

The Smithfield Planning Commission held its regular meeting on Tuesday, December 13<sup>th</sup>, 2022, at 6:30 p.m. at the Smithfield Center.

**Members present:**

Charles Bryan – Chairman

Julia Hillegass – Vice Chair

Dr. Thomas Pope

Raynard Gibbs

Michael Swecker

**Members absent:**

Michael Torrey

Randy Pack

**Staff present:**

Tammie Clary - Community Development & Planning Director

William H. Riddick, III – Town Attorney

Mark Kluck – Planner

Valerie Butler – Councilwoman, Town Council

Jeff Brooks – Councilman-elect, Town Council

Nadya Jaudzimas – Administrative Assistant

**Press:** Stephen Faleski – The Smithfield Times

**Citizens:** 0

Chairman Bryan welcomed everyone to the meeting and asked that all in attendance stand for the Pledge of Allegiance.

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

Tammie Clary, Community Development and Planning Director, reported that there would be elections at the next Planning Commission meeting, January 2023. She stated that there had been updates made to the Town's website in order to make Historic District information more interactive and detailed for citizens. She directed the Commission members to electronically access the web page included behind the PDF to see the information.

Chairman Bryan inquired if the information provided was based on tax plat codes.

Mrs. Clary reported that the information provided did include tax map ID and when the pop-up was visible provided additional information for users.

**Upcoming Meetings and Activities:**

Tuesday, December 20th, 6:30 PM – Board of Historic & Architectural Review Meeting

Tuesday, December 20th, 7:30 PM – Board of Zoning Appeals Meeting

Tuesday, December 27th, 3:00 PM – Town Council Committee Meetings

Tuesday, January 3rd, 6:30 PM – Town Council Meeting

Tuesday, January 10th, 6:30 PM – Planning Commission Meeting

**Public Comments:**

Chairman Bryan explained that the public was invited to speak to the Planning Commission on any matter, except scheduled public hearings, and to 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.

There were no public comments.

**Planning Commission Comments:**

There were no Planning Commission Comments.

**\*Discussion Item\* SZO Article 2.AA Text Amendment – Town of Smithfield, applicant.**

Mrs. Clary reported that at its Monday November 7<sup>th</sup>, 2022 Planning Commission meeting Town Staff provided draft language to the amendment for review. She continued that at the request of the Planning Commission, Town staff deleted Section AA.1.b.i. excluding pump stations and other public utility structures, which are to be dedicated to the Town and Section AA.1.b.ii. exempting State and Federal buildings. She stated that a red lined version did follow the Staff Report for the Commissions review. Town Staff recommended a robust discussion and a favorable consensus on the return of the application as a public hearing for Planning Commission.

Chairman Bryan reported that there had been a robust discussion at the previous Commission meeting and inquired if anyone would like to make any additional comments.

Dr. Pope reported that he was happy with the results of the conversation and ensuing changes made. Vice Chair Hillegass agreed.

Chairman Bryan stated that he had an administrative question and asked about the use of different colors in the redline version.

Mrs. Clary reported that the colors added in were to differentiate the updated wording by Town Staff from the wording in the original draft.

Chairman Bryan inquired if there was any further discussion and if the amendment should be recommended to Town Council for consideration.

The Town Attorney reminded Chairman Bryan that a having a Public Hearing was the next step in the process. He added this could be advertised for next month's Planning Commission meeting and did not require a motion.

Chairman Bryan received collective affirmative answers from the Commission members that the text amendment should be recommended for public hearing next month.

**\*Discussion Item\* SZO Article 2.P.17 Test Amendment – Town of Smithfield, applicant.**

Mrs. Clary reported that this agenda item was a continuation of the discussion from the previous Planning Commission meeting. She gave the reminder that Section P.15 of Article 2 addresses portable storage units and P.16 of Article 2 addresses construction debris containers, adding that they allowed for a maximum of 60 days with a Zoning Permit waiver after which time a zoning permit must be obtained for up to an additional ninety 90 days of use. Mrs. Clary proposed that Section 17 of Article 2 include that shipping containers are considered accessory structures for setback placement purposes and shall not be utilized as a primary building or dwelling. She continued that staff also included shipping containers were permissible in the Light Industrial (I-1) Zoning District, Community Conservation (C-

C) Zoning District, and Highway Retail Commercial (HR-C) Zoning District, only after the successful acquisition of a Special Use Permit (SUP). She also stated that staff had included the statement that at no time shipping containers be stacked or used for habitation without the successful acquisition of a SUP. She reported that this would give the Commission the ability to review an application and decide whether or not they approve with any conditions.

The Town Attorney inquired if there was any language included in the document that stated that an SUP for habitation could be completed.

Mrs. Clary repeated that the way that the document had been written at no time shipping containers be stacked or used for habitation without the successful acquisition of a SUP. She recalled that Mr. Pack had previously discussed certain businesses using stacked containers in innovative ways, specifically mentioning use in the Pinewood area, and Town Staff did not want to preclude the item if it was something that the Planning Commission would be interested in exploring further.

The Town Attorney inquired if they then would need to include a provision for that in the Special Use section under those zoning districts.

Mrs. Clary explained that the language regarding acquisition of an SUP was highlighted in the color purple as it was added by Town Staff after the discussions held at the last Planning Commission meeting. She continued that it was highlighted so that the Commission could decide if they wanted this condition included in the final draft. Mrs. Clary added that they had also kept in mind that the Smithfield Fire Department does use stacked shipping containers for the use of training. She stated that in the draft shipping containers were a by-right use in I-2, a use permitted by SUP in the I-1, as use permitted by SUP in the CC, and as use permitted by SUP in HRC. Mrs. Clary explained that Town staff had also included the previous definition of a shipping and portable storage container as well as the updated definition per the Planning Commission recommendations.

Chairman Bryan stated that suburban residential and urban residential had been left out of the draft. He asked for confirmation that there was no proposal to add shipping containers to residential zoning. He additionally asked for confirmation as to why certain areas were highlighted in the color green.

Mrs. Clary reported that Town Staff had color coordinated certain localities to make it easy for the Commission members to reference the relevant information.

Chairman Bryan surmised that many of the comments were part of a compilation of information from other localities.

Mrs. Clary stated that this was correct and added that the color coding on the staff reports was not reflective of the color coding on the attachment included. She added that the color coding was included so that the Commission could see what had been changed since the previous meeting.

Dr. Pope stated that he had a comment that may or may not apply and gave the example of units that were used as food stands at the outlet malls in Williamsburg. He continued by giving the hypothetical situation of requesting permission from Mr. Little to place such a unit in Little's parking lot for three months in the summertime to sell hot dogs and inquired by asking how something like that would be regulated.

Mrs. Clary reported that the Town did have a regulation for food trucks that required the acquisition of a peddler's permit. She continued that payment would be based on how often the applicant would like to have their permit in place. She reported that more permanent structures had not been

encountered in Town as of this time.

Dr. Pope again referenced the previous hypothetical food vendor stating if the applicant had a storage unit without wheels that they set down with the intention to leave it. He stated that in this situation the structure was in a gray- zone between a food truck and a storage unit.

The Town Attorney stated that the situation described could not be done without an SUP.

Dr. Pope thanked the Town Attorney and clarified that he just wanted to ensure that they were thinking about the possible situations that may arise.

Vice Chair Hillegass pointed out that it could be done with an SUP.

The Town Attorney stated that this is why SUPs were valuable. He continued that the requirement of an SUP made it so that the Commission had to review the proposal and if the plan made sense, looked good, and was an asset it could be approved. He added that if it was not those things then they could say no.

Dr. Pope reiterated that he wanted to ensure that they were covered in the gray-zone he had mentioned.

Mr. Swecker inquired about what type of permit a gentleman with a pop-up trailer selling hot dogs a few years back had.

The Town Attorney recalled that the particular vendor had the appropriate operational permits.

Mrs. Clary stated that she believed that vendor had a peddler's permit, under which food trucks were categorized.

The Town Attorney outlined that an issue with food trucks were that they were trendy and people enjoyed them, but merchants did not as they were competition at less of an expense.

Vice Chair Hillegass stated that they could be looked at as a gateway enterprise as sometimes a business starts off as a food truck, then is able to expand into a brick and mortar, using the example of The Coffee Cube in Town.

Mr. Gibbs gave personal insight into the running of a food truck, pointing out that they were required to be tied to a commercial kitchen, or commissary, and if commissary rights were not allowed then food trucks would be excluded.

Dr. Pope reported that he was happy overall with the way that the ordinance had been written.

Vice Chair Hillegass agreed.

Mrs. Clary asked to review what the Town Attorney had mentioned previously that storage containers were prohibited for primary buildings or dwellings, but the way it had been drafted was that storage containers could be stacked and used for habitation with successful issue of an SUP. She reiterated that it could not be for a primary dwelling but would be applicable for an accessory structure.

Dr. Pope reported that he was ok with the inclusion as long as they required an SUP.

Chairman Bryan added that it must be a commercial structure.

Mrs. Clary reviewed that Community Conservation was technically a residential zoning district but was primarily agricultural in this area, so it was permitted with an SUP in those areas.

Chairman Bryan asked if they could be stacked.

Mrs. Clary reiterated that they could only be placed or stacked with acquisition of an SUP. She explained that the idea in this type of zoning was to provide storage for agricultural necessities.

Chairman Bryan inquired if there was a limit placed on how many could be stacked.

Mrs. Clary reported that the ordinance was not specific which is why an SUP was required. She

gave the reminder, as the Town Attorney had pointed out, that the Planning Commission could also put special conditions on the SUP.

Dr. Pope speculated that a farmer would not be stacking storage containers.

The Town Attorney gave the reminder that they only place storage containers could be placed, with an SUP, would be in Community Conservation zoning. He added that in other zoning areas there was potential business uses.

Chairman Bryan inquired about the inclusion of the City of Norfolk's definitions of Industrial – Waterfront and Industrial – Deep Water in the supporting materials as Smithfield did not have any areas that fit those descriptions.

Mrs. Clary clarified that the Town Staff had included information from other localities to give examples of how shipping containers are addressed in other areas.

Chairman Bryan confirmed that all of the language used in the examples would not be included in the final draft and were for informational purposes only.

The Town Attorney reported that if the Commission members were comfortable with the draft provided, then a public hearing could be advertised to be held at the next Planning Commission meeting on the issue.

Chairman Bryan asked for confirmation that the next step in the process was not to recommend to Town Council for public hearing.

The Town Attorney reiterated that the next step needed to be a public hearing at the Planning Commission level and after considering the outcome the Commission members would make their recommendation at that time, whether it be to make changes or for it to be sent to Town Council favorably.

Chairman Bryan made a recommendation for a public hearing at the next Planning Commission meeting as presented.

#### **\*Discussion Item\* Developmental Density**

Dr. Pope recalled back to discussions held at previous Planning Commission meetings regarding Mallory Point and density. He stated that development needed to be addressed before it happens. He discussed the possibility that a developer could draft a plan for a development based on the Town's ordinances, and if the Commission rejected that plan as it was too dense then he felt that outcome was not satisfactory. He stated that to limit that issue arising he felt that the Commission needed to address the density currently allowed within the Town's ordinance. He reported that in his opinion the density currently permitted in Community Conservation, Neighborhood Residential, etc. was too high.

Dr. Pope used Mallory Point's usage of the current zoning ordinances when they came for approval at the Planning Commission to illustrate this point. He reviewed that two parcels of the proposed development of Mallory Point had already been zoned as Neighborhood Residential which allows for 2 units/acre with the rest being zoned as Community Conservation, except for the environmental conservation easement. He continued that the developer had 261.5 developable acres included the Mallory Point plan. Dr. Pope recalled that his argument at the time was that with these density allowances in mind, the developer could build 594 homes on his property before the proposal reached the Commission. He additionally recalled that the developer had wanted the property rezoned to be Attached Residential and Suburban Residential Cluster and had asked for this prior to his being

granted the rezoning change. He pointed out that had this occurred, the developer could have built many more homes, giving the example of the developer building 1451 homes with how much density is currently allowed for that type of zoning. Dr. Pope added that the developer had first proposed 1100 homes, but ultimately changed this to 812 which is still many homes. He expressed concern that if the property had been zoned as Multi-family Residential, the developer could have put in 3138 units. He stated that it was his opinion that this was too dense and wanted to bring the discussion of density, specifically if it needed to be changed, to the Planning Commission. He gave the clarification that this would only be in regard to Residential Zoning and not Commercial Zoning. He added that he felt that if there were going to be future developmental parcels that the ordinance should be more restrictive of how many units would be allowed, and the way to have this completed would be before a development was proposed before the Commission. Dr. Pope pointed out that if you look at the information provided on the density allowed by other localities for comparison, the Town is not far off from that. He reviewed that the Planned Mixed Use District (PMUD) designation included a mix of commercial and residential, adding that he felt that the Commission needed to also consider a Mixed Residential type of zoning ordinance that would address different residential densities allowed on a property.

The Town Attorney stated that the way that the Commission could limit the density is to just say no, adding that the Commission did not have to re-zone.

Dr. Pope acknowledged that the Commission did not need to re-zone, but gave the reminder that a person had a right to do what they wanted with their land.

The Town Attorney clarified that a person had a right to do what is currently zoned for on their land. He added that a person only gained additional rights with what they were able to persuade the Commission to allow. He reported that he had never seen an example where a maximum density limitation was enforced.

Chairman Bryan inquired if this would be an amendment to the zoning ordinance.

Dr. Pope stated that if approved it would need to be an amendment to the zoning ordinance because he was asking to change the density allowed in the ordinance. He added that the way to limit density was not allow a large amount up front. He used developers requesting Community Conservation zoning to be change in order to be developed as an example.

The Town Attorney pointed out that the ordinance currently had Community Conservation at a limit of 1 unit/acre with a maximum of 5 units.

Dr. Pope asked for clarification on the meaning of the statement.

The Town Attorney reviewed that the zoning ordinance currently read that Community Conservation allowed 1 unit per net developable acre by special permit only for not more than 5 residential lots. He gave the hypothetical example of owning 100 acres, he could get 5 lots.

Chairman Bryan asked for clarification if the number was 5 lots / acre or 5 lots/100 acres.

The Town Attorney clarified that number of acres did not matter and using the example of 261 acres in Mallory Point stated that they would get 5 lots. He added that in the case of Mallory Point, the developer already had some leverage as it had already been zoned for a subdivision with large lots. He added that when the numbers are compared with the surrounding localities, Smithfield is not overly generous in regard to density.

Dr. Pope agreed but added that Smithfield is very different to other localities with residents frequently concerned with keeping the small-town charm of the Town. He stated that one way to ensure

that characteristic is kept is by being more restrictive with density.

The Town Attorney hypothesized that if a developer came to the Commission and proposed 261 acres of Multi-family Residential, the answer would likely be no. He continued that this was the job of the Planning Commission and the Town Council.

Dr. Pope pointed out that applicants are still requesting Attached Residential, even within a development, which drives the density higher. He reiterated that his goal was to protect the Town from becoming too dense.

The Town Attorney read from the information provided regarding other localities density allowances. He reported that Isle of Wight allowed 14 units per acre for Multi-family Residential.

Dr. Pope stated that his point was that it was becoming awfully dense in the areas surrounding Smithfield.

The Town Attorney continued reading from the information provided and reported that in some cases Suffolk is up to 40 units per acre. He made the point that Smithfield did not have anything like that in their ordinance.

Dr. Pope explained that when the owner of a property comes before the Commission to ask for a zoning change to pursue development in one of the different zoning categories, his immediate thought is about what is the total number of units that would be reasonable. He stated that the Commission could work with the applicant on a reasonable number or just say no, but he felt that the landowner had a right to look at their land and make future plans. He acknowledged that if he didn't want a piece of land developed then he should buy the property himself and keep it under Community Conservation.

The Town Attorney gave the hypothetical situation of someone wanting to take 100 acres of land zoned under Community Conservation. He reported that in this situation with the zoning ordinance as it is currently written the least dense option would allow for 200 units. He continued that the discussion would be able to start at that point, but presently 2 units per acre on that size property would not be able to work due to the cost of infrastructure.

Dr. Pope agreed with this point, adding that it would discourage developments. He continued that in discussions held at Planning Commission meetings it seemed that residents did not want developments. He outlined that he felt that applicants should be limited before they even come before the Planning Commission. He speculated that a lot of citizens that came to the meetings to comment on developments looked at the subject as a "yes or no" situation, but he felt that there was more of a compromise in the middle.

The Town Attorney stated that if they were not in favor of apartments or multifamily residential, then the maximum density allowed should be decreased. He added that if this was done, nothing could be built as no developer could afford to build.

Dr. Pope asked for confirmation of what type of zoning had been granted to the property behind the Royal Farms.

Mrs. Clary responded that it was Multifamily Residential.

Dr. Pope inquired if he decided to change the development plan, would the applicant be able to multiply his acreage out by 12 units.

The Town Attorney clarified that the applicant could not get any more units than what had been approved by the Planning Commission.

Dr. Pope asked if the applicant scrapped the plan that had originally been approved and started

over with a new development plan, would the property revert back to its previous zoning.

The Town Attorney replied that it would not. He explained that zoning would not be changed until the Commission changed it. He expanded that if Dr. Pope hypothetically bought the property from the current owner he would be beholden to whatever the zoning and its conditions were at that time. He gave an example of a farm on Smith's Neck Road that was zoned 40 years ago as a golf course and single-family homes. He reported that part of the conditions of that property required water and sewer to be run to it, which Isle of Wight County would not allow. He added that the property is unchanged to this day as a result.

Dr. Pope acknowledged that much of what he was discussing due to his anxiety about whether people knew the law. He added that he wanted to ensure that the Town was protecting itself.

The Town Attorney encouraged him to look again at the density numbers he provided from the adjacent localities and pointed out that Smithfield was more conservative than most of them.

Dr. Pope questioned if they numbers should be even more conservative.

The Town Attorney stated that it would depend on what the Commission wanted. He explained that if they did not want any development that the numbers could decrease and there would be no development. He used the large lots on Smithfield Blvd as an example. He explained that the developer had gone bankrupt trying to build the roads, water, and sewer to this area as the lots were so big and did not have enough units on them to spread the cost. He added that the market changed, and larger houses were being built on smaller lots as a result.

Dr. Pope stated that he saw the market changing again, and he did not want to see attached residential, high-density structures. He stated that he understood that the Planning Commission retained its veto power.

The Town Attorney stated that Cypress Creek was a great example of the difficulty for developers to pay for lower density and larger lots. He reported that the neighborhood was zoned in 1989 and as of today was still not fully built out. He stated that the developer was determined to not change his standards. He added that the power to say yes or no was with the Planning Commission and the Town Council.

Dr. Pope stated that this answered his question.

Chairman Bryan stated that he felt that the current zoning ordinance worked. He reviewed the approval for Mallory Point and stated that he felt that if the developer had requested for the property to be zoned as multifamily residential that it would have never been approved.

Dr. Pope agreed that the current Commission would not have approved that type of zoning, but he added he did not know what it would look like in the future. He questioned how long the current density limits had been in place.

The Town Attorney stated that he was unsure of the year that the density allowances were put in place. He added that Dr. Pope's concern was real as due to the density in adjacent localities, many people were seeking to move toward Smithfield. He stated that the Planning Commission would be under more pressure from developers, but that they could ultimately say what would be allowed.

Chairman Bryan speculated that Smithfield would not see the type of high density that could be seen in adjacent localities.

The Town Attorney discussed the development of the Sweetgrass neighborhood on Yeoman Farms and the density that would be seen there.



Dr. Pope acknowledged that the Commission could not control the developments outside the area, but that they were in close proximity. He stated that the future for some of the large farm parcels in the Town was uncertain.

Chairman Bryan reiterated that the Town of Smithfield was much more conservation than Isle of Wight County.

Mr. Gibbs stated that he understood Dr. Pope's suggestion that they increase restrictions in order to keep the nostalgia of the Town intact. He pointed out that as the population grows, it is inevitable that the Town will change.

Chairman Bryan added that Smithfield would not change at the pace of the County, and there was not that much area left to develop within the Town.

Vice Chair Hillegass stated that the County's changes would impact Smithfield.

Mr. Gibbs echoed the Town Attorney's sentiment that people were coming this way as there was very little room left to build in the adjacent areas and as such there was a desire to make regulations more restrictive.

The Town Attorney stated that the Planning Commission needed to ensure that they got what they wanted when a development was proposed.

Chairman Bryan stated that the Commission already had this ability with current regulations.

The Town Attorney reported that he did not think the current density allowances were so generous that it was an invitation for more dense development.

Vice Chair Hillegass agreed. She reiterated that Smithfield was much more restrictive than other areas, and that the Commission needed to be strong about keeping their standard. She used the initial proposal for the Pierceville property as an example.

The Town Attorney stated that this was a good example. He reviewed that the proposed layout had not been bad, but the Commission did not like what the design would look like. He added that this was a good conversation for the Commission to have.

Chairman Bryan stated that he felt that Dr. Pope's point was well put, but he did feel that the Commission had the ability to adequately limit density in proposed developments.

The consensus from the Planning Commission members was that no further action needed to be taken as it was only a discussion topic at this time.

**Approval of Monday, November 7<sup>th</sup>, 2022 Meeting Minutes:**

The Town Attorney recommended the minutes be approved as presented.

Vice Chair Hillegass made a motion to approve the minutes as presented. Mr. Gibbs seconded the motion.

Chairman Bryan called for a collective vote. All members present voted aye, with none opposed. The motion to passed.

The meeting adjourned at 7:31 pm.

---

Charles Bryan - Chairman

---

Tammie Clary – Community Development &  
Planning Director