were owned at this time. He stated that the Town of Smithfield had an easement going from Washington Avenue that followed behind all the other lots to the park.

Mrs. Hayes questioned where this would be in proximity to the fence the property owners would be putting up.

Chairman Brown stated that Mrs. Hayes had a few more minutes to bring up her concerns, and they needed to be addressed to the Board.

Mrs. Hayes restated that her main concern was the construction of a permanent structure over the stormwater drain. She added that the stormwater drain was not new, and would ultimately have to be replaced.

Mr. Smith stated that he had some comments in regard to the concerns brought up.

The Town Attorney reminded all present the public hearing needed to be completed.

Chairman Brown asked if there were any other public comments on the issue.

Russell Hill, a property owner on Riverview Avenue, stated that he understood what Mr. Smith was trying to accomplish. He confirmed with Mr. Smith that the house was not going to be placed closer to the road than the normal setback allowed. He continued that Mr. Chapman owned the two empty lots at the end of the road, and that they were not really buildable lots. He stated that somehow the Town had been negligent in putting the pipe across the property, and added that building 10 feet to the left was not going to hurt a thing. He stated that they should let the applicant move on and build the house rather than going through the process of digging up the pipe. He reiterated that Mr. Smith was not going to hurt the neighborhood by moving the house to the left. Mr. Hill added that as long as the driveway is not asphalt or concrete then it can be accessed by the Town. He continued that if it was, then a waiver would need to be signed allowing them to access it just as the process would be if it was a gas line.

Chairman Brown asked if there were any other public comments on the issue. Hearing and seeing none, the public hearing was closed.

The Town Attorney addressed the concern with the driveway's construction over the pipe explaining that this was not an unusual occurrence with many properties set up this way. He stated that if the pipe fails the Town must go in, repair it, and put it back as it was all at the

Town's expense. He addressed the statement that the Town was negligent, stating that the Town is old and things were done differently many years ago. He reviewed that no one was really sure when it was put in or who exactly put it in, but it was there and needed to be accommodated as it served a public function.

Mrs. Clary clarified that the Public Works Department would be lining the pipe to protect its integrity.

Chairman Brown stated that he had personal experience with this issue as he also had a drainage pipe with an easement across his backyard. He added that this past year it had to be dug up and replaced with the Town regrading and reseeding his yard. He stated that it would be part of the easement agreement that the Town would have the right to dig it up, but they would have to restore the property condition when they are finished.

Vice Chair Barnes inquired as to how often the pipes were checked.

The Town Attorney stated that it would be checked as often as the rest of the pipes were checked. He stated that normally they were not worried about until there was a problem such as a clog or blockage. He reported that the Town had maintenance crews that routinely check to make sure they did not get clogged, particularly in the fall when leaves are falling.

Vice Chair Barnes stated that once the pipe is lined it would be further protected from developing issues such as leaks or cracks, and she did not necessarily have a problem with it.

Chairman Brown addressed the concern about access to Riverview Park, pointing out that there was another oddly shaped lot at the end of the street that he assumed was private property and added that it did not look buildable.

The Town Attorney confirmed that it was private property and agreed that it would be extremely difficult to build on the land.

Mr. Smith stated that he did not think anyone would be stopped from going through this area and the access to the park would still be there.

Chairman Brown stated that he knew of the overgrown shrubbery that Mrs. Hayes had referenced, but was unsure of the property's ownership.

The Town Attorney stated that this property was private and had a listed owner. He added that as long as the owner didn't care about people using it as an entrance it was ok, but again pointed out it was private property and not public access.

Chairman Brown made the motion to approve the application as presented.

The Town Attorney clarified that the motion was to approve the Special Yard Exception.

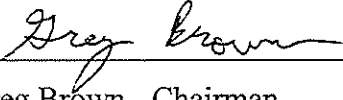
Vice Chair Barnes seconded the motion. Chairman Brown called for a collective vote, all members present were in favor, with none opposed. The motion passed.

### **Approval October 19<sup>th</sup>, 2021 Meeting Minutes**

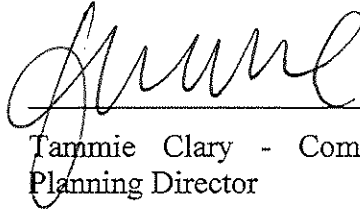
The Town Attorney recommended approval of the minutes with the inclusion of minor revisions and corrections.

Mrs. Seeley made the motion to approve the minutes with minor corrections as presented. Chairman Brown seconded the motion. He called for a collective vote, all members present were in favor, with none opposed. The motion passed.

The meeting adjourned at 6:59 p.m.



Greg Brown - Chairman



Tammie Clary - Community Development &  
Planning Director