COUNTY AGENDA REQUEST

Department:	Planning and Zoning	Presenter(s):	Pete Frisina & Dennis Davenport
Meeting Date:	Thursday, March 26, 2015	Type of Request:	Public Hearing

Wording for the Agenda:

Public Hearing on Ordinance 2015-06 - an ordinance to amend the Fayette County Code of Ordinances Chapter 110. Zoning Ordinance, As Amended, Specifically Article VII. Zoning Board of Appeals and Article IX. Policies, Procedures, and Standards Governing Amendments.

Background/History/Details:

On August 19, 2014, the County Attorney made a presentation to the Board of Commissioners concerning parliamentary and zoning procedures. These proposed amendments are a result of that discussion and address rezoning procedures for the Planning Commission and Board of Commissioners, and procedures for the Zoning Board of Appeals.

Staff and the County Attorney recommend approval of the amendments.

The Planning Commission recommends approval of the amendments.

Bob Simmons made a motion to recommend approval of the proposed amendments. Brian Haren seconded the motion. The motion passed 4-1

"Exhibit A" provides a red-lined version of the proposed ordinance amendments. "Exhibit B" provides the final form ordinance document under consideration.

What action are you seeking from the Board of Commissioners?

Adoption of Ordinance 2015-06 - an ordinance to amend the Fayette County Code of Ordinances Chapter 110. Zoning Ordinance, As Amended, Specifically Article VII. Zoning Board of Appeals and Article IX. Policies, Procedures, and Standards Governing Amendments.

If this item requires funding, please describe:

Not Applicable.

Has this request been considered within the past two years?	Yes	If so, when?	Tuesday, August 19, 2014
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:

EXHIBIT A

ORDINANCE 2015-06 ZONING BOARD OF APPEALS

RED-LINDED VERSION OF PROPOSED CHANGES

ARTICLE VII. ZONING BOARD OF APPEALS

Sec. 110-238. Membership.

Sec. 110-239. Rules and procedures.

Sec. 110-240. Administrative assistance.

Sec. 110-241. Public hearing.

Sec. 110-242. Powers and duties.

Secs. 110-243—110-262. Reserved.

Sec. 110-238. Membership.

(a) *Membership and appointments.* The ~~county~~ zoning board of appeals shall consist of five members residing within the county and shall be appointed by the board of commissioners ~~of the county~~. None of the board members shall hold any other public office, except that one member may also be a member of the planning commission. The zoning board of appeals members shall be removed by the board of commissioners for cause, upon written charges, and after public hearing. Any member of the zoning board of appeals shall be disqualified to act upon a matter before the zoning board of appeals with respect to property in which the member has an interest. It may be deemed cause for removal should any zoning board of appeals member fail, without proper reason, to attend three consecutive meetings.

(b) *Term of office.* The term of office for each member of the zoning board of appeals shall be for three years and the member shall remain on the board until reappointed or a successor is appointed. It is the intent of this section that their terms be staggered with no term limitation. ~~Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment.~~

(c) *Compensation.* The zoning board of appeals members shall receive compensation for their service as determined by the board of commissioners ~~of the county~~.

(Code 1992, § 20-9-1; Ord. No. 2012-09, § 5, 5-24-2012)

Sec. 110-239. Rules and procedures.

The zoning board of appeals shall elect one of its members as chairperson and another as vice-chairperson, each serving for one year, or until re-elected, or a successor is elected. The vice-chairperson shall have the authority to act as chairperson in the chairperson's absence. The zoning board of appeals shall appoint a secretary who shall be an employee of the county. The zoning board of appeals shall have authority to adopt rules of procedure. ~~(Note only: Rules of procedure adopted by the ZBA on June 27, 2011.)~~ Meetings of the zoning board of appeals may be held at the call of the chairperson. The chairperson may administer oaths and compel the attendance of witnesses by subpoena. The zoning board of appeals shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the planning and zoning department and shall be public record. The decisions of the zoning board of appeals shall contain a statement of the subject matter being considered by the zoning board of appeals, ~~the decisions of the zoning board of appeals,~~ and the grounds for its decision reduced to written form. The full text shall be sent to the appellant/petitioner. ~~An application which seeks the same relief in regard to the same property~~

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Comment [A1]: Where are the Rules of Procedure which were adopted by the ZBA on June 27, 2011?

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~~shall not be accepted for a period of six months following the date of the written decision from said application.~~

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(Code 1992, § 20-9-2; Ord. No. 2012-09, § 5, 5-24-2012)

Sec. 110-240. Administrative assistance.

The ~~zoning administrator~~ planning and zoning department shall provide such technical, administrative, clerical assistance, and office space as is required by the zoning board of appeals to carry out its function under the provisions herein.

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(Code 1992, § 20-9-3; Ord. No. 2012-09, § 5, 5-24-2012)

Sec. 110-241. Public hearing.

(a) *Place, time, and date.* The public hearings shall be conducted as follows:

(1) Place: the county administrative complex.

(2) Time and Date: Fourth Monday, 7:00 p.m.

Any changes from the standard schedule for public hearings will be published in the newspaper which carries legal advertisements for the county in compliance with the requirements for public notification as provided herein.

(b) *Conduct of hearing.* Public hearings shall be conducted with 20 minutes provided for the appellant/petitioner and proponents and 20 minutes provided for the opponents of an ~~application for rezoning~~appeal/petition. An ~~applicant~~appellant/petitioner may reserve part of the allotted time for rebuttal.

(~~b~~c) *Notice of hearing shall be given.* Before making its decision on an appeal, a request for a variance, or any other matter within the zoning board of appeals' purview, the zoning board of appeals shall hold a public hearing thereon. ~~At least 15 calendar days'~~ A notice of the date, time and place of such hearing shall be sent to the appellant/petitioner by certified U.S. mail to the appellant/petitioner's last known address. ~~Such notice shall contain the name of the appellant/petitioner; the date, time, and place set for the hearing; and a brief statement of the nature of the hearing.~~

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(~~c~~d) *Public notice in newspaper.* The zoning board of appeals shall cause public notice of the hearing to be published in the legal organ of the county, at least 15 calendar days but not more than 45 calendar days, prior to the date of the public hearing.

(~~d~~e) *Posting of signs.*

(1) A sign shall be posted on property. One sign is required for each street frontage of said property. The sign shall be posted consistent with the requirements for newspaper notification.

(2) Signs used for posting property shall be a minimum of 18 inches by 18 inches and shall indicate the ~~application~~appeal/petition number, the time, date, and place of the hearing.

(3) A refundable sign deposit shall be required for each sign at the time of ~~application~~filing the appeal/petition.

(~~e~~f) *Who may appear.* Any party may appear at the public hearing in person or by agent or attorney.

(~~f~~g) *Zoning board of appeals' decision.* The zoning board of appeals shall approve, deny, or table each ~~application~~appeal/petition by a public vote. An action to table shall include justification of such action and a specific meeting date at which the ~~application~~appeal/petition is to be reconsidered. If there is not a full zoning board of appeals board present at the public hearing, the appellant/petitioner may request to table the appeal/petition to the next zoning board of appeals public hearing, provided the appellant/petitioner requests to table the agenda item prior to the presentation. A new legal advertisement will ~~not~~ be required with an announcement to a specific meeting date if an ~~application~~appeal/petition is tabled~~.~~ ~~however, the~~ The property shall be reposted with new signage indicating the new public hearing dates.

(~~g~~h) *Time limit on zoning board of appeals decision.* The zoning board of appeals shall reach a decision following a public hearing within 45 calendar days or the ~~application~~appeal/petition shall be deemed ~~to be~~ approved.

(~~h~~i) *"Writ of certiorari" (appeal).* An ~~applicant~~appellant/petitioner has 30 calendar days from the date of the zoning board of appeals' decision to ~~file~~seek a "writ of certiorari" (appeal) with the superior court of the county.

(Code 1992, § 20-9-4; Ord. No. 2012-09, § 5, 5-24-2012)

Sec. 110-242. Powers and duties.

(a) *Appeals from actions of the zoning administrator.* The zoning board of appeals shall hear and decide upon appeals where it is alleged there is error in any order, requirement, decision, or determination made by the zoning administrator in the enforcement of these regulations.

(1) *Who may appeal.* Appeals to the zoning board of appeals may be taken by any person aggrieved ~~or by an officer, department, or board of the county affected~~ by any decision of the zoning administrator. Such appeals, specifying the grounds thereof shall be filed with the planning and zoning department no later than 30 calendar days after the date of notification of the zoning administrator's decision. The zoning administrator shall forthwith transmit to the zoning board of appeals all the papers constituting the record upon which the action appealed from was taken.

(2) *Legal proceedings stayed.* An appeal stays all legal proceedings in furtherance of the action appealed from, unless the zoning administrator certifies to the zoning board of appeals that by reason of facts stated in the certificate a stay would, in the zoning administrator's opinion, cause imminent peril to life and property. In such a case, proceedings shall not be stayed otherwise than by a restraining order from a court of competent jurisdiction.

(3) *Extent of the zoning board of appeals' power.* The zoning board of appeals may, in conformity with the provisions of these regulations, reverse or affirm the order, requirement, decision, or determination of the zoning administrator. The zoning board of appeals may direct the issuance of a permit. It shall be the duty of the zoning administrator to carry out the decisions of the zoning board of appeals.

(b) *Request for a variance.* The zoning board of appeals 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, no lot is eligible for a variance for reduction in lot size, lot width, or road frontage, unless the variance request is for an improved illegal lot. A variance shall not be granted for any requirements of a conditional use with the exception of a legal nonconforming conditional use (see article V of this chapter), or a use of land, building, or structure that is prohibited in the zoning district

at issue, except as otherwise provided herein. In exercising the powers described in this subsection, the zoning board of appeals 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. A variance may be granted in an individual case upon a finding by the zoning board of appeals that all of the following criteria 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 chapter would deprive the applicant of any rights that others in the same zoning district are allowed.~~;~~

~~(6)~~ The zoning board of appeals may impose or require conditions, as may be necessary, to protect the health and safety of workers and residents in the community; 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 approval granted pursuant to the provisions of these regulations, that any of the conditions upon which such approval was granted are not being complied with, said zoning board of appeals shall rescind and revoke such approval after giving due notice to all parties concerned and granting full opportunity for a hearing~~; and~~.

~~(7) In exercising the above powers, the zoning board of appeals 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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Comment [P2]: Moved to paragraph at beginning of subsection (b).

In addition to the above factors, if the variance being sought is for an improved lot which is smaller than the minimum lot size for its zoning district, more narrow than the minimum lot width required for its zoning district, or has less road frontage than is required for its zoning district and the lot is an illegal lot as opposed to a nonconforming lot, the ~~ZBA~~zoning board of appeals may consider such a lot for a variance. Should the ~~applicant~~appellant/petitioner be successful in obtaining a variance, the resulting lot would, for the purposes of this chapter, be deemed to be a nonconforming lot. If the ~~applicant~~appellant/petitioner successfully passes the above enumerated factors, the ~~ZBA~~zoning board of appeals shall also employ the following factors for an illegal lot seeking to be deemed a nonconforming lot:

(1) The transaction giving the ~~applicant~~appellant/petitioner ownership in the subject property was more than five years from the date of the ~~application~~appeal/petition or if the period of ownership is less than five years the subject property was made illegal more than ten years from the date of the ~~application~~appeal/petition;

(2) The ~~applicant~~appellant/petitioner is not the person, or an immediate family member of the person, who caused the subject property to be an illegal lot. For purposes of these procedures, "immediate family" is defined as the spouse, child, sibling, parent, step-child, step-sibling, step-parent, grandparent, grandchild, aunt, uncle, niece or nephew of the person who caused the subject property to be an illegal lot; and

(3) No adjacent property is available to add to the subject property to allow the subject property to meet the minimum requirements for its zoning district. In determining whether adjacent property

is available, if adding any adjacent property to the subject property would no longer allow the adjacent property to meet the minimum requirements of the adjacent property's zoning district, then the adjacent property is not available. Additionally, any adjacent property which is part of an illegal lot shall not be deemed available for purposes of these variance procedures, unless the adjacent illegal lot is unimproved and the entirety of the adjacent illegal lot is combined with the subject property. If adjacent property is available, the cost of acquiring the adjacent property shall not be a factor in determining the availability of the adjacent property.

(c) *Compliance with standards.* Where an ~~application~~appeal/petition to the board is initiated due to an existing violation of this chapter and said ~~application~~appeal/petition is denied, the violation shall be required to be corrected within ten calendar days of such denial, or as specified by the board, if a greater time period is necessary. The maximum extension of the time shall not exceed 30 calendar days.

(d) *Forms.* Appeals, requests for variances, or any other matter within the zoning board of appeals' purview shall be made on forms, as applicable, provided by the ~~zoning administrator~~ planning and zoning department; and all information requested on the forms shall be provided by the appellant/petitioner. Forms shall be filed with the ~~zoning administrator~~ planning and zoning department along with the necessary fees. No form shall be accepted by the ~~zoning administrator~~ planning and zoning department unless it contains all pertinent information and is accompanied by the required fee.

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(Code 1992, § 20-9-5; Ord. No. 2012-09, § 5, 5-24-2012; Ord. No. 2013-13, § 1, 9-26-2013)

(e) *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 herein.

(f) *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 consider under the terms herein. Said extensions may be granted in an individual case upon a finding by the board that all of the following criteria are present:

(1) The use is a legal nonconforming use as defined in these regulations; and

(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.

(g) *Continuance of a legal nonconforming use.* The zoning board of appeals may allow a legal nonconforming use to be re-established after discontinuance for six consecutive months where it is deemed by the zoning board of appeals that all of the following criteria are present:

(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 legal nonconforming use is situated; and

(2) Undue hardship to the property owner would result in not allowing the continuance of a 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 legal nonconforming use.

ARTICLE VII. ZONING BOARD OF APPEALS

Secs. 110-243—110-262. Reserved.

ARTICLE IX. POLICIES, PROCEDURES AND STANDARDS GOVERNING AMENDMENTS

Sec. 110-290. Intent.
Sec. 110-291. Technical evaluation and qualification of properties.
Sec. 110-292. Public hearings.
Sec. 110-293. Initiation of amendments.
Sec. 110-294. Limitation on re-applying and withdrawal.
Sec. 110-295. Appeal.
Sec. 110-296. Application for amendment.
Sec. 110-297. Planning commission recommendation.
Sec. 110-298. Public hearing before the board of commissioners.
Sec. 110-299. Conditional approval.
Sec. 110-300. Standards for map amendment (rezoning) evaluation.
Sec. 110-301. Public notification.
Sec. 110-302. Zoning reversion.
Sec. 110-303. Responsibilities of the zoning administrator.
Secs. 110-304—110-324. Reserved.

Sec. 110-290. Intent.

The purpose of this article is to describe and establish procedures for making changes to the official zoning map (i.e., rezoning of properties) and amending the text of the ordinance from which this chapter is derived. Such actions require legislative approval by the board of commissioners in order to be enacted.

(Code 1992, § 20-11-1; Ord. No. 2012-09, § 6, 5-24-2012)

Sec. 110-291. Technical evaluation and qualification of properties.

(a) Every petition for a legislative change shall be subject to a technical evaluation. The evaluation shall be conducted by the ~~zoning administrator who~~ planning and zoning department which shall coordinate a review of the proposal with all appropriate county departments and public agencies. Following the evaluation, ~~the zoning administrator shall prepare~~ a report shall be prepared by the planning and zoning department containing recommendations to be presented to the planning commission and the board of commissioners.

(b) The ~~zoning administrator~~ planning and zoning department shall distribute copies of applications for amendment to the planning commission and the board of commissioners. In addition, the members of the technical review committee (TRC) shall be supplied with copies of each application. Each department head or his/her designee shall return his/her comments, in writing, to ~~the zoning~~

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~~administrator~~ the planning and zoning department per the deadline established by the planning and zoning department.

(c) Any lots affected by proposed rezonings which are initiated by a party other than the board of commissioners ~~of the county~~ shall each be of sufficient size and shape to meet all requirements of this chapter, except as otherwise provided in article V of this chapter. Combination or division of lots, in accordance with county regulations, shall be accomplished as a condition of approval prior to the approval of any permits or applications.

(d) A property ~~which is~~ improved with existing structures ~~and~~ which would become nonconforming within the zoning district for which the rezoning is sought may be considered for rezoning (see article V of this chapter).

(Code 1992, § 20-11-2; Ord. No. 2012-09, § 6, 5-24-2012)

Sec. 110-292. Public hearings.

(a) *Date, place, and time.* The public hearings shall be conducted as follows:

(1) Place: the county administrative complex.

(2) Time and date:

a. Planning commission: First Thursday, 7:00 p.m.

b. Board of commissioners: Second and Fourth Thursdays, 7:00 p.m.

Any changes from the standard schedule for public hearings will be published in the newspaper which carries legal advertisements for the county in compliance with the requirements for public notification as provided herein.

(b) *Conduct of hearing.* Public hearings on amendments shall be conducted with ~~15~~ 20 minutes provided for the applicant and proponents and ~~15~~ 20 minutes provided for the opponents of an application for rezoning. ~~If necessary, the chairperson or vice-chairperson may allocate an equal amount of additional minutes for both the proponents and the opponents.~~ An applicant may reserve part ~~or all~~ of the allotted time for rebuttal.

(1) *Decisions.* Recommendations of the planning commission and ~~the decision~~decisions of the board of commissioners on applications for ~~rezoning~~rezonings shall be made subsequent to the public ~~hearing~~hearings.

(2) *Minutes.* The minutes of any public hearing~~/workshop/meeting~~ shall be maintained with the zoning decision entered thereon. The minutes shall be kept as public records.

(Code 1992, § 20-11-3; Ord. No. 2012-09, § 6, 5-24-2012)

Sec. 110-293. Initiation of amendments.

Applications to amend the text of this chapter may be initiated by the planning commission, the board of commissioners, staff, or by a member of the general public. The planning commission, the board of commissioners, a property owner, or the authorized agent of a property owner may initiate an application to amend the official zoning map (rezone property). When an agent is authorized to act on behalf of an owner, such certificate of authorization shall be notarized on the rezoning application. All information and required fees shall be received by the ~~zoning administrator~~ planning and zoning department by the deadline date for filing.

(Code 1992, § 20-11-4; Ord. No. 2012-09, § 6, 5-24-2012)

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ARTICLE IX. POLICIES, PROCEDURES AND STANDARDS GOVERNING AMENDMENTS

Sec. 110-294. Limitation on re-applying and withdrawal.

If the zoning decision of the board of commissioners is to deny a rezoning of property, then an application for the same property may not be re-submitted for rezoning until the expiration of at least six months, immediately following the date of denial. An application for a map amendment shall not be withdrawn by the applicant after the legal advertising as required herein, except as provided herein.

(Code 1992, § 20-11-5; Ord. No. 2012-09, § 6, 5-24-2012)

Sec. 110-295. Appeal.

An applicant has 30 calendar days from the date of the board of commissioners rezoning decision to file an Appeal with the superior court of the county.

(Code 1992, § 20-11-6, Ord. No. 2012-09, § 6, 5-24-2012)

Sec. 110-296. Application for amendment.

Any citizen filing an application to amend the text or the official zoning map may obtain an application from the ~~zoning administrator~~ planning and zoning department. Applications to amend the text or the official zoning map shall be submitted on forms, as applicable, provided by the ~~zoning administrator~~ planning and zoning department.

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(Code 1992, § 20-11-7; Ord. No. 2012-09, § 6, 5-24-2012)

Sec. 110-297. Planning commission recommendation.

~~(a) The planning commission shall make a recommendation of approval, denial, table, or withdrawal without prejudice on each application. An action to table shall include a justification of such action and a specific meeting date at which the application is to be reconsidered.~~

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~~(1) If there is not a full board present at the public hearing, the petitioner may request to table the petition to the next planning commission public hearing, provided the petitioner requests to table the agenda item prior to the presentation.~~

~~(2) A new legal advertisement will not be required with an announcement to a specific meeting date if an application is tabled; however, the property shall be reposted with new signage indicating the new public hearing dates.~~

~~(3) In addition, the planning commission may recommend amendments to the applicant's request which would reduce the land area for which the application is, change the zoning district requested to one which is less intense, or recommend conditions which may be deemed advisable so that the purpose of this chapter will be served and the public health, safety, and welfare secured.~~

(a) The planning commission shall make a recommendation of approval, denial, table, or withdrawal without prejudice on each application.

(1) An action to table shall include a justification of such action and a specific public hearing date at which the application is to be reconsidered.

(2) If there is not a full board present at the public hearing, the petitioner may request to table the petition to the next planning commission public hearing, provided the petitioner requests to table the agenda item prior to the presentation. Only one (1) such request may be made.

(3) When an application is tabled, a new legal advertisement will be required stating the new public hearing dates and the property shall be reposted with new signage indicating the new public hearing dates.

(4) The planning commission may recommend amendments to the applicant's request which would reduce the land area of a rezoning petition (where possible with a legal description only), or change the zoning district requested to one which is less intense, and recommend conditions which may be deemed advisable so that the purpose of this ordinance will be served and the public health, safety, and welfare secured.

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(b) A ~~report~~ resolution of the planning commission's recommendation shall be submitted to the board of commissioners. The ~~report~~ resolution shall contain the recommendation of the planning commission, all grounds ~~therefore~~therefor, and shall be signed and approved by the chairperson or vice-chairperson of the planning commission.

(c) If the planning commission fails to submit a report within 100 calendar days from the date of the acceptance of the completed amendment application, the application shall be forwarded to the board of commissioners with ~~no~~ a positive recommendation. Actions of the planning commission which contribute to the delay, such as the lack of a ~~full board~~ quorum or a tabling of the petition initiated by the planning commission, shall count toward the 100 calendar days. Actions by the petitioner, such as a request to table or a request to table where there is less than a full board present, shall not count toward the 100 calendar days.

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(Code 1992, § 20-11-8; Ord. No. 2012-09, § 6, 5-24-2012)

Sec. 110-298. Public hearing before the board of commissioners.

~~(a) After receipt of the planning commission's and recommendation on the proposed amendment, the board of commissioners shall hold a public hearing. The board of commissioners may approve, deny, or table an application. An action to table shall include a justification of such action and a specific meeting date at which the application is to be reconsidered. A new legal advertisement will not be required with an announcement to a specific meeting date; however, the property shall be reposted with new signage indicating the new public hearing dates.~~

~~(b) In addition, the board of commissioners may approve an amendment with a reduction in the land area requested, change the zoning district requested (as long as such change is to a less intense zoning district), or add or delete conditions of zoning which will enhance the health, safety and welfare of the county.~~

~~(c) The board of commissioners may, by a majority vote of all members, allow an application to be withdrawn without prejudice with regards to the waiting period required by a denial.~~

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(a) After receipt of the planning commission's resolution and recommendation on the proposed amendment, the board of commissioners shall hold a public hearing. The board of commissioners may approve, deny, table an application or allow an application to be withdrawn without prejudice with regards to the waiting period required by a denial.

(1) An action to table shall include a justification of such action and a specific public hearing date at which the application is to be reconsidered.

(2) If there is not a full board present at the public hearing, the petitioner may request to table the petition to the next board of commissioners' public hearing, provided the petitioner requests to table the agenda item prior to the presentation. Only one (1) such request may be made.

(3) When an application is tabled, a new legal advertisement will be required stating the new public hearing dates and the property shall be reposted with new signage indicating the new public hearing dates.

(4) The board of commissioners may approve an amendment to the applicant's request which would reduce the land area of a rezoning petition (where possible with a legal description only), or change the zoning district requested to one which is less intense, and recommend conditions which may be deemed advisable so that the purpose of this ordinance will be served and the public health, safety, and welfare secured.

(~~b~~d) The decision of the board of commissioners shall be contained in a ~~written report prepared by the clerk of the board of commissioners~~resolution. The ~~report~~resolution shall contain the decision of the board of commissioners, all grounds therefor, and shall be signed and approved by the chairperson or vice-chairperson of the board of commissioners. The clerk shall provide a copy of the ~~report~~resolution to the ~~zoning administrator~~ planning and zoning department, which copy shall become a part of the application file, and shall send one copy to the applicant by certified mail.

(Code 1992, § 20-11-9; Ord. No. 2012-09, § 6, 5-24-2012)

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Sec. 110-299. Conditional approval.

Any application for an amendment may be approved subject to conditions which relate to the use, occupancy, or development ~~regulations for~~ of the property contained in the petition. Conditions imposed on the property may only be more restrictive than the requirements of any zoning district and other applicable parts of this chapter as may apply to the property. The following policies shall apply:

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~~(1) *Controls proposed by applicant.* An applicant may propose controls to be considered by the planning commission and the board of commissioners. Such proposed controls may include plans, limitations of use and occupancy, or more restrictive development standards than would otherwise be applied to the property.~~

~~a. Such proposed controls may be eliminated or changed into conditions of approval as submitted, or they may be eliminated, modified, or extended.~~

~~b. The board may choose to incorporate, as conditions of approval, selected restrictions, or requirements which were not included in the request for controls submitted in the original application.~~

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(~~2~~1) *Consent not required.* Approval of applications subject to conditions may occur with or without the consent of the applicant.

(~~3~~2) *Conditions shall be permanent.* All conditions imposed by action of the board of commissioners shall remain on the subject property regardless of changes in ownership.

(~~4~~3) *Changes to conditions.* Conditions shall be changed only through the amendment process by which they were established. ~~or when expressly overridden by a state government authority taking precedence over the area of regulation.~~

(Code 1992, § 20-11-10; Ord. No. 2012-09, § 6, 5-24-2012)

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ARTICLE IX. POLICIES, PROCEDURES AND STANDARDS GOVERNING AMENDMENTS

Sec. 110-300. Standards for map amendment (rezoning) evaluation.

All proposed map amendments shall be evaluated with special emphasis being placed on the relationship of the proposal to the land use plan and related development policies of the county. ~~The zoning administrator shall prepare a report for each proposed map amendment which shall recommend a course of action including recommended conditions, if any~~. The following factors shall be considered by the ~~zoning administrator~~ planning and zoning department, the planning commission and the board of commissioners when reviewing a request for rezoning:

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(1) Whether the zoning proposal is in conformity with the land use plan and policies contained therein;

(2) Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property;

(3) Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing or planned streets, utilities, or schools;

(4) Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the zoning proposal.

(Code 1992, § 20-11-11; Ord. No. 2012-09, § 6, 5-24-2012)

Sec. 110-301. Public notification.

(a) *Newspaper.* Notice of scheduled hearings shall be published in the newspaper of general circulation within the county in which are carried the legal advertisements of the county.

(1) The notice shall be published at least seven days prior to the public hearing before the planning commission, but not more than 45 calendar days, nor less than 15 calendar days prior to the public hearing before the board of commissioners. In the event that the time-frames above cannot be met with one advertisement, the notice shall be published twice.

(2) The notice shall contain the dates of the public hearings before the planning commission and the board of commissioners.

(3) Public notification shall include at a minimum the time, date, place, purpose of the hearing, location, boundary description, area of the property, and the current and requested zoning classifications.

(b) *Posting of signs.*

(1) A sign shall be posted on property for which the rezoning is sought. One sign is required for each street frontage of said property. The sign shall be posted consistent with the requirements for newspaper notification.

(2) Signs used for posting property shall be a minimum of 18 inches by 18 inches and shall indicate the application number, the time, date, place, purpose of the hearings, and the current and requested zoning classifications.

(3) A refundable sign deposit shall be required for each sign at the time of application for rezoning.

(c) *Applicant notification.*

(1) Upon certification by the ~~zoning administrator~~planning and zoning department that an application is complete, a notice giving the date, time, and place of the public hearings shall be ~~given~~provided by certified mail to the applicant.

(2) The clerk to the board of commissioners shall notify the applicant by mail of any action (including tabling of action) taken by the board of commissioners. All actions of the board of commissioners shall be deemed to be effective as of the date of the action.

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(Code 1992, § 20-11-12; Ord. No. 2012-09, § 6, 5-24-2012)

Sec. 110-302. Zoning reversion.

Within three years of the date of rezoning, rezoned property shall be utilized for uses allowed in the new zoning district or substantial development shall be demonstrated toward such utilization. Failure to so utilize or demonstrate substantial development may subject the property to consideration for reversion to the previous zoning classification. In such event, public hearings shall follow the established procedures for rezoning petitions herein and a final decision shall be rendered by the board of commissioners.

(Code 1992, § 20-11-13; Ord. No. 2012-09, § 6, 5-24-2012)

Sec. 110-303. Responsibilities of the ~~zoning administrator.~~ planning and zoning department

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The ~~zoning administrator~~ planning and zoning department shall have the following responsibilities associated with receiving and processing all amendment applications:

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(1) Receive all applications and supporting information and collect all fees at the time of initial filing;

(2) Maintain a log of all applications;

(3) Return incomplete applications and all supporting information to the applicant upon determination that an application is incomplete with reasons for the determination;

(4) If the application is complete, issue a notice that lists the dates, times, and places of all hearings that are scheduled for the application;

(5) Establish and maintain a file for each application which shall contain:

a. Copies of all materials submitted by the applicant;

b. Correspondence, records, reports, and exhibits produced during processing;

c. Minutes and all actions taken by the planning commission and the board of commissioners on an application; and

d. All follow-up activities, if any, including re-filing of additional requests, copies of citations or violations and any other significant materials.

(6) Prepare a map for all map changes (rezoning), which shall show the location and dimensions of the subject property of the petition, all properties within at least 1,000 feet of the subject property, and the zoning districts thereon;

(7) Transmit to the appropriate departments within five working days after the deadline for submissions, all materials to be evaluated;

(8) Schedule and provide notice for all public hearings, including the posting of the property, as required herein;

(9) Transmit the recommendation of the planning commission to the board of commissioners at least 14 calendar days prior to the scheduled public hearing before the board of commissioners; and

(10) Update the official zoning map.

ARTICLE IX. POLICIES, PROCEDURES AND STANDARDS GOVERNING AMENDMENTS

(Code 1992, § 20-11-14; Ord. No. 2012-09, § 6, 5-24-2012)

Secs. 110-304—110-324. Reserved.

EXHIBIT B

ORDINANCE 2015-06 ZONING BOARD OF APPEALS

FINAL FORM VERSION OF THE ORDINANCE

STATE OF GEORGIA
COUNTY OF FAYETTE

ORDINANCE NO. 2015 - 06

AN ORDINANCE TO AMEND THE FAYETTE COUNTY CODE OF ORDINANCES, CHAPTER 110. ZONING ORDINANCE, AS AMENDED, SPECIFICALLY ARTICLE VII. ZONING BOARD OF APPEALS and ARTICLE IX. POLICIES, PROCEDURES AND STANDARDS GOVERNING AMENDMENTS

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 110. Zoning Ordinance, as amended, is hereby further amended by deleting Article VII. Zoning Board of Appeals in its entirety and replacing it with the following:

ARTICLE VII. ZONING BOARD OF APPEALS

Sec. 110-238. Membership.

Sec. 110-239. Rules and procedures.

Sec. 110-240. Administrative assistance.

Sec. 110-241. Public hearing.

Sec. 110-242. Powers and duties.

Secs. 110-243—110-262. Reserved.

Sec. 110-238. Membership.

(a) *Membership and appointments.* The zoning board of appeals shall consist of five members residing within the county and shall be appointed by the board of commissioners. None of the board members shall hold any other public office, except that one member may also be a member of the planning commission. The zoning board of appeals members shall be removed by the board of commissioners for cause, upon written charges, and after public hearing. Any member of the zoning board of appeals shall be disqualified to act upon a matter before the zoning board of appeals with respect to property in which the member has an interest. It may be deemed cause for removal should any zoning board of appeals member fail, without proper reason, to attend three consecutive meetings.

(b) *Term of office.* The term of office for each member of the zoning board of appeals shall be for three years and the member shall remain on the board until reappointed or a successor is appointed. It is the intent of this section that their terms be staggered with no term limitation.

(c) *Compensation.* The zoning board of appeals members shall receive compensation for their service as determined by the board of commissioners.

(Code 1992, § 20-9-1; Ord. No. 2012-09, § 5, 5-24-2012)

Sec. 110-239. Rules and procedures.

The zoning board of appeals shall elect one of its members as chairperson and another as vice-chairperson, each serving for one year, or until re-elected, or a successor is elected. The vice-chairperson shall have the authority to act as chairperson in the chairperson's absence. The zoning board of appeals shall appoint a secretary who shall be an employee of the county. The zoning board of appeals shall have authority to adopt rules of procedure. Meetings of the zoning board of appeals may be held at the call of the chairperson. The chairperson may administer oaths and compel the attendance of witnesses by subpoena. The zoning board of appeals shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the planning and zoning department and shall be public record. The decisions of the zoning board of appeals shall contain a statement of the subject matter being considered by the zoning board of appeals, and the grounds for its decision reduced to written form. The full text shall be sent to the appellant/petitioner.

(Code 1992, § 20-9-2; Ord. No. 2012-09, § 5, 5-24-2012)

Sec. 110-240. Administrative assistance.

The planning and zoning department shall provide such technical, administrative, clerical assistance, and office space as is required by the zoning board of appeals to carry out its function under the provisions herein.

(Code 1992, § 20-9-3; Ord. No. 2012-09, § 5, 5-24-2012)

Sec. 110-241. Public hearing.

(a) *Place, time, and date.* The public hearings shall be conducted as follows:

(1) Place: the county administrative complex.

(2) Time and Date: Fourth Monday, 7:00 p.m.

Any changes from the standard schedule for public hearings will be published in the newspaper which carries legal advertisements for the county in compliance with the requirements for public notification as provided herein.

(b) *Conduct of hearing.* Public hearings shall be conducted with 20 minutes provided for the appellant/petitioner and proponents and 20 minutes provided for the opponents of an appeal/petition. An appellant/petitioner may reserve part of the allotted time for rebuttal.

(c) *Notice of hearing shall be given.* Before making its decision on an appeal, a request for a variance, or any other matter within the zoning board of appeals' purview, the zoning board of appeals shall hold a public hearing thereon. A notice of the date, time and place of such hearing shall be sent to the appellant/petitioner by certified U.S. mail to the appellant/petitioner's last known address.

(d) *Public notice in newspaper.* The zoning board of appeals shall cause public notice of the hearing to be published in the legal organ of the county, at least 15 calendar days but not more than 45 calendar days, prior to the date of the public hearing.

(e) *Posting of signs.*

(1) A sign shall be posted on property. One sign is required for each street frontage of said property. The sign shall be posted consistent with the requirements for newspaper notification.

(2) Signs used for posting property shall be a minimum of 18 inches by 18 inches and shall indicate the appeal/petition number, the time, date, and place of the hearing.

(3) A refundable sign deposit shall be required for each sign at the time of filing the appeal/petition.

(f) *Who may appear.* Any party may appear at the public hearing in person or by agent or attorney.

(g) *Zoning board of appeals' decision.* The zoning board of appeals shall approve, deny, or table each appeal/petition by a public vote. An action to table shall include justification of such action and a specific meeting date at which the appeal/petition is to be reconsidered. If there is not a full zoning board of appeals board present at the public hearing, the appellant/petitioner may request to table the appeal/petition to the next zoning board of appeals public hearing, provided the appellant/petitioner requests to table the agenda item prior to the presentation. A new legal advertisement will be required with an announcement to a specific meeting date if an appeal/petition is tabled. The property shall be reposted with new signage indicating the new public hearing dates.

(h) *Time limit on zoning board of appeals decision.* The zoning board of appeals shall reach a decision following a public hearing within 45 calendar days or the appeal/petition shall be deemed approved.

(i) *"Writ of certiorari" (appeal).* An appellant/petitioner has 30 calendar days from the date of the zoning board of appeals' decision to seek a "writ of certiorari" (appeal) with the superior court of the county.

(Code 1992, § 20-9-4; Ord. No. 2012-09, § 5, 5-24-2012)

Sec. 110-242. Powers and duties.

(a) *Appeals from actions of the zoning administrator.* The zoning board of appeals shall hear and decide upon appeals where it is alleged there is error in any order, requirement, decision, or determination made by the zoning administrator in the enforcement of these regulations.

(1) *Who may appeal.* Appeals to the zoning board of appeals may be taken by any person aggrieved by any decision of the zoning administrator. Such appeals, specifying the grounds thereof shall be filed with the planning and zoning department no later than 30 calendar days after the date of notification of the zoning administrator's decision. The zoning administrator shall forthwith transmit to the zoning board of appeals all the papers constituting the record upon which the action appealed from was taken.

(2) *Legal proceedings stayed.* An appeal stays all legal proceedings in furtherance of the action appealed from, unless the zoning administrator certifies to the zoning board of appeals that by reason of facts stated in the certificate a stay would, in the zoning administrator's opinion, cause imminent peril to life and property. In such a case, proceedings shall not be stayed otherwise than by a restraining order from a court of competent jurisdiction.

(3) *Extent of the zoning board of appeals' power.* The zoning board of appeals may, in conformity with the provisions of these regulations, reverse or affirm the order, requirement, decision, or determination of the zoning administrator. The zoning board of appeals may direct the issuance of a permit. It shall be the duty of the zoning administrator to carry out the decisions of the zoning board of appeals.

(b) *Request for a variance*. The zoning board of appeals 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, no lot is eligible for a variance for reduction in lot size, lot width, or road frontage, unless the variance request is for an improved illegal lot. A variance shall not be granted for any requirements of a conditional use with the exception of a legal nonconforming conditional use (see article V of this chapter), or a use of land, building, or structure that is prohibited in the zoning district at issue, except as otherwise provided herein. In exercising the powers described in this subsection, the zoning board of appeals 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. A variance may be granted in an individual case upon a finding by the zoning board of appeals that all of the following criteria exist:

(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 chapter would deprive the applicant of any rights that others in the same zoning district are allowed.

The zoning board of appeals may impose or require conditions, as may be necessary, to protect the health and safety of workers and residents in the community; 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 approval granted pursuant to the provisions of these regulations, that any of the conditions upon which such approval was granted are not being complied with, said zoning board of appeals shall rescind and revoke such approval after giving due notice to all parties concerned and granting full opportunity for a hearing.

In addition to the above factors, if the variance being sought is for an improved lot which is smaller than the minimum lot size for its zoning district, more narrow than the minimum lot width required for its zoning district, or has less road frontage than is required for its zoning district and the lot is an illegal lot as opposed to a nonconforming lot, the zoning board of appeals may consider such a lot for a variance. Should the appellant/petitioner be successful in obtaining a variance, the resulting lot would, for the purposes of this chapter, be deemed to be a nonconforming lot. If the appellant/petitioner successfully passes the above enumerated factors, the zoning board of appeals shall also employ the following factors for an illegal lot seeking to be deemed a nonconforming lot:

(1) The transaction giving the appellant/petitioner ownership in the subject property was more than five years from the date of the appeal/petition or if the period of ownership is less than five years the subject property was made illegal more than ten years from the date of the appeal/petition;

(2) The appellant/petitioner is not the person, or an immediate family member of the person, who caused the subject property to be an illegal lot. For purposes of these procedures, "immediate family" is defined as the spouse, child, sibling, parent, step-child, step-sibling, step-parent, grandparent, grandchild, aunt, uncle, niece or nephew of the person who caused the subject property to be an illegal lot; and

(3) No adjacent property is available to add to the subject property to allow the subject property to meet the minimum requirements for its zoning district. In determining whether adjacent property is available, if adding any adjacent property to the subject property would no longer allow the adjacent property to meet the minimum requirements of the adjacent property's zoning district, then the adjacent property is not available. Additionally, any adjacent property which is part of an illegal lot shall not be deemed available for purposes of these variance procedures, unless the adjacent illegal lot is unimproved and the entirety of the adjacent illegal lot is combined with the subject property. If adjacent property is available, the cost of acquiring the adjacent property shall not be a factor in determining the availability of the adjacent property.

(c) *Compliance with standards.* Where an appeal/petition to the board is initiated due to an existing violation of this chapter and said appeal/petition is denied, the violation shall be required to be corrected within ten calendar days of such denial, or as specified by the board, if a greater time period is necessary. The maximum extension of the time shall not exceed 30 calendar days.

(d) *Forms.* Appeals, requests for variances, or any other matter within the zoning board of appeals' purview shall be made on forms, as applicable, provided by the planning and zoning department; and all information requested on the forms shall be provided by the appellant/petitioner. Forms shall be filed with the planning and zoning department along with the necessary fees. No form shall be accepted by the planning and zoning department unless it contains all pertinent information and is accompanied by the required fee.

(Code 1992, § 20-9-5; Ord. No. 2012-09, § 5, 5-24-2012; Ord. No. 2013-13, § 1, 9-26-2013)

(e) *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 herein.

(f) *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 consider under the terms herein. Said extensions may be granted in an individual case upon a finding by the board that all of the following criteria are present:

(1) The use is a legal nonconforming use as defined in these regulations; and

(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.

(g) *Continuance of a legal nonconforming use.* The zoning board of appeals may allow a legal nonconforming use to be re-established after discontinuance for six consecutive months where it is deemed by the zoning board of appeals that all of the following criteria are present:

(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 legal nonconforming use is situated; and

(2) Undue hardship to the property owner would result in not allowing the continuance of a 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 legal nonconforming use.

Secs. 110-243—110-262. Reserved.

Section 2. The Fayette County Code of Ordinances, Chapter 110. Zoning Ordinance, as

amended, is hereby further amended by deleting Article IX. Policies, Procedures and Standards Governing Amendments in its entirety and replacing it with the following:

ARTICLE IX. POLICIES, PROCEDURES AND STANDARDS GOVERNING AMENDMENTS

Sec. 110-290. Intent.

Sec. 110-291. Technical evaluation and qualification of properties.

Sec. 110-292. Public hearings.

Sec. 110-293. Initiation of amendments.

Sec. 110-294. Limitation on re-applying and withdrawal.

Sec. 110-295. Appeal.

Sec. 110-296. Application for amendment.

Sec. 110-297. Planning commission recommendation.

Sec. 110-298. Public hearing before the board of commissioners.

Sec. 110-299. Conditional approval.

Sec. 110-300. Standards for map amendment (rezoning) evaluation.

Sec. 110-301. Public notification.

Sec. 110-302. Zoning reversion.

Sec. 110-303. Responsibilities of the zoning administrator.

Secs. 110-304—110-324. Reserved.

Sec. 110-290. Intent.

The purpose of this article is to describe and establish procedures for making changes to the official zoning map (i.e., rezoning of properties) and amending the text of the ordinance from which this chapter is derived. Such actions require legislative approval by the board of commissioners in order to be enacted.

(Code 1992, § 20-11-1; Ord. No. 2012-09, § 6, 5-24-2012)

Sec. 110-291. Technical evaluation and qualification of properties.

(a) Every petition for a legislative change shall be subject to a technical evaluation. The evaluation shall be conducted by the planning and zoning department which shall coordinate a review of the proposal with all appropriate county departments and public agencies. Following the evaluation, a report shall be prepared by the planning and zoning department containing recommendations to be presented to the planning commission and the board of commissioners.

(b) The planning and zoning department shall distribute copies of applications for amendment to the planning commission and the board of commissioners. In addition, the members of the technical review committee (TRC) shall be supplied with copies of each application. Each department head

or his/her designee shall return his/her comments, in writing, the planning and zoning department per the deadline established by the planning and zoning department.

(c) Any lots affected by proposed rezonings which are initiated by a party other than the board of commissioners shall each be of sufficient size and shape to meet all requirements of this chapter, except as otherwise provided in article V of this chapter. Combination or division of lots, in accordance with county regulations, shall be accomplished as a condition of approval prior to the approval of any permits or applications.

(d) A property improved with existing structures which would become nonconforming within the zoning district for which the rezoning is sought may be considered for rezoning (see article V of this chapter).

(Code 1992, § 20-11-2; Ord. No. 2012-09, § 6, 5-24-2012)

Sec. 110-292. Public hearings.

(a) *Date, place, and time.* The public hearings shall be conducted as follows:

(1) Place: the county administrative complex.

(2) Time and date:

a. Planning commission: First Thursday, 7:00 p.m.

b. Board of commissioners: Second and Fourth Thursdays, 7:00 p.m.

Any changes from the standard schedule for public hearings will be published in the newspaper which carries legal advertisements for the county in compliance with the requirements for public notification as provided herein.

(b) *Conduct of hearing.* Public hearings on amendments shall be conducted with 20 minutes provided for the applicant and proponents and 20 minutes provided for the opponents of an application for rezoning. An applicant may reserve part of the allotted time for rebuttal.

(1) *Decisions.* Recommendations of the planning commission and decisions of the board of commissioners on applications for rezonings shall be made subsequent to the public hearings.

(2) *Minutes.* The minutes of any public hearing shall be maintained with the zoning decision entered thereon. The minutes shall be kept as public records.

(Code 1992, § 20-11-3; Ord. No. 2012-09, § 6, 5-24-2012)

Sec. 110-293. Initiation of amendments.

Applications to amend the text of this chapter may be initiated by the planning commission, the board of commissioners, staff, or by a member of the general public. The planning commission, the board of commissioners, a property owner, or the authorized agent of a property owner may initiate an application to amend the official zoning map (rezone property). When an agent is authorized to act on behalf of an owner, such certificate of authorization shall be notarized on the rezoning application. All information and required fees shall be received by the planning and zoning department by the deadline date for filing.

(Code 1992, § 20-11-4; Ord. No. 2012-09, § 6, 5-24-2012)

Sec. 110-294. Limitation on re-applying and withdrawal.

If the zoning decision of the board of commissioners is to deny a rezoning of property, then an application for the same property may not be re-submitted for rezoning until the expiration of at least six months immediately following the date of denial. An application for a map amendment shall not be withdrawn by the applicant after the legal advertising as required herein, except as provided herein.

(Code 1992, § 20-11-5; Ord. No. 2012-09, § 6, 5-24-2012)

Sec. 110-295. Appeal.

An applicant has 30 calendar days from the date of the board of commissioners rezoning decision to file an Appeal with the superior court of the county.

(Code 1992, § 20-11-6; Ord. No. 2012-09, § 6, 5-24-2012)

Sec. 110-296. Application for amendment.

Any citizen filing an application to amend the text or the official zoning map may obtain an application from the planning and zoning department, Applications to amend the text or the official zoning map shall be submitted on forms, as applicable, provided by the planning and zoning department.

(Code 1992, § 20-11-7; Ord. No. 2012-09, § 6, 5-24-2012)

Sec. 110-297. Planning commission recommendation.

(a) The planning commission shall make a recommendation of approval, denial, table, or withdrawal without prejudice on each application.

(1) An action to table shall include a justification of such action and a specific public hearing date at which the application is to be reconsidered.

(2) If there is not a full board present at the public hearing, the petitioner may request to table the petition to the next planning commission public hearing, provided the petitioner requests to table the agenda item prior to the presentation. Only one (1) such request may be made.

(3) When an application is tabled, a new legal advertisement will be required stating the new public hearing dates and the property shall be reposted with new signage indicating the new public hearing dates.

(4) The planning commission may recommend amendments to the applicant's request which would reduce the land area of a rezoning petition (where possible with a legal description only), or change the zoning district requested to one which is less intense, and recommend conditions which may be deemed advisable so that the purpose of this ordinance will be served and the public health, safety, and welfare secured.

(b) A resolution of the planning commission's recommendation shall be submitted to the board of commissioners. The resolution shall contain the recommendation of the planning commission, all grounds therefor, and shall be signed and approved by the chairperson or vice-chairperson of the planning commission.

(c) If the planning commission fails to submit a report within 100 calendar days from the date of the acceptance of the completed amendment application, the application shall be forwarded to the

board of commissioners with a positive recommendation. Actions of the planning commission which contribute to the delay, such as the lack of a quorum or a tabling of the petition initiated by the planning commission, shall count toward the 100 calendar days. Actions by the petitioner, such as a request to table or a request to table where there is less than a full board present, shall not count toward the 100 calendar days.

(Code 1992, § 20-11-8; Ord. No. 2012-09, § 6, 5-24-2012)

Sec. 110-298. Public hearing before the board of commissioners.

(a) After receipt of the planning commission's resolution and recommendation on the proposed amendment, the board of commissioners shall hold a public hearing. The board of commissioners may approve, deny, table an application or allow an application to be withdrawn without prejudice with regards to the waiting period required by a denial.

(1) An action to table shall include a justification of such action and a specific public hearing date at which the application is to be reconsidered.

(2) If there is not a full board present at the public hearing, the petitioner may request to table the petition to the next board of commissioners' public hearing, provided the petitioner requests to table the agenda item prior to the presentation. Only one (1) such request may be made.

(3) When an application is tabled, a new legal advertisement will be required stating the new public hearing dates and the property shall be reposted with new signage indicating the new public hearing dates.

(4) The board of commissioners may approve an amendment to the applicant's request which would reduce the land area of a rezoning petition (where possible with a legal description only), or change the zoning district requested to one which is less intense, and recommend conditions which may be deemed advisable so that the purpose of this ordinance will be served and the public health, safety, and welfare secured.

(b) The decision of the board of commissioners shall be contained in a resolution. The resolution shall contain the decision of the board of commissioners, all grounds therefor, and shall be signed and approved by the chairperson or vice-chairperson of the board of commissioners. The clerk shall provide a copy of the resolution to the planning and zoning department, which copy shall become a part of the application file, and shall send one copy to the applicant by certified mail.

(Code 1992, § 20-11-9; Ord. No. 2012-09, § 6, 5-24-2012)

Sec. 110-299. Conditional approval.

Any application for an amendment may be approved subject to conditions which relate to the use, occupancy, or development of the property contained in the petition. Conditions imposed on the property may only be more restrictive than the requirements of any zoning district and other applicable parts of this chapter as may apply to the property. The following policies shall apply:

(1) *Consent not required.* Approval of applications subject to conditions may occur with or without the consent of the applicant.

(2) *Conditions shall be permanent.* All conditions imposed by action of the board of commissioners shall remain on the subject property regardless of changes in ownership.

(3) *Changes to conditions.* Conditions shall be changed only through the amendment process by which they were established.

(Code 1992, § 20-11-10; Ord. No. 2012-09, § 6, 5-24-2012)

Sec. 110-300. Standards for map amendment (rezoning) evaluation.

All proposed map amendments shall be evaluated with special emphasis being placed on the relationship of the proposal to the land use plan and related development policies of the county The following factors shall be considered by the planning and zoning department, the planning commission and the board of commissioners when reviewing a request for rezoning:

(1) Whether the zoning proposal is in conformity with the land use plan and policies contained therein;

(2) Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property;

(3) Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing or planned streets, utilities, or schools;

(4) Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the zoning proposal.

(Code 1992, § 20-11-11; Ord. No. 2012-09, § 6, 5-24-2012)

Sec. 110-301. Public notification.

(a) *Newspaper.* Notice of scheduled hearings shall be published in the newspaper of general circulation within the county in which are carried the legal advertisements of the county.

(1) The notice shall be published at least seven days prior to the public hearing before the planning commission, but not more than 45 calendar days, nor less than 15 calendar days prior to the public hearing before the board of commissioners. In the event that the time-frames above cannot be met with one advertisement, the notice shall be published twice.

(2) The notice shall contain the dates of the public hearings before the planning commission and the board of commissioners.

(3) Public notification shall include at a minimum the time, date, place, purpose of the hearing, location, boundary description, area of the property, and the current and requested zoning classifications.

(b) *Posting of signs.*

(1) A sign shall be posted on property for which the rezoning is sought. One sign is required for each street frontage of said property. The sign shall be posted consistent with the requirements for newspaper notification.

(2) Signs used for posting property shall be a minimum of 18 inches by 18 inches and shall indicate the application number, the time, date, place, purpose of the hearings, and the current and requested zoning classifications.

(3) A refundable sign deposit shall be required for each sign at the time of application for rezoning.

(c) *Applicant notification.*

(1) Upon certification by the planning and zoning department that an application is complete, a notice giving the date, time, and place of the public hearings shall be provided by certified mail to the applicant.

(2) The clerk to the board of commissioners shall notify the applicant by mail of any action (including tabling of action) taken by the board of commissioners. All actions of the board of commissioners shall be deemed to be effective as of the date of the action.

(Code 1992, § 20-11-12; Ord. No. 2012-09, § 6, 5-24-2012)

Sec. 110-302. Zoning reversion.

Within three years of the date of rezoning, rezoned property shall be utilized for uses allowed in the new zoning district or substantial development shall be demonstrated toward such utilization. Failure to so utilize or demonstrate substantial development may subject the property to consideration for reversion to the previous zoning classification. In such event, public hearings shall follow the established procedures for rezoning petitions herein and a final decision shall be rendered by the board of commissioners.

(Code 1992, § 20-11-13; Ord. No. 2012-09, § 6, 5-24-2012)

Sec. 110-303. Responsibilities of the planning and zoning department

The planning and zoning department shall have the following responsibilities associated with receiving and processing all amendment applications:

(1) Receive all applications and supporting information and collect all fees at the time of initial filing;

(2) Maintain a log of all applications;

(3) Return incomplete applications and all supporting information to the applicant upon determination that an application is incomplete with reasons for the determination;

(4) If the application is complete, issue a notice that lists the dates, times, and places of all hearings that are scheduled for the application;

(5) Establish and maintain a file for each application which shall contain:

a. Copies of all materials submitted by the applicant;

b. Correspondence, records, reports, and exhibits produced during processing;

c. Minutes and all actions taken by the planning commission and the board of commissioners on an application; and

d. All follow-up activities, if any, including re-filing of additional requests, copies of citations or violations and any other significant materials.

(6) Prepare a map for all map changes (rezoning), which shall show the location and dimensions of the subject property of the petition, all properties within at least 1,000 feet of the subject property, and the zoning districts thereon;

(7) Transmit to the appropriate departments within five working days after the deadline for submissions, all materials to be evaluated;

(8) Schedule and provide notice for all public hearings, including the posting of the property, as required herein;

(9) Transmit the recommendation of the planning commission to the board of commissioners at least 14 calendar days prior to the scheduled public hearing before the board of commissioners; and

(10) Update the official zoning map.

(Code 1992, § 20-11-14; Ord. No. 2012-09, § 6, 5-24-2012)

Secs. 110-304—110-324. Reserved.

Section 3. That the preamble of this Ordinance shall be considered to be and is hereby incorporated by reference as if fully set out herein.

Section 4. 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 5. All ordinances or resolutions and parts of ordinances or resolutions in conflict herewith are hereby expressly repealed except those provided for herein.

Section 6. The effective date of this Ordinance shall be the date of adoption unless otherwise specified herein.

So ordained this 26th day of March, 2015, by the

BOARD OF COMMISSIONERS
FAYETTE COUNTY, GEORGIA

_____
Chuck Oddo, CHAIRMAN

ATTEST:

_____
CLERK/DEPUTY CLERK

Minutes

Board of Commissioners
Special Called Meeting
August 19, 2014
3:00 P.M.

The Board of Commissioners of Fayette County, Georgia, met in Official Session on August 19, 2014 at 3:00 p.m. in the Public Meeting Room of the Fayette County Administrative Complex, 140 Stonewall Avenue, Fayetteville, Georgia.

Commissioners Present:	Steve Brown, Chairman Charles Oddo, Vice Chairman David Barlow Allen McCarty Randy Ognio
Staff Present:	Steve Rapson, County Administrator Floyd L. Jones, County Clerk Tameca P. White, Deputy Clerk Dennis Davenport, County Attorney

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Call to Order

Chairman Brown called the Tuesday, August 19, 2014 Board of Commissioners- Special Called Meeting to order at 3:02 p.m.

Acceptance of Agenda

Chairman Brown moved to accept the Agenda as written. Commissioners Ognio and McCarty seconded the motion. No discussion followed. The motion passed unanimously.

The Chairman turned the floor over to County Attorney Dennis Davenport. Mr. Davenport briefly explained to the Board what he intended to convey in this meeting.

1. Discussion of Parliamentary Procedures– Making the Meeting Work.

County Attorney Dennis Davenport briefed the Board for approximately thirty-three minutes on the Fayette County Code, Chapter 2, Articles 1-6- Administration and he answered questions from the Board. Mr. Davenport also suggested several changes that could be made to the County Code. He focused specific attention on following sections:

A) Section 2-49(g)- Chair or presiding officer affidavit

B) Section 2-51(a)- Three members of the board shall constitute a quorum and no action shall be taken by the board without the concurring vote of at least three members of the board. Mr. Davenport compared this Section2-51(a) with Section 2-49©) and spoke about how these sections conflict with each other.

C) Section 2-55. Parliamentarian.

D) Section 2-56. Rules of Order. Mr. Davenport suggested that it would be a good idea to have a textual reference to default to should a scenario arise that is not addressed in the County Code.

E) Section 2-56 (b)- Motions; general requirement. Mr. Davenport informed the Board that motions require action, and that a motion to "consider" an item is not a proper motion.

F) Section 2-56(b)(3)- Withdrawal.

G) Section 2-56(b)(4)- Tabling.

H) Section 2-56(6)(a)- A commissioner in favor of a motion shall say "aye" while holding up his right hand.

I) Section 2-56(d)- Special motions. Call the question.

J) Sections 2-56 (e) and (f)- Point of order and Out of order.

K) Section 2-56(h)- Public Discussion.

L) Section 2-60. Order of business.

M) Section 2-63. Decorum.

N) Section 2-64. Abstentions. Mr. Davenport explained the differences between abstentions and recusals.

The Board did not vote upon or give direction on this matter. A copy of the supporting material, identified as "Attachment 1," follows these minutes and is made an official part hereof.

2. Discussion concerning the Zoning Board of Appeals and its role in Fayette County.

County Attorney Dennis Davenport briefed the Board for approximately seven minutes on the Fayette County Code, Subpart B- Land Development and Use, Chapter 110- Zoning, Article VII. Zoning Board of Appeals. He answered questions from the Board during this explanation of this portion of the Fayette County Code of Ordinances. He focused specific attention to the following sections:

A) Section 9-5(B)(1-7)- Request for a Variance.

B) Section 9-5(A)(1-3)- Appeals from Actions from the Zoning Administrator.

The Board did not vote upon or give direction on this matter. A copy of the supporting material, identified as "Attachment 2," follows these minutes and is made an official part hereof.

3. Discussion about the Planning Commission– Makes Recommendations for Rezonings (Focus on Rezonings.)

County Attorney Dennis Davenport briefed the Board for approximately six minutes on the Fayette County Code, Chapter 110- Zoning, Article X. Planning Commission. Mr. Davenport answered questions from the Board about this portion of the County Code. He spoke about the differences and correlation between the Land Use Plan and the Zoning Map. He also spoke about "spot zoning" and "contract zoning." Mr. Davenport focused specific attention to the following section: *Section 11-11- Standards for Map Amendment (Rezoning) Evaluation.*

The Board did not vote upon or give direction on this matter. A copy of the supporting material, identified as "Attachment 3," follows these minutes and is made an official part hereof.

4. Discussion on the Role of the Fayette County Board of Commissioners in Rezonings.

County Attorney Dennis Davenport spoke about for approximately twenty-two minutes about the differences between the roles of the Zoning Board of Appeals and the Planning Commission in regards to rezoning matters, and he spoke about the procedure it takes to amend Fayette County's Zoning Ordinance document as opposed to the Fayette County Code of Ordinances. He explained the differences involved with Public Hearings in general compared to Public Hearings involving rezoning matters. Mr. Davenport answered questions from the Board. He focused on the following specific sections of the Fayette County Code, Chapter 110- Zoning, Article. Planning Commission:

A) Section 11-3.(B) Conduct of Hearing.

B) Section 11-8. Planning Commission Recommendation.

C) Section 11-10. Conditional Approval.

D) Section 11-13. Zoning Reversion.

Mr. Davenport spoke about the issues of "spot zoning" and "contract zoning" with the Board and told of problems associated with those types of zonings.

The Board did not vote upon or give direction on this matter.

5. Concluding Remarks.

County Attorney Dennis Davenport spoke about the differences between ordinances versus policies. He explained that ordinances always trump policies, and once an ordinance has been amended the policy must be changed. He reiterated that if an ordinance butts against policy that the ordinance will win.

Mr. Davenport asked the Board for liberty to look into the areas of the code that he brought up and that he thought was problematic, and to come to the Board at a future date with changed language. The Board agreed to his request. The Board did not vote on this matter. Copies of the sample ordinance and policy, identified as "Attachment 4," follow these minutes and are made an official part hereof.

ADJOURNMENT:

Chairman Brown moved to adjourn the August 19, 2014 Board of Commissioners Special Called Meeting. Commissioner McCarty seconded the motion. No discussion followed. The motion passed unanimously.

The August 19, 2014 Board of Commissioners Special Called Meeting was adjourned at 4:17 p.m.

Floyd L. Jones, County Clerk

Steve Brown, Chairman

The foregoing minutes were duly approved at an official meeting of the Board of Commissioners of Fayette County, Georgia, held on the 28th day of August 2014.

Floyd L. Jones, County Clerk

THE FAYETTE COUNTY PLANNING COMMISSION met on November 20, 2014 at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Fayetteville, Georgia.

MEMBERS PRESENT:	Chairman, Al Gilbert Brian Haren Bob Simmons Douglas Powell
MEMBERS ABSENT:	Jim Graw, Vice-Chairman
STAFF PRESENT:	Pete Frisina, Director of Community Services Dennis Davenport, County Attorney

Welcome and Call to Order:

Chairman Gilbert called the Planning Commission Meeting to order. Chairman Gilbert introduced the Commission Members and Staff. Chairman Gilbert said Jim Graw was absent tonight.

1. Consideration of the Minutes of the Meeting held on November 6, 2014.

Bob Simmons made a motion to approve the minutes. Brian Haren seconded the motion. The motion passed 3-0-1. Doug Powell abstained because he was absent from the meeting on November 6, 2014. Jim Graw was absent.

2. Discussion of proposed amendment to the Zoning Ordinance, Article IX. Policies, Procedures and Standards Governing Amendments.

Dennis Davenport said the purpose of these amendments is to update the ordinance and remove any inconsistences. He said throughout this article whenever is says "zoning administrator" that will be changed to "planning and zoning department." He added under (b) Sec. 110-291, "amendment" should be plural and "his" should be "his/her." He said many of these changes are similar form changes but there are some substantive changes as well. He added in (d) it says "A property which is improved with existing structures and which would become nonconforming within the zoning district for which the rezoning is sought may be considered for rezoning." and would the rezoning classify the structure as nonconforming or illegal?

Pete Frisina said technically a rezoning could make a structure illegal if it doesn't comply with the zoning district being sought but the County approves these rezonings with conditions that require action to bring the structure into compliance by removing it or seeking a variance within a certain period of time.

Doug Powell said we had a case in the southern portion of the county where the County required right-of-way which caused the lot to be nonconforming and the County approved it because we created the problem by taking right-of-way.

Chairman Gilbert asked would it be better to say nonconforming by action of the County.

Dennis Davenport said he was questioning if you could actually categorize it as nonconforming because you are putting it into a zoning district where it doesn't fit and he just wanted to bring it to everybody's attention and he is alright with it. He said under 110-292 (a) (2) (b), do we have public hearings before the Board of Commissioners on the second Thursday.

Pete Frisina said occasionally a rezoning is heard on the second Thursday especially during the holidays when meeting get canceled.

Dennis Davenport said an item that the BOC wanted was to give more time for both sides to speak at a rezoning so the time will be increased from 15 minutes to 20 minutes.

Pete Frisina said we will have to recognize when a petitioner has presented their rezoning and they have used five (5) minutes of their time, since the public that speaks in favor of the rezoning will go toward their 20 minutes, because the petitioner will want to reserve a portion of their time, say five (5) minutes for rebuttal, so if a number of people get up and speak, the petitioner doesn't lose all of his time to rebut.

Chairman Gilbert said when Pinewood was presented there was probably 30 minutes of people speaking in favor.

Pete Frisina asked Dennis Davenport if it would be appropriate for the petitioner to reserve time and limit the time for the public to speak in favor.

Dennis Davenport said it all comes down to how much control you are going to have on other folks for example if the petitioner uses five (5) minutes for his presentation and wants to reserve five (5) minutes for rebuttal and are you going to tell that next person they only have 10 minutes to speak because the petitioner has reserved five (5) minutes for rebuttal.

Chairman Gilbert said the petitioner will have to ask the public for those five (5) minutes.

Doug Powell said the petitioner is not going to be aware of that.

Dennis Davenport said the way he has viewed that is if you have a lot of folks supporting you there may not be a need for rebuttal.

Pete Frisina said for Camp Southern Ground there were a lot of people in favor and a lot in opposition.

Bob Simmons asked if there are 10 people in support will they have 20 minutes in total to speak.

Pete Frisina said 20 minutes in total for both sides.

Chairman Gilbert asked after the petitioner don't we only allow three (3) minutes per speaker.

Dennis Davenport said we don't have to have any limit at all but you pay a price for that in long meetings and State law says you have to have a minimum of 10 minutes per side but there is always this willingness to give people extra time and we have to think long and hard about that because once you get to an agenda with five (5) or six (6) rezonings and you give the first one extra time don't you think the other petitions would want the same consideration.

Pete Frisina asked Dennis Davenport if all of the petitioner's time is used up it would be appropriate for the Planning Commission or BOC to bring the petitioner up to answer to the concerns brought up by the opposition.

Dennis Davenport said that option is always available to the Planning Commission and BOC and they can ask anybody any question they want. He added that the problem of running out of time should be rare and that would be a way to address the problem.

Doug Powell said is it not allowable for the chairman to grant extra time?

Dennis Davenport said that provision will be pulled out of the ordinance.

Chairman Gilbert said when Dennis Davenport addressed the BOC he made that point.

Doug Powell said the ability to ask the petitioner questions will help the situation.

Doug Powell said one of the changes is we will now require a new legal ad when a petition is tabled to the future meeting.

Dennis Davenport said the reason we are changing that is to be consistent because we change the sign but we don't change the legal ad.

Doug Powell said he agrees with that and the other change was the petitioner can make only one (1) request to table. He asked why we are limiting him to one (1) time if it is of no fault of the petitioner that there is not a quorum and he tables and comes back to the next meeting and again there is not a quorum. He said the petitioner should have the right to present to the full commission.

Dennis Davenport said what about the person through no fault of his own has one of you abstain from a vote because of a conflict, they will never get a full board.

Doug Powell in that case the petitioner will never get a full board, but the petitioner wants the opportunity to be heard by a full board and comes back again when there is not a full board.

Dennis Davenport said I only brought up the issue of the conflict to show that it is not unfair to have less than a full board it is just preferred to have a full board. He said if you want to wait until you have a full board I don't have a problem with that this was put in so you have a way to put a check on that and you don't have petitions continuing for two, three, four, or five meetings.

Pete Frisina said policy wise that is how we have handled it in the past.

Chairman Gilbert said he remembers when the County had a Board of Commissioner who was very ill and eventually passed away and there were a number of meetings without a full board because it took some time to fill that commission post.

Doug Powell said he could see that case but normally everybody tries to make the meetings but there have probably been times when we only had four (4) Planning Commissioners in consecutive meetings.

Dennis Davenport said the only downside he sees is increased cost of advertising because you can't put that burden on the petitioner if it is through no fault of his own.

Pete Frisina asked if the 60 day rule comes into play when a petition is repeatability tabled.

Dennis Davenport said that won't be an issue because we are going to re-advertise.

Doug Powell asked about the 100 day rule for the Planning Commission to make a recommendation.

Dennis Davenport asked if the 100 days starts with the hearing or application.

Pete Frisina said it starts with the application.

Dennis Davenport said that would create a problem and one more reason to put a limit in the ordinance. He said tabling due to the lack of a full board counts toward the 100 days but a table requested by a petitioner does not apply to the 100 days and he thinks this language is confusing and needs to be clarified.

Doug Powell said we have had a petitioner that requested to table for 60 days so that didn't count toward the 100 days.

Dennis Davenport said we need to address this conflict in the language because I can see someone requesting to table for lack of a full board and the 100 days runs and we are going to point to the fact that the petitioner requested the table therefore the 100 days doesn't run and he will say but it was less than a full board so therefore it does run.

Doug Powell suggested allowing a petitioner to request to table no more than two (2) times.

Pete Frisina said once an application is accepted it takes about 30 days before the first meeting.

Doug Powell said so we are back to one (1) extension and I am good with that.

Chairman Gilbert said he thought we did allow anyone to table for more than 60 days.

Dennis Davenport said once we get beyond 60 days it becomes problematic.

Bob Simmons asked why we are qualifying it to say a full board.

Dennis Davenport said it is because of your rules on voting you have to have three (3) votes to pass a motion. He said a petitioner that requests a table for reason other than the lack of a full board even when there is a lack of a full board, that table would not count toward the 100 days. He added that he has some issues with 110-299 "Conditional approvals." He said there are two schools of thought when it comes to conditional zoning and one thought is you can put any condition on a rezoning that you want and the other school of thought is you can only condition what has been identified as a negative of the rezoning which is then addressed by the condition and that's where I feel comfortable. He added that some people will add a condition to a rezoning to increase the minimum house size and I don't think that is a valid condition to put on the rezoning. He said a petitioner for rezoning that believes there is a less than favorable chance of getting the rezoning will offer up some things to get the rezoning and the County will approve the rezoning with conditions proposed by the petitioner and that development will have standards that nobody else will have but that's alright because the petitioner agreed to the conditions. He said the property is sold to someone else and the new owner wants to develop under the requirements of the zoning district and not the conditions and I don't know if those conditions are enforceable. He stated the County should never be in a position of approving a rezoning when the petitioner says I will meet these conditions if I get the rezoning as that could be contract zoning. He said the petition either meets the land use requirements and it is right for the County or it is not right for the County and should be denied. He stated that 110-299 (1), a and b it is almost that we are putting a value on the petitioner coming to the County and bargaining to get the rezoning and he would advise against doing that.

Chairman Gilbert said we use to condition the size of the house for a rezoning in the past but we don't do that anymore.

Doug Powell said what we did on South Jeff Davis was to change the zoning district to increase the house size.

Pete Frisina most of our conditions increase the setbacks to decrease conflicts between different uses.

Doug Powell said we have placed vegetated buffers on property through a condition of zoning.

Dennis Davenport said that addresses a perceived negative effect of the rezoning and I am fine with that.

Pete Frisina said this section of the ordinance also says conditions on the use of the property and we don't recommend conditions on the use of the property anymore but we have a lot of properties with conditions of the use of the property.

Chairman Gilbert said we condition for dedication right-of-way.

Dennis Davenport said that's fine because the only time you can exact that type of contribution is when they want something from the County. He added that we should consider deleting (1) a and b because the County can propose conditions and (2), (3) and (4) do not need to be deleted.

Doug Powell said he would like for Jim Graw to offer his opinion of the changes concerning conditions.

Pete Frisina asked if we take it out does it preclude the petitioner from offering conditions.

Dennis Davenport said it wouldn't preclude the applicant from proposing conditions it just removes the template for doing so from the ordinance.

Chairman Gilbert said it is hard to enforce a condition if the petitioner is not in agreement with the condition.

Dennis Davenport said if you get to a point as the Planning Commission where you see the condition as necessary based on it addressing a perceived negative of the rezoning it doesn't matter if the petitioner agrees or not.

Doug Powell said he can withdraw.

Dennis Davenport said he can't withdraw once his item is read on the agenda he loses his opportunity to withdraw; he has to request to withdraw before the item is taken up by the Planning Commission and the Planning Commission must vote to approve the withdrawal.

Doug Powell said we normally read the conditions and ask the petitioner if he agrees to the conditions.

Dennis Davenport said it is not a problem with the petitioner agreeing on record to the conditions because that way he can't plead ignorance. He added that a petitioner can

Pete Frisina said the County controls lighting so it doesn't shine into the road or adjacent parcels but the County does not require lighting.

Brian Haren said he is not in favor of requiring lighting.

Al Gilbert said if the County doesn't require lighting in a commercial development why would we require it for a part-time venture.

Brian Haren asked if the procedure for applying for this is addressed in these amendments.

Pete Frisina said it would follow the procedure for a Conditional Use and they would need to do a sketch plan on a survey.

Chairman Graw asked the Planning Commission if they were ready to go to public hearings and it was the consensus of the Planning Commission to move ahead with public hearings.

3. Discussion of proposed amendment to the Zoning Ordinance, Article IX. Policies, Procedures and Standards Governing Amendments and Article VII. Zoning Board of Appeals.

Patrick Stough said there were just a few changes since the last meeting. He added most of the changes were just changing terms used such as the planning and zoning department for the zoning administrator. He said in Section 110-292 the time allotted for public hearings was increased from 15 minutes to 20 minutes per side. He added in Section 110-297 a petitioner that requests a table due to the lack of a full board can only table once.

Pete Frisina said that had been the policy but it was never written in the ordinance.

Chairman Graw asked why the ordinance does not require the inclusion of the vote to the BOC like 5-0 or 3-2.

Pete Frisina said the vote is included in the information sent to the BOC.

Brian Haren asked about Section 110-297 paragraph a, 2, second to the last sentence which reads "If there is not a full board present at the public hearing, the petitioner may request to table the petition to the next planning commission public hearing, provided the petitioner requests to table the agenda item prior to the presentation "and what is considered the presentation.

Pete Frisina said it is when the applicant starts presenting the merits of the petition.

Brain Haren said so he can walk in here take a look and only see three (3) members and say I want to table right now.

Pete Frisina said we always offer that option.

Bob Simmons said at the last meeting when the applicant asked to table he had already made his presentation.

Pete Frisina said he didn't table because of a lack of a full board, he tabled because he was confused.

Patrick said lets be specific in your language he asked to be tabled and the planning commission allowed him to table.

Bob Simmons said when that applicant comes back to the next meeting even if there is not a full board he can't be tabled again.

Chairman Graw said next month we have to take a vote but he could withdraw.

Al Gilbert asked if he would be allowed to withdraw since he already started the presentation.

Chairman Graw asked if there is anything in this section about withdrawing.

Pete Frisina said applicants can request to withdraw and the Planning Commission and BOC would have to vote to allow the withdrawal.

Chairman Graw said it doesn't say when they have to request to withdraw.

Patrick Stough said once it is advertised the applicant can't withdraw unless the BOC votes to allow the withdrawal.

Pete Frisina said his interpretation is an applicant can withdraw the application prior to the legal advertisement and the application is void, but once it is advertised the Planning Commission and BOC have to vote to allow the withdrawal. He said under section 110-294 it reads "An application for a map amendment shall not be withdrawn by the applicant after the legal advertising as required herein, except as provided herein" and then you go to section 110-297 which reads "The planning commission shall make a recommendation of approval, denial, table, or withdrawal without prejudice on each application" so then you go through the public hearing process to allow the withdrawal.

Patrick Stough said there doesn't seem to be a limitation as to when an applicant can request to withdraw.

Pete Frisina said under Section 110-297, 2 an applicant can only ask to be tabled once when there is less than a full board but under 1 the applicant can ask for a table and there is not a limit on how many times an applicant can asked to be tabled.

Patrick said that is true but the table is ultimately decided by the BOC but keep in mind when you table something it will have to be re-advertised so there should be a certain set of circumstances that lead to a tabling. He added that the Planning Commission has 100 days to make a recommendation and in Section 110-297 it states that actions by the petitioner such as a request to table where there is not a full board shall not count toward the 100 days.

Bob Simmons asked for clarification about what is "prior to the presentation" and when does the presentation start.

Patrick Stough said if the applicant wants to table that should be the first thing out of his mouth.

Chairman Graw asked if there are any other amendments that need to be discussed.

Patrick Stough said if a petition is tabled the legal ad will need to be re-run and the sign changed to reflect the new dates for the public hearings. He added that the provisions discussing the ability of the applicant to propose recommended conditions were deleted.

Chairman Graw asked if all of the factors in Section 110-300 have to be met before a rezoning can be approved.

Patrick Stough said they need to be considered but they are not criteria that must be met before a rezoning can be approved. He said the amendments concerning the Zoning Board of Appeals include limiting the time to 20 minutes similar to a rezoning and in Section 110-242 we have added three addition types of petitions that can be heard by the ZBA such as request for change of the legal nonconforming use of a structure, request for extension or enlargement of the legal nonconforming use of a structure, and continuance of a legal nonconforming use.

Brian Haren asked if the ZBA had seen these changes.

Pete Frisina said he would get the changes to the ZBA for their comments.

Chairman Graw asked if all of the seven criteria on page four must be met to grant a variance.

Patrick Stough said they all have to be met.

Chairman Graw suggested putting the word "and" in between each of the criteria so it is clear that all of them must be met.

Pete Frisina said number 6 is not really a criteria it just indicates that the ZBA can place conditions on the variance.

Patrick Stough said that can changed and number 7 is really not a criteria either.

Chairman Graw said f and g on page 5 have criteria and all of them must be met so the word "and "should be added between each criteria. Chairman Graw asked if a petitioner asks to withdraw after they have given their presentation, what criteria should the Planning Commission use to determine whether to let them withdraw.

Patrick Stough said it is similar to what do you use to let them table and you have to use your best judgment and once a petition is advertised it still goes through to the Board of Commissioners. Patrick Stough said he would make the changes discussed tonight.

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

Al Gilbert said so moved.

Chairman Graw said the meeting was adjourned at 8:15 pm.

PLANNING COMMISSION
OF
FAYETTE COUNTY

_____
JIM GRAW, CHAIRMAN

ATTEST:

_____

Brain Haren said this is a good approach and the Road Department could get base line data from a facility.

Phil Mallon said he agrees with the approach.

Brian Haren said we still need to evaluate the road for safety such as site distance.

Phil Mallon said site distance applies to building a new road not site distance for a driveway.

Pete Frisina said the approach is to limit a wedding/event facility on an unpaved road to 12 events per calendar and to require a permit to keep tract of the number of events.

Dennis Davenport said let's make sure that we are requiring an adequately sized lot so as to minimize the effect on surrounding properties.

Pete Frisina said the proposed regulations will not allow the use on lot that accesses an internal local road.

2. Discussion of proposed amendment to the Zoning Ordinance, Article IX. Policies, Procedures and Standards Governing Amendments and Article VII. Zoning Board of Appeals.

Pete Frisina said he would review the changes made since the last meeting which are the following: Sec. 110-291. - language changed to make the sentence more clear, Sec. 110-292. – included the applicant with proponent and deleted workshop/meeting from public hearing, Sec. 110-293. – added staff to the list of who can propose amendments to the zoning ordinance, Sec. 110-294. - just for an example not an amendment, gave an example of how long it would be before a property that was denied for a rezoning could reapply and be heard, Sec. 110-297. – added language to better define when a table applies to the Planning Commission's 100 day deadline to act on a rezoning, Sec. 110-299 –a minor amendment to clean up the language, Sec. 110-238 – remove language which conflicts with the BOC's policy to appoint ZBA members, Sec. 110-239 – removed language and created a new Sec. 110-243 which is consistent with the procedure of a rezoning, Sec. 110-241 - included the applicant with proponent, removed the 15 calendar day requirement for the certified notice to the applicant, added a withdrawal to the list of actions the ZBA can take, extended the period in which the ZBA must act on a petition from 45 days to 60 days, and added language to better define when a table applies to the ZBA's 60 day deadline to act on a petition. He presented zoning amendment scenarios as follows:

Withdrawal

- **Petitioner withdraws application prior to legal advertisement running in legal organ.** The application is void. No action required by the Planning Commission or Board of Commissioners.

Petitioner requests withdrawal of the petition after the legal advertisement runs in legal organ. The petition moves forward to the Planning Commission for Public Hearing

- where the Planning Commission can make a recommendation to accept the withdrawal of the petition. The Planning Commission may also make a recommendation that the withdrawal request be denied. In this case the Planning Commission must also make a recommendation to approve, deny, or table the petition.

  The petition moves forward to the Board of Commissioners for Public Hearing where the Board of Commissioners can accept the withdrawal of the petition. The Board of Commissioners may also deny the withdrawal request. In this case the Board of Commissioners must approve, deny, or table the petition.

Table

Planning Commission

- **Lack of a Planning Commission quorum at a Public Hearing.** Without a quorum, the Planning Commission can neither meet nor act. The petition is automatically tabled until the next Public Hearing date (1st Thursday of the month.) New legal ad will be run and new sign will be posted. This counts toward the Planning Commission's 100 days.
- **Lack of a full Planning Commission at a Public Hearing.** As long as there is a quorum (3 members) the Planning Commission can meet and act. The petitioner is made aware that they can ask to table to the next Public Hearing in anticipation that a full board may be present and that the petitioner may only exercise this option one time. The petitioner must take this option prior to making the presentation. The Planning Commission must vote to table the petition to the next Public Hearing date. New legal ad will be run and new sign will be posted. This does not count toward the Planning Commission's 100 days.
- **The Planning Commission initiates the tabling of a petition.** The Planning Commission must vote to table the petition. New legal ad will be run and new sign will be posted. This counts toward the Planning Commission's 100 days.
- **The petitioner requests to table the petition.** The Planning Commission must vote to table the petition. New legal ad will be run and new sign will be posted. This does not count toward the Planning Commission's 100 days.

Board of Commissioners (Note: there is no time limit in the Zoning Ordinance in which the Board of Commissioners must act)

- **Lack of a Board of Commissioners quorum at a Public Hearing.** Without a quorum, the Board of Commissioners can neither meet nor act. The petition is automatically tabled until the next Public Hearing date (4th Thursday of the month.) New legal ad will be run and new sign will be posted.

- **Lack of a full Board of Commissioners at a Public Hearing.** As long as there is a quorum (3 members) the Board of Commissioners can meet and act. The petitioner is made aware that they can ask to table to the next Public Hearing in anticipation that a full board may be present and that the petitioner may only exercise this option one time. The petitioner must take this option prior to making the presentation. The Board of Commissioners must vote to table the petition to the next Public Hearing date. New legal ad will be run and new sign will be posted.

- **The Board of Commissioners tables a petition.** The Board of Commissioners must vote to table the petition. New legal ad will be run and new sign will be posted.

Variance Scenarios
Withdrawal

- **Petitioner withdraws application prior to legal advertisement running in legal organ.** The application is void. No action required by the Zoning Board of Appeals.
- **Petitioner requests withdrawal of the appeal/petition after the legal advertisement runs in legal organ**. The petition moves forward to the Public Hearing where the Zoning Board of Appeals can vote to accept the withdrawal of the appeal/petition. The Zoning Board of Appeals may also vote to deny the withdrawal request. In this case the Zoning Board of Appeals must also vote to approve, deny, or table the appeal/petition.

Table

- **Lack of a Zoning Board of Appeals quorum at a Public Hearing.** Without a quorum, the Zoning Board of Appeals can neither meet nor act. The appeal/petition is automatically tabled until the next Public Hearing date (4th Monday of the month.) New legal ad will be run and new sign will be posted.
- **Lack of a full Zoning Board of Appeals at a Public Hearing.** As long as there is a quorum (3 members) the Zoning Board of Appeals can meet and act. The petitioner is made aware that they can ask to table to the next Public Hearing in anticipation that a full board may be present and that the petitioner may only exercise this option one time. The petitioner must take this option prior to making the presentation. The Zoning Board of Appeals must vote to table the petition to the next Public Hearing date. New legal ad will be run and new sign will be posted.
- **The Zoning Board of Appeals tables a petition.** The Zoning Board of Appeals must vote to table the petition. New legal ad will be run and new sign will be posted. This counts toward the Zoning Board of Appeals' 60 days.
- **The petitioner requests to table the petition.** The Zoning Board of Appeals must vote to table the petition. New legal ad will be run and new sign will be posted. This does not count toward the Zoning Board of Appeals' 60 days.

Pete Frisina said he would add language that says a member stays on the board until such time that the board member is reappointed or his successor is appointed.

It was the consensus of the Planning Commission to move ahead with the aforementioned amendments.

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Al Gilbert made a motion to adjourn the meeting. Chairman Graw said the meeting was adjourned at 9:00 pm.

PLANNING COMMISSION
OF
FAYETTE COUNTY

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JIM GRAW, CHAIRMAN

ATTEST:

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on an unpaved road but it is hard to say that one of these facilities would generate a lot of traffic. She added that this proposed use is a good idea but it wouldn't help her selling her land with the limitation.

Chairman Graw asked her how many acres she has.

Diane Stone said a total of 28.5 acres. She added that she is in favor of the proposal even though it may not help her sell her property, but could the ordinance be revisited in the future.

Pete Frisina said staff and Planning Commission had a lot of concern with unpaved roads and how do we determine if an unpaved road can handle the increased traffic as not all unpaved roads are the same quality. He said Public Works and Planning Commission had originally proposed criteria for the County Engineer to evaluate each unpaved road but that made some of our elected officials and the County Attorney uneasy so we compromised by limiting the number of weddings/events on an unpaved road to determine if there is a problem and overtime we may come back and look at this again. He said staff and Planning Commission came up with 12 events based on a facility functioning six (6) months out of the year and two (2) events per month.

Diane Stone said she understood the reasoning and she thinks overall it is a good use.

Chairman Graw asked if there was anybody who wanted to speak in opposition to the petition. Hearing none he brought it back to the board.

Al Gilbert made a motion to recommend approval of the proposed amendments. Brian Haren seconded the motion.

Al Gilbert said the Planning Commission did a lot of work on these amendments and he appreciated staff's work on the amendments and while this may be revisited in the future we will have something in place and we can reevaluate after we have some experience.

Chairman Graw called the vote. The motion passed 3-1. Bob Simmons voted in opposition to the motion.

5. **Consideration of Amendments to the Fayette County Code of Ordinances, Chapter 110. Zoning Ordinance, Regarding Article IX. Policies, Procedures and Standards Governing Amendments and Article VII. Zoning Board of Appeals.**

Pete Frisina said these amendments are a result of a presentation made by the County Attorney to the Board of Commissioners concerning parliamentary and zoning procedures and these amendments address zoning procedures for rezonings and text amendments and procedures for the variances and appeals made to the Zoning Board of Appeals. He said since staff and Planning Commission have been working on these amendments for some time, he was not going to go through these amendments line for line but he would answer any questions the Planning Commission may have. He said basically the procedures for public hearing for rezonings and text amendments and those procedures for appeals and variances are now consistent.

Chairman Graw asked if there was anyone who wanted to speak in favor of the petition. Hearing none he asked if there was anybody who wanted to speak in opposition to the petition. Hearing none he brought it back to the board.

Bob Simmons made a motion to recommend approval of the proposed amendments. Brian Haren seconded the motion.

Brain Haren asked if the Planning Commission was voting to approve only the regulations concerning rezoning and text amendment procedures.

Pete Frisina said the Planning Commission is also voting on the procedures for the Zoning Board of Appeals.

Brian Haren asked if the Zoning Board of Appeals were good with the amendments.

Pete Frisina said they reviewed the amendments and while there have been some changes since then they have not been substantive.

Chairman Graw called the vote. The motion passed 4-0

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Al Gilbert made a motion to adjourn the meeting. Chairman Graw said the meeting was adjourned at 8:00 pm.

PLANNING COMMISSION
OF
FAYETTE COUNTY

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JIM GRAW, CHAIRMAN

ATTEST:

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