

THE FAYETTE COUNTY PLANNING COMMISSION met on November 5, 2015 at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Fayetteville, Georgia.

MEMBERS PRESENT: Jim Graw, Chairman
Brian Haren, Vice-Chairman
John H. Culbreth
Al Gilbert
Arnold Martin, III

STAFF PRESENT: Pete Frisina, Director of Community Services
Dennis Dutton, Zoning Administrator
Patrick Stough, County Attorney

Welcome and Call to Order:

Chairman Graw called the Planning Commission Meeting to order. Chairman Graw introduced the Commission Members and Staff. Chairman Graw stated that he was coming down with laryngitis and asked Vice-Chairman Haren to take over.

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1. Consideration of the Minutes of the Meeting held on October 15, 2015.

Al Gilbert made a motion to approve the minutes. John Culbreth seconded the motion. The motion passed 5-0.

NEW BUSINESS

2. Consideration of a Final Plat Revision for Canoe Club at Waterlace, Pod D for SELAF Fayette Holding Company, LLC. Pod D consists of 42 single-family residential lots on 49.97 acres. The property is located in Land Lots 6, 7, 26, & 27 of the 7th District and fronts on Discovery Lake Drive, Rowboat Drive, and Crescent Creek Drive.

Mark Jones representative for SELAF Holding Company stated he was requesting approval for the final plat for Canoe Club.

Al Gilbert made a motion to approve the final plat conditioned upon signature correction. Arnold Martin seconded the motion.

John Culbreth asked the question if the developer discussed the plans with the surrounding neighborhood.

Mark Jones answered that the plat revision was approved in 2007. He stated that conversations were had by the developer and surrounding neighborhoods back in 2007, but he was unaware of any present discussions.

Dennis Dutton stated this was a preliminary plat that was revised due to some connection issues with the road. He said that this plat was an interior piece to a larger development called Waterlace. He added that the revised plans have been approved and the developer is coming to have the final plat approved.

John Culbreth stated that he was clear.

The motion passed 5-0.

PUBLIC HEARING

3. **Consideration of Petition No. 1251-15, Ruth M. Sitton, Owner, and Al Gaskins, Agent, request to rezone 4.238 acres from A- R to R-70 to develop a Single-Family Residential Lot. This property is located in Land Lot(s) 169 and 170 of the 4th District and fronts on Antioch Road.**

Al Gaskins representative for Ruth Sitton read the following statement:

Members of the Planning Commission

Good evening, my name is Al Gaskins. I am representing Mrs. Ruth Sitton for her request to rezone 4.238 acres of her 9.341 acres from A-R to R-70 located at 1101 Antioch Road Fayetteville, Georgia in order for her daughter and son in law to build a house next to her. They would like to do this be able to assist Mrs. Sitton as her husband passed away in 2011 and she is getting to the age of assistance.

We acknowledge that the existing zoning requires a minimum of 5 acres for a buildable lot but there are circumstances that we believe should be taken in to consideration.

1. In 1976 when the Sittons purchased the property, it was a total of 10.60 acres. Since that time a portion of the property was taken for right-of-way for Antioch road to be improved and a portion for the construction of Lake Horton leaving less than 10 acres.
2. Although the Fayette County comprehensive plan calls for 5 acre minimum in the A-R zoning, there are existing lots that do not meet that requirement. The property located at 1079 Antioch Road for example is directly in front and beside the property we wished to be rezoned is only 2 acres. In 2007, Hammock Bay at Lake Horton subdivision located on Antioch Road and almost touches the subject property also has lots with less than 5 acres. There are really too many properties in the A-R zoning district less than 5 acres to list here tonight.

In conclusion, I wish to point out that if rezoned it will not be burdensome to roads, utilities or schools as per the zoning staff report. It appears the only negative is that if rezoned, it COULD provide legal leverage of other properties in the future. I hope we can all agree that there are times when circumstances require a little leniency, such as the case mentioned before i.e. 1079 Antioch Road. So, I respectfully ask that you approve this rezoning. Thank you.

Vice-Chairman Haren asked if anyone wanted to speak in favor of the rezoning.

Ruth Sitton, owner of the property stated that she has lived on Antioch Road for 40 years. She said that she has enjoyed living there and would enjoy it more if she had someone living next to her. She thanked them for their vote.

Tom Lord, Ruth Sitton's son-in-law, stated that he understood the purpose of the land use plan and understood that it's been many years since it's been implemented. He said that he understood why it was implemented at the time but he believes that the board has the ability to apply discretion to the policy. He added that if there is no discretion there would be no reason for the board to meet. He stated that it made sense for a family member to build a home next door to Ms. Sitton so she can remain in her home for the rest

of her life. He said that it would be a shame to allow the verbiage from the land use agreement to negatively impact Ruth's life for the remainder of her life. He stated that he hoped the board would approve the request in spite the land use plan. He added that he understood the precedent issue but he hoped common sense would prevail somewhere in the process.

Mary Carole, Fayette County homeowner and frequent visitor of Lake Horton, stated that she was in opposition of the rezoning. She said that she believed the rezoning was spot zoning. She added that most of the county is zoned A-R on the south side and she would like to keep it a good portion of the County A-R. She said she would like to keep a good portion of the County A-R for the natural beauty and to minimize the stress and battering away of the County's land. She stated that land is permanent and people are not. She said that there was no law saying that the Sittons have to stay there. She added that the Sittons could move or sell their piece of property. She stated that Lake Horton was a rare jewel and that eagles and the yellow loon have nested there. She added that there were plenty of places for families to live next door to each other in the County.

Tom Lord stated that 100 yards up the road Hammock Bay subdivision sits on 69 acres and is zoned R-40. He added that prior to the Lake Horton being filled; the property where the lake is now the west boundary was R-40 according to the deed book. He said that Hammock Bay which is a 100 feet from Ms. Sitton's home is zoned R-40. He stated that that half of Fayette County appears to be zoned A-R but going forward it will be hard for the County to sustain itself financially. He added that people do change but Ms. Sitton has been at her property for 40 years and doesn't want to move. He stated that he and his wife are very responsible people who care about the area, the community, the property, and the resources. He said that he understood Mary Carole's position but he doesn't think it's a legitimate concern. He added that Ms. Carole would feel differently if someone was telling her where she could live.

Vice-Chairman Haren asked the public to just state the facts.

Mary Carole stated that she does not believe that Hammock Bay subdivision bordered Lake Horton.

Al Gaskins stated that the lot is four point three (4.3) acres and half of an acre less of the required five (5) acres. He said if the lake was not where it was at or if the right-of-way for the road had not been taken or if the owners would have subdivided 15 years ago there would have been the five (5) acres.

Arnold Martin III asked the Sittons if there were multiple dwellings/buildings on her property.

The family responded no.

Arnold Martin III asked if the Sittons planed on putting multiple structures on the land aside from a separate garage.

Tom Lord replied that due to the floodplain, buffer, and the easement that Fayette County require there is only one place for a building to go on the lot. He stated that he and his wife have not settled on a house because they did not know what they can do as far as the rezoning. He said that his intent was to build a very nice home. He added that he doesn't know if they would build a free standing garage.

Al Gilbert stated that this was not an easy situation. He said it would be ideal if they could keep their 4.2 acres and stay A-R and build, but that's not possible. He added that his concern would be to open this up for further rezoning's in the area.

Chairman Graw stated that Al Gilbert was talking about setting future precedent. He added that he saw staff's recommendation also and the recommendation was to deny based on the land use plan. He said that Lot number two (2) only has 1.1 acres of contiguous area and two (2) acres of contiguous area is required for A-R. He stated that if the board was to recommend approval, and it went through the County would be approving a non-conforming lot. He added that the County cannot and will not recommend the approval of a non-conforming lot. He said based on those two (2) items he would be voting against the rezoning request.

John Culbreath stated that he was a strong believer where possible to conforming to the land use plan. He added that there are special exceptions in many cases of something that won't affect the overall plan. He said that he would rather redo the plan instead of starting off with spot zoning. He added that he knows it doesn't appear that the board is taking the human aspect of the decision into consideration but they are. He stated that if the board begins with one (1) precedent setting of this type then when other petitioners come before the board then we're faced with trying to address their concerns in the same way. He said that's how you lose your handle on managing your land use plan. He added that he believes that there has to be some work to developing an updated land use plan which could address some of the changes from A-R to residential with less than a five (5) acres. He stated that based on what he has heard tonight he cannot in his position support the rezoning.

Vice-Chairman Haren stated that the Planning Commission's decision is only a recommendation and not the final decision.

Jim Graw made a motion to recommend denial of the zoning petition. John Culbreth seconded the motion. The motion passed 4-1 with Arnold martin voting in opposition to the motion.

4. Consideration of Petition No. 1252-15, Jeffrey Anderson Jr., Owner, request to rezone 8.87 acres from R-20 to A-R to develop a Single-Family Residential Lot. This property is located in Land Lot 62 of the 4th District and fronts on Bankstown Road.

Vice-Chairman Haren asked if anyone was there to speak in favor of the rezoning.

Jeff Anderson, owner of the property stated that he was an equipment manager in Fairburn and just recently moved to Brooks from Canton so he wouldn't have a 70 mile commute every day. He said he purchased an 8.98 acre foreclosed property in Brooks. He added that the foreclosed property had a dilapidated home that was an eye soar to the community and he has been working tirelessly to renovate the home since April. He stated that he grew up on a farm and thought this piece of property was the ideal place to introduce his children to farm life. He added that a lot of his surrounding neighbors already have livestock and parts of his land have barbered wire on it. He said he never thought the property was zoned residential. He added that the parcel he bought has two (2) residential lots. He stated that he has gone through the necessary steps to have the farm he has dreamed of; those steps being having the property surveyed and platted as one property. He requested that the property be zoned for agricultural use. He showed the board a copy of the zoning map that had all surrounding properties zoned as A-R. He stated that his family has been happy since he has moved to Fayette County and being able to participate in farming activities would make it perfect for them.

Vice-Chairman Haren asked if anyone else would like to speak in favor of the petition.

Audra Anderson, Jeff's wife stated that she and her children are very excited to move to Fayette County. She reiterated that they did have the property resurveyed into one (1) large lot. She said that having animals is something her and husband have been around all of their lives and they would like to raise their children

around that environment. She added that they were very invested in Fayette County and Brooks' athletics. She stated that they purchased a very dilapidated home that was vacant for four (4) years. She added that her neighbors have expressed their approval of them renovating the home. She reemphasized that the property is surrounded by A-R. She stated that they have enough acreage to do farming activities and raise animals. She said that she appreciated them for listening to their petition for rezoning.

Vice-Chairman Haren asked if anyone would like to speak in opposition of the petition.

Vice-Chairman Haren asked the board if they had any questions.

Al Gilbert stated that A-R zoning is perfect for this lot.

Chairman Graw stated that it was rare that you have a property that is going from a higher density to a lower density.

Arnold Martin III asked staff for background on the property besides the rezoning that happened in 1972.

Pete Frisina replied that the property was rezoned prior to 1972 and that the County did not have a land use plan back in those days. He stated that he's not sure when the property was rezoned, but knows that the property has been in existence for a long time.

Vice Chairman Haren asked Pete Frisina if they were addressing all seven (7) lots indicated in yellow or the southernmost.

Pete Frisina replied that it was just the southern one (1) which consist of lot seven (7) and eight (8). He stated that the tax accessor still has it as one (1) parcel but it is indeed two (2) parcels.

Vice-Chairman Haren asked if the properties north of that will remain R-20.

Pete Frisina replied yes they will.

Al Gilbert made a motion to recommend approval of the zoning petition with two (2) conditions.

Al Gilbert read the following conditions:

1. That a variance for the existing single-family dwelling's encroachment into the side yard setback be obtained from the Zoning Board of Appeals within 180 days from the effective date of this rezoning and prior to the approval of the Minor Revision to a Final Plat. If the variance is denied, the owner/developer agrees to take all necessary action consistent with the direction of the Zoning Board of Appeals. If the owner/developer fails to take action to obtain a decision from the Zoning Board of Appeals within 180 days and that time period has expired, the property owner agrees to remove that portion of the existing single-family dwelling encroaching into the side yard setback within 30 days from the date of the expiration. *(This condition is required for compliance with the Zoning Ordinance, Section 110-170.)*
2. That the Minor Revision to the Survey for P.K. Dixon Final Plat be revised to combine lots 7 and 8 to meet the minimum A-R five (5) acre requirement and depict the A-R setbacks prior to establishing any uses or structures permitted under the A-R zoning district.

Chairman Graw asked the Jeffrey Anderson if he was aware of the conditions and if he agrees to the conditions.

Jeffrey Anderson replied yes sir.

Arnold Martin seconded the motion. The motion passed 5-0.

- 5. Consideration of Petition No. RP-058-15, Jeffrey Anderson Jr., Owner, request to revise the Survey for P.K. Dixon Subdivision to add A-R uses to the subdivision. This property is located in Land Lot 62 of the 4th District and fronts on Bankstown Road.**

Vice-Chairman Haren asked if Jeffrey or Audra Anderson wanted to address the revise plat petition.

Jeffrey Anderson replied no.

Vice-Chairman Haren asked if anyone would like to speak in opposition of the revise plat petition.

Vice-Chairman Haren asked if the board had any questions or comments.

Arnold Martin III made a motion to approve of the Revised Plat. John Culbreth seconded the motion. The motion passed 5-0.

OLD BUSINESS

- 6. Discussion of Amendments to the Fayette County Code of Ordinances, Chapter 110. Article V., Sec. 110-169. Conditional use approval, to eliminate buffers between a Care home, convalescent center and/or nursing home, Cemetery, human or pet, Child care facility, Church and/or other place of worship, College and/or university, Hospital, Private school, or Recreation centers owned by nonprofit organizations as so registered with the Georgia Secretary of State Office that is in a residential or A-R zoning district.**

Pete Frisina stated that Dennis Dutton took the amendment to the board and they sent it back for reconsideration. He then turned it over to Dennis Dutton.

Dennis Dutton stated that the Board of Commissioners had some concern about the effect on other properties. He said the Board sent it back for the Planning Commissioners to look at it in a different way. He stated that one (1) of the ideas presented to him was to do away with the blanket statement and look at the amendment individually for each conditional use. He said the relief of the buffer would go to care homes, churches, schools, child care facilities, colleges/universities, hospitals, and recreational centers. He added that the Board had issues with the wording "similar institutions" and asked that it be removed from the amendment due to the confusion it may cause. He stated that John Lewis the Headmaster for Konos School was looking at acquiring the property next to Whitewater Church.

Chairman Graw asked Dennis Dutton about the original amendment that was presented to the Board include commercial property.

Pete Frisina replied they addressed it in Article 3 General Provisions. He said that part of the ordinance

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oversees the entire aspect of everything within the ordinance. He stated the way they had written it before it would remove all non-residential buffers if they were abutting a church or a school or a university. He said that was a concern brought to him and Dennis. He added that they inserted it into the conditional uses and relieved the buffers only in those instances; when two (2) churches are adjacent or when a church and a school are adjacent. He added that commercial zoning next to a church would still need the buffers.

Chairman Graw asked if they were going to need to insert that paragraph into each conditional use.

Pete Frisina replied yes. He stated that this is taking a very broad brush approach and making it more surgical. He stated that they added care home and convalescent center. He asked the board if a care home was a use they would want to include in the elimination of a buffer. He added that care homes are the only use that is not allowed in a residential zoning district.

Arnold Martin III asked why care home/convalescent centers were added to the amendment.

Pete Frisina replied that he thinks it's similar to the other uses. He added that after he did this he didn't realize it was not allowed in residential zoning districts. He said that these uses abut each other and doesn't relieve the buffers around the rest of the property only where they abut each other. He stated that he found at least four (4) instances in the County where churches abut each other. He added that there was an instance where a private school did abut a church. He said that they all have buffer between them.

Vice-Chairman Haren stated that he doesn't have an issue with care homes, convalescent homes, or nursing centers. He said it was something that he didn't consider last time but it did make sense. He asked staff if they were looking for a decision tonight.

Pete Frisina replied that it was just a work discussion. He added that there is no vote tonight and that there was nothing they needed to act on tonight.

Al Gilbert asked if we feel good about this amendment we would then move to public hearing.

Pete Frisina replied yes. He said if we were to move forward we would schedule the amendment for the November meeting with Planning Commission and the first meeting in december with the Board of Commissioners. He stated that the Board of Commissioners wanted something brought back to them by the 28th of January.

Chairman Graw said he didn't have an issue.

Al Gilbert said he didn't have an issue.

John Lee Headmaster of Konos Academy stated that the board only added a wrinkle to the amendment and that doesn't affect him.

Pete Frisina stated that there are always concerns with this sort of thing and one of the concerns are what to do when two (2) churches abut each other. He said you relieve them of their buffer where the properties abut. He added that if the church was to be sold and torn down and the developer decides to create a residential subdivision the buffer would be alleviated but not the setback. He told the board to be aware that this was an issue and he did not know how to fix it. He stated that if the two (2) churches were abutting each other in such a way that building couldn't meet a buffer once a residential subdivision came back in, we're not going to make them take the church down. He stated that new structures would have to meet that buffer.

Vice-Chairman Haren asked if they tore down the church and built a residential subdivision would the residential part of the zoning kick back in requiring a buffer with the church.

Pete Frisina replied that if you had two (2) properties that were adjoining and you relieved the buffer, and they built on both of them not accommodating the buffer. He then said that one (1) of them goes away it would be hard to tell the existing one (1) to take their property back 50 feet.

Vice-Chairman Haren asked would it not be necessary for the one that is bringing in the residential to have that buffer.

Pete Frisina replied no that it only works one (1) way. He said the houses don't have to meet buffer the non-residential structures do.

Patrick Stough stated one potential controversy we have identified is where you have an existing church surrounded by residential which has the necessary buffers, and then another church comes in next to it, because of this change they would not have to get a buffer. He said you have a situation where the first church did have to get a buffer and their being treated differently because they were there first. He added that conditional uses are you meet the conditions you get the use. He said when you start introducing situations where sometimes the conditions apply and sometimes they don't you run the risk of watering down those conditions and that can undermine those conditions themselves they can also undermine all the conditional uses you have in your ordinance. He added that this was something to consider as they bring this back.

Arnold Martin III asked if it was possible to add additional language to protect or cover the "what if" scenarios.

Patrick Stough stated we can always add language that we think will do what we want it to do, but there is always a possibility that the language will get a challenge. He said his concern would be that they would give something and then taking it away from them in the future. He added that land ownership is a very important right in this country that has a lot of protection on it. He said they could find themselves in a takings lawsuit.

Al Gilbert asked if a church comes in to an existing church can we tell the existing church you no longer need those buffers.

Patrick Stough replied that we could say that, but the church has already been built.

Al Gilbert asked what if the church wants to put in a tot lot, but they don't have the room because of the buffers. He then added that by removing the buffers they can put their tot lot in.

Patrick Stough replied that is true.

Al Gilbert added that by doing this we're not denying them that right. He said that it might be too late for them to do anything but he was wondering if this was a way around that for an existing church to eliminate their buffers.

Patrick Stough replied that there are ways for them to take advantage of the loss of the buffer, but the fundamental one (1) would be the building of the main building and they already have done that.

Vice Chairman Haren stated that if a church goes in they will have to incorporate that buffer, and then 10 years later if another church comes in next to them they won't have the buffer. He added that you adhere to

the rules that were in effect when you build your structure. He then said the watering down of the ordinance he can see but how often would it be applied.

Pete Frisina replied that there are five (5) instances right now that they could find existing. He stated that they have another part of the verbiage under buffer that says if you're next to a governmentally owned piece of property we don't require you to have a buffer. He said to date he doesn't know if that would apply to anyone yet. He added to keep the ordinance consistent they should remove care home/convalescent center out and only stick with those uses allowed in a residential zoning district. He stated that convalescent centers and care homes are the only outliers and people may ask why these nonresidential uses get a pass, but none of the others do.

Vice-Chairman Brian Haren asked the board how they felt about removing convalescent centers and care homes. He then asked if any of the commissioners bring that up as a specific item.

Pete Frisina replied no because they just added that in after the fact. He stated that he just noticed on yesterday that the use wasn't residentially zoned. He added that if consistency is an issue then remove the outlier.

Vice-Chairman Haren then asked if convalescent centers, care homes, or nursing homes were allowed in residential districts.

Pete Frisina replied no. He said that these conditional uses are only allowed in C-C, C-H, and O-I. He added that all of these other uses have a residential zoning allowance that one (1) does not.

Dennis Dutton interjected saying the County codes deal with in-home care which limits the number based on the number of families, meets all the state regulations as far as inspections such as sprinklers. He stated that there are ways for people to keep people in their homes but on a small scale. He added that these were only for the large developments.

Vice Chairman Haren asked what the board would be striking from this.

Pete Frisina replied the part that says I. care home under number three (3) would be removed in total and then within the verbiage of the others care home would be removed. He asked the board if they wanted another meeting to discuss this or did you want to move ahead to the 19th November.

The board replied yes.

Pete Frisina stated that he could get it to the board by the 10th of December.

Chairman Graw asked if anyone had a problem with them taking this to a public hearing.

The board replied no.

Chairman Graw said let's take it to a public hearing.

Vice-Chairman Haren asked if there was any other business.

Al Gilbert made a motion to adjourn the meeting. Vice-Chairman Haren said the meeting was adjourned at 8:07 pm.

ATTEST:



**PLANNING COMMISSION OF
FAYETTE COUNTY**



JIM GRAW, CHAIRMAN