

**THE FAYETTE COUNTY PLANNING COMMISSION** held a **Public Meeting/Workshop** on April 1, 2010, at 7:11 P.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

**MEMBERS ABSENT:** Jim Graw  
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 plus review of the Zoning Ordinance.***

Pete Frisina presented the following proposed revised amendments since the last Public Meeting/Workshop:

**ARTICLE III. DEFINITIONS**

**Acquisition of Property for a Public Purpose. *The acquisition of property by an entity with the power of eminent domain.***

**Legal Nonconforming Cemetery or Burial Ground. *An existing cemetery or burial ground established before the effective date of this Ordinance (November 13, 1980) or subsequent amendments which fail to comply with the provisions herein. These cemeteries or burial grounds could be active, inactive, or abandoned.***

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

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, or due to the acquisition of property for a public purpose, a rezoning, or a variance.

Chairman Thoms clarified a rezoning could be requested by a property owner or by the Board of Commissioners which could create a legal nonconforming lot.

Pete Frisina concurred.

Pete Frisina advised Jim Graw had called on March 29, 2010, and made the following suggestion:

Nonconformance, Legal. A legally An 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 is made nonconforming as the result of subsequent amendments, or due to the acquisition of property for a public purpose, a rezoning, or a variance.

Pete Frisina said he did not want to delete “legally” because it changes the meaning of the requirement.

#### 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 requirements herein.~~ No land, building, or structure shall be used in any manner or for any purpose that is inconsistent with 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.
- 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.

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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 shall be located on a lot, except as otherwise provided herein. ***The principal use on a non-residentially zoned lot shall either be nonresidential or residential but not both.***

Chairman Thoms suggested inserting a “comma (,)” after “residential.”

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

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.

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

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 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.~~

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- 5-21. ~~Nonconforming Lot of Record.~~ Any unimproved nonconforming lot of record existing prior to the adoption of this Ordinance 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 conform to the applicable regulations contained herein.
- 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~~
  2. ~~Front and side yards adjoining major thoroughfares shall not be administratively reduced by more than five (5) percent.~~

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**ARTICLE VII. CONDITIONAL USES, EXCEPTIONS, NONCONFORMANCES,  
TRANSPORTATION CORRIDOR OVERLAY ZONE, AND MODIFICATIONS-  
COMMERCIAL DEVELOPMENT STANDARDS**

Pete Frisina reported the title of Article VII. has been made to reflect what is actually found in the Article.

7-2. Nonconformances.

A. Nonconforming Lots.

Any lot, being a lot of record at the time of passage of this ordinance that fails to comply with the minimum requirements of this Ordinance, may *A legally existing lot of record 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, or due to the acquisition of property for a public purpose, a rezoning, or a variance, 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 district cannot be met in terms of the placement of structures, a variance authorized by the Zoning Board of Appeals shall be required. 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.*

Al Gilbert confirmed that if you added enough property to a legally existing nonconforming lot to make it a conforming lot, it would automatically be considered a conforming lot.

Chairman Thoms also confirmed that once a lot is made conforming it cannot be made nonconforming.

Pete Frisina concurred with both statements.

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.~~

**Creation of a Legal Nonconforming Lot for Enhancements to a Development. Said lot shall not be utilized for the Permitted or Conditional Uses of the zoning district in which the lot is located and the lot is not required to meet the applicable minimum lot size, lot width, or road frontage requirements. Said enhancements shall include tot lots, decorative features (such as landscaping, arbors, fences/walls, fountains, sculptures, benches, arches, etc.), signs and the preservation of historic and agricultural structures for ornamentation (see Nonconforming Structures). A tot lot shall only be equipped with playground equipment (swing set, slide, teeter totter, monkey bars, sandbox, etc.) intended for small children. A minimum 15 foot setback shall be maintained for any playground equipment or any historic or agricultural structures utilized 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, and Developer/Property Management entity, as applicable.**

Pete Frisina suggested adding “stormwater facilities” prior to “tot lots” and deleting “For Enhancement Purposes Only” and put “Not a Building Lot” in quotes.

Bill Beckwith suggested deleting “and” and inserting “or” prior to “Development/Property.”

**Creation of a Legal Nonconforming Lot for a Legal Nonconforming Cemetery or Burial Ground. The creation of a lot intended for the sole purpose of containing a legal nonconforming cemetery or burial ground is allowed. Said lot is not required to meet the applicable minimum lot size, lot width, or road frontage requirements. The boundary of the lot shall be setback a minimum of five (5) feet from the location of any grave. A legal nonconforming cemetery or burial ground shall be indicated on a Preliminary Plat, Final Plat and/or Site Plan, as applicable. A minimum 20 foot public access to a legal nonconforming cemetery or burial ground shall be maintained either through fee simple ownership or an easement.**

Pete Frisina advised a section would be added to the County Code Book regarding a Cemetery and a Burial Ground which basically reiterates the State Law.

Individual lots, parcels or tracts affected by proposed rezonings which are initiated by a party other than the Board of Commissioners of Fayette County shall ~~each be of sufficient size and shape to meet all~~ **the minimum lot size, lot width, and road frontage** requirements of this Ordinance, **except as otherwise provided herein.** Combination or division of lots **to achieve compliance with said requirements** in accordance with County regulations, shall be accomplished as a condition of **rezoning** approval. ~~prior to the approval of any permits or applications.~~

**Consideration for the Rezoning of Legal Nonconforming Lots. Any legal nonconforming lot may be considered for rezoning to another zoning district where the lot would be made nonconforming by said rezoning. Factors of consideration, in addition to those enumerated in Article XI., would include the following:**

- 1. The degree of increase or reduction of the nonconformity of existing structures located on the subject property; and**
- 2. The land use designations of adjoining lots as indicated on the Land Use Plan.**

Chairman Thoms suggested inserting “current zoning and” prior to “land use designations.”

Pete Frisina concurred.

**Where the dimensional requirements of the zoning district cannot be met in terms of the placement of new structures, a variance authorized by the Zoning Board of Appeals shall be required.**

**B. Nonconforming Uses**

**Nonconforming Open Uses of Land. Any legally existing open uses of land 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, or due to the acquisition of property for a public purpose, a County initiated rezoning, or a variance, 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.

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.

Pete Frisina stated “legal” should be inserted prior to “nonconforming” in #1. thru #4.

Nonconforming Use of a Structures. Noneonforming *Any legally existing* uses of a structures *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, or due to the acquisition of property for a public purpose, a County initiated rezoning, or a variance, 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:

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.

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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.

Pete Frisina stated “legal” should be inserted prior to “nonconforming” in #1. thru #4.

Request for Change of the **Legal Nonconforming Use of a Structure.** The **Zoning Board of Appeals** may authorize, upon appeal in specific cases, a change in the **legal** nonconforming use of a structure in accordance with the provisions of ~~Section 7-2.C~~ **herein.**

Request for Extension or Enlargement of the **Legal Nonconforming Use of a Structure.** The **Zoning Board of Appeals** may authorize upon appeal in specific cases an extension **or enlargement** of an existing **legal** nonconforming use which the Board is specifically authorized to pass on under the terms herein. Said extensions may be granted in an individual case upon a finding by the Board that:

1. The use is a **legal** ~~nonconformance~~ **nonconforming use** as defined in these regulations;
2. The **legal nonconforming** use is in full compliance with all requirements of these regulations applicable to nonconformances; and
3. The extension of said **legal nonconforming** use will not further injure a permitted use on adjacent property in the same zoning district.

Continuance of ~~Nonconformance~~ **a Legal Nonconforming Use.** The Board may allow a ~~nonconformance~~ **legal nonconforming use** to be re-established after discontinuance for six (6) consecutive months where it is deemed by the Board that:

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1. The design, construction, and character of the land, building, or structure is not suitable for uses permitted in the zoning district in which the

~~nonconformance~~ legal nonconforming use is situated; and

2. Undue hardship to the property owner would result in not allowing the continuance of a ~~nonconformance~~ legal nonconforming use; and
3. Adjacent property would not be unduly damaged by such continuance; and
4. The use is to be identical to the prior ~~nonconformance~~ legal nonconforming use.

C. Nonconforming Structures

**Nonconforming Structures. Any legally existing 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, or due to the acquisition of property for a public purpose, a rezoning, or a variance, shall be considered a legal nonconforming structure and shall be allowed to remain. The enlargement, expansion, or extension of a legal 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.**

Robyn Wilson requested an enlargement of a nonconforming structure by making the structure two-story be addressed, whether it is allowed or prohibited.

Bill Beckwith asked how an encroachment was measured.

Pete Frisina explained the measurement is taken from the foundation/wall to the property line. He added there is a definition in Article III. of the Zoning Ordinance. He said the County Attorney advised the ZBA should be making this type of a decision instead of Staff.

Chairman Thoms asked how a canopy would be addressed which is attached to a structure but has no supports on the front of the canopy.

Pete Frisina replied eaves and steps can only extend three (3) feet from a structure.

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Al Gilbert said he did not have a problem with this type request being considered by the ZBA, but they need to have guidelines to go by.

Pete Frisina replied the ZBA do have guidelines to go by. He suggested inserting “either vertical and/or horizontal,” prior to “shall only be made.”

Bill Beckwith stated this should help Staff explain this section to the public.

Pete Frisina reminded the PC that this section would also cover the enlargement of nonconforming churches; however, a decision needs to be made when enough is enough in terms of enlargement. He said the ZBA needed to consider parking (grass/gravel/paved), planted buffers, landscaping, stormwater facilities, and/or requiring a fence.

Robyn Wilson suggested requiring the percentage of lot coverage on the ZBA checklist to assist the ZBA in making a decision regarding the enlargement of a nonconforming structure.

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***

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- d. Landscaping requirements; ~~and~~

Pete Frisina suggested inserting “Buffer and/or” prior to “Landscaping.”

e. Signage.

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 allowed in residential subdivisions to preserve the character of Fayette County as these structures can be used as residences, or community facilities, or as ornamentation 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)

Reconstruction of Nonconforming Structures. When a nonconforming structure ~~or a structure containing a nonconforming use~~ is razed or damaged by fire, flood, wind or act of God, such structure may be reconstructed as a nonconforming structure only if the cost of reconstruction totals less than ~~seventy-five (75)~~ 75 percent of the current fair market value of the structure for tax purposes. Reconstruction costs shall include labor, materials, appliances, devices, and fixtures required for the issuance of a Certificate of Occupancy (per applicable International Residential Code and International Building Code.) The "value of the structure" shall not include the value of any accessory building, well, septic tank or utility in determining the extent of the damage. ~~Structures which do not conform to the yard requirements herein shall also be governed by this provision.~~

Pete Frisina stated "legal" should be inserted prior to "nonconforming".

Maintenance or Repair of Nonconforming Structures. The normal maintenance and repair of a nonconforming structure, as is required to keep it in a safe and sound condition, may be made. However, if the structure falls into a state of disrepair where the cost of the maintenance and/or repair is 75 percent or greater of the current fair market value of the structure for tax purposes, the structure must be removed and/or brought into compliance. Reconstruction costs shall include labor, materials, appliances, devices, and fixtures required for the issuance of a Certificate of Occupancy (per applicable International Residential Code and International Building Code.)

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Pete Frisina stated "legal" should be inserted prior to "nonconforming".

A property ~~which~~ that is improved with an existing structures ~~and~~ which would become nonconforming in terms of the setbacks only within the zoning district for which ~~the~~ a rezoning is being sought may be considered for rezoning, except as otherwise provided in

Article VI, O-I. and Article VII, Transportation Corridor Overlay Zone. ; however, the concept plan must illustrate an attempt by the applicant to meet, to the extent possible, all requirements herein, and no subsequent use may be approved which would further a deficiency of required on-site parking. Upon approval of the rezoning request, said structure shall be considered as a legal nonconforming structure and allowed to remain within the setback. Any enlargement, expansion, or extension of said structure which serves to increase the setback nonconformance shall only be made with the authorization of the Zoning Board of Appeals. Any new structure construction or improvements, including expansion of any existing structure, shall comply with the dimensional minimum requirements herein, and shall not be approved unless the parking requirements for the entire property can be met.

Pete Frisina stated “legal” should be inserted prior to “nonconforming”. He also suggested deleting “the setback” prior to nonconformance shall only” and inserting “, vertical and/or horizontal,” prior to “shall only be made.”

A property that is improved with an existing structure, which would become nonconforming in terms of the architectural requirements within the Zoning Ordinance, may be considered for rezoning. Upon approval of the rezoning request, said structure shall be considered as a legal nonconforming structure, in terms of architectural requirements and be allowed to remain in its architectural character, except as is required in a Transportation Corridor Overlay Zone regarding enlargement of an existing nonconforming structure.

A property that is improved with an existing structure, which would become nonconforming in terms of the maximum height limits within the Zoning Ordinance, may be considered for rezoning. Upon approval of the rezoning request, said structure shall be considered as a legal nonconforming structure in terms of height limits and be allowed to remain at said height.

A property that is improved with an existing residential structure, which would become nonconforming in terms of the minimum square footage requirements within the zoning district for which a rezoning is being sought, may be considered for rezoning. Any actions necessary to achieve compliance will be handled through conditions of rezoning approval.

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A property that is improved with accessory structures, which would become nonconforming in terms of the accessory structure requirements within the Zoning Ordinance, may be considered for rezoning. Any actions necessary to achieve compliance will be handled through conditions of rezoning approval, except as otherwise provided herein.

~~7-4. Changes in Zoning. Any nonconformances produced by a change in zoning district boundaries or Ordinance regulations after the date of passage of this Ordinance shall also be governed by the provisions of Section 7-2.~~

Illegal Nonconforming Uses. Notwithstanding any other provisions herein to the contrary, as to nonconforming uses, which were illegal when they were commenced, or which became illegal thereafter, prior to the adoption of this Ordinance, *or amendment hereto*, this section shall be deemed to impose additional regulations only. It shall not be held or construed to be permissive of such illegal use, nor as recognizing any right to the continuance of an illegal use, except in those instances where the illegal use was rendered conforming by the inclusion of the land, whereon such use was conducted within a zoning district wherein such use is permitted as shown upon the Zoning Map of Fayette County.

#### **Article VI – O-I Zoning District**

Use of Existing Structure: When property containing a lawfully existing building and accessory structures is rezoned to O-I for use of the existing buildings, the following shall apply: **the dimensional requirements shall be reduced to the extent of, but only at the location of, any encroachment by existing structures and said structures shall be considered legal nonconforming structures.**

Bill Beckwith suggested deleting “lawfully existing” and inserting “legally conforming.”

Pete Frisina suggested deleting “existing.”

Chairman Thoms inserting “, under the current zoning,” prior to “is rezoned to O-I.”

- ~~a. The dimensional requirements shall be reduced to the extent of, but only at the location of, any encroachment by existing structures. Any new construction or improvements, including expansion of any existing structure, shall comply with the dimensional requirements herein.~~

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- ~~b. In the event that a structure which existed at the time of rezoning is removed, demolished or destroyed, any new structure must comply with the provisions of this district.~~

#### **Article VII in SR 54 West, General State Route, SR 85 North, SR 74 North**

Use of Existing Structure: When property containing a lawfully existing building and

accessory structures is rezoned to O-I or Commercial, to use the existing buildings, the following requirements shall apply: *the dimensional requirements shall be reduced to the extent of, but only at the location of, any encroachment by existing structures and said structures shall be considered legal nonconforming structures.*

Bill Beckwith suggested deleting “lawfully existing” and inserting “legally conforming.”

Pete Frisina suggested deleting “existing.”

Chairman Thoms inserting “, under the current zoning,” prior to “is rezoned to O-I.”

- a. ~~The setback requirements on the existing lot shall be reduced to the extent of any encroachment by existing structures. Any new construction shall comply with the setback requirements herein. (Amended 03/22/07)~~
- b. ~~All additions to existing structures shall not encroach upon the setback to a greater extent than the existing building line. (Amended 03/22/07)~~

#### ARTICLE IX. ZONING BOARD OF APPEALS

- B. Request for a Variance. The Board 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, a variance shall not be granted for *a reduction in lot size, lot width, road frontage, or any requirements of a Conditional Use, or a* use of land, building, or structure that is

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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 Board that the following exists:

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. Provided that the Board may impose or require such additional restrictions, conditions, and standards as may be necessary to protect the health and safety of workers and residents in the community, and 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 permit granted pursuant to the provisions of these regulations, that any of the ~~terms, conditions, or~~ restrictions, conditions, and standards upon which such permit was granted are not being complied with, said Board shall rescind and revoke such permit after giving due notice to all parties concerned and granting full opportunity for a hearing. In exercising the above powers, the Board 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.

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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 3-0. Jim Graw and Doug Powell were absent. The Public Meeting/Workshop adjourned at 8:33 P.M.

**PLANNING COMMISSION**  
**OF**

**FAYETTE COUNTY**

**ATTEST:**

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**TIM THOMS  
CHAIRMAN**

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