

**THE FAYETTE COUNTY PLANNING COMMISSION** held a **Public Meeting/Workshop** on May 3, 2007 at 8:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Public Meeting Room, First Floor, Fayetteville, Georgia.

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

**MEMBERS ABSENT:** None

**STAFF PRESENT:** Pete Frisina, Director of Planning & Zoning  
Dennis Dutton, Zoning Administrator  
Delores Harrison, Zoning Technician  
Robyn S. Wilson, P.C. Secretary/Zoning Coordinator  
Bill McNally, County Attorney

**Welcome and Call to Order:**

Chairman Powell called the Public Meeting/Workshop to order and introduced the Board Members and Staff.

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**1. Discussion of the proposed amendments to the Fayette County Zoning Ordinance regarding Article VI. District Use Requirements, Section 6-19. C-H Highway Commercial District, C. Conditional Uses, Self-Storage and Article VII. Conditional Uses, Exceptions, and Modifications, Section 7-1. Conditional Use Approval, B. Conditional Uses Allowed, 34. Self-Storage Facility as presented by the Planning & Zoning Department.**

Staff's amendments to the current ordinance are indicated in **bold**, **underline**, and ***italics***. ~~Strikethrough~~ indicates deletion.

**ARTICLE VI. DISTRICT USE REQUIREMENTS**

**6-19. C-H Highway Commercial District.**

C. Conditional Uses. The following Conditional Uses shall be allowed in the C-H Zoning District provided that all conditions specified in Section 7-1 herein are met:

**16. Self-Storage Facility;**

~~16. 17.~~ Single-Family Residence; and

~~17. 18.~~ Telephone, Electric or Gas Sub-Station or Other Public Utility Facilities.

Staff's amendments to the current ordinance are indicated in **bold**, **underline**, and ***italics***. ~~Strikethrough~~ indicates deletion.

**ARTICLE VII. CONDITIONAL USES, EXCEPTIONS, AND MODIFICATIONS**

7-1. Conditional Use Approval. B. Conditional Uses Allowed:

34. Self-Storage Facility. (Allowed in M-1 **and C-H** Zoning District)  
(Adopted in its entirety 06/28/01; Amended 06/24/04; Amended 01/13/05;  
Amended 03/24/05)

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- a. The maximum size of a storage bay shall be 550 square feet. (Amended 03/24/05)
- b. All buildings shall maintain a decorative facing on those portions of the building which face public streets and any property zoned residential or agricultural-residential. The decorative facing shall consist of brick, stone, stucco or similar building materials compatible with the area, and the colors selected shall be classic exterior or nature-blending compatible with the area. **The Transportation Corridor Overlay Zone shall apply when applicable.**
- c. Aisleways adjacent to storage bays shall be used both for circulation and temporary customer parking while using storage bays. The minimum width of these aisleways shall be twenty-five (25) feet as measured from the closest part of the structure including any overhang. (Amended 03/24/05)
- c. Storage of vehicles, boats, and trailers, shall be located in the rear yard only and be screened from view from adjacent residential areas and public roads with any combination of privacy fence and/or berm, and vegetation. Covered vehicle storage up to 850 square feet per parking space, shall be allowed provided it does not exceed twenty-five percent (25%) of the overall gross square footage of all buildings. All covered storage must have a peaked roof, be closed on any side that is visible from a residential or A-R zoning district or from any street, and must be built of materials consistent with the main structure. Aisles adjacent to boat and RV parking shall be a minimum of fifty (50) feet wide unless it is angle parking. (Amended 01/13/05)
- e. The accessory use of truck rental parking may be allowed within the front yard provided the landscaping along the front property line includes a two (2) foot berm with double the minimum planting requirements.
- f. All outdoor lighting shall be shielded away from adjacent residential uses. (Amended 03/24/05)
- g. No exterior loudspeakers or paging equipment shall be permitted on the site.

Pete Frisina advised that a self storage facility was previously allowed as a conditional use under the C-H zoning district and parcels had been developed as such. He pointed out that when self storage facility was removed from the C-H zoning district that these facilities became nonconforming causing difficulty with refinancing and acquiring insurance. He confirmed that this item had been discussed at the B.O.C. Workshop and it was concluded that either a self storage facility should be allowed as a conditional use under the C-H zoning district or rezone the existing properties which contain a self storage facility from C-H to M-1. He reported that he did not want to rezone the properties to M-1 because some of the areas were not appropriate for the M-1 zoning district. He added that he had reviewed the Minutes and a previous Zoning Administrator had stated that a self storage facility was not an appropriate use for the C-H zoning district.

Chairman Powell asked Mr. Huie Bray if he would like to address the P.C.

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Mr. Huie Bray said his self storage facility had been in the C-H zoning district for 27 years and he had been zoned C-H twice and M-1 once. He explained that if the facility burned or if it was damaged by a storm, he may not be able to rebuild since the use is now a nonconforming use under the C-H zoning district. He stated that the self storage facilities located in the C-H zoning district are having trouble acquiring insurance and also with refinancing their property. He said that he would prefer to remain zoned C-H.

Tim Thoms remarked that the M-1 zoning district had recently been amended to allow additional uses.

Pete Frisina advised that the additional uses were for a business center and not for a self storage facility.

Chairman Powell instructed Robyn Wilson to advertise the proposed amendments for the June Public Hearing.

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2. **Discussion of the proposed amendments to the Fayette County Zoning Ordinance regarding Article III. Definitions; Article VII. Conditional Uses, Exceptions, and Modifications, Section 7-1. Conditional Use Approval, B. Conditional Uses Allowed, 1. Adult Day Care Facility and Section 7-1. Conditional Use Approval, B. Conditional Uses Allowed, 8. Church, Temple, or Place of Worship; Article VI. District Use Requirements, Section 6-17. O-I Office-Institutional District, D. Conditional Uses, Adult Day Care Facility; Section 6-18. C-C Community Commercial District, C. Conditional Uses, Adult Day Care Facility; and Section 6-19. C-H Highway Commercial District, C. Conditional Uses, Adult Day Care Facility as presented by the Planning & Zoning Department.**

Staff's additions to the current ordinance are indicated in **bold**, underline, and *italics*. Strikethrough indicates deletion.

Delete all sections numbers 3-1. thru 3-124. and add a definition for an Adult Day Care Facility. All definitions are to remain in alphabetical order.

**ARTICLE III. DEFINITIONS**

Words and terms not explicitly defined in this Ordinance shall have the meaning given by common and ordinary use as defined in Webster's New Collegiate Dictionary. The following specific definitions shall apply:

~~3-1.~~ **Accessory**. A use or structure customarily incidental and subordinate to the principal use or structure, and located on the same lot as such principal use or structure.

~~3-2.~~ **Acre, gross**. A measure of land equal to 43,560 square feet.

~~3-3.~~ **Acre, net**. A gross acre less: street rights-of-way, both public and private; all land located within the 100 year flood plain; all water impoundments; and all lands proposed to be dedicated to a governing authority.

**Adult Day Care Facility.** *Adult day-care occupancies shall include any building or portion thereof used for not more than sixteen (16) hours per day to house more than three (3) adults requiring care, maintenance, and supervision by other than their relative(s). Clients shall be ambulatory or semi ambulatory and shall not be bedridden.*

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**3-4. Alteration**. Any change in the supporting members of a building; any addition to or reduction of a building; any change in use; or any relocation of a building.

And

Staff's amendments to the current ordinance are indicated in **bold**, **underline**, and *italics*. ~~Strikethrough~~ indicates deletion.

### ARTICLE VII. CONDITIONAL USES, EXCEPTIONS, AND MODIFICATIONS

7-1. Conditional Use Approval. Conditional Uses include certain uses which are allowed in a particular zoning district provided that all conditions specified under the Zoning Ordinance are met. The Zoning Administrator shall issue a Conditional Use Permit for each use listed below upon compliance with all specified conditions and approvals by the appropriate County officials.

A. Special Regulations. Prior to the issuance of development and/or building permits, a Site Plan must be submitted to the Zoning Administrator and approved by the appropriate County officials. This requirement shall apply to all Conditional Uses allowed within the various zoning districts except for: farm outbuildings, home occupations, single-family residences, and temporary meeting and/or events which are conducted no longer than fourteen (14) days per year.

B. Conditional Uses Allowed:

1. Adult Day Care Facility. (*Allowed in the C-C, C-H, and O-I Zoning Districts*).

a. *The facility shall comply with all licensing requirements of the State of Georgia.*

b. *The hours of operation shall be limited to: Monday through Saturday from 6:00 a.m. to 10:00 p.m.*

Staff's amendments to the current ordinance are indicated in **bold**, **underline**, and *italics*. ~~Strikethrough~~ indicates deletion.

### ARTICLE VII. CONDITIONAL USES, EXCEPTIONS, AND MODIFICATIONS

8. Church, Temple, or Place of Worship. (*Allowed in O-I, A-R, and residential zoning districts*).

a. The lot area shall be at least five (5) acres, and the lot width at the building line shall be at least 400 feet.

b. Such uses shall be permitted only on a lot which fronts on and accesses a Major Thoroughfare as specified by the Fayette county Thoroughfare Plan.

c. A minimum fifty (50) foot buffer plus the required setbacks shall separate all buildings and use areas from any residential or A-R Zoning District. However off-street parking areas and an unlit tot lot with a maximum size of 2,400 square feet may be located within the setback areas.

- d. Minimum setbacks for structures and use areas (excluding parking areas and tot lots as defined herein).
  - (1) Front yard: 100 feet
  - (2) Side yard: fifty (50) feet
  - (3) Rear yard: seventy-five (75) feet
- e. Uses and/or structures incidental to a church such as a private school, parsonage, gymnasium, playground, and/or athletic field shall be allowed provided all buildings and use areas meet the minimum setback and buffer requirements specified in subsections 8.c. and 8.d., above. Outdoor lighting for recreation purposes shall be prohibited.
- f. Day Care facilities shall be allowed provided that all requirements for day care facilities herein are met.
- g.** ***Adult Day Care facilities shall be allowed provided that all requirements for adult day care facilities herein are met.***
- ~~g~~**h.** Landscape areas shall be required in accordance with the Development Regulations. Tot lots, as defined herein, shall be planted in accordance with the Development Regulations along the side(s) closest to or adjoining the buffer.
- ~~h~~**i.** All buildings, other than storage buildings, shall maintain a decorative facing on those portions of the building which face public streets and any property zoned residential or agricultural-residential. The decorative facing shall consist of brick, stone, stucco or similar building materials compatible with the area.

Staff's amendments to the current ordinance are indicated in **bold**, **underline**, and ***italics***. ~~Strikethrough~~ indicates deletion.

**6-17. O-I, Office-Institutional District.**

- D. Conditional Uses. The following Conditional Uses shall be allowed in the O-I Zoning District provided that all conditions specified in Section 7-1 herein are met:
  - 1. Church, Temple or Other Place of Worship;
  - 2. Church or Religious Tent Meeting; (Added 04/09/98)
  - 3. Day Care Facility (Nursery School or Kindergarten);
  - 4.** ***Adult Day Care Facility;***
  - ~~4.5.~~ Hospital;

Staff's amendments to the current ordinance are indicated in **bold**, underline, and *italics*. ~~Strikethrough~~ indicates deletion.

**6-18. C-C Community Commercial District.**

- C. Conditional Uses. The following Conditional Uses shall be allowed in the C-C Zoning District provided that all conditions specified in Section 7-1 herein are met:
1. Animal Hospital, Kennel (Commercial or Non-Commercial), or Veterinary Clinic;
  2. Automobile Service Station, including gasoline sales in conjunction with a Convenience Store;
  3. Campground Facilities;
  4. Care Home, Convalescent Center or Nursing Home;
  5. Church or Religious Tent Meeting;
  6. Commercial Driving Range;
  7. Day Care Facility (Nursery School or Kindergarten);
  - 8. Adult Day Care Facility;**
  - ~~8.9.~~ Dry Cleaning Plant;
  - ~~9.10.~~ Fraternities and/or Sororities;

Staff's amendments to the current ordinance are indicated in **bold**, underline, and *italics*. ~~Strikethrough~~ indicates deletion.

**6-19. C-H Highway Commercial District.**

- C. Conditional Uses. The following Conditional Uses shall be allowed in the C-H Zoning District provided that all conditions specified in Section 7-1 herein are met:
1. Animal Hospital, Kennel (Commercial or Non-Commercial), or Veterinary Clinic;
  2. Automobile, Truck, Farm Equipment, or Motorcycle Sales and Accessory Repairs; (Amended 06/24/04)
  3. Automobile Service Station, including gasoline sales in conjunction with a Convenience Store;
  4. Care Home, convalescent Center or Nursing Home;
  5. Cemetery;
  6. Church or Religious Tent Meeting;
  7. Commercial Driving Range;

8. Day Care Facility (Nursery School or Kindergarten);

**9. Adult Day Care Facility;**

**9-10.** Dry Cleaning Plant;

Dennis Dutton stated that Staff was proposing ordinance amendments regarding Adult Day Care since it was not addressed in the Zoning Ordinance. Under Definitions, he said he would like to add a definition for Adult Day Care and also delete the section number of each definition; however, the definitions would remain in alphabetical order.

Jim Graw asked Mr. Dutton how he came up with the definition.

Mr. Dutton replied that it was through the Life Safety Code in the E.M.S. Department.

Tim Thoms asked why Adult Day Care could not fall under the Day Care guidelines.

Mr. Dutton explained that such items as an outdoor play area were not necessary for Adult Day Care.

Al Gilbert asked if a Senior Center would be required to follow the same guidelines as an Adult Day Care.

Pete Frisina replied it would not.

Mr. Graw asked why Staff wanted to regulate the hours of operation. He added that he would like to see flexible hours of operation and asked if the hours of operation could not be placed on the door.

Mr. Frisina replied that it was necessary to regulate the hours of operation to avoid an Adult Day Care Facility turning into a Nursing Home or Care Home. He added that regulating the hours of operation also made the ordinance more enforceable and having the hours of operation posted on the door would not be helpful.

Chairman Powell asked why the Adult Day Care Facility could not be open on Sunday.

Mr. Frisina replied that the proposed ordinance had been drafted similar to a Day Care Facility. He added that he did not object to the Adult Day Care Facility being open on Sunday.

Mr. Graw remarked that he would like to see the hours of operation extended to assist those working different shifts. He reiterated that the proposed hours of operation were not flexible enough.

Mr. Frisina reiterated that his primary concern was enforcement and he did not want the Adult Day Care Facility becoming a Nursing Care or Care Home with beds moved in to accommodate overnight adults.

Tim Thoms commented that this type service needs to be offered. He asked why an Adult Day Care Facility was not being allowed in the A-R zoning district.

Mr. Frisina replied Staff would prefer them being located in a commercial area because of the possibility for houses to be utilized as an Adult Day Care Facility.

Attorney Bill McNally suggested the following definition for Adult Day Care Facility: Adult Day Care Facilities shall include any building or portion thereof used to house more than three (3) adults requiring care, maintenance, and supervision by other than a relative. Client shall be ambulatory or semi-ambulatory and shall not be bedridden. Under the conditional use requirements, he suggested

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to strike b. as proposed and add the following: A client shall not remain in such facility for more

than sixteen (16) hours per day.

The P.C. and Staff could not reach an agreement on the hours of operation.

Mr. Frisina advised that Staff would contact other operators of Adult Day Care Facilities and get their input on what is typical for this type operation.

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Chairman Powell asked if there was any further business.

Chairman Powell circulated copies of a Memorandum from Attorney Bill McNally dated April 26, 2007, regarding Conditional Zoning which states: The following case law supports the conclusion that, in Georgia, conditional zoning may only be used where the motivation is to lessen any negative impact on neighboring property owners or the community that would occur as a result of the rezoning. Conditional zoning is improper where the rezoning is motivated by conditions proposed by the rezoning applicant. The case of Cross V. Hall County, 238 GA. 709 (1977) defines conditional zoning and improper contract zoning:

1. Conditional zoning is rezoning subject to conditions which are not applicable to other land similarly zoned.
2. Generally, such conditions will be upheld when they were imposed pursuant to the police power for the protection or benefit of neighbors to ameliorate the effects of the zoning change.
3. Other conditions imposed on rezoning are generally invalid, particularly where the zoning board is motivated to allow the change by the conditions offered or proposed by the rezoning applicant, so that the rezoning is granted as a consequence of the condition rather than as an exercise of legislative discretion.

In my opinion, placing conditions on a particular parcel being rezoned should relate to the physical situation of the parcel or its impact on the community. Some examples would be as follows:

1. Placing a buffer requirement on a new development abutting a main road.
2. Preventing a commercial rezoning from entering a residential street when a highway is available for ingress and egress.
3. Placing a buffer requirement on a new development if the development will have a detrimental effect upon a stream or another neighborhood.
4. Providing road right-of-way when the new development will greatly increase traffic flow.

A problem arises when conditions are placed on a rezoning by the board or volunteered by the developer if those conditions are merely to make the rezoning request more attractive or acceptable.

Examples of this type of condition are larger than required house sizes or lot sizes. The acceptance of this type of condition or the imposition of conditions of this type is improper and could be ruled invalid.

Attorney McNally explained that this case says that when the P.C. imposes a condition of zoning, and the P.C. should impose the condition, and the condition should have to do with the physical piece of property. He confirmed that the Court does like to see the P.C. depart from the zoning of the property because that is what belongs in the area and there is an inclination to believe that when the P.C. accepts self-imposed conditions that it is an inducement for the P.C. to grant the zoning that would otherwise not have been granted and therefore; can be interpreted as contract zoning, which is improper.

Hearing no further comments, Bill Beckwith made a motion to adjourn the Public

Meeting/Workshop. The motion unanimously passed 5-0. The Public Meeting/Workshop adjourned at 9:04 P.M.

**PLANNING COMMISSION**

**OF**

**FAYETTE COUNTY**

**ATTEST:**

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**DOUG POWELL**  
**CHAIRMAN**

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**ROBYN S. WILSON**  
**P.C. SECRETARY**



