COUNTY AGENDA REQUEST

Department:	Planning and Zoning	Presenter(s):	Pete Frisina
Meeting Date:	Thursday, September 26, 2013	Type of Request:	Public Hearing

Wording for the Agenda:

Consideration of staff's recommendation to adopt Ordinance 2013-13 amending the Fayette County Code of Ordinances, Chapter 20. Zoning Ordinance (2010), as amended, specifically Article IX (Zoning Board of Appeals); to provide for severability; to repeal conflicting laws, ordinances, and resolutions; to provide an effective date; and for other purposes allowed by law.

Background/History/Details:

On April 11, 2013, Commissioners Oddo's and Ognio's requested the Planning Commission to review potential changes for variances for improved illegal lots and for the Planning Commission to work with the County Attorney to finalize and present recommendations to the Board of Commissioners at a later date.

Both the Planning Commission and Zoning Board of Appeals have reviewed and are are in favor or the proposed amendments.

On August 15, 2013, the Board of Commissioners instructed staff to move ahead with Public Hearings for approval and adoption of the proposed amendments. Staff has advertised the recommended amendments, and is bringing the amendments to the Board for a final vote.

What action are you seeking from the Board of Commissioners?

Approval of staff's recommendation to adopt Ordinance 2013-13 amending the Fayette County Code of Ordinances, Chapter 20. Zoning Ordinance (2010), as amended, specifically Article IX (Zoning Board of Appeals); to provide for severability; to repeal conflicting laws, ordinances, and resolutions; to provide an effective date; and for other purposes allowed by law.

If this item requires funding, please describe:

Not Applicable.

Has this request been considered within the past two years?	Yes	If so, when?	August 15, 2013
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:

STATE OF GEORGIA
COUNTY OF FAYETTE

ORDINANCE NO. 2013 - 13

AN ORDINANCE TO AMEND THE FAYETTE COUNTY CODE OF ORDINANCES, CHAPTER 20. ZONING ORDINANCE (2010), AS AMENDED, SPECIFICALLY ARTICLE IX (ZONING BOARD OF APPEALS); 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 in Article IX. Zoning Board of Appeals, Sec. 9-5. Powers and Duties, B. in its entirety and replacing it with the following:

B. *Request for a Variance*. The Zoning Board of Appeals may authorize, upon appeal in specific cases, a variance from the terms of these regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of these regulations will, in an individual case, result in practical difficulty or unnecessary hardship, so that the spirit of these regulations shall be observed, public safety and welfare secured, and substantial justice done. However, no lot is eligible for a variance for reduction in lot size, lot width, or road frontage, unless the variance request is for an improved illegal lot. A variance shall not be granted for any requirements of a Conditional Use with the exception of a legal nonconforming Conditional Use (see Article VII.), or a use of land, building, or structure that is prohibited in the zoning district at issue, except as otherwise provided herein. A variance may be granted in an individual case upon a finding by the Zoning Board of Appeals that the following exists: (Amended 05/24/12)

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography; and
2. The application of these regulations to this particular piece of property would create a practical difficulty or unnecessary hardship; and
3. Such conditions are peculiar to the particular piece of property involved; and
4. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of these regulations; provided, however, no variance may be granted for a use of land, building, or structure that is prohibited herein; and
5. A literal interpretation of this Ordinance would deprive the applicant of any

rights that others in the same zoning district are allowed; and

6. The Zoning Board of Appeals may impose or require conditions, as may be necessary, to protect the health and safety of workers and residents in the community; to protect the value and use of property in the general neighborhoods; and provided that wherever the Board shall find, in the case of any approval granted pursuant to the provisions of these regulations, that any of the conditions upon which such approval was granted are not being complied with, said Zoning Board of Appeals shall rescind and revoke such approval after giving due notice to all parties concerned and granting full opportunity for a hearing. (Amended 05/24/12)
7. In exercising the above powers, the Zoning Board of Appeals shall not consider any nonconforming use of neighboring lands, structures or buildings in the same zoning district, and no permitted use of lands, structures, or buildings in other zoning districts as grounds for the issuance of a variance.

In addition to the above factors, if the variance being sought is for an improved lot which is smaller than the minimum lot size for its zoning district, more narrow than the minimum lot width required for its zoning district, or has less road frontage than is required for its zoning district and the lot is an illegal lot as opposed to a nonconforming lot, the ZBA may consider such a lot for a variance. Should the applicant be successful in obtaining a variance(s), the resulting lot would, for the purposes of this Ordinance, be deemed to be a nonconforming lot. If the applicant successfully passes the above enumerated factors, the ZBA shall also employ the following factors for an illegal lot seeking to be deemed a nonconforming lot:

1. The transaction giving the applicant ownership in the subject property was more than five (5) years from the date of the application or if the period of ownership is less than five years the subject property was made illegal more than ten (10) years from the date of the application; and
2. The applicant is not the person, or an immediate family member of the person, who caused the subject property to be an illegal lot. For purposes of these procedures, "immediate family" is defined as the spouse, child, sibling, parent, step-child, step-sibling, step-parent, grandparent, grandchild, aunt, uncle, niece or nephew of the person who caused the subject property to be an illegal lot; and
3. No adjacent property is available to add to the subject property to allow the subject property to meet the minimum requirements for its zoning district. In determining whether adjacent property is available, if adding any adjacent property to the subject property would no longer allow the adjacent property to meet the minimum requirements of the adjacent property's zoning district, then the adjacent property is not available. Additionally, any adjacent property which is part of an illegal lot shall not be deemed available for purposes of these variance procedures, unless the adjacent illegal lot is unimproved and the entirety of the adjacent illegal lot is combined with the subject property. If adjacent property is available, the cost of acquiring the adjacent property shall not be a factor in determining the availability of the adjacent property.

Section 2. That the preamble of this Ordinance shall be considered to be and is hereby incorporated by reference as if fully set out herein.

Section 3. . 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 4. All ordinances or resolutions and parts of ordinances or resolutions in conflict herewith are hereby expressly repealed except those provided for herein.

Section 5. The effective date of this Ordinance shall be the date of adoption unless otherwise specified herein.

So ordained this 26th day of September, 2013, by the

BOARD OF COMMISSIONERS
FAYETTE COUNTY, GEORGIA

_____
STEVE BROWN, CHAIRMAN

ATTEST:

_____
CLERK/DEPUTY CLERK

8. **Approval of staff's request for the Board to declare six workstations as unserviceable, to authorize staff to sell the workstations either to the highest bidder or by utilizing the GovDeals website, and to return proceeds from the sales to 911's fund balance. A copy of the request, identified as "Attachment 8", follows these minutes and is made an official part hereof.**

9. **Approval of the Sheriff's request to authorize the Chairman to sign the Statewide Electronic Secondary Metals Recycler Database Agreement as required by the Georgia Sheriff's Association. Copies of the request and the Statewide Electronic Secondary Metals Recycler Database Agreement, identified as "Attachment 9", follow these minutes and are made an official part hereof.**

10. **Approval of the disposition of tax refunds as recommended by the Tax Assessor's Office. A copy of the request, identified as "Attachment 10", follows these minutes and is made an official part hereof.**

11. **Approval of the August 7, 2013 Board of Commissioners Emergency Special Called Meeting Minutes.**

OLD BUSINESS:

12. **Discussion of proposed amendments to the Fayette County Code of Ordinances, Chapter 20. Zoning Ordinance, Article IX Zoning Board of Appeals regarding illegal lots.**

Community Development Director Pete Frisina reminded the Board that this issue was raised by the Board in April in response to a previous zoning application for an illegal non-conforming lot status. He said the Board asked staff to review the issue and to try to find another mechanism or solution within the zoning ordinance that would achieve basically the same outcome; namely, to look at illegal lots under criteria to determine if there is a way to "legitimize those lots". Mr. Frisina replied that the proposed process would involve the Zoning Board of Appeals, and he added that the Zoning Board of Appeals and the Planning Commission have looked at the proposed amendments and are in favor of them. He also mentioned to the Board that the proposed amendments were prepared by both the interim County Attorney and staff.

Mr. Frisina explained that the proposed amendments explained that if an applicant wanted a zoning variance that they already had to meet seven criteria, and that the proposed amendments would add an additional three criteria pertaining to illegal lots. He said the county has several properties that have been illegal for years, and those illegal lots have gone through five, or six, or seven property owners who are far removed from the person who created the problem. He said the county was trying to find a solution for those properties since the lots are in an area where they could not be rezoned to a smaller acreage due to the County's Land Use Plan. He said the intention was to not create a conflict either with the Zoning Ordinance or with the Land Use Plan. Mr. Frisina explained that the first of the three additional criteria was that the transaction given the applicant owner of the subject property was more than five years old from the date of the application, or (if the period of ownership is less than five year) that the property has been illegal for at least ten years. He explained that, essentially, a person had to own the property for at least ten years before they could apply for a variance. He added that the intention of the first criteria was to establish a time period that does not encourage people to create illegal lots, but that the time limit is not designed to be so far out that it is unachievable. Mr. Frisina told the Board that the second additional criterion was that the applicant cannot be related to anybody who created the problem or who made the lot illegal. He then said the third additional criteria was that a determination would have to be made concerning property adjacent to the illegal lot that could be purchased and added to the illegal lot that would then render the illegal lot as a

legal lot. He said if the county would not allow a purchase that would render an otherwise legal lot to be illegal. He also clarified that if the neighboring lot to an illegal lot was illegal, then the county would not allow someone to buy a sliver of the neighboring illegal lot only to make the original lot legal.

Chairman Brown asked Mr. Frisina what constitutes an illegal lot and why there are illegal lots. Mr. Frisina replied that an illegal lot is a lot that was altered in a way that it does not comply with basic zoning, be it lot size, lot width, or the road frontage. He explained that years ago, Fayette County did not have quite as much control over the issue as it does now, and that now the county, based on the laws imposed on the Clerk of Superior Court, sends any plat back to the Planning and Zoning Department that does not have approvals or signatures on them. Mr. Frisina said there are still ways to create illegal lots since there is no way to catch everything, but that the proposed amendments were an effort to deal with lots that have been illegal for a long period of time. He explained that if a person has an illegal lot and something happens to his home, the county cannot allow that person to rebuild his home. He acknowledged that those were the worst case scenarios, and that was what the county was trying to alleviate.

Commissioner Barlow asked if this issue was in relation to the young couple who came to the Board earlier in the year and were unable to get help. Mr. Frisina replied that they were one of several people throughout the county. Commissioner Barlow asked if the proposed amendments would help solve their problem. Mr. Frisina replied that he thought it would help them with their problem. Commissioner Barlow mentioned that help would be wonderful since it was a devastating thing to find a young couple who purchased an expensive home only to find out it is on an illegal lot, that they cannot get insurance, and that they cannot rebuild it if something happens to it.

The Board consented to authorize staff to forward the proposed amendments to the Fayette County Code of Ordinances, Chapter 20. Zoning Ordinance, Article IX Zoning Board of Appeals regarding illegal lots to public hearing. A copy of the request, identified as "Attachment 11", follows these minutes and is made an official part hereof.

NEW BUSINESS:

13. Consideration of a recommendation from Chairman Brown and Commissioner Ognio to appoint Mr. Todd Strickland to the Fayette County Development Authority, to fill State Court Judge Jason Thompson's unexpired term, and for said appointment to expire on April 9, 2014.

Chairman Brown explained that State Court Judge Jason Thompson was appointed by Governor Deal to his position in State Court, and in doing so a vacancy was left on the Fayette County Development Authority. He said a number of really good candidates were interviewed. He reminded everyone that the current Board advertises for all boards, commissioners, and authorities, and that the County has been receiving tremendous responses. He said the candidates who apply are full of life experience, education, and work experience. He told the audience that the hardest part is to tell some of them that they will not be the choice. Chairman Brown continued saying the County always feels good advertising for positions since it receives "super fantastic people" and that Mr. Strickland is one of those. He commented that Mr. Strickland would be a great addition to the Fayette County Development Authority.

Commissioner Ognio moved to appoint Mr. Todd Strickland to the Fayette County Development Authority. Commissioner McCarty seconded the motion. No discussion followed. The motion passed unanimously. A copy of the request, identified as "Attachment 12", follows these minutes and is made an official part hereof.

THE FAYETTE COUNTY PLANNING COMMISSION met on September 5, 2013 at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Fayetteville, Georgia.

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

MEMBERS ABSENT: Tim Thoms

STAFF PRESENT: Pete Frisina, Director Community Services Division
Dennis Dutton, Zoning Administrator

Welcome and Call to Order:

Chairman Gilbert called the Planning Commission Meeting to order. Chairman Gilbert introduced the Commission Members and Staff.

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1. Consideration of the Minutes of the Meeting held on August 22, 2013.

Doug Powell made a motion to approve the minutes. Bill Beckwith seconded the motion. The motion passed unanimously 4-0.

PUBLIC HEARING

2. Consideration of Amendments to the Fayette County Code of Ordinances, Chapter 20. Zoning Ordinance, regarding Article IX. Zoning Board of Appeals (variance criteria for an illegal lot)

Chairman Gilbert said this item had been discussed at length previously by the Planning Commission so since this was a Public Hearing he would ask if anyone from the public would like to comment on the amendments. Hearing none he brought the item back the commission for consideration.

Doug Powell said the Zoning Board of Appeals had also discussed the proposed amendments.

Bill Beckwith made a motion to recommend approval of the proposed amendments. Jim Graw seconded the motion. The motion passed unanimously 4-0.