COUNTY AGENDA REQUEST

Department:	Planning and Zoning	Presenter(s):	Pete Frisina
Meeting Date:	Thursday, April 25, 2013	Type of Request:	Public Hearing

Wording for the Agenda:

Consideration of staff's recommendation to adopt Ordinance 2013-02 amending the Fayette County Code of Ordinances, Chapter 20. Zoning Ordinance, Regarding Article III., Article IV., Article V., and Article VII. concerning the deletion of all sections of the zoning ordinance related to the Legal Nonconforming Status (LNS) rezoning procedure.

Background/History/Details:

In May 2012, amendments were made to the Comprehensive Plan and Zoning Ordinance concerning illegal lots and the Legal Nonconforming Status (LN) rezoning procedure.

During the February 28, 2013 Board of Commissioners meeting, the Board indicated that it was not in favor of the LNS procedure.

Staff is initiating amendments to the Comprehensive Plan and Zoning Ordinance to eliminate the LNS.

The Planning Commission heard this item on April 4. Please refer to the minutes attached as backup.

What action are you seeking from the Board of Commissioners?

Approval of staff's recommendation to adopt Ordinance 2013-02 amending the Fayette County Code of Ordinances, Chapter 20. Zoning Ordinance, Regarding Article III., Article IV., Article V., and Article VII. concerning the deletion of all sections of the zoning ordinance related to the Legal Nonconforming Status (LNS) rezoning procedure.

If this item requires funding, please describe:

Not Applicable.

Has this request been considered within the past two years?	No	If so, when?	
Is Audio-Visual Equipment Required for this Request?*	No	Backup Provided with Request?	Yes

**** All audio-visual material must be submitted to the County Clerk's Office no later than 48 hours prior to the meeting. It is also your department's responsibility to ensure all third-party audio-visual material is submitted at least 48 hours in advance.***

Approved by Finance	Not Applicable	Reviewed by Legal	
Approved by Purchasing	Not Applicable	County Clerk's Approval	Yes
Administrator's Approval			

Staff Notes:

The Planning Commission heard this item on April 4, 2013.

STATE OF GEORGIA
COUNTY OF FAYETTE

ORDINANCE NO. 2013 - 02

AN ORDINANCE TO AMEND THE FAYETTE COUNTY CODE OF ORDINANCES, CHAPTER 20. ZONING ORDINANCE (2010), AS AMENDED, SPECIFICALLY ARTICLE III, (DEFINITIONS), ARTICLE IV (ESTABLISHMENT OF DISTRICTS), ARTICLE V (GENERAL PROVISIONS), AND ARTICLE VII (CONDITIONAL USES, NONCONFORMAMNCES, TRANSPORTATION CORRIDOR OVERLAY ZONE AND COMMERCIAL DEVELOPMENT STANDARDS); TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING LAWS, ORDINANCES, AND RESOLUTIONS; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES ALLOWED BY LAW.

WHEREAS, the duly elected governing authority of Fayette County is the Board of Commissioners thereof;

WHEREAS, the governing authority desires to amend the provision that provides for the regulation of land development as allowed by the State of Georgia;

WHEREAS, the health, safety, and welfare of the citizens of Fayette County, Georgia shall be improved and protected by adoption and implementation of this Ordinance.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF FAYETTE COUNTY AND IT IS HEREBY ORDAINED BY AUTHORITY THEREOF:

Section 1. The Fayette County Code of Ordinances, Chapter 20. Zoning Ordinance (2010), as amended, is hereby further amended by deleting the definition "*Bona-fide purchaser in good faith*" in Article III (DEFINITIONS).

Section 2. The Fayette County Code of Ordinances, Chapter 20. Zoning Ordinance (2010), as amended, is hereby further amended by amending Article IV (ESTABLISHMENT OF DISTRICTS) Sec. 4-1. Zoning Districts, to delete the following:

~~The Legal Nonconforming Status (LNS) designation, as administered in Article VI, shall be considered a sub-category of the particular zoning district. (Adopted 05/24/12)~~

Section 3. The Fayette County Code of Ordinances, Chapter 20. Zoning Ordinance (2010), as amended, is hereby further amended by amending Article VI (DISTRICT USE REQUIREMENTS), to delete the following:

The purpose of this Article is to delineate the uses and requirements of the established zoning districts. ~~The Legal Nonconforming Status (LNS) designation, as administered in Article VII, shall be considered a sub-category of the particular zoning district. (Adopted 05/24/12)~~

Section 4. The Fayette County Code of Ordinances, Chapter 20. Zoning Ordinance (2010), as amended, is hereby further amended by amending Sec. 7-1. Conditional Use Approval in Article

VII (CONDITIONAL USES, NONCONFORMAMNCES, TRANSPORTATION CORRIDOR OVERLAY ZONE AND COMMERCIAL DEVELOPMENT STANDARDS), to delete the following:

Sec. 7-1. Conditional Use Approval. Conditional Uses include certain uses which are allowed in a particular zoning district~~, including the Legal Nonconforming Status (LNS) sub-category,~~ provided that all conditions specified under the Zoning Ordinance are met.

Section 5. The Fayette County Code of Ordinances, Chapter 20. Zoning Ordinance (2010), as amended, is hereby further amended by amending Sec. 7-2. Nonconformances., A. Nonconforming Lots. in Article VII (CONDITIONAL USES, NONCONFORMAMNCES, TRANSPORTATION CORRIDOR OVERLAY ZONE AND COMMERCIAL DEVELOPMENT STANDARDS), to delete the following:

~~*Consideration for the Rezoning of Illegal Nonconforming Lots.* An illegal nonconforming lot may be considered for rezoning to a Legal Nonconforming Status (LNS) sub-category of the same zoning district. For the purposes of this section, an illegal nonconforming lot is a lot which does not comply with the minimum lot area (acreage), minimum lot width at the building line, and/or the minimum required road frontage; whereas, a variance cannot be granted for said deficiencies by the Zoning Board of Appeals (see Article IX.) The status of any existing legal nonconforming uses or structures will be evaluated and addressed during the rezoning procedure. After approval of the rezoning, any existing illegal nonconforming structure(s) which are to remain will need a variance authorized by the Zoning Board of Appeals (see Article IX.) The continuation of an illegal nonconforming use is prohibited. The petition for rezoning to a LNS sub-category of the same zoning district shall be evaluated per the following factors, in addition to those listed under Article XI. Policies, Procedures and Standards Governing Amendment: (Adopted 05/24/12)~~

~~1. Whether the applicant is a bona fide purchaser in good faith of said illegal nonconforming lot without the knowledge of any illegal nonconformance and has provided documentation that there was no disclosure of nonconformance made at the time of acquisition of the property and that the property was acquired with a non-contingent contract, as applicable. (Adopted 05/24/12)~~

~~2. Whether the applicant created the illegal nonconforming lot by any of his/her actions or has a familial relationship to an individual that created the illegal nonconforming lot. (Adopted 05/24/12)~~

~~3. Whether the applicant has attempted to acquire more property from adjacent properties to bring the illegal non-conforming lot into compliance. The applicant shall provide written information documenting such attempt(s) and the result of such attempt(s). (Adopted 05/24/12)~~

~~4. Whether the applicant has executed and signed an affidavit affirming all of the above are true and correct. (Adopted 05/24/12)~~

~~5. Whether the County issued any building permit(s) for any structure(s) on the illegal nonconforming lot including the circumstances involved with the issuance of said permits. (Adopted 05/24/12)~~

~~6. Whether the subject property is developed or vacant. A vacant lot created after the effective date of (insert date of ordinance approval) shall not be given consideration for rezoning to a (LNS) sub-category of the same zoning district. (Adopted 05/24/12)~~

~~Where the dimensional requirements of the zoning district cannot be met in terms of the placement of new improvements, a variance authorized by the Zoning Board of Appeals shall be required. In the event that a landlocked Illegal Nonconforming Lot is rezoned to a Legal Nonconforming Status, a 20 foot easement to a public street that has been duly recorded and made a part of the property deed shall be required prior to the issuance of building permits.~~

~~(Adopted 05/24/12)~~

Section 6. That the preamble of this Ordinance shall be considered to be and is hereby incorporated by reference as if fully set out herein.

Section 7. **a.** It is hereby declared to be the intention of the Board of Commissioners that all Sections, paragraphs, sentences, clauses and phrases of this Article are and were, upon their enactment, believed by the Board of Commissioners to be fully valid, enforceable and constitutional.

b. It is hereby declared to be the intention of the Board of Commissioners that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Board of Commissioners that, to the greatest extent allowed by law, no Section, paragraph, sentence, clause or phrase of this Article is mutually dependent upon any other Section, paragraph, sentence, clause or phrase of this Article.

c. In the event that any phrase, clause, sentence, paragraph or section of this Article shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Board of Commissioners that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or Sections of the Article and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and Sections of the Article shall remain valid, constitutional, enforceable, and of full force and effect.

Section 8. All ordinances or resolutions and parts of ordinances or resolutions in conflict herewith are hereby expressly repealed except those provided for herein.

Section 9. The effective date of this Ordinance shall be the date of adoption unless otherwise specified herein.

So ordained this 25th day of April, 2013, by the

BOARD OF COMMISSIONERS
FAYETTE COUNTY, GEORGIA

_____
STEVE BROWN, CHAIRMAN

ATTEST:

_____
CLERK/DEPUTY CLERK

THE FAYETTE COUNTY PLANNING COMMISSION met on April 4, 2013 at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Board of Commissioners Conference Room, Suite 100, Fayetteville, Georgia.

MEMBERS PRESENT: Al Gilbert, Chairman
Jim Graw, Vice-Chairman
Bill Beckwith
Douglas Powell
Tim Thoms

STAFF PRESENT: Dennis Dutton, Zoning Administrator
Harold Myers, Marshal
James Williamson, Marshal

Welcome and Call to Order:

Chairman Gilbert called the Planning Commission Meeting to order. Chairman Gilbert introduced Harold Myers and James Williamson of the Marshal's office and Dennis Dutton the Zoning Administrator and the Commission Members Doug Powell, Tim Thoms, Jim Graw and Chairman Gilbert, Chairman.

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1. Consideration of the Minutes of the Meeting held on March 7, 2013.

Jim Graw made a motion to approve the minutes. Bill Beckwith seconded the motion. The motion passed unanimously 5-0.

2. Consideration of the Minutes of the Meeting held on March 21, 2013.

Chairman Gilbert made a motion to approve the minutes. Doug Powell seconded the motion. The motion passed unanimously 5-0.

PUBLIC HEARING

3. Consideration of Amendments to the Land Use Element Text of the Fayette County Comprehensive Plan concerning Legal Nonconforming Status

4. Consideration of Amendments to the Fayette County Code of Ordinances, Chapter 20. Zoning Ordinance, Regarding Article III. Definitions, Article IV. Establishment of Districts, Article V. General provisions, Article VI. District Use Requirements, and Article VII. Conditional Uses, Nonconformances, Transportation Corridor Overlay Zone, and Commercial Development Standards concerning Legal Nonconforming Status

Chairman Gilbert said we will need guidance on the Public Hearings because we will need two motions and he asked Dennis Dutton if that was correct.

Dennis Dutton replied that is correct.

Doug Powell asked if the Planning Commission could treat both together.

Dennis Dutton said one request is for the Comp Plan and the other request is for the Zoning Ordinance.

Doug Powell said they are two separate documents but I think the object tonight is to rescind the prior amendments as they pertain to Legal Nonconforming Status on the basis of the legal opinion we received from the County Attorney and seeing as such if we could treat them together as opposed to talking about them separately and to that degree I will make a motion to recommend that items 3 and 4 be rescinded as they are listed on the agenda.

Chairman Gilbert said as a note there is no public present so there will not be any need for public comment.

Tim Thoms seconded the motion.

Chairman Gilbert asked if there was any discussion.

Tim Thoms asked Dennis Dutton if these items are deleted from the ordinances and something were to happen on a nonconforming lot and a residence is destroyed what would be the repercussions.

Dennis Dutton said on an illegal lot the County could not grant a building permit to rebuild the structure.

Chairman Gilbert said it puts the County back where it was before the amendments.

Bill Beckwith asked if that were the case in the meantime and the County passes something that would cover that in the future could the County consider that retroactively.

Dennis Dutton said we would need to consult the County Attorney on that.

Jim Graw said if the County adopts something in the future, such as June 1st, that anything at that point in time or prior could be heard and if we put something into the ordinance that said that anything prior to June 1st 2013 we could hear it but after that date we could not hear because that is the way this ordinance reads now.

Dennis Dutton said if we delete the ordinances as presented we would be where we were before and there would not be a means to hear those requests.

Chairman Gilbert said he thinks what Jim Graw is saying is there is a cutoff date in the ordinance.

Jim Graw said the County could do the same thing if another ordinance was adopted in the future.

Dennis Dutton said that is correct.

Doug Powell said but we cannot make that recommendation if I understand the opinion of the County Attorney.

Dennis Dutton said maybe if there was a different mechanism as opposed to going through a rezoning process such as a variance I don't think you can set a date.

Tim Thoms said a variance request would come before the Zoning Board of Appeals.

Jim Graw said the ZBA has its own list of criterion. Jim asked that with the LNS, if one of those had been approved how the County would document it, by putting it on a plat that the lot was illegal but now it is not.

Chairman Gilbert said as the County has R-40 listed for a lot on the zoning map, it would have an LNS listed on one of those lots.

Jim Graw said then someone would see that and know that the lot is now legal but how would they know a variance has been approved.

Dennis Dutton said if they have to plat the property then the variance would be on the plat.

Chairman Gilbert said if someone looked at the plat and I'm looking at an area and I see zoning there would not be an indication of a variance on the map.

Dennis Dutton said that's true.

Doug Powell said the County just got finished writing the ordinance to correct that and were it approved then it would have A-R LNS for example and you are correct that there will be nothing on the plat for someone to determine if it is a conforming lot or not and you would have to look at the zoning districts and make that determination.

Jim Graw said to Dennis Dutton that he said "if they plat the lot" and asked what you mean by "if they plat the lot" and could there be a case where they don't have to plat the lot.

Dennis Dutton said there may be.

Tim Thoms said he was going to vote to rescind the LNS but I have some qualms because we discussed this issue for about a year and I have some concerns with deleing it in its entirety but hopefully the County can come up with something else because the problem will still exist.

Doug Powell said it is frustrating because we worked on this and now it has been determined that it is not a viable solution and I am still not clear on that determination.

Chairman Gilbert said he always gives the County Attorney's opinion a lot of consideration because that is who defends the County if there is a lawsuit.

Bill Beckwith said he shares some of Tim Thoms' concerns but feels the County has to act now so we don't get into a legal bind.

Jim Graw said we have gotten two different opinions form two different County Attorneys.

Tim Thoms said all we can do is express our concerns at this time and move it along.

Jim Graw said he would like to see some kind of solution in the future.

Chairman Gilbert called the question.

Bill Beckwith asked do we need to vote to call the question.

Chairman Gilbert said yes, so I call the question is there a second.

Bill Beckwith seconded.

Tim Thoms said I don't think we need a second.

Chairman Gilbert asked all in favor of calling the question and all said "I."

Chairman Gilbert called the question pertaining to the motion previously made by Doug Powell recommending that items 3 and 4, concerning Legal Nonconforming Status, be rescinded as they are listed on the agenda. The motion passed unanimously 5-0.

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Chairman Gilbert said he would entertain a motion to adjourn the meeting.

Doug Powell said so moved.

Chairman Gilbert said the meeting was adjourned.

PLANNING COMMISSION
OF
FAYETTE COUNTY

_____
Al GILBERT, CHAIRMAN

ATTEST:

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