

..TITLE

Vote on a Legislative request for a text amendment request for the Chatham County Zoning Ordinance, specifically Section 10.13 Table of Permitted Uses, Churches and other places of worship to be changed from P+ Permitted to be required to obtain an approved Conditional Use Permit in order to locate in R-1, R-2, and R-5 Residential zoning districts.

..ABSTRACT

Action Requested:

Vote on a Legislative request for a text amendment request for the Chatham County Zoning Ordinance, specifically Section 10.13 Table of Permitted Uses, Churches and other places of worship to be changed from P+ Permitted to be required to obtain an approved Conditional Use Permit in order to locate in R-1, R-2, and R-5 Residential zoning districts.

Introduction & Background:

A legislative public hearing was held November 19, 2018 to consider a citizen initiated text amendment to the Zoning Ordinance. The proposed amendment is to the table of permitted uses, specifically for churches and places of worship to require a conditional use permit in the three residential zoning districts instead of allowing them as a permitted use. The applicant presented the request and other neighbors who live on or near Hogan Farm Road were also present and spoke including Roland Cargill, Anne Fuller, and Scott Wilson. There were also several speakers who referred to their representative, Attorney Paul Messick, to provide comments on their behalf.

Section 19 of the Zoning Ordinance outlines the procedure for amending the ordinance and Section 19.1, Statement of Intent, reads: "For the purpose of establishing and maintaining sound, stable and desirable development within Chatham County this Ordinance shall not be amended except to correct an error in the Ordinance or, because of changed or changing conditions in a particular area or in the County generally, or to extend the boundary of an existing zoning district or to rezone an area to a different zoning district, or to change the regulation and restrictions of the Zoning Ordinance. These amendments shall be reasonably necessary to promote the public health, safety and general welfare and to achieve the purposes of the adopted Land Use Plan."

Discussion & Analysis:

The Table of Permitted Uses in the Zoning Ordinance includes "Churches and other places of worship" as a use which is permitted by right in all of the residential, business, and office & institutional districts. There are also additional requirements that apply to this use in residential districts that include a three acre minimum lot size, 50' side and rear setbacks from property lines, and a 65' front setback. If the text amendment is

approved it would apply uniformly throughout the zoned areas of the county where the county has land use authority, which covers approximately 598 square miles.

During the public hearing the applicant stated the request was not about a “religion or religious organization”, but of concerns about safety with increased traffic in a residential area, noise, trash, lack of sidewalks to keep pedestrians safe, and special events that have the potential to bring up to 300 to 400 people into a small residential area. He commented that he understood the request would not help the residents on Hogan Farm Road and nearby areas of their current concerns with the place of worship that has recently opened in a converted single-family dwelling.

Additional concerns noted by other speakers were that a residential home was partially converted into a commercial space for a place of worship and the lot was created for residential use, not commercial. Comments also included that churches should be treated like any other commercial business so that neighbors in an area where someone wants start one would be given an opportunity to voice concerns and have some say in the process; zoning regulations are intended to protect public health, safety, and welfare; places of worship should be treated like any other public facility; and emergency vehicle access should be evaluated.

Attorney Paul Messick commented that the Religious Land Use and Institutional Persons Act of 2000 (RLUIPA), 42 U.S.C. 2000cc (<https://www.justice.gov/crt/religious-land-use-and-institutionalized-persons-act>) provides federal protections for religious uses and that no land use regulation can impose a substantial burden or discriminate against churches. He commented that the proposed amendment violates the law and that the burden of a conditional use permitting process with no standards leaves it open to discrimination. He also stated that churches are a private facility, not public, and that other uses such as schools are currently permitted in residential districts.

The Board asked staff if there were existing regulations regarding site plan approvals. Planning staff stated even though churches and places of worship are permitted in all zoning districts other than light and heavy industrial, site plan approval is required and must follow all the development ordinances and regulations such as minimum lot size, setbacks, parking, lighting, signage, etc. This would include all county departments involved in site development.

The Planning Board discussed the proposed amendment during their December 4, 2018 meeting and there were several questions raised for the county attorney and his responses have been attached. The Planning Board resumed discussion during their January 8, 2019 meeting and several citizens were present to voice their concerns about the continued allowance for churches and other places of worship to locate in an R-1 Residential district without benefit of a conditional use permit. It was stated by staff

and planning board members that churches and other places of worship could not be singled out for special permitting requirements unless all places of assembly, such as schools, non-profit clubs, etc. were also included.

Planning staff reviewed the answers to the questions the Board had for the county attorney to help guide them in their recommendation. The consensus from the attorney and planning staff was that a set of standards can be developed for assembly uses, which would include schools, churches, and other places of worship or assembly, that would have to be met before any zoning or other permitting of the use could be granted. Some of the standards discussed were a requirement that these uses locate on a public road, a traffic impact analysis or study be prepared to identify potential conflicts, and require a conditional use permit for all of these uses in a residential district. Planning staff provided a list of special permitting from adjacent counties and towns for consideration stating there can be some regulation provided it is applied to all assembly uses, whether religious or non-religious, that would provide some protection to adjacent and adjoining property owners. Two of the biggest concerns noted were parking and traffic.

The Planning recommends denial of the rezoning request due to legal issues associated with targeting churches/places of worship and also noted that the amendment is not supported by the comprehensive plan. Board members also discussed that this use can be an asset for communities, but can have secondary impacts on adjoining properties and the surrounding community when they are not properly designed. After additional discussion they recommended that the Board of Commissioners direct them to work with the Planning Department to research this issue and provide additional standards for assembly uses in residential districts.

How does this relate to the Comprehensive Plan: This request is not consistent with the comprehensive plan or other goals that have been adopted by the Board of Commissioners.

Recommendation:

The Planning Board, by a vote of 7-0, recommends adoption of a resolution approving the following consistency statement:

The text amendment to require churches and other places of worship to obtain a conditional use permit singles out churches and other places of worship and does not require the same standard for other assembly uses and would violate the Religious Land Use and Institutionalized Persons Act. The request should therefore be denied due to inconsistency with the adopted Comprehensive Plan.

The Planning Board, by vote of 7-0, recommends denial of the text amendment application.

There was also an additional motion by the Planning Board to request that the Board of Commissioners direct the Planning Department to develop performance standards for assembly uses in residential zoning districts and evaluate requiring a conditional use permit.

The motion was approved by a vote of 7-0.