COUNTY AGENDA REQUEST

Department:	Planning & Zoning	Presenter(s):	Pete Frisina or Dennis Dutton
Meeting Date:	Thursday, July 25, 2013	Type of Request:	Public Hearing

Wording for the Agenda:

Consideration of Ordinance 2013-08 adopting 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.

Background/History/Details:

On May 23, 2013, the BOC voted to send the issue to the Planning Commission for possible amendments to the zoning ordinance.

A church is developing a property with an existing single-family residence and accessory structure. As a church is a Conditional Use, setbacks and buffers are required and a variance is not allowed for a Conditional Use. A portion of the existing single-family residence and the entire accessory structure are within the setback and a portion of the accessory structure is within the buffer. The structures or portions thereof, would need to be removed from the setback and buffer for the property to comply with the Conditional Use requirements for a church.

The amendments would allow the existing structures to remain in the setback but not the buffer. The use of these structures would be limited to the following uses under a Conditional Use for a church: administration, parsonage/residence, storage building, or detached garage.

The Planning Commission voted 4-1 to recommend approval of the amendments. Staff agrees with proposed recommendations.

What action are you seeking from the Board of Commissioners?

Approval of Ordinance 2013-08 adopting 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.

If this item requires funding, please describe:

Not Applicable.

Has this request been considered within the past two years?	No	If so, when?	
Is Audio-Visual Equipment Required for this Request?*	No	Backup Provided with Request?	Yes

**** All audio-visual material must be submitted to the County Clerk's Office no later than 48 hours prior to the meeting. It is also your department's responsibility to ensure all third-party audio-visual material is submitted at least 48 hours in advance.***

Approved by Finance	Not Applicable	Reviewed by Legal	
Approved by Purchasing	Not Applicable	County Clerk's Approval	Yes
Administrator's Approval			

Staff Notes:

Date: July 16, 2013

To: Board of Commissioners

From: Pete Frisina

Subject: Zoning Ordinance Amendments Regarding Church or Place of Worship and Existing Structures That Do Not Meet the Conditional Use Setbacks and/or Buffers

On May 23, 2013, the Board of Commissioners asked the Planning Commission to research amendments to the Zoning Ordinance regarding church or place of worship and existing structures that do not meet the Conditional Use setbacks and/or buffers (see attached minutes). Staff prepared proposed amendments and the Planning Commission met twice to discuss the amendments (see attached minutes). The amendments allow an existing structure that does not meet the Conditional Use setbacks for a church to encroach and remain in the setback but not the buffer. This language is similar to language in the Office-Institutional Zoning District and State Route Corridor Overlay Zones. In addition, the use of these structures is limited to administration, parsonage, storage building, or detached garage.

The Planning Commission voted 4-1 to recommend approval of the attached amendments as presented on July 2, 2013 (see attached minutes). Staff concurs with the Planning Commission's recommendation.

13. *Church and/or other Place of Worship.* (Allowed in O-I, C-C, C-H, A-R, R-85, R-80, R-78, R-75, R-72, R-70, R-55, R-50, R-45, R-40, R-20, and DR-15 Zoning Districts)

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

b. Such uses shall be permitted only on a lot which fronts on a Major Thoroughfare as designated by the Fayette County Thoroughfare Plan. All access is limited to the Major Thoroughfare only. (Amended 05/24/12)

c. A minimum 50 foot buffer plus the required setbacks listed below shall separate all buildings and use areas from any residential or A-R Zoning District. The setback shall be measured from the buffer. However, off-street parking areas and an unlit tot lot with a maximum size of 2,400 square feet may be located within the setback areas. A walking/running path or track may be located in the front yard setback. (Amended 05/24/12)

d. Minimum setbacks for structures and use areas (excluding parking areas and tot lots as defined herein.)

   i. Front yard: 100 feet
   ii. Side yard: 50 feet
   iii. Rear yard: 75 feet

e. Uses and/or structures incidental to a church shall be limited to: a private school, parsonage, gymnasium, pool, playground, tot lot, outdoor athletic facility, child care facility, adult day care facility, administration, human cemetery (provided that all requirements for a *Cemetery* herein are met), broadcast facility, including a tower (see Article V. General Provisions), and seasonal sales (see Article VII. *Seasonal Sales as Outdoor Displays*) shall be allowed provided all buildings and use areas meet the minimum setback and buffer requirements. (Amended 05/24/12)

f. Only portable temporary lighting for athletic facilities shall be permitted and the athletic facility shall not be lighted or used after 10:00 p.m. (Amended 05/24/12)

g. Child care facilities shall be allowed provided that all requirements for child care facilities herein are met (see Article VII. *Child Care Facility.*) (Amended 05/24/12)

h. Adult day care facilities shall be allowed provided that all requirements for adult day care facilities herein are met (see Article VII. *Adult Day Care Facility.*)

i. Landscape areas shall be required in accordance with the Development Regulations (see County Code.) (Amended 05/24/12)

j. All buildings, other than storage buildings, shall maintain a decorative facing on those portions of the building which face public streets and any property zoned residential or agricultural-residential. The decorative facing shall consist of brick, stone, stucco, wood, or similar building materials compatible with the area.

k. Accessory structures such as a storage building, detached garage, pavilion, and/or pool shall comply with the buffer and/or setback requirements and shall be located to the side/rear of the main sanctuary building.

l. The construction of one (1) open air pavilion utilized for picnics/social gatherings only is allowed under the following conditions:

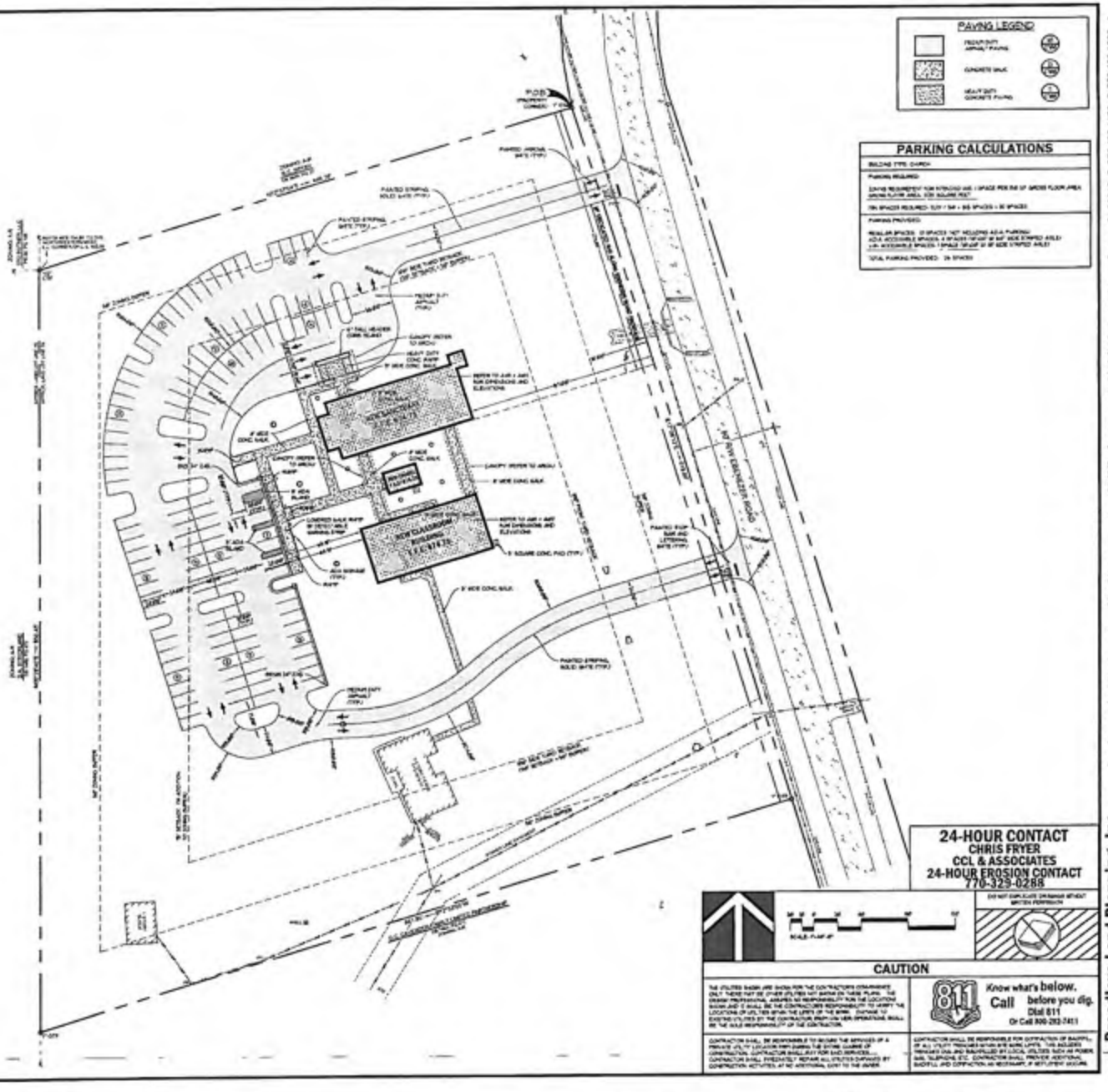
i. The pavilion shall be constructed following the construction of the main sanctuary building;

ii. The floor area shall not exceed 40 percent of the square footage of the main sanctuary building; and

iii. The pavilion shall not be lighted or used after 10:00 p.m. (Amended 05/24/12)

If the open air pavilion is built in conjunction with lighted restrooms and/or an attached storage building, the overall square footage shall not exceed 40 percent of the main sanctuary building square footage. (Amended 05/24/12)

m. ***Use of Existing Structure: When property containing legal structures (conforming or nonconforming), under the current zoning, is utilized as a Church and/or Place of worship under this section, the setback requirements only shall be reduced to the extent of, but only at the location of, any encroachment by the structures and said structures shall be considered legally nonconforming structures. The use of these structures shall be limited to administration, parsonage/residence, storage building, or detached garage.***



Breedlove Land Planning, Inc. ◆ Landscape Architects ◆ Site Planners ◆ Civil Engineers ◆ 2140 Old Covington Highway Conyers, GA 30012 P: 770-483-1173 F: 770-483-1229 ◆

CONSULTANT

SEAL

ALL SAINTS ANGLICAN CHURCH, INC.
149 EBENEZER ROAD
FAYETTEVILLE, GA 30215

REVISIONS

No.	DATE	DESCRIPTION
1		
2		
3		
4		
5		

NOT RELEASED FOR CONSTRUCTION

SUBMITTALS

No.	DATE	DESCRIPTION
1	12-14-12	OWNER REVIEW SET
2	02-04-13	PROGRESS SET
3	03-08-13	LDP SUBMITTAL
4	03-29-13	PRICING SET
5	04-30-13	LDP RESUBMITTAL
6		
7		
8		

BLP, INC. PROJECT NO:	12004
DATE:	04-30-2013
DRAWING BY:	KMW
CHECKED BY:	BHB

TITLE: STAKING & LAYOUT PLAN

SHEET#: C200

limitations. He stated that we need to look at this and is an easy fix. He stated that churches have a certain look that is not usually detrimental to the character of the area. He continued that there is a struggle with height with the movie studio and trying to find common ground. He stated that other issues are non-residential uses that are moving into the county that need a higher limit. He stated that while he is working on this he would like to go ahead and look at the other zoning districts as well.

Commissioner McCarty stated that water and cell towers are taller than that and we have those in the county as well.

Mr. Frisina agreed.

Commissioner Ognio stated that the City of Fayetteville has a higher height than the County so maybe we can look at their ordinance.

Chairman Brown stated that he thinks Peachtree City is five (5) stories.

Mr. Frisina stated that everyone handles it differently and to remember that whatever numbers the county comes up with, someone will want to go higher.

On motion from Chairman Brown, seconded by Commissioner Barlow and carried, the Board unanimously approved to have the Planning Commission do research and to look at height restrictions across the Board in Fayette County.

10. **Discussion of Conditional Use Requirements for churches and existing residential structures that do not meet the Conditional Use Requirements.**

Chairman Brown led this discussion and stated that there is a church that wants to build a structure. He stated that there are conditional uses on churches in terms of zoning; the church can reside in any zoning classification in the county, but in lieu of just dropping a church building on any site there are conditions related to the zoning application they fall in. He stated that there was a church where there was an existing house on the property and the house was properly zoned for the zoning district that it was in and they wanted to build a small sanctuary on the church and they wanted to use the house as an administrative office for a couple of years until they had the money to buy a building behind the sanctuary.

Commissioner Ognio suggested looking at limitations. He stated that if it is partially in, tell them they can keep it for so many years.

Mr. Frisina stated that we have some zoning districts and allowances for that under certain highway corridors and some of the zoning districts. He stated that they encourage retrofit of the existing homes and the office for instance. He stated that with certain limitations we should allow for this and also limit the uses that can go in there as well.

On motion from Chairman Brown, seconded by Commissioner Barlow and carried, the Board unanimously approved to have the Planning Commission look at the issue of Conditional Use Requirements for churches and existing residential structure that do not meet the Conditional Use Requirements.

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 Commissioned 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 Condition 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.

Tim Thoms said he remembers a case were 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 is 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 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.

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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.

Doug Powell asked if this property could be subdivided in to more two (2) acre lots.

Pete Frisina said based on the configuration of the subdivision this lot could not be subdivided.

Doug Powell said he understood Jim Graw's concern.

Pete Frisina said this amendment will be before the Planning Commission in a Public Hearing on July 2, 2013.

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 or worship structures permitted above the height limit.

Pete Frisina said this amendment would allow a cathedral or vaulted ceiling on a church or place of worship to exceed the height limit in the applicable zoning district and they would be treated as an architectural feature like a steeple.

Doug suggested that the solar panels and satellite/telecommunication equipment be listed separately as "roof mounted."

Pete Frisina said he would make that change.

Pete Frisina said this amendment will be before the Planning Commission in a Public Hearing on July 2, 2013.

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 this amendment to the Conditional Use for a church would allow an existing structure to encroach into the setback but not the buffer and the uses would be limited.

Doug Powell said he was in agreement with the amendment.

Pete Frisina asked Patrick Stough if he had problems with use of the term "legal nonconforming structures."

Patrick Stough said you could use the word "legally" to describe a conforming or nonconforming structure. Patrick Stough asked if the amendment would allow the construction of a new structure in the setback

Pete Frisina said it would not allow a new structure to encroach into the setback.

Jim Graw asked Pete Frisina to explain how the setback will be reduced based on this amendment.

Pete Frisina said the setback would be reduced only in the area where the existing structure is located, any new structures or additions would need to meet the Conditional Use setback.

Pete Frisina said this amendment will be before the Planning Commission in a Public Hearing on July 2, 2013.

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

Doug Powell said so moved.

Chairman Gilbert said the meeting was adjourned.

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PLANNING COMMISSION
OF
FAYETTE COUNTY

_____
Al GILBERT, CHAIRMAN

ATTEST:

_____

Pete Frisina said it would appropriate to send that suggestion along with the recommendation.

Doug Powell suggested making the changes to the amendments now and sending those to the Board of Commissioners.

Chairman Gilbert said he was not comfortable doing that because changes like that are usually discussed in workshop.

Pete Frisina said the amendments have been advertised and are going to the Board of Commissioners and they could table it or just send it back to the Planning Commission for more work.

Chairman Gilbert called the question and the motion passed unanimously.

7. Consideration 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.

Tim Thoms said that he had been hired as a consulting arborist by a consultant doing work for this church and he didn't feel he had a conflict of interest so he would participate with the discussion of the amendments.

Pete Frisina said a church that is being proposed on a seven (7) acre lot that contains an existing single-family residence and accessory structure and when the use of the property is changed to a church these structures do not meet the Conditional Use buffer and setbacks for a church. He said the existing residence encroaches partially into the setback and the accessory structure encroaches fully into the setback and partially into the buffer. He said the amendments allow an existing structure to encroach into the setbacks but not the buffer and the uses are limited to administration, parsonage, storage building or detached garage.

Chairman Gilbert said he would hate to see a good building torn down.

Jim Graw asked what the definition of a place of worship is in the Zoning ordinance.
Pete Frisina said it is as follows: Church or other Place of Worship. A building used for public worship, including, but not limited to: temple, synagogue, pagoda, shrine, cathedral, tabernacle, and mosque/masjid.

Jim Graw said this may be a stupid question, but what if an individual wants to convert his house in a subdivision into a church.

Pete Frisina said one of the requirements for a church is it has to front and access a major thoroughfare and street in a subdivision is a minor street plus a church has many requirements that can't be met in a subdivision and to change a use of a lot in a residential subdivision you would need to go through a public hearing.

Tim Thoms recommended that a time period requirement be established where the existing structure had to have been built five (5) years prior to the permit for the church

as he did not want someone to try to get around the ordinance.

Bill Beckwith asked if that is really necessary.

Tim Thoms said he thought it was.

Doug Powell said Tim is trying to prevent the situation from happening but in this time of foreclosures he would not want to see a church have to wait to buy a property with an existing house built two (2) years ago.

Pete Frisina said he appreciates Tim's concern as we always try to anticipate individuals trying to get around the ordinance, so he suggests we put the ordinance in place and see if this occurs and then we can come back and amend the ordinance so it doesn't happen again.

Tim Thoms said his other concern is it is a different situation when the existing structure is adjacent to an existing residential subdivision.

Bill Beckwith said but the structure is already there.

Tim Thoms said but the use is being changed from strictly a residential use and we seem to be moving the bar way too often when it comes to zoning.

Chairman Gilbert said in the past this was a rural county and now we are a suburban county.

Doug Powell said we are always trying to prevent devious situations that try to get around the ordinance.

Pete Frisina said for perspective if look under c. of this section you will see allowances that have been made in the past for certain things that can be located in the setbacks under the Conditional Uses for a church and this isn't the first time these allowances have been made. He said back in the 90's an allowance was made for a tot lot to be in the

setback when a church built a tot lot in the setback. He added that the County has not been consistent in enforcing this with existing structures in the last 40 years.

Doug Powell made a motion to recommend the amendments as presented.

Bill Beckwith seconded the motion.

Pete Frisina reminded the Chairman that this was a public hearing.

Chairman Gilbert asked if anyone from the public had any questions or comments and seeing none he brought the item back to the Planning Commission.

Chairman Gilbert called the question and the motion passed 4-1 with Tim Thoms voting in opposition to the motion.

OLD BUSINESS

8. Discussion of proposed amendments to the Fayette County Code of Ordinances, Chapter 20. Zoning Ordinance, Article IX Zoning Board of Appeals regarding: illegal lots.

Pete Frisina said the amendments had been discussed with the Zoning Board of Appeals and he wanted to bring to the Planning Commission's attention the amendment they wanted changed and that is the 10 year ownership of the illegal lot. He said they liked the following wording: The transaction giving the applicant ownership in the subject property was more than five (5) years from the date of the application or if the period of ownership is less than five years the subject property was made illegal more than ten (10) years from the date of the application. He asked the Planning Commission how they felt about the language.

Jim Graw said the Planning Commission had similar concerns and he liked the amendment.

Al Gilbert said he attended the first meeting with the ZBA and he liked their suggestion. He added that in general the rest of the proposed regulations are very tough and will be hard to meet.

Jim Graw said he agreed with Chairman Gilbert.

Pete Frisina said he would take this back to the Board of Commissioners for their input and direction.

STATE OF GEORGIA
COUNTY OF FAYETTE

ORDINANCE NO. 2013 - 08

AN ORDINANCE TO AMEND THE FAYETTE COUNTY CODE OF ORDINANCES, CHAPTER 20. ZONING ORDINANCE (2010), AS AMENDED, SPECIFICALLY ARTICLE VI (DISTRICT USE REQUIREMENTS); TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING LAWS, ORDINANCES, AND RESOLUTIONS; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES ALLOWED BY LAW.

WHEREAS, the duly elected governing authority of Fayette County is the Board of Commissioners thereof;

WHEREAS, the governing authority desires to amend the provision that provides for the regulation of land development as allowed by the State of Georgia;

WHEREAS, the health, safety, and welfare of the citizens of Fayette County, Georgia shall be improved and protected by adoption and implementation of this Ordinance.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF FAYETTE COUNTY AND IT IS HEREBY ORDAINED BY AUTHORITY THEREOF:

Section 1. The Fayette County Code of Ordinances, Chapter 20. Zoning Ordinance (2010), as amended, is hereby further amended by amending in Article VII. Conditional Uses, Nonconformances, Transportation Corridor Overlay Zone, And Commercial Development Standards, Sec. 7-1. Conditional Use Approval., B. Conditional Uses Allowed:, 13. Church and/or other Place of Worship. by adding the following:

m. Use of Existing Structure: When property containing legal structures (conforming or nonconforming), under the current zoning, is utilized as a Church and/or Place of worship under this section, the setback requirements only shall be reduced to the extent of, but only at the location of, any encroachment by the structures and said structures shall be considered legally nonconforming structures. The use of these structures shall be limited to administration, parsonage/residence, storage building, or detached garage.

Section 2. That the preamble of this Ordinance shall be considered to be and is hereby incorporated by reference as if fully set out herein.

Section 3. . a. It is hereby declared to be the intention of the Board of Commissioners that all Sections, paragraphs, sentences, clauses and phrases of this Article are and were, upon their enactment, believed by the Board of Commissioners to be fully valid, enforceable and constitutional.

b. It is hereby declared to be the intention of the Board of Commissioners that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Board of Commissioners that, to

the greatest extent allowed by law, no Section, paragraph, sentence, clause or phrase of this Article is mutually dependent upon any other Section, paragraph, sentence, clause or phrase of this Article.

c. In the event that any phrase, clause, sentence, paragraph or section of this Article shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Board of Commissioners that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or Sections of the Article and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and Sections of the Article shall remain valid, constitutional, enforceable, and of full force and effect.

Section 4. All ordinances or resolutions and parts of ordinances or resolutions in conflict herewith are hereby expressly repealed except those provided for herein.

Section 5. The effective date of this Ordinance shall be the date of adoption unless otherwise specified herein.

So ordained this 25th day of July, 2013, by the

BOARD OF COMMISSIONERS
FAYETTE COUNTY, GEORGIA

_____
STEVE BROWN, CHAIRMAN

ATTEST:

_____
CLERK/DEPUTY CLERK