

The Smithfield Planning Commission held its regular meeting on Tuesday, September 9th, 2014. The meeting was called to order at 7:30 p.m. Members present were Mr. Bill Davidson, Chairman; Ms. Julia Hillegass, Vice Chair; Mr. Charles Bryan, Mr. Randy Pack, Mr. Larry Odom, Mr. Mike Swecker, and Dr. Thomas Pope. Staff members present were Mr. William T. Hopkins III, Director of Planning, Engineering, and Public Works; Mr. William H. Riddick III, Town Attorney; and Mr. William G. Saunders IV, Planner/GIS Coordinator. There were no (0) citizens present.

Chairman Davidson – I would like to welcome everyone to the September 9th, 2014 Planning Commission meeting. If everyone will stand, we will say the Pledge of Allegiance.

Everyone present stood and recited the Pledge of Allegiance.

Chairman Davidson – For those who would like to remain standing, Mr. Odom will offer a word of prayer.

Mr. Odom – Lord, we thank you for this opportunity to gather. We pray God that the decisions we make tonight are based upon wisdom and guidance that you provide us. Through your Son, our Lord, Jesus Christ, I ask this prayer. Amen.

Chairman Davidson – The first item on the agenda is the Director of Planning, Engineering, and Public Works Activity Report.

Director of Planning, Engineering, and Public Works – Thank you, Chairman. As you can see on the agenda there are only two items. Cypress Creek Phase 7-B and 7-C is under review. Staff has already commented on it one time but there will be a few more reviews to go through. Also, O'Reilly's Auto Parts is under review. It has been under review for a couple of months. Comments went back to them for the second time. We are looking forward to that expanding and finalizing. The Cypress Creek Phase 7-A is under construction. It is not on the agenda but I wanted to point that out.

Chairman Davidson – The next item is Upcoming Meetings and Activities. The Board of Zoning Appeals meeting is cancelled for this month. On September 16th the Board of Historical and Architectural Review will meet. The Town Council Committee meetings will be on September 22nd and 23rd. The next Town Council meeting is October 7th. On October 13th town offices will be closed for Columbus Day. Our next Planning Commission meeting will be October 14th. Next is Public Comments. We do

not have any tonight. Are there any Planning Commission Comments? Next on the agenda is Child Care Home Occupations Review. Could we have a staff report?

Director of Planning, Engineering, and Public Works – Thank you, Chairman. The child day care as a home occupation first started back in July 2014 with Town Council where that type business being ran out of their house. They had approximately nine children or maybe a few more. There were regulations that changed throughout the state where they had to get locality approval. They requested us to look into it and possibly make some changes to our ordinance. The Town Council felt that it was a step that we should look into. On July 8th the Planning Commission discussed the topic. The Chairman appointed a sub-committee which included Chairman Davidson, Ms. Julia Hillegass, Mr. Saunders, and I. Mr. Saunders and I had already did a lot of research on it and came up with different avenues compared to other localities. We compared it with other surrounding localities. The decision for the Planning Commission is to keep it as it is or make some amendments to our ordinance which would involve a special use permit.

Planner/GIS Coordinator – Good evening. I am going to go through some of the items that you have in your packet that we discussed at the subcommittee meeting. The home occupation that started this conversation they actually had twelve children in their home and they had two employees outside the family. The number of children and employees outside of the family were both in contradiction with the town ordinance. There are two prong recommendations that came out of the sub-committee either that the ordinance not be amended or that the Planning Commission explore a special use permit option for six to ten children. But one of the conditions that they put on that expiration of a possible special use permit was that it would also meet the existing requirements for home occupations such as the four hundred square foot, twenty-five percent of total area maximum of the dwelling to be used as a home occupation, and as well as the maximum of one non-family member as an employee. You have the home occupation section of the ordinance for your reference during your debate. The next item is a spread sheet that was put together by Mr. Joseph Reish, Planning Technician. This lists the criteria of some of the nearby localities as well as the Town of Smithfield on some of these points related to childcare as a home occupation. For the Town of

Smithfield the number is five by right but anything beyond five is prohibited. The maximum usage of the home as a home occupation is the limitation there. The state also differentiates between five or less children or six or more children. Six or more children require a license as a day care provider and five or less is effectively considered babysitting. In our ordinance it is somewhat backed by the state law in that regard. There was what seem to be a misunderstanding at the last meeting whereby the Oliver's mentioned that Isle of Wight County allowed twelve children without a special use permit. A couple of the Planning Commission members had determined that the number was five. Technically, they were both right. The number of children is five for Isle of Wight County that is just like ours by right for five children. Isle of Wight County has a unique opportunity which is not something that I would recommend for the Town of Smithfield. The County would issue a zoning permit for up to twelve children without a special use permit but only if the neighbors were notified and none of them complained. If any neighbor complained then it would be sent to the Board for a regular special use permit process. If none of the neighbors complained I think in thirty days then they would issue a zoning permit for up to twelve children. It is kind of a gray area between by right and special use permit. This is where the difference of opinion came from. Isle of Wight County also has a twenty-five percent floor area of the home as maximum for the home occupation. The Town of Windsor has five children without a special use permit or ten with a special use permit. Town of Windsor allows fifty percent of the floor area for home occupation. The City of Suffolk is very similar to ours. They allow five children by right. If there are more than five children it would require a commercial type day care facility setting. They do not have a restriction on the amount of the floor area that would be required for home occupation use. The next item is a section from the state code as it relates to licensed child care centers. This goes to the number of square feet the state requires per child in a day care center which kind of bears on our area limitations. If the home occupation or the child care facility was in use prior to 2008 then it is effectively grandfathered at twenty-five square feet per child. Anyone that began after 2008 then it would be thirty-five square feet per child. At the thirty-five square foot number our four hundred square foot limitation would not accommodate twelve children. It would take more than four hundred square feet that it would take to accommodate

twelve children at thirty-five square feet. I included the letter from the USDA Coordinator. I also included a copy of an article from the Smithfield Times which had some information in it that was not brought out at our last meeting in the public comments. There is a copy of the minutes from the last meeting that has Mr. Oliver's conversation before the Planning Commission had information on it. Other than the recommendation that came out of the sub-committee staff really does not want to provide any direction. We would like for the Planning Commission to give this a fair hearing. We just wanted to give you as much information as we could for you to make an informed decision as we could. Are there any questions?

Chairman Davidson – I really am grateful for the work that staff does on these things. Being on the sub-committee Ms. Hillegass and I saw this stuff before. It really does help when all of this information is ferreted out by the staff. Our suggestion from the sub-committee was that we have an issue that is basically two pronged. The first is that we do nothing. The second is that we amend the ordinance for a special use permit but limit it to ten children which would qualify for the four hundred square feet and probably more manageable. I guess that is what we need to discuss and figure out where we are going to go from here. We need to decide which of those two we want to pursue or if anyone else has another suggestion.

Dr. Pope – If they have more than five children then they have to go through the state for licensing and meet all of those criteria. What do we do about the existing households that have less than five? Do they need a business licenses?

Director of Planning, Engineering, and Public Works – They do need a business license from the Town of Smithfield. We cannot issue a business license for any resident that has more than five children.

Dr. Pope – But everybody is required to have a business license if they have five or less.

Director of Planning, Engineering, and Public Works – Yes. There are several of them throughout the town. I have been here over nineteen years and the Town Attorney has been here for twenty years this is the first time that this has ever come to our attention as an issue. I am not aware of any other problems. A lot of times you will have a homeowner who starts a day care with five and then they end up with more children.

Mr. Swecker - If we expand this to allow them to have more than five children and then it expands to ten the people beside them decide to quit their job to do the same thing. Everyone is looking for a good day care for their children. Is it limited to one per neighborhood? Could three or four houses in a row have a day care?

Town Attorney – Yes they can. But it is on a case by case basis. You have to consider each application on its own merit. I am going to explain about the special use permit because that gives you some enforcement provisions. Special use permits come with conditions. You can impose conditions or recommend to the Town Council that it proposes conditions. The Oliver's, for example, have been in business for a long time. Up until now we have not received any complaints so they must be doing a pretty good job. You would think that if we amend the ordinance and they make an application for a special use permit then they would fill up the room with all of their neighbors that say they have done a good job. If there were any concerns then you would recommend certain conditions. The conditions would be a limitation on the number of children and they maintain their license with the state. If later they were to generate complaints that neighbors were saying it is too much traffic, they are not doing a good job, and they are not supervising the children. The Planning Commission and the Town Council can review their special use permit and revoke it for failure to abide by the conditions. So that is where you have enforcement provisions under the special use permit scenario. What they had suggested was that it be allowed by right but then you do not have any of those enforcement mechanisms which would be a disaster. The research that you have in front of you nobody permits that which certainly does not seem to be a place to start at all. It really comes down to whether you want to make it an option or not. They do not get to do anything they want to do. You get the opportunity to impose conditions and those conditions are enforceable and they can be revoked.

Mr. Swecker – Do we have to come up with those conditions tonight?

Town Attorney – No. The conditions are case specific. It might have to do with where they live, how much square footage they have, and what type of back yard do they have. You would really have to get into the nuts and bolts of it all. They would have to make their case. They would have to explain the reasons that you should give them a special use permit such as doing a good job, these are things we offer, and this is why it

would be an asset to the town. If you think it is a good idea then you would recommend approval and if think it is not you don't.

Chairman Davidson – It is my understanding that there would have to be public hearings for the Planning Commission and Town Council.

Town Attorney – There has to be a public hearing. It is just like rezoning. There is a public hearing at Planning Commission level. Whether you recommend approval or denial then it still goes to the Town Council and they can overrule you. There are two opportunities for it to be heard. There are two opportunities for the public to be heard about whether it is a good thing or not.

Mr. Pack – Can we get in trouble for permitting a special use permit for someone but do not permit it for someone else?

Town Attorney – Not if you can point to a factual basis for making a distinction.

Director of Planning, Engineering, and Public Works - What happens if one of the neighbors just does not want it?

Town Attorney – That is a good reason. If everybody in the neighborhood thinks it is a great idea and people in another neighborhood think that it is a bad idea then that is what public input is all about. You get feedback from all of the citizens.

Director of Planning, Engineering, and Public Works - That is one of the things that concerns me a little bit. If the business is going well and traffic is not bad but the neighbor tries to sell their house and the realtor says that the house has not sold in three years because of all of the playground equipment in the back yard then. We cannot really do anything about that.

Town Attorney – No.

Director of Planning, Engineering, and Public Works – It is one of the things that concern me when neighbors change.

Town Attorney – You cannot protect the public from bad neighbors. There are people who are not in the day care business who are not good neighbors and that has an impact on their ability to sell their homes too.

Director of Planning, Engineering, and Public Works – We need to decide whether to keep it like it is or have a public hearing at the next Planning Commission

meeting. If we have a public hearing it does not necessarily mean that changes will occur.

Town Attorney – If you decide that you want to change it you can put together a proposed amendment to the zoning ordinance that would permit it by special use permit. Then you can get public comment if people think it is a great idea then you might think it is a good idea. If people fill the room and say it is a horrible idea then it might have an impact on your position as well.

Chairman Davidson – These people in Wellington Estates have been doing this for a number of years. As far as we know there have not been any complaints. I am relatively certain that all of the residents of Wellington Estates do not know that this is going on. If it is advertised then we may get a whole different group of people at the public hearing.

Town Attorney – The flip side of that coin is that if they do not know it is going on it is probably not having a negative impact on their day to day existence. It would be a good argument for the property owner that they are doing a good job.

Chairman Davidson – They probably are doing a good job.

Town Attorney – The Oliver's are in a very unique situation in that they have had sort of a test drive. They were able to do it when most people wouldn't. They have been doing it not in conformity with the zoning but presumably they can demonstrate that they have done a good job. We do not know that but assuming based on the people that they brought with them to the Town Council meeting it appeared that they had a pretty large group of supporters. You would think that they would be different than anyone else because they would have the ability to demonstrate that they have done a good job and not caused a negative impact on the community. Most people do not have that luxury. Most people would be starting from scratch. It would be a leap of faith and there in comes the enforcement mechanism of a special use permit. Because if you put conditions on them and they do not live up to the conditions then you revoke their permit.

Mr. Bryan – Does the ordinance have a special use permit that would cover this?

Town Attorney – No, not in a residential district.

Mr. Bryan – I was looking at one of the conditions on the state code. It says a separate space should be designated for children who are ill or injured. Considering the recent outbreak of illnesses where a few hundred children had some sort of cold virus recently and the concern with the Ebola outbreak. If we are going to go down this path to come up with a special use permit to change the ordinance for that then I think it is one of the things that we should be concerned with as well.

Town Attorney – The state law requires it. We do not have anything to do with that. If they meet the six or more threshold then they have to go under a very rigorous permitting process licensing provisions through the state. According to this lady's letter it is one hundred and twenty seven pages of regulations. It seems like a lot to me but that is the government for you. Child care is one of those things that everyone who has children needs. The question is not whether it is a good thing or a bad thing it is a necessity. The question is how far you want to go to permit people to do it in their homes.

Vice Chair Hillegass – I have mixed emotions about the whole thing. I checked with some other localities around the region. There are all different types of permutations of the chart that Mr. Saunders put together. Everyone is doing something a little bit different around the region. For families with several children it could be a hardship if they cannot put all of their children in the same place.

Town Attorney – I do not know how you measure demand. It would be an interesting thing to know. What is the demand in Smithfield for child care? Is there plenty of it or is there a shortage? Is there a shortage of licensed child care?

Vice Chair Hillegass – Yes that is the other thing. I would want the best possible provider. Licensing is a good thing.

Mr. Odom – My impression is that this lady is licensed.

Town Attorney – She was but the reason she is not now is because the state changed their regulations and required licensed providers to comply with local zoning ordinances. She was not in compliance.

Town Planner/GIS Coordinator – She was licensed for five children.

Town Attorney – She does not have to have a state license for five children. She only has to have a business license.

Town Planner/GIS Coordinator – They have changed it now to where when you renew your state license then you have to go to your locality and get the zoning administrator to sign off to make sure that what you are doing is appropriate with the local zoning ordinance. There is a place to fill in the maximum number of children in that locality. We signed her form but filled in five as the maximum. She still carries a state license which she is not required to do by the state now that five is all she can have. She is still licensed by the state to do up to five. In some of the research even though they do not really have numbers of how many children unlicensed day cares there are it is estimated that the amount of commercial day care is satisfying about half of the demand. If you look at how much commercial day care activity there is in the town based on this information then you can assume by however many kids are in that is what the demand is for home services or babysitter services.

Mr. Pack – If we are to look at the idea of a special use permit where they have an option for six to ten children by state law they have to become licensed through the state. So now have a regulated child care as opposed to five or less unregulated. In theory that should give you better quality and better protection for the children in the home than unregulated. I have been mixed on this as well while listening to all of the information from staff tonight especially with our Town Attorney's options of doing it by special permit where you can limit neighborhoods. I would be willing to explore a special use permit for this type of thing particularly with the Oliver's case since they were there for nine years and no one really knew about it. Traffic must not have been an issue because no one complained about it. I would be willing to go along with at least exploring a special use permit option.

Dr. Pope – I agree with the subcommittee's option of up to five unregulated. I would argue to go up to eleven because it gets you to the maximum of the square footage allowable. When trying to run a business you are trying to squeeze every last dollar out of the business that you can get that extra child may help that family be successful. I would argue to go with the special use permit for six to eleven children.

Mr. Swecker – I have to go with the ordinance not being amended. I personally think that you should not be allowed to have a business in a residential area. It is why

you live in a residential area. We have a day care on Church Street. There are too many cons on it. I say we leave it as is.

Mr. Odom – I am going to go with the ordinance not being amended as well. I think a lot of time and study was initially done in establishing this. I can see the part regarding the regulation versus non-regulation there is some merit to that. On the other hand I have to go with having a day care in a residential area is just too controversial at this time. I will go with the ordinance not being amended.

Vice Chair Hillegass – I agree with Dr. Pope to go with a special permit for six to eleven children.

Mr. Pack – I think they made some really good points about the residential area that I had not really thought about. We need to continue to listen. I think good points were made for both cases.

Mr. Bryan – At the moment I am in favor of a special use permit option.

Town Attorney – Just remember that if you propose this and you get a bunch of feedback then you can always change your mind. It is what the public hearing is all about.

Vice Chair Hillegass – The Town Council may not agree with our decision.

Chairman Davidson – I tend to agree with the fact that we would have some control with the special use permit option. At this point, I think I am in favor of the special use permit option and getting public comments. Is there any more discussion?

Mr. Pack – I will make a motion that we explore a special use permit option for six to eleven children.

Vice Chair Hillegass – Second.

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

On call for the vote, seven members were present. Mr. Bryan voted aye, Mr. Pack voted aye, Dr. Pope voted aye, Mr. Odom voted nay, Mr. Swecker voted nay, Vice Chair Hillegass voted aye, and Chairman Davidson voted aye. There were two votes against the motion. The motion passed.

Chairman Davidson – The vote is five to two. The motion passed.

Town Attorney – The staff will work on a proposed ordinance amendment that will be advertised for public hearing hopefully at the next Planning Commission meeting if we get it all done by then. We want to make sure that it does not conflict with anything else. We have done this in the past. We rush to do something and then you create a hidden problem that you did not realize that you created. It is the law of unintended consequences. We will be careful about that. We will not rush it but if we get it done in time for next month then we will have a public hearing. We will see what the public thinks about it.

Town Planner/GIS Coordinator - Do you want to have one more meeting to review the amended ordinance before the public hearing or have the public hearing the first time you see amended ordinance?

Director of Planning, Engineering, and Public Works – I think we are talking about a public hearing at the next meeting.

Town Planner/GIS Coordinator - You are going to have to have it to recommend to the Town Council to approve that version of it. I just did not know if you wanted to do that all in one meeting.

Mr. Swecker – Do we have to vote on it that night?

Town Attorney – No. If you do not want to make a decision that night then you can table it. I am anticipating that what the ordinance will say will be to include day care as a special use item in the residential zoning district.

Town Planner/GIS Coordinator – It will be a very simple change most likely.

Town Attorney – Even when you make simple changes you have to read everything else to make sure you did not mess something else up somewhere else.

Director of Planning, Engineering, and Public Works – It will also depend on what zoning district. There are several residential districts.

Town Attorney – Correct. I am assuming you all would not be in favor of something like this in a multi-family district. I am pretty sure it would not comply.

Director of Planning, Engineering, and Public Works – The downtown district has small backyards.

Town Attorney – That is not entirely true. There are multiple iterations of lots within the downtown district there some that have big lots and some have small lots.

Mr. Swecker – How can you tell one part of town that you can put it in your neighborhood but not in another part of town you are telling them no? Both sides of the areas are paying the same taxes and doing the same thing.

Town Attorney – We do that all of the time. It is the point of zoning. There are different requirements for lots of different residential districts throughout the town. They have different requirements in all of them.

Town Planner/GIS Coordinator – In this there are requirements for the amount of area outdoors that you have to have for children. I believe it is seventy-five square feet. Unless you are in a single family zoning district then you are not going to have that amount of outdoor space to meet the state requirements. If you are in an apartment, townhouse, or a condo situation then you are not going to probably have the capacity for that. It is probably going to have to be single family zoning district.

Mr. Swecker – Do we have other neighborhoods in town that have permits so they can run a business out of their house.

Town Attorney – Yes all of them can have home occupations.

Director of Planning, Engineering, and Public Works - It does not normally involve more traffic or anything.

Town Attorney – For example, on downtown Main Street there is a counselor who sees people for spiritual and I do not know if it is marital counseling or not. It is a home occupation. It would be a permitted type of home occupation. A music teacher or tutoring would require people coming and going. A lawyer could have an office in his home.

Mr. Swecker – We had somebody in our neighborhood that did a day care. They were a cut above but you could hear the kids play. Kids will play it is part of life. You will hear them outside screaming and hollering. You will have more traffic especially in the afternoons. You will have the same amount in the morning for drop off. You will pick up more traffic in the afternoon because you are outside more than you are early in the mornings when they drop them off. In a residential area with twelve children then you have a possibility of twelve cars at one time. It is a lot in a residential area.

Director of Planning, Engineering, and Public Works – For a normal household traffic flows ten trips per day. It is the average for a normal residential household.

Town Attorney – You are exactly right, Mr. Swecker. You have potentially a factual situation existing for a long time in the town apparently none of those things that you are concerned about were a problem. We do not really know that for sure. I guess we will find out when they file an application and see what all of the neighbors really think. If it gets that far.

Mr. Swecker – There is no house in the neighborhood that is set up to park twelve cars at one time on the street to pick up children.

Town Attorney – They would say that it never happens. The letter says that it does not happen. I do not know if it does or not but they say it does not happen. You might get to the end of this process and say it is a terrible idea. You might get to the end and say it is a great idea.

Mr. Swecker – I am subject to change.

Mr. Pack – We have only said that we are going to explore that option. I would like to hear more from the public. I am not sold that this is a great idea. I am willing to explore which is all that I agreed to do tonight. I think you have a solid point for residential neighborhoods should be residents. That is what they were zoned for.

Director of Planning, Engineering, and Public Works – This is possibly amending our ordinance which involves two public hearings. On top of that anybody like the Oliver's who pursue a special use permit will have two more public hearings. It will definitely be open to the public.

Town Attorney – Yes. The public hearing to change the ordinance that is just the beginning then somebody has to make a specific application and put all their cards on the table. Then you decide whether this makes sense or if it does not if it gets that far.

Chairman Davidson – Is there any other discussion on this? Hearing none, next is Approval of the July 8th, 2014 Meeting Minutes.

Town Attorney – Mr. Chairman, I have read the minutes and cannot find any changes so I would recommend the minutes be approved as presented.

Vice Chair Hillegass – So moved.

Mr. Swecker – Second.

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

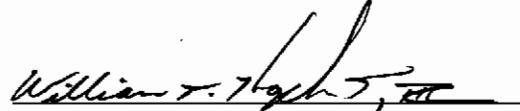
On call for the vote, seven members were present. Mr. Bryan voted aye, Mr. Pack voted aye, Dr. Pope voted aye, Mr. Odom voted aye, Mr. Swecker voted aye, Vice Chair Hillegass voted aye, and Chairman Davidson voted aye. There were no votes against the motion. The motion passed.

Chairman Davidson – The meeting is adjourned.

The meeting adjourned at 8:13 p.m.



Mr. Bill Davidson
Chairman



Mr. William T. Hopkins III
Director of Planning, Engineering, and
Public Works