

The Smithfield Planning Commission held its regular meeting on Tuesday, August 11th, 2020 at 6:30 p.m. at the Smithfield Center.

Members present:

Randy Pack – Chairman

Charles Bryan – Vice Chairman

Mike Swecker

Julia Hillegass

Thomas Pope

Michael Torrey

Lilton Marks

Members absent:

Staff members present:

John Settle – Community Development & Planning Director

William H. Riddick, III – Town Attorney

Tammie Clary - Planner

There were eight (8) citizens present. The media was not represented. Chairman Pack welcomed everyone to the meeting and everyone stood for the Pledge of Allegiance.

Community Development & Planning Director's Report:

Mr. John Settle reported that, on Thursday, April 30th, 2020, Town staff received an application for a comprehensive plan (future land use map) amendment, official zoning map amendment (rezoning), zoning ordinance text amendment, special use permit, and Planning Commission waiver for 19474 & 19502 Battery Park Rd (TPINs 22-01-017, 22-01-026, 22-01-028, 22-01-029, 22-01-033, 22-03-001, 22-03-002, 23-01-008 & 23-01-008A). Pursuant to Smithfield Zoning Ordinance (SZO) Section 4.D.1, Town staff reviewed the application for completeness and sent a Determination of Completeness to the applicants on Wednesday, July 29th, 2020, informing them that their application was complete. The same day, the applications were circulated to all reviewing agencies concerned, thereby initiating the mandatory thirty day administrative review process. At this time, the applications are anticipated to appear as a discussion item on the Tuesday, September 8th, 2020 Planning Commission meeting agenda.

Upcoming Meetings and Activities:

Tuesday, August 18th, 6:30 PM – Board of Historic & Architectural Review Meeting

Monday, August 24th, 3:00 PM – Town Council Committee Meetings

Tuesday, August 25th, 3:00 PM – Town Council Committee Meetings

Tuesday, September 1st, 6:30 PM – Town Council Meeting

Tuesday, September 8th, 6:30 PM – Planning Commission Meeting

Public Comments:

The public is invited to speak to the Planning Commission on any matters, except scheduled public hearings. Please use the sign-up sheet. Comments are limited to five (5) minutes per person. Any required response from the town will be provided in writing following the meeting.

Mr. Mark Christiensen of 400 Plaza Street, Richmond, Virginia spoke and protested against Smithfield Foods with five other members of the public.

Planning Commission Comments:

Vice Chairman Bryan stated that he walks at Windsor Castle Park. He has noticed that people often park on the grass at the dog park when the parking lot is not full. Mr. Settle stated that he would speak to Public Works and Parks and Recreation and see what could be done.

Mr. Settle asked to move to item #6 on the agenda since Summit Design was present at the meeting to give a report.

Presentation by Craig Wilson & Joel Webne of Summit Design & Engineering Services, PLLC on the 2020-2021 Smithfield Comprehensive Plan Update:

Mr. Settle explained that the Town is in the midst of the Comprehensive Plan update. The Town has contracted with Summit Design & Engineering to do the work.

Mr. Wilson stated that Summit Design has been working on the maps. Copies were distributed to the Planning Commissioners for review. The existing Comprehensive Plan is very lengthy and very detailed. The Summit Design maps include a corporate limit map, an existing land use map, a floodplain map, a wetlands map, an environmental constraint map, an existing zoning classifications map, and an existing zoning classifications map with the environmental conservation “overlay” delineated. Mr. Wilson recommended that the Town consider converting the environmental conservation district into a zoning overlay because it does not require the Town to practice split zoning for a long list of waterfront properties. The Town already has a historic overlay district and an entrance corridor overlay district. He asked the Planning Commissioners to supply input.

The Community Development & Planning Director stated that the overlay would probably be the biggest technical change to the Town’s planning map infrastructure. The environmental conservation district was created sometime in the 1970’s or 1980’s with two intentions. The first was to ensure that any development occurring in a floodplain was done to floodplain standards. The second was that it allowed for people who had received permits for piers to erect a pier without having to worry about setbacks as they would in a base zoning district. Most waterfront lots in Smithfield have the typical waterfront frontage someone would expect; but, sometimes, their actual waterfront frontage is only twenty feet wide. Mr. Settle explained that the environmental conservation district was created to make it easier for someone to erect a pier in those unusual cases. The technical changes that Summit Design outlined are the conversion of the environmental conservation district which is currently treated as a base district in Smithfield into an overlay district. The rules of the underlying zoning district are still there; but the overlay would have certain provisions in place to allow the same freedoms currently in

the base environmental conservation district. This would be the largest technical change to the maps.

Dr. Pope asked if the overlay district was based on the topography or elevation to define the borders. Mr. Wilson stated that the floodplain is determined by FEMA. It is relative to elevation; but not purely elevation. The lines for the 100 year floodplain have been adjusted which is part of the issue. A lot of the changes have to do with ratings for insurance. Another factor is wave action.

Chairman Pack asked what the issue was and why the Town is trying to fix it. Mr. Settle explained that the key issue is the environmental conservation district which is not an overlay. He stated that approximately 90% of all waterfront property in Smithfield are dual zoned. They are in more than one zoning district. It creates ambiguity as to when one set of standards apply over another set of standards. He explained that the Town would like to avoid dual zoned parcels whenever they can because it creates all sorts of complexities. The exception to the rule is during conditional rezonings when there is a general development plan when proposed lot lines are clearly outlined at the start of the process.

Chairman Pack asked about Mallory Pointe which has wetlands. Mr. Settle stated that 90% of the regulations that apply to wetlands apply to tidal wetlands. Non-tidal wetlands have different criteria. When it is a conditional rezoning, the Planning Commission has a very wide range of authority as to what can be asked for especially early in the application process.

Mr. Wilson stated that the maps are a work-in-progress. The current comprehensive plan is a complex document with sub-areas within districts. Comprehensive Plan amendments are necessary from time to time. Zoning has evolved over the last twenty years. He is looking at creative ways to deal with zoning issues with enough specificity to do the job; but enough flexibility to make the job easier. He asked the Planning Commissioners to give him some guidance about how the Comprehensive Plan updates would meet the needs of the Town.

Mr. Settle stated that the current Comprehensive Plan has a high degree of precision. It was done by a consulting company whose staff members were likely each assigned a sub-area. As an example, in some cases there are different sub-areas that are talking about much of the same thing, and yet, conflict with one another.

Vice Chairman Bryan asked if the plan could be simplified. Mr. Wilson stated that the goal would be to have specificity but also flexibility. Ms. Hillegass stated that the Town's plan is more complex than Virginia Beach's plan.

Mr. Wilson asked the Planning Commissioners to examine the maps that they had provided, and to channel their questions, comments, concerns, and ideas concerning them through Mr. Settle. Mr. Settle would then relay that information to him and Mr. Webne.

Entrance Corridor Overlay Design Review Application – 207 Battery Park Road, James River Mechanical, Inc. c/o Morgan Fitchett & Gregory Seely, applicants:

The applicant wishes to erect a thirty-five foot (35') tall ground set tapered aluminum flagpole to display an eight foot (8') by twelve foot (12') flag. The flagpole will be seven inches (7") thick at its largest diameter and feature one-hundred grit polish. It will be capped with an eight inch (8"), fourteen (14) gauge spun aluminum ball, anodized in gold. The flag

will be hoisted with a single sheave truck of cast aluminum and hung with two (2) bronze swivel snaps with covers. Two (2) bronze light-emitting diode (LED) accent landscape lights of twelve (12) watts will up-light the flag. Town staff recommends approval as submitted.

The applicant did not attend the meeting but was available by phone.

Mr. Settle explained that there was no indication as to what type of flag would be on the pole. However, the Planning Commission cannot make a decision based on what is put on the pole. There was no indication from Mr. Fitchett that it would be anything malicious or inappropriate.

Chairman Pack asked if it was malicious or inappropriate would the Planning Commission have any avenue to address that. The Town Attorney stated that it is his flagpole and he can fly any flag he wants from it.

Mr. Settle stated that the flag is eight feet by twelve feet. Since this is an Entrance Corridor Overlay Design review, the Planning Commissioners can limit the size of the flag.

Vice Chairman Bryan had concerns about what type of flag would be on the pole. He asked to call the applicant to find out. The Town Attorney stated that the type of flag to be flown is a First Amendment issue and is not something that the Planning Commission or Town staff can regulate. People are permitted to express their views. The only question is if the Commissioners like the flagpole and think it is appropriate.

Chairman Pack stated that he understood Vice Chairman Bryan's concern. Vice Chairman Bryan stated that his concern is the character of the Town since this is in the entrance corridor. The Town Attorney reminded everyone that the Commissioners are voting on the flagpole; not the flag that will go on it.

Mrs. Hillegass stated that the Town has no control over the content of the flag. She made a motion to approve the application as presented. Mr. Swecker seconded the motion. Chairman Pack asked if there was any further discussion. Vice Chairman Bryan asked what would happen if the flag was pornographic. The Town Attorney stated that there are obscenity laws that can be enforced. Vice Chairman Bryan asked what could happen if it were a Nazi flag. The Town Attorney stated that what some find offensive others do not. Content on the flag cannot be regulated due to the First Amendment. The decision was made by the Supreme Court.

Chairman Pack further explained that the applicant has a constitutional right to fly any flag and express himself. The Town would have no recourse unless it violated an obscenity law.

Chairman Pack stated that there is a motion on the floor which has been properly seconded. With no further discussion, he called for the vote.

On call for the vote, seven members were present. Mrs. Hillegass voted aye, Mr. Swecker voted aye, Mr. Torrey voted aye, Dr. Pope voted aye, Dr. Marks voted nay, Vice Chairman Bryan voted nay, and Chairman Pack voted aye. There were two votes against the motion. The motion passed 5-2.

Public Hearing – SZO Section 2.Z Text Amendment – Town of Smithfield, applicant:

The Community Development & Planning Director reported that there is nothing to address short-term rentals in any Town Ordinance. With current trends and the influx of Internet-based short-term rental housing markets, homeowners/occupants have the ability to rent their

entire house or portions (rooms), for a short period of time. These short-term rentals are usually for a week or weekend. We are aware that there are some short-term rentals currently being operated in Town. This text amendment will function as an avenue for these short-term rentals to legitimize their businesses. Additionally, by requiring a business license for all short-term rentals, residents will be allowed to openly report income for taxation purposes. To better serve and protect Town residents, Town staff propose the following text amendment to Article 2, creating Section Z. This text amendment to the SZO is intended to achieve the following:

- (1) The assurance of compliance with existing public and private legal infrastructure by requiring the operator to obtain a Town business license, assure service by a Virginia-licensed waste management facilities operator, and continued compliance with any other section of the Town Code and any private restrictions and covenants (i.e. owners' associations, etc.).
- (2) The creation of development standards by limiting the total number of rentable nights per calendar year to 104 nights, the total length of stay to no more than thirty days, and the prohibition of short-term rentals in accessory buildings and structures, among other standards.
- (3) The provision of an avenue for legitimization for those currently operating short-term rentals in the Town by requiring them to obtain a business license, enabling those operators to report their earnings as taxable income, which consequently expands the Town's tax base.
- (4) The empowerment of decision-making bodies (i.e. the Planning Commission and Town Council) by establishing them as stakeholders in the decision-making process—this is done through the proposed language in which short-term rentals not classified as “homestays” are required to apply for a Special Use Permit. This also ensures that there is necessary oversight above the administrative level in this permitting process.
- (5) The creation of necessary avenues for recourse, if violations are discovered.

In order to reach this end, this text amendment imposes provisions that are consistent with other localities, as well as best planning practices suggested by the Virginia State Bar. In order to ensure that these provisions are met, prospective operators will be required to complete, sign, and notarize an affidavit assuring all applicable provisions are adhered to. To remove ambiguity, the terms “short-term rental” and “homestay” will be added to the definitions in Article 13, Section B. A red lined version of the proposed language of this text amendment, as well as a draft version of the proposed short-term rental affidavit, accompanied the staff report. At its Tuesday, July 14th, 2020 meeting, the Planning Commission reached a favorable consensus on the application's return for a public hearing at its next regularly-scheduled meeting, so long as the following changes to the text amendment were made:

- (A) The proposed SZO Section 2.Z.1.c must be removed.
- (B) “...except upon the issuance of an SUP by the Town Council” must be added to the end of the proposed SZO Section 2.Z.1.e.

- (C) "...to include the transient occupancy tax" must be added to the end of the proposed SZO Section 2.Z.1.f.
- (D) Language must be incorporated into the proposed text amendment in which existing short-term rentals operating prior to the date of adoption of the proposed SZO Section 2.Z and which conflict with the standards contained therein may be approved administratively by Town staff following the operators' submittal of satisfactory evidence to the Town that they were operating prior to the date of adoption of the proposed Section 2.Z.
- (E) Town staff must consult with the Virginia Department of Health (VDH) to ascertain whether or not they have any role in the process of permitting and inspecting short-term rentals.

Town staff have incorporated the desired language from item "D" above into the proposed SZO Section 2.Z.2. Additionally, Town staff have consulted with VDH and found that short-term rentals are excluded from their definitions for both hotels and bed and breakfast facilities and are therefore exempt from permitting and inspection by the VDH. Lastly, items "A" through "C" have been incorporated into the proposed language. Town staff recommended a favorable report to the Town Council.

Dr. Pope asked for examples of a short-term rental. Mr. Settle explained that there are two categories; short-term rentals and homestays. Short-term rentals would be someone who buys a home and lists it on an app as a weekend resort home. Homestays are someone who lives in a home and wants to lease a bedroom. Homestays are, generally, permissible by right. Short-term rentals are permissible by a special use permit. A homestay would be an accessory to the primary residential use. The principal difference is that a homestay is an accessory use short-term rental. A short-term rental is a primary use short-term rental.

Vice Chairman Bryan asked about the sixty day language. Mr. Settle explained that the Planning Commission wanted language so that someone who was already operating would not have to get an SUP. The language can be removed at a future date if needed.

Dr. Pope asked if, in the definition of a homestay, the length of stay should be raised from thirty to forty-five days to accommodate workers in Town to assist with outages at the nuclear power plant. Most agreed that such a change, although it was an astute suggestion, would be unnecessary.

Chairman Pack opened the public hearing. With no public comments, he closed the public hearing.

Dr. Marks made a motion to favorably recommend the text amendment changes to Town Council as presented. Mrs. Hillegass seconded the motion. With no further discussion, Chairman Pack called for the vote.

On call for the vote, seven members were present. Mrs. Hillegass voted aye, Mr. Swecker voted aye, Mr. Torrey voted aye, Dr. Pope voted aye, Dr. Marks voted aye, Vice Chairman

Bryan voted aye, and Chairman Pack voted aye. There were no votes against the motion. The motion passed.

**Public Hearing - SZO Articles 3.A, 3.B, 3.C, 3.D, 3.E, 3.F, 3.G & 3.H Text Amendment –
Town of Smithfield, applicant:**

The Community Development & Planning Director reported that due to Smithfield Town Code (STC) Section 82-45, as well as the nature of ground source heating, ventilation, and air conditioning (HVAC) systems that require wells for operation, Town residents, prospective residents, and contractors are encountering situations where they cannot replace or install their ground source HVAC systems without first obtaining a Special Use Permit (SUP) from the Town Council. STC Section 82-45 reads: *Where a public water supply is available in the town it shall be unlawful to connect a residential or commercial structure to a private well or other water supply except as may be approved by the town manager on a temporary basis or by approval of a special use permit in accordance with the provisions of the town's zoning ordinance.* In order to ease the burdens and frustrations of prospective applicants, Town staff have generated a text amendment to Articles 3.A, 3.B, 3.C, 3.D, 3.E, 3.F, 3.G, and 3.H of the SZO, which would allow residents in all residential zoning districts to utilize wells for ground source HVAC systems, by right, without having to obtain an SUP from the Town Council. The language proposed in this text amendment would appear in tandem with the irrigation well use that appears in Section B, "Permitted Uses", in Articles 3.A, 3.B, 3.C, 3.D, 3.E, 3.F, and 3.G of the SZO. Additional language proposed in this text amendment would add wells for ground source HVAC systems to Section I, "Additional Regulations", in Articles 3.A, 3.B, 3.C, 3.D, 3.E, 3.F, and 3.G. Lastly, for reasons unclear to Town staff, irrigation wells were not included as a permitted use in the Downtown zoning district. This is a mixed-use district with a high concentration of residential properties. This text amendment would add irrigation wells and wells for ground source HVAC systems to Article 3.H, Section B, "Permitted Uses", in addition to Section I, "Additional Regulations". A red lined version of this text amendment was included in the pages immediately following the staff report. At its Tuesday, July 14th, 2020 meeting, the Planning Commission reached a favorable consensus on the application's return for a public hearing at its next regularly-scheduled meeting. Town staff recommend a favorable report to the Town Council.

Dr. Pope noted that there were two different types of ground-source HVAC systems, and asked if both would be included. Chairman Pack and Town Attorney Riddick stated that the proposed language does not exclude either configuration.

Chairman Pack opened the public hearing. No one spoke for or against the application. Chairman Pack closed the public hearing.

Mrs. Hillegass made a motion to favorably recommend the text amendment changes to the Town Council. Vice Chairman Bryan seconded the motion. With no further discussion, Chairman Pack called for the vote.

On call for the vote, seven members were present. Mrs. Hillegass voted aye, Mr. Swecker voted aye, Mr. Torrey voted aye, Dr. Pope voted aye, Dr. Marks voted aye, Vice Chairman

Bryan voted aye, and Chairman Pack voted aye. There were no votes against the motion. The motion passed.

Approval of the Tuesday, July 14th, 2020 Meeting Minutes.

The Town Attorney recommended the minutes be approved as presented. Mrs. Hillegass made a motion to approve the minutes. Mr. Swecker seconded the motion. Chairman Pack called for the vote.

On call for the vote, seven members were present. Mr. Torrey voted aye, Dr. Pope voted aye, Mrs. Hillegass voted aye, Dr. Marks voted aye, Mr. Swecker voted aye, Vice Chairman Bryan voted aye, and Chairman Pack voted aye. There were no votes against the motion. The motion passed.

Chairman Pack asked if the Planning Commission could be assigned a police officer for future meetings. Mr. Settle and the Town Attorney stated that they would take care of that. The Town Attorney stated that the officers obtained the protesters' information. He will be sending them letters stating they are banned from Town property until further notice. They are a militant environmental group who are opposed to Smithfield Foods.

Dr. Marks asked if the Commissioners could think about future actions for someone who puts up a flag, banner, or sign that might be offensive to some. The Town Attorney stated that the First Amendment protects freedom of speech. Dr. Marks asked if there was any way to act on offensive or out-of-line content. He understands the First Amendment; but what about everyone's right to the First Amendment. He explained that everyone is coming to a point of having to look at what is not only offensive but what is disruptive. A segment of the community is being offended. He believes we are all in an era where everyone has to start thinking about what to do to live together in harmony.

Mrs. Hillegass expressed agreement with Dr. Marks' concerns, citing her recent surprise with events in the Commonwealth and the country at large, but acknowledged with restrained frustration how the First Amendment prevented Smithfield, and any other locality, from acting on content-based enforcement matters.

Chairman Pack stated that he understood and respected Dr. Marks' remarks. He did not believe anything offensive would be on the flagpole. The applicant who requested the flagpole has been known to Chairman Pack for a long time. He assured the Commissioners that he believes he will have an American flag on the pole.

2020-2021 Planning Commission Group Photograph:

The Planning Commission group photograph was taken for the website.

The meeting adjourned at 8:15 p.m.

