

The Smithfield Planning Commission held its regular meeting on Tuesday, July 9th, 2019. The meeting was called to order at 6:30 p.m. Members present were Mr. Randy Pack, Chairman; Mr. Charles Bryan, Vice Chairman; Mr. Bill Davidson, Ms. Julia Hillegass, Mr. Mike Swecker, and Mr. Michael Torrey. Dr. Thomas Pope was absent. The staff members present were Mr. John Settle, Community Development & Planning Director and Mr. William H. Riddick, III, Town Attorney. There was (1) citizen present. The media was not represented.

Chairman Pack – Good evening ladies and gentlemen. Welcome to the Smithfield Planning Commission meeting of July 9th, 2019. We will start our meeting with the Pledge. Please stand.

Everyone present stood and recited the Pledge of Allegiance.

Chairman Pack – The first item on the agenda is the Community Development & Planning Director's Report with Mr. John Settle.

Community Development & Planning Director – Thank you, Mr. Chairman. There are only two items on the report tonight. The first is an update on a situation concerning a rezoning application that we had received. It was received on May 20th, 2019. Pursuant to the ordinance, we sent a determination of completeness to the applicants. This is where we assess whether or not the application submitted was complete. The initial letter sent to applicant was that it was not complete; however, following a conversation at the start of June, staff sent an updated determination to the applicant identifying ten items that were missing from the submittal. At this time, we have not received a follow-up submittal in response to this letter. We will keep the Planning Commission updated. It is for the large piece of property behind Royal Farms. The other item is an administrative update. The Director of Planning, Engineering and Public Works, Mr. William Saunders, has accepted a new position as Director of Planning & Community Development for Surry County. Since his departure, I have been promoted to Community Development & Planning Director.

Chairman Pack – Congratulations, Mr. Settle. We are glad to have you. Our next item is Upcoming Meetings & Activities. There is a list provided for you review. The next item is Public Comments. The public is invited to speak to the Planning Commission on any matter except for scheduled public hearings. We do not have any public hearings

tonight. No one has signed up but if anyone would like to speak please come forward.

Seeing none, we will move to Planning Commission Comments. Are there any comments from the Planning Commissioners?

Vice Chairman Bryan – I have a comment. During an application at the last meeting, I did not intend to offend anyone by an “off the cuff” comment that I made about the condition of a dumpster enclosure looking dilapidated. I was not sure what initiated the application. I was curious if it was a town code concern and if staff had notified them. Looking at it, I see that it was the owner’s initiative to do something about the enclosure. I just wanted to mention what the purpose of our zoning ordinances are. They are to promote the health, safety, and welfare of the Town of Smithfield. One purpose is to facilitate the creation of an attractive and harmonious community. I think that the applicant has taken the initiative on repairing that enclosure. This is the spirit of our ordinances. I wanted to apologize to the applicant for my comment and to anyone else I may have offended. Thank you.

Chairman Pack – Are there any other Planning Commissioner comments? Hearing none, we will move to Entrance Corridor Overlay (ECO) Design Review – 1229 Bennis Church Blvd. – 7-Eleven #37229, Inc. c/o Christopher Etter, applicant. Could we have a staff report please?

Community Development & Planning Director – Yes sir, Mr. Chairman. At its April 9th, 2019 meeting, the Planning Commission approved the applicants’ ECO design review application to replace an existing white wooden and polyvinyl chloride (PVC) dumpster enclosure, measuring 15’deep x 11’wide x 6’tall. The replacement dumpster enclosure would be made of wood, painted white, and will measure 15’deep x 13’wide x 6’tall. The applicant is now seeking to amend their initial approval by proposing that the doors to the enclosure be constructed of metal with a beige and black finish. The ECO design guidelines state that dumpster enclosures should “repeat the design elements of the primary building.” The proposed dumpster enclosure emulates a commercial building of no particular style; but the proposed colors would be consistent with colors visible on the primary building. Staff recommends that this application be approved as submitted. Thank you, Mr. Chairman.

Chairman Pack – Would the applicant like an opportunity to speak? If so, please state your name and address for the record.

Mr. Christopher Etter – I live at 2101 Whitley Park Court in Virginia Beach. If you have any questions, I will be glad to answer them.

Chairman Pack – Are there any questions for the applicant?

Ms. Hillegass – I am just curious about why you want to make this change.

Mr. Etter – When I returned back to my office, the Vice President of our branch informed me that the majority of the garbage truck men love to use their forks to push open gates and move gates out of the way instead of getting out of their trucks.

Ms. Hillegass – So, white is a problem.

Mr. Etter – Not white; but a wooden door to close it is the problem. It would get broken within the first month. It is why we wanted to change from wooden doors to steel doors. They will have a locking pin as you mentioned at the last meeting.

Mr. Swecker – The metal looks better.

Chairman Pack – Are there any other questions for the applicant? Hearing none, thank you Mr. Etter.

Ms. Hillegass – Mr. Chairman, I would move to approve as submitted.

Vice Chairman Bryan – Second.

Chairman Pack – A motion has been made and properly seconded. Roll call vote.

On call for the vote, six members were present. Mr. Davidson voted aye, Ms. Hillegass voted aye; Mr. Mike Swecker voted aye, Mr. Michael Torrey voted aye, Vice Chairman Bryan voted aye, and Chairman Pack voted aye. There were no votes against the motion. The motion passed.

Chairman Pack – The motion carries. You are approved Mr. Etter. You are welcome to stay for the rest of our meeting; but if you want to get back to Virginia Beach that is quite alright too. The next item on the agenda is a Discussion Item – Amendments to the Smithfield Zoning Ordinance; Event Facilities – Town of Smithfield, applicant. Could we have a staff report please?

Community Development & Planning Director – Thank you, Mr. Chairman. I sent you all quite a dissertation on this item. I am going to try and paraphrase it as best as I

can and take your questions afterwards. This is a text amendment to allow the events facilities use in the Town of Smithfield. We have examples of this that have survived, had non-conformities, or originated through other means since we have had zoning. The problem that staff seems to encounter, at least once every two months, is that we are approached by a business that is either entirely centered around or has some aspect of it that is focused on special events. This could be concerts, weddings, or a competition of some kind. Long story short, we have no way of permitting that use. We have use codes that kind of touch on the subject. For instance, a common one is indoor commercial recreation which is close but it was not all encompassing. What was even worse was that we did not have this use as an ancillary or accessory use. So for somebody opening up a restaurant who might want to turn it into a concert venue after a certain hour of the evening, we had no way of permitting it ultimately. This text amendment seems to remedy that situation. Ultimately, the text that we provide shows it being allowed as a by right use or a use permitted by a special use permit only in about eight base zoning districts. We see these throughout the text amendment as principle uses and accessory uses. Sometimes, we allow both in those zoning districts. This is to ensure a maximum amount of flexibility given the situation. Since I have been here since October of last year, I can think of three or four instances where we basically had to throw up our hands and not know how to permit a particular, proposed use.

Chairman Pack – Can you give us an example of one of those?

Community Development & Planning Director – Probably the most compelling example is the Hillstreet Baptist Church downtown. I certainly do not want to imply that it will never be a church again; but an events facility use, in my mind, is a use that can accommodate certain buildings that there might not be another feasible use for. It is just another added benefit of this text amendment. Another example is a place on S. Church Street that makes cakes. This was the first one I encountered. The owner wanted to have a couple of rooms in her business where she could teach classes on how to make specialty cakes. She wanted to lease certain rooms for small parties. It is zoned Highway Retail Commercial and we have no clear use code to accommodate her. It is a prime example. She is still there. She is selling cakes; but, at this time, we do not have

a permitting avenue for her to branch out into this event related use that she is asking for. It kind of summarizes the bulk of what we are proposing here.

Ms. Hillegass – Would she need one for each special event?

Community Development & Planning Director – No, ma'am. She would need it just for her business. In other words, we would classify that as a food service establishment with an event facility as an accessory use. If it is permitted by right in that zoning district, she does not need anything. If it is permitted by special use permit, she would have to apply for a special use permit. For her location, she would just use the accessory use.

Ms. Hillegass – What about during a holiday time with a tent in the backyard at the courthouse with wreath-making activities that charge a fee? Is that a special event?

Community Development & Planning Director – If it meets the definition of an events facility then yes.

Ms. Hillegass – What is the threshold? Would it be number in attendance or the fact that you are charging a fee?

Town Attorney – What are you asking?

Ms. Hillegass – There is an event downtown during the holidays and they make fresh wreaths. They do it in the backyard of the courthouse on Main Street.

Town Attorney – Based on what we are proposing with the ordinance when you get into the guts of this, an event facility in the downtown district would be a by right use as an accessory use. The primary use of the courthouse is not as an event center; but it would be permitted by right for an event facility as an accessory use.

Ms. Hillegass – So, what would they have to do?

Town Attorney – They would not have to do anything. Wreath-making would be okay. They can have that little event in the backyard and be fine.

Ms. Hillegass – What about Wharf Hill and their trivia night? What would they have to do?

Town Attorney – Nothing.

Vice Chairman Bryan - Is that even if they charge a fee?

Town Attorney – It does not matter. The primary function of Wharf Hill is a restaurant. If they are having an event as an accessory use, it is a by right use under the proposal that Mr. Settle has prepared.

Vice Chairman Bryan – You are saying that before this change the cake business on S. Church Street did not have this right; but how would she know that?

Community Development & Planning Director – I had to explain it to her.

Vice Chairman Bryan – Did she come to you with the idea?

Community Development & Planning Director – Yes, sir.

Vice Chairman Bryan – Otherwise, she could have just done it without coming to you.

Town Attorney – People do that all the time but it does not make it right.

Vice Chairman Bryan – No, it doesn't. I was just curious if something like that happened then what would we do?

Community Development & Planning Director – We would have to begin the violation process and let them know that it is not a use that is permissible in the zoning district. In her case, we would let her know that she can bake cakes and sell them all day long; but the accessory events facility use is not permitted.

Vice Chairman Bryan – Which is basically rooms within her business.

Community Development & Planning Director – Yes, sir. Basically, leasing her space for events.

Ms. Hillegass – So, it is the leasing of her space that triggers this.

Town Attorney – No. The leasing part has nothing to do with it. It is how you use a property that determines what the use is.

Community Development & Planning Director – There are a couple of other things that I want to address in the staff report. We evaluated, as part of this text amendment, the ordinance's compliance with what is called the Religious Land Use & Institutionalized Persons Act (RLUIPA). We chose to do this as part of this text amendment because the events facilities use and the uses addressed in this legislation are all assembly related uses. Ultimately, this legislation states that religious assembly uses cannot be on less than equal terms with non-religious assembly uses. Basically, it means that if there is a zoning district where Masonic Lodges are permitted but

churches are not then churches have to be permissible there as well. In our evaluation, staff determined that the zoning ordinance is compliant with RLUIPA. However, what this does kind of segway us into is another issue that we have been having. Some of these non-religious assembly uses such as Masonic Lodges are described throughout the ordinance in a slew of different use codes. They are meshed often with uses more like private clubs, boat clubs, and country clubs. I have gone through the whole ordinance and taken all of these uses and cut them in half. What I mean by that is that now we have two uses. One is civic fraternal and/or social organizational halls. This is to cover everything from a Moose Lodge to Masonic Lodge. The other one is boating, country club, and/or hunt clubs. This is to cover everything from a marina to hunt club. If you look, there are about seven or eight different use codes throughout the ordinance used to describe that. On top of this, we have defined each of those use codes. There were no definitions for these prior. An additional change concerns the church use code. There were about five different descriptors for churches in the zoning ordinance. We have eliminated all but the most commonly occurring one which is churches and places of worship. It just makes it less confusing. Lastly, this concerns the conference centers use. This is only found in three zoning districts in the zoning ordinance. We have eliminated it. We propose this because the proposed event facilities definition encompasses a conference center use. Ultimately, our recommendation is that staff encourages discussion among the members of the Planning Commission concerning changes that should be made to this proposed text amendment. If you feel comfortable, the recommendation is that we proceed with a public hearing next month. Thank you.

Vice Chairman Bryan – I just want to clear up something that was said. With this change, using the bakery as an example, she can use the extra rooms now for events but she still requires a special use permit.

Town Attorney – No.

Community Development & Planning Director – She is in the Highway Retail Commercial zoning district. Accessory event facility uses are permissible by right.

Vice Chairman Bryan – So, in the future with this change, she does not have to come to you to do anything with these extra rooms.

Community Development & Planning Director – No, sir.

Vice Chairman Bryan – I understand now. Thank you. It simplifies your work.

Community Development & Planning Director – It simplifies it for the businesses which I think is more important.

Chairman Pack – We are proposing to add event facilities to our zoning ordinances in an effort to clean up some of the confusion and make some adjustments to make it a little more user friendly and a little more business friendly. Staff has asked that we read through this and have some discussion about it. If we are comfortable with what is presented, we will send it to a public hearing next month or when it is properly advertised. The only question I have with the zoning ordinance and getting into an event facility is do we require any additional parking or minimum amount of parking? I remember when we addressed a home in the 300 block of Main Street. They could have up to fifty people without any required parking because they were zoned Downtown Neighborhood Residential. While that did not seem logical at the time, it was how our zoning ordinance was written and we really did not have a choice about it. I may suggest that if we look at event facilities that, perhaps, we tie in some appropriate parking measures to this if we have not already.

Mr. Torrey – It says something about one spot for every three people.

Community Development & Planning Director – If you look at Article 8, page 8, it is under Article 8, Section E, Item 3 which is the minimum required parking for event facility uses.

Mr. Torrey – I have a question especially if this goes to a public hearing. It is about the section on temporary signs as advertisement. Is that by permit or will they be able to put out signs?

Community Development & Planning Director – We actually exempt those from paying for a temporary sign permit; largely because we anticipate it is only up for three days and then it is gone. This is consistent with what we commonly seen in town. They are usually put up on Wednesdays for events on Saturdays. If there is an event center, we anticipate similar behavior with the temporary signs.

Chairman Pack – But they have to be on their property.

Community Development & Planning Director – Yes, sir.

Chairman Pack – But if they want to put up a sign for the Chick-A-Que somewhere that the Chick-A-Que is not happening then they have to get a temporary sign permit but we are not really discussing that at this point.

Mr. Torrey – So, if the lady wants to hold baking classes at her bakery in two weeks she is able to put out some kind of temporary sign to advertise it.

Community Development & Planning Director – As long as it complies with the temporary sign standards. I believe that I allowed for seven days prior to the event that they can have that sign out. Typically, what we see for temporary signs pertaining to an event is that the signs go up on Wednesday. It is why we do our sign roundups on Thursday.

Chairman Pack – Okay. We have allowed for temporary signage and one parking spot for every three people. Mr. Riddick, in the event that the house on Main Street came to us again for an event facility.....

Town Attorney – They would have to have a special use permit.

Chairman Pack – And with a special use permit, we can have anything we want to put on it. We will now have a minimum parking space to base the decision on.

Town Attorney – Mr. Settle and I have talked about this a little bit. With respect to the downtown district, we would probably have to think about this and allow a possible unique parking situation; whereas, they can make arrangements with adjacent properties nearby that would permit them to use the parking for the event. Downtown is a unique situation. There is only so much parking. I do not think we would require onsite parking for that. I think we probably would have to fashion a way to deal with it more creatively.

Mr. Davidson – The way I remember the Main Street house was that she went to Bank of America and asked to use their parking. Since it was after hours, they did not mind.

Town Attorney – That is the type of thing I am driving at Mr. Davidson.

Mr. Torrey – What if somebody wants to do something similar three doors down?

Town Attorney – Each application will have to stand on its own. If they cannot demonstrate that they have adequate parking when they need it then that would be the basis for saying no.

Chairman Pack – So, the downtown area would be a little bit different.

Town Attorney – We will have to look at that. As far as the parking requirement, it will be a pretty important driving factor in approving any sort of permanent event facility. With respect to downtown since there are no parking requirements anyhow, we may have to look and put a caveat or an additional condition that the town could consider offsite parking with suitable contractual arrangements.

Ms. Hillegass – I have a question about the music with the hours of 10:00 p.m. until 7:00 a.m. I know it is pretty standard. We have the same thing in Virginia Beach. It is not realistic. It is not really happening now. I can hear it from my back porch on a variety of evenings from a variety of venues. Is that realistic? Are we really going to enforce that? I am not saying I mind it because sometimes I enjoy the music from my back porch with a glass of wine.

Community Development & Planning Director – That section was actually copied directly from the town code.

Ms. Hillegass – It is pretty standard for a lot of other places but I do not think it is realistic at all.

Community Development & Planning Director – I think the appropriate thing for that is to mimic the actual town code.

Town Attorney – Yes. We talked about that too. The first thing I thought about was that it is not realistic. It is not realistic for the Smithfield Center.

Ms. Hillegass – I can hear noise from here, the winery, the Smithfield Inn, the Friday night concerts, and others. We can hear it all from my house.

Town Attorney – It seems to me that 11:00 p.m. might be more realistic.

Ms. Hillegass – As I said, I do not mind it.

Town Attorney – No; but if you are setting yourself up to fail and cause people to be in violation.....

Ms. Hillegass – If somebody wants to be a pain about it then they could.

Chairman Pack – I do not have any problem with that being changed to 11:00 p.m. but I would also like to change it to at least 8:00 a.m.

Community Development & Planning Director – Maybe it would be more prudent for me to change this to say “see town code”. We could then endeavor to change the town code.

Chairman Pack – I really do like the way the ordinance is written. It says where any noise is plainly audible across an adjoining property line. I thought that was a really good way of handling it.

Town Attorney – The town has talked about the problem with enforcing the noise ordinances. They are almost unenforceable because when you start setting decibel requirements and things like that it becomes a nightmare to enforce it.

Chairman Pack – I think those two times are a bit more realistic.

Mr. Torrey – With the event center on Main Street, the question will be asked of how late you will be playing music right next to someone’s house. If the town code says 11:00 p.m. then that’s it. They had weekend hours and weekday hours.

Town Attorney - It was a condition that they specifically agreed to. It does not matter what the ordinance says when they agreed to that.

Chairman Pack – Are there any other comments or concerns on these proposed changes? Is there any further discussion on these recommended amendments to the zoning ordinance?

Town Attorney – If that is the case then we will prepare it for a public hearing at the next Planning Commission meeting. I have one additional item before we move on along the same line. This has to do with our Historic Preservation Ordinance provision which seems to be a never ending controversy. I cannot remember whether I explained it to your or not; but I have explained it to everyone else. Nevertheless, we have a problem with our ordinance; in particular, the required maintenance provisions of our town code. In the Historic Preservation Ordinance, there is a provision that says you must maintain it. To make a long story short, the Virginia statutes which authorize the Historic Preservation Ordinance do not include that provision which means it is not legal or enforceable. So, we are going to work with the Board of Historic and Architectural Review and the Department of Historic Resources to come up with some amendments to our ordinance to make it more legal and enforceable. It will be coming back to the Planning Commission through this same process at some point in the future. In the

meantime, Mr. Settle, the Town Manager, and I are looking at a possible adoption of an ordinance that would permit the town to enforce the Virginia Uniform Statewide Building Code as to maintenance so that we can do it a different way without doing it through the Historic Preservation Ordinance. We could then do it through the Virginia Uniform Statewide Building Code. We are going to meet shortly and start discussing that and see if that will work for the town. It is just a heads up so you have an understanding of what is going on.

Chairman Pack – Just so I am clear, you are not trying to get rid of our ability to enforce our Historic Preservation Ordinance.

Town Attorney – Contrary to the popular opinion of the local newspaper editor, I do not advocate gutting the Historic Preservation Ordinance.

Chairman Pack – Very good. We have that on record now. Our last item for tonight is Approval of the April 9th, 2019 Meeting Minutes.

Town Attorney – I recommend approval as presented, Mr. Chairman.

Ms. Hillegass – So moved.

Mr. Swecker – Second.

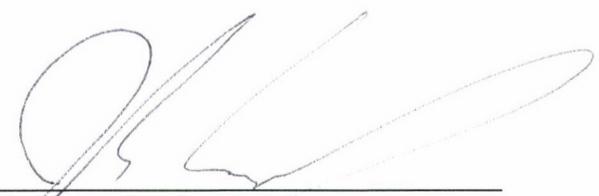
Chairman Pack – A motion has been made and properly seconded. All in favor say aye, opposed say nay.

On call for the vote, six members were present. Mr. Davidson voted aye, Ms. Hillegass voted aye; Mr. Mike Swecker voted aye, Mr. Michael Torrey voted aye, Vice Chairman Bryan voted aye, and Chairman Pack voted aye. There were no votes against the motion. The motion passed.

Chairman Pack – Ladies and gentlemen, we are adjourned.

The meeting adjourned at 7:15 p.m.


Mr. Randy Pack
Chairman


Mr. John Settle
Community Development & Planning
Director