

THE FAYETTE COUNTY PLANNING COMMISSION held a **Public Meeting/Workshop** on March 4, 2010, at 7:03P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Board of Commissioners Conference Room, Fayetteville, Georgia.

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

MEMBERS ABSENT: Douglas Powell

STAFF PRESENT: Pete Frisina, Director of Planning & Zoning
Dennis Dutton, Zoning Administrator
Robyn S. Wilson, P.C. Secretary/Zoning Coordinator

Welcome and Call to Order:

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

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1. Discussion of proposed amendments to the Fayette County Zoning Ordinance, in its entirety. *This is part of a year long review of the Zoning Ordinance.*

Pete Frisina advised he had gone through the Zoning Ordinance and pulled out areas regarding nonconformances. He pointed out a legal nonconformance is created by actions by the County such as changes in regulations which have made a conforming use nonconforming. He confirmed if the County makes something nonconforming then it is recognized as a “legal nonconformance”. He said normally a nonconformance should eventually cease to exist; however, the current ordinance allows the creation of a new nonconformance.

Pete Frisina advised there are three (3) main issues:

- 1) How do we handle existing nonconformities? Should they continue? Should they be able to expand, and if so, to what extent?
- 2) We presently allow the creation of nonconformities in several portions of the ordinance. As we create new nonconformities, how do we want to regulate them?
- 3) There are conflicting regulations currently in the ordinance relating to nonconformities.

Jim Graw asked if the County should continue creating nonconformances?

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Pete Frisina replied each time the ordinance is amended, you could be creating nonconformances, so legally, the County can't stop creating nonconformances because people have vested rights.

Pete Frisina presented a definition for "Legal Nonconformance" and "Illegal Nonconformance" as indicated below:

ARTICLE III. DEFINITIONS

Nonconformance, Legal. A legally existing lot, use, building or structure which fails to comply with the provisions herein, as of the effective date of this Ordinance (***November 13, 1980***), ~~or~~ as the result of subsequent amendments, ***due to the acquisition of property for a public purpose, rezoning, or variance.***

Pete Frisina explained a legal nonconformance is made nonconforming by the County by amending the ordinance, adopting a new ordinance, property taken for a public purpose, rezoning, or variance. He pointed out a variance, including an administrative variance, actually creates a legal nonconformance.

Jim Graw stated a definition is needed for "public purpose."

Pete Frisina concurred and stated "public purpose" is the taking of property by any entity that has eminent domain (State, Federal government, County, public utility). He added he would add a definition to the ordinance.

Nonconformance, Illegal. ***A lot, use, building or structure established after the effective date of this Ordinance (November 13, 1980) or subsequent amendments which fails to comply with the provisions herein.***

Pete Frisina explained an illegal nonconformance is created by an action of the landowner, after the effective date of the ordinance or subsequent amendments. He stated an illegal nonconformance could be building a structure without a building permit or subdividing property with less acreage than allowed by the zoning district.

ARTICLE V. GENERAL PROVISIONS

5-1. Use. ~~No building, structure or land shall be used or occupied in a manner inconsistent with the requirements herein. No building, structure or part thereof shall be erected, constructed, reconstructed, moved, enlarged or structurally altered in a manner inconsistent with the~~

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requirements herein. **No land, building, or structure shall be used in any manner or for any purpose that is inconsistent this ordinance, or amendment thereto, except as otherwise provided herein. In addition, no building or structure shall be erected, moved, altered, or enlarged in any manner that is inconsistent with this ordinance, or amendment thereto, except as otherwise provided herein.**

Pete Frisina pointed out he had added “except as otherwise provided herein” to cover nonconforming uses.

Jim Graw suggested inserting “with” prior to “this ordinance” on the second line of bold print.

5-2. Use, Prohibited. If either a use or class of uses is not specifically indicated as being permitted in a zoning district, either as a matter of right or as a conditional use, then such use, class of uses, or structures for such uses shall be prohibited in such zoning district, **except as otherwise provided herein.**

Pete Frisina pointed out he had added “except as otherwise provided herein” to cover nonconforming uses.

5-3. Principal Structure or Use. In all residential or agricultural-**residential** zoning districts, no more than one (1) principal structure or use shall be located on a lot, except as otherwise provided herein. In all non-residential zoning districts, no more than one (1) principal use, **in terms of non-residential and residential uses,** shall be located on a lot, except as otherwise provided herein.

Jim Graw asked for clarification of one (1) principal use in terms of non-residential and residential uses.

Pete Frisina explained residential uses are allowed in a non-residential zoning district, such as a single-family dwelling. He said in a non-residential zoning district, you must pick either a non-residential use or a residential use, but not both.

Jim Graw suggested deleting “in terms of non-residential and residential uses” because it is confusing.

Al Gilbert suggested adding the following sentence: “A principal use in a non-residential zoning district shall be either a non-residential use or a residential use, but not both.”

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5-4. Use on a Lot. Construction of buildings, ~~and~~ structures, and establishment of uses shall occur only upon a lot as defined herein.

(Art III - Lot. A ~~lot~~ **tract** of land of varying size which is designated as a single unit of property.)

Pete Frisina asked if “regulated”, “allowed”, or “required” was a better term to replace “defined.” He said the definition of “lot” is vague.

The PC concurred with the term “required.”

5-5. Height and Density. No building or other structure shall hereafter be erected or altered so as to:

A. Exceed the height limit; or

B. Accommodate or house a greater number of families per lot than allowed.

5-6. Reduction of Lot Area. No lot shall be reduced in size so that the lot size, width or depth, size of yard, lot area per family, or any other requirement of this Ordinance is not maintained. This restriction shall not apply when a portion of a lot is acquired for a public purpose.

Pete Frisina stated that a definition of “public purpose” would be developed.

5-7. **Conflicting Requirements. Should any requirements within this ordinance conflict or conflict with any other County requirements, the most restrictive shall apply.**

Jim Graw suggested deleting “or conflict.”

5-8. Yard Service, Required Open Space to One (1) Building. No part of any yard, ~~or~~ other open space, or off-street parking or loading space required about, or in connection with, any building, structure, or use shall be included as part of a required yard, open space, or off-street parking or loading space similarly required for any other building, structure, or use except as provided herein.

5-9. Open Space Yard Not to be Encroached Upon. No ~~open space~~ **yard** shall be encroached upon or reduced in any manner except in conformity with the ~~yard~~, setback, off-street parking spaces, and such other regulations required for the zoning district in which such building is

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located. ~~Shrubby~~ Landscaping, driveways, vehicle parking areas, retaining walls, walls and fences, curbs, and planted buffer strips shall not be construed to be encroachments. Open space areas shall be permanently maintained as open space and appropriately landscaped. These areas may not be used for vehicular access, parking or similar uses except as otherwise provided herein.

Pete Frisina explained yard and open space had been used interchangeably in the ordinance. He confirmed yard means setback area.

5-36. ~~Administrative Variances and Modifications.~~ The Zoning Administrator shall have the authority to approve administrative variances regarding setbacks for an existing structure. Said administrative variance shall not exceed ten (10) percent of the minimum setback requirements up to a maximum of two (2) feet. minor changes to plan elements, This shall not include setbacks required for Conditional Uses. dimensional requirements and conditions of zoning when the conditions in A. below exist:

A. ~~Evaluation.~~ The evaluation of a request for a minor change to plan elements, dimensional requirements, landscape requirements, and conditions of zoning shall determine that:

1. ~~The basic design and concept expressed on approved plans or in County regulations have been preserved; and~~
2. ~~The minor change is made necessary by:~~
 - a. ~~Discovery of topographic, geographic or geologic conditions that were unknown at the time of plan or plat approval; or~~
 - b. ~~Unforeseen developments, on or off the site, which impact the reasonableness of the plan element, dimensional requirement or condition of zoning.~~

B. ~~Limitations.~~ The Zoning Administrator shall have the authority to approve administrative variances and modifications of conditions not to exceed twenty (20) percent of the stated requirements:

1. ~~Required buffers between lots identified for industrial, commercial, and office institutional uses on the Land Use Plan may be reduced to twelve (12) foot deep landscape areas; and~~

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2. ~~Front and side yards adjoining major thoroughfares shall not be administratively reduced by more than five (5) percent.~~

Pete Frisina stated the present procedure has been to only grant a limited administrative variance for an existing structure, especially older structures that slightly encroached into the setback, and not grant administrative variances for the placement of new structures which gives staff too much discretion. He said these changes will only allow a limited administrative variance for an existing structure. He added any variance over and above this limit will have to be considered by the ZBA.

Jim Graw asked if two (2) feet are enough footage allowed for an administrative variance.

Pete Frisina replied anything greater than two (2) feet should be considered by the ZBA and not by staff.

Robyn Wilson added the neighbors would be made aware of a request before the ZBA because the property would be posted with a sign.

ARTICLE VII. CONDITIONAL USES, EXCEPTIONS, AND MODIFICATIONS

Pete Frisina advised in regards to nonconformance, there are portions of the ordinance that seem to conflict. He pointed out one section states you cannot expand or enlarge a nonconformance and another section states you can.

Pete Frisina reported there are three (3) types of conformities: 1) nonconforming lots; 2) uses; and 3) structures. He added in some cases, there are compound nonconformities present on a lot.

7-2. Nonconformances.

- A. Nonconforming Lots. Any lot, being a lot of record at the time of passage of this ordinance ***(November 13, 1980) or at the time of any subsequent amendments,*** that fails to comply with the minimum ***dimensional*** requirements of this Ordinance, ***shall be considered a legal nonconforming lot and may be utilized for the establishment of uses or the placement of structures as long as all applicable regulations can be met. Where the dimensional requirements of the Zoning Ordinance cannot be met in terms of the placement of structures, a variance authorized by the Zoning Board of Appeals shall be required.*** ~~may.~~ ***In addition, any legally existing lot of record which is made nonconforming due to the acquisition of property for a public purpose shall also be considered a legal nonconforming lot. Any reduction in the land area of a legal nonconforming lot other***

than an acquisition for a public purpose which serves to make the lot more nonconforming shall result in a loss of the legal nonconforming lot status. However, any addition of property to a legal nonconforming lot which serves to make the lot more conforming shall not result in the loss of the legal nonconforming lot status.

Jim Graw asked for clarification of the following statement: Any reduction in the land area of a legal nonconforming lot other than an acquisition for a public purpose which serves to make the lot more nonconforming shall result in a loss of the legal nonconforming lot status.

Pete Frisina replied a legal nonconforming lot would lose its status if property is subdivided which makes the lot more nonconforming. He added this has been a policy.

Jim Graw suggested using the definitions and state “which serves to make the lot more nonconforming shall result in an illegal nonconforming lot.”

Pete Frisina explained if you have a legal nonconforming lot status and you reduce the acreage, not for a public purpose, you lose the legal nonconforming lot status. He added if you add property to a legal nonconformance lot, you maintain the legal nonconforming lot status because you are attempting to bring the lot more into compliance.

1. ~~If vacant, be used for a dwelling, in the A-R or a residential zoning district, provided that the height and floor area requirements along with the yard and any other applicable requirements are met.~~
2. ~~If vacant and in any district other than a residential or A-R Zoning District, be used for any use allowed in the applicable district provided that the minimum requirements for height, floor area and yards, and any other applicable requirements shall be met.~~
3. ~~If occupied by a structure containing a conforming use, have the structure improved, enlarged or extended provided that the minimum requirements for height, floor area and yards and any other applicable requirements are met.~~

Pete Frisina pointed out Section 7-2. is in conflict with Section 5-21. which reads as follows:

Nonconforming Lot of Record. Any unimproved nonconforming lot of record existing prior to the adoption of this Ordinance **(November 13, 1980)** which has an area or a width which is less than that required by this Ordinance may be used as a building site for a principal structure permitted in that zoning district. All other

structures and uses ~~must~~ shall conform to the applicable regulations contained herein. (This needs to be deleted from Article V.)

Pete Frisina advised Section 5-21. has been used primarily with property zoned residential. He said the last sentence seems to imply that the principal structure does not have to meet setbacks. He noted, as a result the principal structure (residence) has been made to meet the front setback and meet the side and rear setbacks to the greatest degree possible, which actually constitutes an Administrative Variance. He pointed out any accessory structure shall meet all setbacks or a variance from the ZBA is required. He added staff has no recollection of using this provision with property zoned nonresidential.

Pete Frisina confirmed the amendments to Section 7-2. above address the problem and Section 5-21. can be deleted.

- B. Nonconforming Open Uses of Land. Any legally existing open uses of land established prior to the passage of the ordinance (November 13, 1980) or any subsequent amendments that fail to comply with the minimum requirements of this ordinance shall be considered a legal nonconforming open use of land. Said uses consisting of storage yards, used car lots, auto wrecking, junk yards, golf driving ranges, miniature golf, and similar open uses where the only buildings on the lot are incidental and accessory to the open use of the lot, and where such use of the land is not permitted to be established herein, shall be governed by the following restrictions in addition to other requirements herein.

Pete Frisina pointed out he had added “any legally existing.”

1. When a nonconforming open use of land has been changed to a conforming use, it shall not thereafter be used for any nonconforming use.
2. Nonconforming open uses of land shall not be changed to any use but conforming uses.
3. A nonconforming open use of land shall not be enlarged to cover more land.
4. When any nonconforming open use of land is discontinued for a period in excess of six (6) months, any future use of the land shall be limited to those uses permitted in that zoning district under the provisions herein. Vacancy and/or non-use of the land, regardless of the intent of the owner or tenant, shall constitute discontinuance under this provision.

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- C. Nonconforming Use of a Structures. Noneonforming Any legally existing uses of a

structures established prior to the passage of the ordinance (November 13, 1980) or any subsequent amendments that fail to comply with the minimum requirements of this ordinance shall be considered a legal nonconforming use of a structure. ~~include structures used, at the time of passage of this Ordinance, for purposes not permitted in the zoning district in which they are located. They Said uses shall be governed by the following restrictions:~~

Pete Frisina pointed out he had added “any legally existing.”

1. A nonconforming use of a structure may be changed to another nonconforming use upon a finding by the Zoning Board of Appeals that the proposed nonconforming use is similar in its operation and effect on surrounding properties.
2. A nonconforming use of a structure shall not be changed to another nonconforming use that generates more automobile or truck traffic; creates more noise, vibration, smoke, dust or fumes; is a more intensive use of the structure than the existing nonconforming use; or is in any way a greater nuisance to the adjoining properties than the existing nonconforming use.
3. A nonconforming use of a structure shall not be extended or enlarged except into portions of the structure which, at the time the use became nonconforming, were already erected and arranged for, or designed for, such nonconforming use, except as provided herein. No alterations shall be made in any structure occupied by a nonconforming use, which would in any way increase the floor space, area, or volume of space occupied by the use.
4. When any nonconforming use of a structure is discontinued for a period in excess of six (6) months, any future use of the structure shall be limited to those uses permitted in that zoning district, except as otherwise provided for herein. Vacancy and/or non-use of the building, regardless of the intent of the owner or tenant, shall constitute discontinuance under this provision.

D. Nonconforming Structures. Any legally existing structure, that at the time of passage of this ordinance (November 13, 1980) or at the time of any subsequent amendments, that fail to comply with the minimum requirements of this Ordinance, shall be considered a legal nonconforming structure and shall be

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allowed to remain. In addition, any legally existing structure that is made nonconforming due to the acquisition of property for a public purpose shall also be

considered a legal nonconforming structure. The enlargement, expansion, or extension of a nonconforming structure which serves to increase the nonconformance shall only be made with the authorization of the Zoning Board of Appeals. Where the Zoning Board of Appeals is required to determine whether a nonconforming structure may be enlarged, expanded, or extended, the provisions of a Request for a Variance (Article XI) shall be considered.

Pete Frisina advised there are no provisions in the ordinance to cover nonconforming structures; however, this proposed section seems to be dealing with setback requirements.

Jim Graw suggested adding “or as a result of a rezoning” prior to “shall also be considered a legal nonconforming structure.”

Pete Frisina suggested adding “or as a result of a county rezoning” prior to “shall also be considered a legal nonconforming structure.”

Pete Frisina explained nonconforming structures could be:

- 1) A structure that doesn't meet setbacks.
- 2) A structure type that is not allowed in the zoning district such as a pole barn in residential zoning.
- 3) A structure that doesn't meet architectural requirements (Overlays and accessory structures).
- 4) A structure (residence) that does not meet the minimum square footage.
- 5) An accessory structure that exceeds the square footage requirement, is in the wrong location (front yard), or the number of accessory structures is exceeded.
- 6) A structure that exceeds the height limits.

Pete Frisina stressed churches are the biggest problem since they are also Conditional Uses. He pointed out they should be considered non-conforming uses first and Conditional Uses second. He noted some of these churches are historic and are important in the history and origin of this County. He confirmed preliminary research is showing approximately 75 churches in unincorporated Fayette County with 46 (61.3%) that meet the required five (5) acre minimum and 29 (38.7%) with less than

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five (5) acres making them nonconforming. He added the research is not complete and there is an indication that some churches on five (5) acre or greater lots are nonconforming due to structure placement as well.

Pete Frisina presented a site plan for a church which has been in existence since 1945, zoned A-R, on a one-half acre lot. He indicated the required setbacks overlap and do not allow for any building area. He said the lot, use, and structure is a legal nonconformance. He commented that the portion of the ordinance dealing with the expansion of a nonconforming use of a structure, had been utilized to allow an expansion of a nonconforming structure.

Pete Frisina stated he did not want to see a church or house destroyed, which could not be rebuilt under the 75 percent rule and the property rendered useless. He remarked there needed to be a regulation to allow any nonconformance to be considered by the ZBA.

The PC concurred.

Bill Beckwith stated the ZBA would need established guidelines to consider a nonconformance.

Al Gilbert remarked sooner or later, enough is enough, especially on a one-half acre lot. He asked if there could be a percentage of the lot coverage addressed in the ordinance.

Pete Frisina concurred.

Al Gilbert commented the ordinance needed to address bringing a site into compliance as much as possible, including parking and landscaping, when an expansion is allowed.

Pete Frisina concurred.

Pete Frisina asked if the addition of a second floor to a nonconforming structure is considered an enlargement?

Al Gilbert stated an addition would not be considered an enlargement because the footprint was not increased.

Pete Frisina explained if there was a ten (10) foot encroachment by a one-story house and then the height was increased by adding a second story, a neighbor could consider this a further encroachment if it blocks a view or sunlight.

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Bill Beckwith and Al Gilbert stated this would be very tough to defend in court.

Pete Frisina suggested having this type request considered by the ZBA. He said previously the policy was if there was an encroachment, you could construct an addition, as long as, the addition

did

not encroach further into the setback. He confirmed this policy is no longer being used by staff.

~~D.E.~~ Restoration and Re-Use of Nonconforming Historic Structures. Nonconforming historic structures previously used for purposes not permitted in the zoning district in which they are located shall be governed by the following restrictions:

1. The structure and previous use ~~must~~ ***shall*** be identified in the Architectural Survey of Fayette County. ***The re-use of the historic structure will be subject to the regulations of the Nonconforming Use of a Structure (Article. VII.).*** (Amended 12/05/01)
2. The structure itself ~~must~~ ***shall*** be the subject of restoration. Any extension, enlargement or alteration of the structure ***that does not comply with the minimum requirements of this ordinance*** is subject to approval of the Zoning Board of Appeals.
3. Areas of consideration for approval of such a request include, but are not limited to:
 - a. ~~Submittal of a site plan;~~
 - b. Restriction of allowable uses;
 - c. Parking requirements; ***and***
 - d. Landscaping requirements; ~~and~~
 - e. ~~Signage.~~

~~E.G.~~ Use of Historic Residential Structures ***and Agricultural Structures*** in Residential Subdivisions. The preservation of historic residential structures listed in the Architectural Survey of Fayette County ***and agricultural structures*** is encouraged in residential subdivisions ***to preserve the character of Fayette County*** as these structures can be used as residences, ~~or~~ community facilities, ***or as ornamentation***

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for the subdivision. Existing structures used for a community facility ~~must~~ ***shall*** meet all applicable building and safety codes and will be regulated as a Conditional Use under Developed Residential Recreational/Amenity Areas. The use of these structures will be subject to the approval of the Zoning Board of Appeals in terms of

any nonconformance with the applicable zoning district. (Adopted in its entirety 12/05/01)

Pete Frisina advised while some of the churches in the County are over 100 years old, they are not listed on the Architectural Survey of Fayette County. Pete Frisina explained he had received requests from developers who would like to keep agricultural structures, such as existing silos, as ornamentation for the subdivision.

Creation of a Lot for Enhancements to a Development. Said lot shall not be for the building purposes of the permitted or conditional uses of the zoning district in which the lot is located and the lot is not required to meet the minimum lot size or lot width for the applicable zoning district. Said enhancements shall include tot lots containing playground equipment only, decorative features (such as landscaping, arbors, fences/walls, fountains, sculptures, benches, arches, etc.), signs and the preservation of historic and agricultural structures for ornamentation. The lot must be labeled: "Not a Building Lot – For Enhancement Purposes Only on the Preliminary Plat and/or the Final Plat as applicable." The lot shall be under the ownership of the Home Owner’s Association, Property Owner’s Association, Developer/Property Management entity as applicable. (Do we need to establish a minimum lot size and setback for some uses such as the tot lot and historic and agricultural structures for ornamentation?)

Pete Frisina reported that technically, the property designated for signage is actually a nonconforming lot. He said this provision would cover the creation of this type nonconforming lot.

Jim Graw said he would like to see subdivisions, at a minimum, develop natural areas with a tot lot or even tennis courts.

Al Gilbert reported the PC had tried this in the past but were told by the developers that such items are “marketing devices”.

Robyn Wilson stated the requirements regarding the Preliminary Plat and Final Plat would also need to be added to the Subdivision Regulations.

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Pete Frisina advised discussion would begin with Section 7-3. at the next Public Meeting/Workshop.

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Chairman Thoms asked if there was any further business.

Hearing none, Al Gilbert made a motion to adjourn the Public Meeting/Workshop. Bill Beckwith seconded the motion. The motion unanimously passed 4-0. Doug Powell was absent. The Public Meeting/Workshop adjourned at 9:03P.M.

**PLANNING COMMISSION
OF
FAYETTE COUNTY**

ATTEST:

**TIM THOMS
CHAIRMAN**

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