

THE FAYETTE COUNTY PLANNING COMMISSION met on June 6, 2013 at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Board of Commissioners Conference Room, Suite 100, Fayetteville, Georgia.

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

STAFF PRESENT: Pete Frisina, Director of Community Services
Dennis Dutton, Zoning Administrator
Lem Miller, Marshal

Welcome and Call to Order:

Chairman Gilbert called the Planning Commission Meeting to order. Chairman Gilbert introduced Lem Miller of the Marshal's office and Dennis Dutton and Pete Frisina of Planning and Zoning. Chairman Gilbert stated all of the Commission Members were present tonight. Chairman Gilbert recognized David Wardell with the All Saints Anglican Church.

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1. Consideration of the Minutes of the Meeting held on May 16, 2013.

Tim Thoms made the motion to approve the minutes. Bill Beckwith seconded the motion. The motion unanimously passed 4-0-1. Jim Graw abstained as he was not present at the May 16, 2013 meeting.

NEW BUSINESS

2. Discussion of proposed amendments to the Fayette County Code of Ordinances, Chapter 20. Zoning Ordinance, Article V, Sec. 5-20., regarding: accessory structure size in residential zoning districts.

Pete Frisina said all three of the items being discussed tonight were brought up by the Board of Commissioners at their May 23, 2013 meeting asking Staff and the Planning Commission to look at these issues. He said this issue deals with accessory structures and an individual that wants a larger accessory structure than is currently allowed and he proposes adding a third option for accessory structures that allows a 3,600 square foot accessory structure with a minimum of five (5) acres and the residence would have to be at least 3,600 square feet in size.

Jim Graw asked what prompted this change.

Pete Frisina said a citizen asked for an enclosed basketball gym on their property that would larger than 1,800 square feet.

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Doug Powell asked if the property is zoned A-R.

Pete Frisina said the property is zoned R-70.

Dennis Dutton said they have approximately seven (7) acres.

Doug Powell asked do we limit barns in A-R.

Dennis Dutton said at some point I A-R barns are not limited in size or number.

Jim Graw asked if this property is in a two (2) acre R-70 area.

Chairman Gilbert said the property is in a R-70 subdivision.

Pete Frisina said the lots in the subdivision range from two (2) acres up to seven (7) acres.

Jim Graw asked if someone in the subdivision on two (2) acres could have a 3,600 square foot accessory structure.

Pete Frisina said they could not because they don't have five (5) acres.

Tim Thoms asked if the structure would be limited to 35 fet in height.

Pete Frisina said for now it would be.

Doug Powell asked what if I had 100 acres could I build a larger accessory structure.

Pete Frisina said if you were zoned R-40 for example you could only buildup to 3,600 square feet.

Jim Graw said he remembers proposed amendments that would allow more things based on the size of the property and the County Attorney at time said not to do that as it may be discrimination.

Bill Beckwith said it is logical that the more property you have the more you should be able to build.

Jim Graw asked what about the rights of the people that live next door.

Bill Beckwith asked what about the rights of the people that own the property.

Chairman Gilbert suggested adding screening to these buildings.

Doug Powell asked if there are architectural standards for accessory structures.

Pete Frisina said there are architectural standards for accessory structures.

Doug Powell asked if they have to have a pitched roof.

Dennis Dutton said a pitched roof is not required.

Jim Graw said you can have a guest house in this structure.

Dennis Dutton said this accessory structure could be attached to the principal structure with a heated corridor and be allowed now.

Chairman Gilbert asked what the purpose is for a Guest House.

Pete Frisina said he just followed the standards for the other accessory structures.

Tim Thoms asked if these structures would have to be in the rear yard.

Pete Frisina said in the side or rear yard.

Tim Thoms suggested that they only be allowed in the rear yard.

Jim Graw said he has a problem with this as someone in this subdivision with two (2) acres can't build the same size structure.

Tim Toms said he has a problem with this as well.

Chairman Gilbert suggested that this be taken back to the BOC with the Planning Commission's reservations.

3. Discussion of proposed amendments to the Fayette County Code of Ordinances, Chapter 20. Zoning Ordinance, Article V, Sec. 5-16., regarding: church or place of worship structures permitted above the height limit.

Pete Frisina said that Section 5-16 addresses structures that can be above the height limit and he proposed adding a cathedral or vaulted ceiling on a church or other place of worship. He said this amendment would also address the existing churches that exceed the height limit.

Chairman Gilbert asked if there is a limit on the height.

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Peter Frisina responded that there would not be a limit on the height a cathedral or vaulted ceiling on a church or other place of worship.

Jim Graw asked what the tallest church structure in the County is now.

Pete Frisina said he thought the highest was 60 to 67 feet depending on where you measure from as the grade changes around the building.

Chairman Gilbert said they can be built into a hill or slope.

Pete Frisina said a tall roof with a steep pitch or dome is an architectural aspect of a church or place of worship.

Jim Graw asked if bell towers are exempt from the height limit.

Pete Frisina said they were already listed in 5-16.

Tim Thoms asked how this is applied to other zoning categories.

Pete Frisina said it would apply to any church or place of worship regardless of what zoning district it is located.

Tim Thoms said the way he reads Section 5-16, it says "The height limit shall not apply to structures and architectural features not intended for human occupancy, including, but not limited to" and does the specific type of structure have to be listed in this sentence.

Pete Frisina said it is easier for staff if the structures are specifically listed.

Tim Thoms said 5-16 says "including, but not limited to" is not specific.

Pete Frisina said that is true but it would also have to be a structure that is not habitable.

Doug Powell asked if that would meet the buildings that were previously discussed in the M-1 area.

Pete Frisina he didn't think so.

Doug Powel said but Section 5-16 says "but not limited to" so could it be applied to any building.

Pete Frisina said if we interpret Section 5-16 in that manner then all of the discussion about building heights we have had would be moot and staff did not think that was the intent of the section.

Bill Beckwith said the Section could be interpreted to mean any structure that doesn't have human occupancy and that is what the section says.

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Pete Frisina said the section has never been applied in that manner.

Bill Beckwith asked why it hadn't been applied in that manner.

Pete Frisina said it is the intent staff goes by.

Bill Beckwith suggested that it be rewritten to take out ambiguity.

Pete Frisina said he is open to any suggestions.

Doug Powell said as written, it would allow any portion of a structure that didn't have human occupancy to not have to meet the building height.

Pete Frisina said what he was hearing is it is the Planning Commission's opinion that this section would allow any portion of a structure that didn't have human occupancy to exceed the height limits with no restrictions on setbacks or acreage.

Tim Thoms said that is the way he reads the section and he knows that is not the way it has been intended or enforced but he still questions the wording. He asked if Section 5-16 applies across the board to all zoning districts.

Pete Frisina replied that it does.

Doug Powell asked if we are happy with not limiting the height of all portions of a structure that could fit into the category of not having human occupancy.

Chairman Gilbert asked if each of the zoning districts have a height limitation.

Pete Frisina said each zoning district has height limitations.

Jim Graw said some churches have a balcony and is that considered human occupancy and what about churches with multiple balconies.

Pete Frisina said we would probably have to go back to the zoning district height and say no occupiable space above zoning district height.

Jim Graw said some churches are below grade, so where do we measure from.

Pete Frisina said the measurement is from the grade outside of the building.

Bill Beckwith said from the conversation with Alvin Williams he said he wanted enough height to build a two-story set and needed some clearance above that, so would that be considered unoccupied space.

Pete Frisina said that would not be applied in that manner and he would be interested in any suggestions from the Planning Commission.

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Chairman Gilbert said he felt like each zoning district needs to be examined in terms of building height.

Bill Beckwith asked if we need to look at it as issues come up or make changes across the board.

Tim Thoms suggested: strike "but not limited to" or strike "structures" and let it read "The height limit shall not apply to only architectural features not intended for human occupancy."

Pete Frisina said the section also lists monument, water tower, observation tower, telecommunication tower, chimney, smoke stack, conveyer, mast or aerial which are not architectural features.

Tim Thoms said your point is we need "structures" in the section as those things are structures.

Doug Powell suggested strike "including, but not limited to" so if someone wants the building something that is not listed we would have to look at the ordinance for each request.

Pete Frisina said we may be able to make a distinction between buildings and structures.

Jim Graw asked if we take out the reference to a cathedral or vaulted ceiling on a church or other place of worship can we just assume it means the same as it is currently written.

Pete Frisina said he would prefer to mention those specifically in the section.

Jim Graw asked what precedes this section in Article V.

Pete Frisina said each Section is specific and this is the only section dealing with building height.

Tim Thoms asked how the ordinance reads in terms of building height.

Pete Frisina said each zoning uses the term "Height Limit" and it does not say "Building" and the definitions in Article III contain a definition for "Building Height."

Tim Thoms said we should specific to what structures are allowed to exceed height restrictions.

Bill Beckwith asked how the zoning ordinance defines buildings and structures.

Pete Frisina read the definitions and said buildings are structures and structures are buildings according to the ordinance.

Jim Graw said someone could make a claim that their building is a structure and meets Section 5-16 and would be able to exceed the height limit.

Doug Powell asked could the height for churches and places of worship be addressed in each zoning district under the Conditional Uses.

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Jim Graw asked if we could add a sentence that says the height limitations for each zoning district shall apply.

Bill Beckwith said shall apply to what.

Jim Graw said the problem is the word "structures" in this section.

Chairman Gilbert suggested getting a legal opinion.

Doug Powel said we still need to clarify this section so it doesn't apply across the board for all structures.

Pete Frisina said Article V is a general provisions portion of the ordinance so you don't have to add verbiage each zoning district.

Doug Powell the way it is currently written it could be interpreted to cover the building we are trying to regulate in G-B.

Pete Frisina staff would make an argument based on the intent of the ordinance.

Bill Beckwith asked who would make a determination in terms of intent of the ordinance.

Pete Frisina replied staff would make the determination and that staff determination could be appealed to the ZBA.

Doug Powell said in the past the County limited building to 35 feet because there was not a fire fighting apparatus to get above 35 feet now we have ladder trucks.

Bill Beckwith said can we just apply this to churches.

Pete Frisina said all he was trying to do was allow a vaulted or cathedral ceilings for a church exceed the height limit.

Bill Beckwith suggested adding a separate sentence to this section to address vaulted or cathedral ceilings for a church.

Doug Powel said telecommunication towers are covered by another portion of the ordinance so they don't have to be listed in this section.

Jim Graw agreed with Doug Powell's suggestion.

Pete Frisina said he would create a separate sentence in this section for a vaulted or cathedral ceilings for a church to exceed the height limit.

The Planning Commission concurred with the suggestion.

4. Discussion of proposed amendments to the Fayette County Code of Ordinances, Chapter 20. Zoning Ordinance, Article VII, Sec. 7-1., regarding: Church and/or other Place of Worship and existing residential structures that do not meet the Conditional Use setbacks and/or buffers.

Pete Frisina said the proposed amendment is listed as J. under the Conditional Use requirements for a church and it is language used in the O-I zoning district which allows existing structures that don't meet the O-I setbacks to remain and be used as legally nonconforming structures. He explained that a new church is developing a lot with an existing home that does not meet the setbacks for a church and a storage building that encroaches into the buffer and the direction he got from the BOC was to consider the encroachment into the setback but not the buffer and to limit the uses.

Tim Thoms asked if the County does this in O-I.

Pete Frisina explained in O-I many times you are converting an existing residence into an office and the residence was built under residential zoning setbacks and may not meet O-I setbacks.

Tim Thoms said a church is a Conditional Use and so now we are going to grant permission for a pre-existing structure to be a legally non-conforming structure giving them an exception.

Chairman Gilbert said but the residence meets the existing setbacks for a residential zoning it is the change of use to a church that creates the problem.

Tim Thoms said but in residential zoning an existing residence could not have the uses allowed in a Conditional Use for a church and now we would be allowing a use that does not meet the Conditional Use requirements for a church.

Pete Frisina said the residence cannot meet the setbacks in the Conditional Use for church.

Tim Thoms said he was uncomfortable changing the Conditional use requirements to allow the use of a residence that does not conform because other churches may have been told they had to meet the same requirements.

Pete Frisina said this has not been consistently applied over the 40 years.

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Tim Thoms said he remembers a case where the County made someone tear down part of a house because it did not meet the setbacks.

Pete Frisina said in that case the builder went to the ZBA but did not get the variance so there was a relief procedure that was followed. A Conditional Use does not have a variance procedure.

Jim Graw asked how long has the residence been there.

David Wardell said since the 1978.

Tim Thoms said I have a problem with moving the bar all the time.

Jim Graw said we have a lot of issues from the past that we are trying to clean up and he has mixed feeling about reducing restrictions.

Tim Thoms said maybe we need to create a variance instead of changing the ordinance all the time.

Chairman Gilbert said a Conditional Use cannot have a variance so the way to change it is to amend the ordinance.

Jim Graw asked why a church has to be a Conditional Use, can't we just make it a permitted use with the same conditions.

Bill Beckwith asked how this issue came up.

Pete Frisina said it was brought up by the BOC.

David Wardell said the church purchased the property because the house could be used for an administration building and an existing storage building could be used for storage.

The consensus of the Planning Commission was to move ahead with this amendment.

David Wardell thanked everyone for their consideration.

Chairman Gilbert mentioned that he attended the ZBA meeting when they discussed the variance for illegal lots and they recommended making the time the lot was made illegal as opposed to the time the person owned the lot.

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

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Tim Thoms said so moved.

Chairman Gilbert said the meeting was adjourned.

PLANNING COMMISSION
OF
FAYETTE COUNTY



AI GILBERT, CHAIRMAN

ATTEST:


