

DRAFT - THE FAYETTE COUNTY PLANNING COMMISSION met on October 2, 2008, at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Public Meeting Room, First Floor, Fayetteville, Georgia.

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

MEMBERS ABSENT: None

STAFF PRESENT: Pete Frisina, Director of Community Development
Dennis Dutton, Zoning Administrator
Bryan Keller, Development Engineer
Robyn S. Wilson, P.C. Secretary/Zoning Coordinator
Sgt. Earl Williams
Investigator Lem Miller

Welcome and Call to Order:

Chairman Powell called the Public Meeting to order and led the Pledge of Allegiance. He introduced the Board Members and Staff and confirmed there was a quorum present.

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1. Consideration of the Minutes of the meeting held on September 4, 2008.

Chairman Powell asked the Board Members if they had any comments or changes to the Minutes. Al Gilbert made the motion to approve the Minutes. Tim Thoms seconded the motion. The motion unanimously passed 5-0.

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2. Consideration of the Workshop/Public Meeting Minutes of the meeting held on September 17, 2008.

Chairman Powell asked the Board Members if they had any comments or changes to the Public Meeting/Workshop Minutes. Jim Graw made the motion to approve the Public Meeting/Workshop Minutes. Bill Beckwith seconded the motion. The motion unanimously passed 5-0.

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Dennis Dutton read the procedures that would be followed including the fifteen (15) minute time limitation for presentation and opposition for petitions.

Chairman Powell advised the audience that the PC was a recommending board and that their recommendations would be forwarded to the BOC and that the BOC would make the final decision.

THE FOLLOWING ITEMS WILL BE CONSIDERED BY THE PLANNING COMMISSION ON OCTOBER 2, 2008 AND BY THE BOARD OF COMMISSIONERS ON OCTOBER 23, 2008.

- 3. Consideration of Petition No. 1211-08, J. Neil and T. Kay Davis, Owners/Agents, request to rezone 2.469 acres from R-70 to O-I to develop uses allowed under the O-I zoning district. This property is located in Land Lot 127 of the 5th District and fronts on S.R. 54 West.** *Staff recommended denial.*

Kay Davis advised that the subject property was purchased in 1988. She confirmed that the property was incorrectly identified on the Official Fayette County Zoning Map and was, in fact, zoned R-70 and not C-C. She reported that they petitioned to rezone the subject property in 1990, for a banquet hall to be used in conjunction with the Old Mill Restaurant building which is approximately 170 years old; however, the petition was denied. She added that the County did not charge for the petition due to the property being incorrectly identified on the Official Fayette County Zoning Map. She stated that since S.R. 54 West had been four-laned and along with other nonresidential development such as the hospital along S.R. 54 West, they decided to petition to rezone the property. She said that the Land Use Plan had been reviewed and it was stated by the County that they encouraged all residents along S.R. 54 West to apply for O-I zoning because they were sure there would not be any problems to rezone a residence O-I because of the Land Use Plan, the close proximity to the hospital, and the fact that no one wants to live on the highway. She said that they had been upright citizens and they have tried to leave the property better than what it was when it was purchased. She appealed to the PC to rezone the property O-I.

Chairman Powell asked if there was anyone to speak in favor of the petition.

J. Neil Davis stated that he was an owner of the subject property. He reported that there was O-I zoning all along the highway. He said that he did not know of any rezoning to O-I with a house which had been denied. He confirmed that the subject property had a twenty-five (25) foot driveway which is the same as Thompson Law Office at 1034 S.R. 54 West. He remarked that this was a house which had been converted and there is not an acceleration/deceleration lane except the one (1) provided by the GDOT. He commented that they lived on the subject property prior to the widening of S.R. 54 West by the GDOT. He reported that the GDOT only required a ten (10) foot long acceleration/deceleration lane for the Old Mill Restaurant which has 365 seats and approximately

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150 cars. He noted that the subject property has an eleven (11) foot lane. He said that the Staff Analysis regarding the access was hard to understand. He remarked that the GDOT left the property this way when the highway was widened with the bridge and guardrail. He stated that it seems that Staff is using the GDOT as a reason for denial of the rezoning.

Chairman Powell asked if there was anyone to speak in opposition of the petition.

Attorney Patricia Buttaro stated that she was representing the residents of Crystal Lake Estates which contains 29 homes and 27 are opposed to the petition. She said that everyone living on S.R. 54 West had not turned their home into a business. She commented that it is not necessary that properties be rezoned to commercial just because a highway has widened. She added that the highway was widened to make it easier to go from one (1) area to another. She remarked that the home was purchased in 1988, based on false information; however, the time for redress has long since passed. She said that just because the highway had been widened, there is still a beautiful, rustic looking, quaint neighborhood at Crystal Lake. She commented that she remembered the mill when there were not houses in the area. She said that if businesses are developed around the lake that it will not be beautiful anymore. She stated that the subject property is basically on the lake and behind the initial 54 highway buildings that front on the highway itself. She commented that the house is beautiful and she does not see why it is still not valued as a lakefront property. She said that doctors' offices are not very historical and this would not save Fayette County's history at all. She pointed out the driveway is also accessed by other homes and anything done to the driveway affects others, as well. She stated that people in the community would be affected by people coming in and out for a business which is not what a residential neighborhood needs. She reported that this is a unique area and not just a typical home on S.R. 54 West, but is part of Crystal Lake Subdivision and anything which happens to the house happens to the subdivision. She noted that the rezoning is not necessary because the house has not lost its use as a home. She reported that the rezoning affects so many others in an adverse way. She added that the rezoning does not just affect the community but everyone who enjoys this beautiful piece of history as they drive down the highway.

Chairman Powell confirmed that letters of opposition had been submitted from the following:

Elizabeth Barnes of 120 Lakeview Court, Lakeview Estates.

Brian A. and Suzanne M. Robbins of 170 Old Mill Court, Crystal Lake Estates.

Roger E. and Carole L. Derflinger of 180 Old Mill Court, Crystal Lake Estates.

Ben S. and Joyce S. Malcom of 200 Old Mill Court, Crystal Lake Estates.

Marla and Andrew R. Kreider, II of 285 Old Mill Court, Crystal Lake Estates.

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John and Mary Sciera of 230 Old Mill Court, Crystal Lake Estates.

Will and Colleen Jourdan of 160 Old Mill Court, Crystal Lake Estates.

Alice Brown Rodriguez of 315 Old Mill Court, Crystal Lake Estates.

Anthony P. Rodriguez of 315 Old Mill Court, Crystal Lake Estates.

Stanley D. Ensley of 190 Old Mill Court, Crystal Lake Estates.

Nancy L. Barham of 150 Old Mill Court, Crystal Lake Estates.

In rebuttal, Mrs. Davis stated that Attorney Buttaro was not well prepared for her presentation because the rezoning is for her house, which is not a part of Crystal Lake Subdivision. She commented that Attorney Buttaro should thank her and her husband because of how beautiful everything is, because they are the ones who did all of the hard work which makes the property what it is today. She remarked that this is a reflection of the kind of people that she and her husband are. She said that she did not complain about the rezonings to O-I on S.R. 54 West since they were encouraged by the County to apply for O-I zoning when the Land Use Plan was amended. She pointed out that this is why they are not requesting commercial zoning. She stated that the house was for sale. She said that you have to go approximately 40 mph out of the driveway to get in front of the traffic on S.R. 54 West. She confirmed that her husband was correct about the acceleration/deceleration lane for the Old Mill Restaurant and about the Thompson property. She remarked that they were asking to do what the Land Use Plan allows. She thanked the PC for their time.

Chairman Powell closed the floor from public comments at this time.

Chairman Powell advised that the PC reviews all the materials given to them. He said that they review the Staff Analysis and ask Staff if they have any questions, listen to the public, visit the property, discuss the petition at the public hearing, and then make a recommendation to the BOC. He remarked that he had reviewed the history of the property and the confusion regarding the zoning designation on the zoning map. He read the future development aspects for S.R. 54 West as follows: 1) The goal is to maintain efficient traffic flow on S.R. 54 West as the County's only major east-west thoroughfare; 2) To maintain nonurban separation between Fayetteville and Peachtree City; and 3) To protect the existing and future residential areas in the S.R. 54 West Corridor. He commented that because of the development of the hospital and the highway 54 development, the S.R. 54 West Overlay Zone was adopted and the overlay allows, but does not encourage, residential property to rezone to O-I. He remarked that he was concerned about the comments from the GDOT and the Engineering Department regarding the stopping distance in order to turn into the driveway.

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He pointed out that the deceleration lane would have to be a 350 foot deceleration lane which has to extend into the property to the west in order to make it a safe deceleration lane. He added that these are today's standards and not those in place in 1983. He noted that the Overlay Zones did not exist in 1983. He expressed concern that approval of the petition would create a traffic hazard in the area because you would have to decelerate on the bridge in order to make the turn into the property. He said that he had made the turn a couple of times and he did not feel comfortable doing so. He added that this is his primary concern. He remarked that approval of the petition would put a burdensome use on the highway because people would have to decelerate on the bridge plus the increased traffic should the subject property be rezoned to O-I. He commented that he was hoping to get the opinion of the property owners who utilize the existing driveway; however, they were not present tonight.

Jim Graw concurred and pointed out that the Land Use Plan also calls for Low Density Residential in this area and if the property was rezoned, it would violate the Land Use Plan and could result in "spot zoning". He said that he did not feel comfortable with O-I zoning in a residentially zoned area.

Chairman Powell said he would entertain a motion.

Tim Thoms made a motion to recommend denial the petition. Jim Graw seconded the motion. The vote to recommend denial unanimously passed 5-0.

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4. **Consideration of Petition No. 1212-08, J. Neil and T. Kay Davis, Owners/Agents, request to rezone 4.437 acres from C-C Conditional to C-C to alleviate the current conditions; to also use the Old Mill structure for a corn grist mill in its historical context; and to allow the uses in the C-C Zoning District; and consideration of Petition No. RP-043-08 to change the use of Lot 1 of Crystal Lake Estates consisting of 2.334 acres (part of the 4.437 acres) from a single-family dwelling to the uses allowed in the C-C Zoning District. This property is located in Land Lot 127 of the 5th District and fronts on S.R. 54 West and Old Mill Court. Staff recommended approval with conditions.**

Kay Davis thanked the PC for considering her previous petition even though she disagrees with the decision. She advised that the property is currently zoned C-C with several conditions and she is asking to have the property zoned C-C.

Neil Davis stated that they were unclear about the recommended conditions because they have no intentions of building a house on Lot 1 where the septic tank lines are located. He added that they have no intentions of putting a driveway into the subdivision. He also added that they had no intentions of putting old folks and children next to the water. He said that the Staff's recommended conditions were basically common sense conditions. He questioned why Staff is still trying to say

that they can build a house on Lot 1. He remarked that the mill building had been there since 1837. He noted that the building is large and should be able to be used for more purposes than a restaurant. He said that they want the uses to be lifted on the building. He commented that the people were present tonight because they want to protect their homes; however, if they don't know by now what type people he and his wife are, they never will. He confirmed that they are willing to agree to the Staff's recommended conditions.

Mrs. Davis said that the Staff Analysis kept referring to Lot 1 of Crystal Lake Estates; however, the lot had been combined with the mill building property and recorded as a single piece of property.

Chairman Powell advised that there was an existing plat recorded at the Clerk of Superior Court's Office which still includes Lot 1. He stated that back when Crystal Lake Estates was developed that there was not a requirement to revise a Final Plat for a change of use until 1995. He confirmed that Mr. and Mrs. Davis have a 4.437 acre tract zoned C-C Conditional.

Mrs. Davis said that it was her understanding that when you rezoned a piece of property now that you cannot condition the uses.

Chairman Powell replied that it depends on who you talk to.

Jim Graw replied that Mrs. Davis was correct because the courts in the early '90's ruled that conditional zoning is illegal when uses are taken away which would otherwise be allowed.

Mrs. Davis said that they want to be able to use the property and that they are trying to market the property for resale or lease. She reported that the restricted uses have hurt them financially and also the County because there is no revenue being generated. She reiterated that there would be no structure built on Lot 1 because of the septic lines. She asked the PC to approve the petition.

Chairman Powell read the existing recommended conditions to the audience as follows:

1. That use of the subject property be restricted to specialty retail shops categorized as arts and/or crafts, a restaurant, and a single-family detached residence.
2. That the exterior materials of the house shall be the same as those comprising the mill.
3. That the exterior appearance of the old mill building shall not be changed except for the addition of the proposed porch.

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4. To observe the Georgia D.O.T. proposed right-of-way which has been identified for

future widening of S.R. 54 as the front property line for determining all measurements and dimensional requirements.

5. To provide designated fire lanes adjacent to all structures and provide water mains, fire hydrants and access for fire fighting equipment as required by the Fayette County Fire Department.
6. To provide off-street parking on the property during the entire construction period.
7. That the light source from any exterior illumination device shall not be directly visible along any adjoining residential property line.
8. That the design and location of signs proposed for the property shall be approved by the Planning Commission.
9. That in accordance with the condition volunteered by the previous owner, the owner agrees that the block building on the property which is known as the "Pink Palace" shall be demolished and removed prior to the issuance of any development related permits by the County.
10. That the buffer adjoining Lot 2, Crystal Lake Subdivision shall be a minimum of 50 feet and shall be improved with a planted screen at least six (6) feet tall.
11. The property shall have no direct access to Old Mill Court except to serve a residence on Lot 1.
12. No building shall be constructed on that portion of the property which was previously Lot 1, Crystal Lake Estates, except a single-family dwelling.

Chairman Powell pointed out that some of the recommended conditions are no longer applicable with the passing of time such as: 1) Removal of the "Pink Palace"; 2) Off-site parking during construction; 3) Sign to be approved by the PC, and 4) Light source from exterior illumination devices.

Al Gilbert read the proposed Recommended Conditions to the audience:

1. Any uses that may cause personal hazards, injury, or safety hazards and any use that may cause an environmental hazard to the State waters due to the location of the property and the structure in the floodway/floodplain shall be prohibited. These uses

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include: Adult Day Care, Day Care Facilities (Nursery School or Kindergarten), Care Home, Convalescent Center or Nursing Home, Automobile Service Station,

including gasoline sales in conjunction with a Convenience Store. The aforementioned uses are Conditional Uses in the C-C Zoning District. *(This condition is to ensure the protection of the health, safety, and welfare of the public and to ensure protection for Whitewater Creek as a drinking water source.)*

2. The property shall have no direct access to Old Mill Court except to serve a residence on Lot 1. *(This condition is to provide control with commercial traffic intermingling with residential traffic. Old Mill Court is classified as an Internal Local (interior subdivision street) and should not be accessed by nonresidential traffic.)*
3. No building shall be constructed on that portion of the property which was previously Lot 1, Crystal Lake Estates, except a single-family dwelling. *(This condition is to assist in the retention of the residential character of Crystal Lake Estates Subdivision.)*

Chairman Powell read the C-C Permitted Uses to the audience:

1. Amusement or Recreational facility;
2. Appliance sales and repair, etc.;
3. Art studio;
4. Auto parts and Tire store, retail;
5. Bakery;
6. Bank;
7. Barber shop;
8. Beauty shop;
9. Business school;
10. Catering service;
11. Church and customary related uses;

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12. Clothing store and variety store;

13. College, University, including Dormitory and Fraternity or Sorority house when located on main campus;
14. Cultural facility;
15. Dance school or Studio;
16. Dental office;
17. Department store;
18. Drug store;
19. Dry goods store;
20. Financial institution;
21. Florist;
22. Gift shop;
23. Grocery store;
24. Growing crops, garden, shrubbery, flowers, etc. and related sales;
25. Gunsmith;
26. Home occupation;
27. Jewelry shop;
28. Laboratory serving professional requirements, (e.g. medical, dental, etc.);
29. Laundry pickup station;
30. Library;
31. Locksmith;
32. Medical office;
33. Messenger service;

34. Museum;
35. Music teaching studio;
36. Novelty shop;
37. Office equipment sales and service;
38. Parking garage;
39. Photography studio;
40. Private clubs or Lodges;
41. Radio studio;
42. Restaurant;
43. Retail establishment;
44. School;
45. Shoe repair;
46. Taxidermist;
47. Taxi service;
48. Telegraph service;
49. Television studio; and
50. Watch repair.

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Chairman Powell asked if there was anyone to speak in favor of the petition. Hearing none, he asked if there was anyone to speak in opposition of the petition.

Attorney Patricia Buttarro stated that the main concern was condition #1. regarding specialty retail shops categorized as arts and/or crafts, a restaurant, and a single-family detached residence. She pointed out that such uses as a putt-putt, Pep Boys, and so many other things could fall under the C-C zoning district. She said that once the conditions are removed that the building could be torn down by someone and rebuilt to suit their use for the property which they have purchased. She remarked that there are many things which could be used in the building just as it is and there are many things that the neighbors of Crystal Lake would be more than happy to see come in there. She commented that a restaurant had been the highest and best use in the past number of years. She noted that it is already zoned for its highest and best use that it has proved to be for the neighbors in the community. She remarked that the Old Mill was a great place to go eat with a wonderful atmosphere with an ambiance that you will not find anywhere else. She pointed out that the Davises want to use the mill for a corn grist mill which is wonderful. She added that the neighbors would have no objection to this at all and they would love to see it operated as a grist mill which is its historical roots. She commented that this type use is very successful throughout the State. She remarked that the PC is uncertain about the Court's ruling regarding conditional zoning. She confirmed that it would be considered an improper taking if the County approves someone carte blanche to do what they want and then tells them no they can't. She added that she did not know if you could initially condition property. She said without the recommended conditions that anyone could do whatever they want to do with that property such as tearing it down and put any kind of building there. She commented that the neighbors would like to see the existing conditions modified by adding a grist mill or other specific businesses. She added that the neighbors would not object to a museum, an art gallery, a restaurant, and a number of other uses. She remarked that the Davises are having trouble selling the property with the existing conditions then this is not what somebody wants to do to this property because they want to come in and tear it down and do something other than run a restaurant such as a Pep Boys or National Tire. She stressed that if the zoning is changed that the County can't stop National Tire from locating there. She reiterated that the property had done very well as a restaurant in the past so it is conditioned to one (1) of its best uses. She noted that the property is not suited for all of the 50 Permitted Uses in the C-C zoning district plus the 16 Conditional Uses. She said that auto body repair, campground facilities, church or religious ten meeting, commercial driving range, dry cleaning plant, fraternities and/or sororities with toga parties, golf course, kennel, 24 hour Laundromat, and telephone, and electric or gas sub-station or other public utility facilities would be allowed. She commented that the neighbors would be glad to agree to anything that is reasonable and which will not impact the neighborhood. She said that everyone on the lake will be affected. She remarked that the historical integrity of the building should be preserved and it should be kept from being torn down. She asked the PC to deny the petition or modify condition #1. to accommodate additional uses.

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Teresa Joiner of 325 Old Mill Court stated she was hearing two (2) different things tonight from the Davises. She said that they are talking about a grist mill but are definitely saying they have the property for sale and the main objective is to get the property where it will sell for the price that they think it is worth. She commented that they did not care what happens to it after that point. She

noted that the houses in Crystal Lake Estates have been remodeled and the owners have a lot of money in their houses. She reported that the owners can't get what they have in their houses because of the real estate market. She remarked that the beautiful pristine trees reflect in the clean lake and she did not want to see this ruined. She said that not knowing the uses seems out of touch with Fayette County. She stated that she could understand consideration if there was a buyer who had plans but not tonight. She commented that a historical location in Fayette County should not be utilized for anything anybody wants to do with it. She remarked that when the Davis's dam broke a few years ago, the residents of the subdivision helped them to haul the fish out. She said that they asked everyone in the subdivision to pay the same amount toward the dam to get it repaired that they were paying and everyone agreed. She added that later they were told that it was going to cost a whole lot more. She stated that everyone put significant amounts of money into the dam. She commented that they say that they care about this piece of land but she does not see it.

Al Gilbert stressed that personal problems should not be addressed because it does not enter into the PC's decision.

Alice Rodriguez of 315 Old Mill Court said that she was fairly new to the neighborhood (7 years). She commented that she had moved from Gwinnett County because of encroachment of commercial zoning on residential property. She remarked that she chose Crystal Lake Estates because her neighbors would not be transient and were vested in the community. She stated that the heart of the community thrived in the hearts of the people. She asked what would happen when there is traffic which is commercially based, strangers who use the subdivision street for turning around. She said that no one had mentioned the stranger affect of rezoning when no one know what is going to be there and the kinds of strangers that will be ushered into the community. She requested denial for intangible reasons.

Chairman Powell confirmed that letters of opposition had been submitted from the following:

Elizabeth Barnes of 120 Lakeview Court, Lakeview Estates.

Brian A. and Suzanne M. Robbins of 170 Old Mill Court, Crystal Lake Estates.

Roger E. and Carole L. Derflinger of 180 Old Mill Court, Crystal Lake Estates.

Ben S. and Joyce S. Malcom of 200 Old Mill Court, Crystal Lake Estates.

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Marla and Andrew R. Kreider, II of 285 Old Mill Court, Crystal Lake Estates.

John and Mary Sciera of 230 Old Mill Court, Crystal Lake Estates.

Varner Holmes of 140 Old Mill Court, Crystal Lake Estates.

Will and Colleen Jourdan of 160 Old Mill Court, Crystal Lake Estates.

Alice Brown Rodriguez of 315 Old Mill Court, Crystal Lake Estates.

Anthony P. Rodriguez of 315 Old Mill Court, Crystal Lake Estates.

Stanley D. Ensley of 190 Old Mill Court, Crystal Lake Estates.

Nancy L. Barham of 150 Old Mill Court, Crystal Lake Estates.

Pat and David Burdette of 220 Old Mill, Crystal Lake Estates.

In rebuttal, Mr. Davis stated that what is for sale or lease is a historic building. He said that the value of the property is the building itself. He commented that no one would buy or lease the property and tear the building down. He remarked that there have been problems leasing the building due to the restrictions. He commented that someone wanted to lease the building for antiques but was told she could not locate there because of the restrictions. He confirmed that the property has been kept very nice because he and his wife have made it a point to keep it looking nice. He reported that they had received many inquiries about leasing the property but not for a tire store or laundromat. He noted that if the building was torn down that it could not be rebuilt because of the flood restrictions. He said they were simply trying to expand the uses. He stated that no one was knocking down the door to lease the building for a restaurant.

Mrs. Davis pointed out that even with the Staff's recommended conditions that they would be able to lease or sale the property. She asked the PC to approve the rezoning petition.

Chairman Powell thanked Mr. and Mrs. Davis for building a jewel in the County.

Mrs. Davis thanked Chairman Powell for his comments.

At this time, Chairman Powell closed the floor from public comments.

Chairman Powell asked Bryan Keller, the Development Engineer, to explain the constraints of the property.

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Bryan Keller advised that the old mill is located in a floodway which is defined as an area where flooding will occur and is known to occur. He commented that approximately 70% of the property is in the floodway. He reported that under the current regulations, nothing could be constructed new.

He noted that if the old mill were destroyed, it could not be rebuilt. He added that the floodplain restrictions are very intense in regards to flood proofing the building and requires the minimum finished floor elevation has to be three (3) feet above the 100 year floodplain elevation. He reported

that no more impervious surface could be added to the site due to the stormwater regulations. He confirmed that the remaining property is under the 100 foot watershed buffer plus a 50 foot watershed setback and no structures, impervious surface, or nitrification fields may be added to this area. He commented that the recent Floodplain Ordinance was adopted last month and went into effect October 1, 2008, and the Watershed Ordinance was adopted in 1987.

Chairman Powell added that these ordinances are required by State regulations and the County develops its own local ordinance to comply with the State regulations.

Bill Beckwith asked if a corn grist mill would be allowed.

Pete Frisina replied that the building is a grist mill and Staff has no objection, as long as, Mr. Davis only grinds some corn and produces a small gift bag of corn to resale. He added that he had cautioned Mr. Davis that semi-tractor trailers of corn would be prohibited.

Jim Graw said that future buyers are not bound by conditions placed on a piece of property.

Chairman Powell replied that the conditions run with the property not the owner.

Mr. Graw stated that the owner of the property could challenge the conditions in court and the court could say that the conditions are invalid. He said he was confused about the revision to a recorded final plat since Lot 1 had been combined with the adjacent property. He pointed out the following options: 1) Remove the conditions (provides 50 plus possible uses for the property); 2) Make no changes; 3) Recommend Staff's recommended conditions; or 4) Rezone the property to O-I and add restaurant and corn grist mill.

Mr. Graw advised that there were 16 O-I uses plus the uses they have now. He said that this would dramatically reduce the uses. He commented that in the future, a better septic system may come about and the septic system could be removed from Lot 1 and someone may want to build a house on Lot 1. He said he would like to see a revised plat of Crystal Lake Estates with Lot 1 removed. He stressed that he saw other options available and added that there are too many uses allowed in C-C.

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Chairman Powell read the Permitted Uses in O-I to the audience:

1. Office;
2. Art Gallery;
3. Clinic (Human Treatment);

4. College or University;
5. Dance Studio or School;
6. Financial Institution;
7. Health Club or Fitness Center;
8. Insurance Carrier, Agent or Broker;
9. Laboratory, Medical or Dental;
10. Legal Services;
11. Massage Therapy;
12. Museum;
13. Performing Arts Theater;
14. Professional Services;
15. Real Estate Agent or Broker; and
16. School, Private and Special.

Mr. Graw said that the courts have not said that you can't add uses, you just can't restrict uses.

Chairman Powell expressed concern about setting a precedent by allowing a restaurant in O-I.

Al Gilbert advised that there is a S.R. 54 West Overlay Zone which requires architectural standards.

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Mr. Frisina pointed out that under the S.R. 54 West Overlay, any structure is required to have the same characteristics as a residence such as a pitched peaked roof with an established pitch, doors, windows, and facades which are residential in character. He added that the existing building meets these requirements.

Tim Thoms said that he had never seen so much baggage with a rezoning petition. He concurred that the site is a jewel of a piece of property. He stated that the petitioner is requesting a straight C-C zoning. He noted that the properties had been joined into one (1) tract; however, the final plat for

Crystal Lake Estates has never been revised to remove Lot 1 from the subdivision. He pointed out that if the use of Lot 1 was not changed from a single family dwelling that the final plat would not be required to be revised. He commented that the property could sale and someone may want to develop a restaurant or the new owner may want to develop a different use allowed in the C-C zoning district. He confirmed that the C-C did not comply with the Land Use Plan which shows Conservation Area and Low Density Residential. He remarked that Staff and the PC have spent a lot time on this rezoning in order to do what is best for the petitioner and the community. He said that he is leaning toward Staff's recommendation; however, there may be other uses which need to be excluded based on public health, safety, and welfare and also potential environmental hazards.

Chairman Powell reported that he had visited the Historical Society; however, the old mill is not on the National Register. He added that he had contacted the Water System to see if Bennett Lake could be brought into the County water system; however, this is not possible because the property lines go out into the lake. He pointed out that the intent was to zone this property as a historic old mill restaurant and not C-C. He added that the County would not approve this property to be rezoned from R-70 to C-C today. He advised that the County had previously denied two (2) rezoning requests for lots in a subdivision from residential to nonresidential.

Mr. Graw reiterated that the property could be rezoned O-I with a restaurant and a corn grist mill.

Mr. Frisina advised that a restaurant is not a use allowed in the O-I zoning district and he would not recommend conditioning a rezoning to allow a use which is not within that zoning district.

Tim Thoms made a motion to recommend approval of the petition subject to the three (3) recommended conditions as presented by Staff. Al Gilbert seconded the motion.

Mr. Gilbert stated additional excluded uses based on public health, safety, and welfare and environmental hazards should be added to the recommended condition.

Chairman Powell suggested that the PC review the list of uses further.

Tim Thoms withdrew his motion. Al Gilbert withdrew his second.

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The PC discussed the following uses as being excluded uses based on public health, safety, and welfare and environmental hazards.

Appliance sales and repair, etc.

Auto parts and Tire store, retail

College, University, including Dormitory and Fraternity or Sorority house when located on main campus

Parking garage

School

Taxidermist

Adult Day Care Facility

Animal Hospital, Kennel (Commercial or Non-Commercial), or Veterinary Clinic

Automobile Service Station, including gasoline sales in conjunction with a Convenience Store

Campground Facilities

Care Home, Convalescent Center or Nursing Home

Day Care Facility (Nursery School or Kindergarten)

Dry Cleaning Plant

Fraternities and/or Sororities

Hospital

Kennel (See Animal Hospital, etc.)

Laundromat, Self-Service or Otherwise

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Mr. Graw stated that this is why the courts ruled like they did back in the early '90's. He said that this was the most arbitrary and capricious activity that he had seen in his 13 years on the P.C. He reiterated that this is arbitrary and capricious and that he was going to vote in opposition to the motion. He remarked that he is not going to be involved in something which is totally illegal. He pointed out that there are chemicals involved in about every use there is. He asked if the PC was going to say that a taxidermist was not going to be allowed to go in next to a school. He said that this is getting silly and he is getting upset about this.

Chairman Powell replied that he did not feel excluding these uses was illegal because it is based on public health, safety, and welfare and environmental hazards.

Chairman Powell allowed Mrs. Davis to speak.

Mrs. Davis requested that the wording on recommended condition #1. be specific.

Tim Thoms made a motion to recommend approval of the petition as C-C Conditional with recommended conditions #2 and #3 as submitted and recommended condition #1 being amended as follows:

1. Any uses that may cause personal hazards, injury, or safety hazards and any use that may cause an environmental hazard to the State waters due to the location of the property and the structure in the floodway/floodplain shall be prohibited. These uses include: Appliance sales and repair, etc., Auto parts and Tire store, retail, College, University, including Dormitory and Fraternity or Sorority house when located on main campus, Parking garage, School, Taxidermist, Adult Day Care Facility, Animal Hospital, Kennel (Commercial or Non-Commercial), or Veterinary Clinic, Automobile Service Station, including gasoline sales in conjunction with a Convenience Store, Campground Facilities, Care Home, Convalescent Center or Nursing Home, Day Care Facility (Nursery School or Kindergarten), Dry Cleaning Plant, Fraternities and/or Sororities, Hospital, Kennel (See Animal Hospital, etc.), Laundromat, Self-Service or Otherwise. *(This condition is to ensure the protection of the health, safety, and welfare of the public and to ensure protection for Whitewater Creek as a drinking water source.)*

Al Gilbert seconded the motion.

Mr. Thoms read the uses which would be allowed on the subject property:
(~~Strikethrough~~ indicates excluded uses)

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Permitted Uses

1. Amusement or Recreational facility;
- ~~2. Appliance sales and repair, etc.;~~
3. Art studio;
- ~~4. Auto parts and Tire store, retail;~~

5. Bakery;
6. Bank;
7. Barber shop;
8. Beauty shop;
9. Business school;
10. Catering service;
11. Church and customary related uses;
12. Clothing store and variety store;
- ~~13. College, University, including Dormitory and Fraternity or Sorority house when located on main campus;~~
14. Cultural facility;
15. Dance school or Studio;
16. Dental office;
17. Department store;
18. Drug store;

19. Dry goods store;
20. Financial institution;
21. Florist;
22. Gift shop;
23. Grocery store;
25. Growing crops, garden, shrubbery, flowers, etc. and related sales;
25. Gunsmith;
26. Home occupation;
27. Jewelry shop;
29. Laboratory serving professional requirements, (e.g. medical, dental, etc.);
29. Laundry pickup station;
30. Library;
31. Locksmith;
32. Medical office;
33. Messenger service;
34. Museum;
35. Music teaching studio;
36. Novelty shop;
37. Office equipment sales and service;
- ~~38. Parking garage;~~

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39. Photography studio;
40. Private clubs or Lodges;
41. Radio studio;
42. Restaurant;
43. Retail establishment;
44. ~~School;~~
45. Shoe repair;
46. ~~Taxidermist;~~
47. Taxi service;
48. Telegraph service;
49. Television studio; and
50. Watch repair.

Conditional Uses

1. ~~Adult Day Care Facility;~~
2. ~~Animal Hospital, Kennel (Commercial or Non-Commercial), or Veterinary Clinic;~~
3. ~~Automobile Service Station, including gasoline sales in conjunction with a Convenience Store;~~
4. ~~Campground Facilities;~~
5. ~~Care Home, Convalescent Center or Nursing Home;~~
6. Church or Religious Tent Meeting;

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7. Commercial Driving Range;
8. ~~Day Care Facility (Nursery School or Kindergarten);~~
9. ~~Dry Cleaning Plant;~~
10. ~~Fraternalities and/or Sororities;~~
11. Golf Course;
12. ~~Hospital;~~
13. ~~Kennel (See Animal Hospital, etc.);~~
14. ~~Laundromat, Self-Service or Otherwise;~~
15. Single-Family Residence; and
16. Telephone, Electric or Gas Sub-Station or other Public Utility Facilities.

Mr. Thoms reiterated that the property was conditionally zoned as a restaurant with Lot 1 to be intentionally used as a residence; however, the development ordinances will preclude it from being developed for any of the uses unless they are done in the existing old mill building. He added that the Conditional Uses may be difficult because of the requirements for those uses. He pointed out that approval would be required for the listed uses. He reported that the excluded uses are reasonable because they are based on public health, safety, and welfare and/or environmental hazards. He concluded by saying that this is a recommendation and not the final vote which will be made by the BOC.

Mr. Beckwith clarified that a retail establishment would include antiques, corn grist mill, and arts and crafts.

Chairman Powell replied that this was correct.

The vote to recommend approval passed 3-2 with Chairman Powell and Jim Graw voting in opposition.

Mr. Graw stated that he voted against the motion because he felt that if this was taken to court that the court may find it illegal and he did not want to vote on something which is or could be illegal. He added that he did not think that this would protect the citizens of Crystal Lake Estates down the road and this is what he is concerned about.

Mr. Frisina advised that since the conditions did not change the use of Lot 1 that the revised plat is no longer required and is a moot point.

Mr. Graw stressed that he would like to see a revised final plat of Crystal Lake Estates with Lot 1 removed. He pointed out that Lot 1 had been combined with the adjacent lot; however, the final plat recorded at the Clerk of Superior Court's Office still shows Lot 1 as part of the subdivision.

Mr. Frisina concurred and stated that the final plat should have been revised years ago. He explained that the final plat was on record at the Clerk of Superior Court's Office and still includes Lot 1 and that this is why Staff was requiring a hearing on the revised final plat.

* * * * *

Chairman Powell called for a break at 8:59 P.M. He reconvened the public hearing at 9:08 P.M.

* * * * *

5. **Consideration of proposed amendments to the Fayette County Zoning Ordinance regarding Article VII. Conditional Uses, Exceptions, and Modifications, Section 7-1. Conditional Use Approval, B. Conditional Uses Allowed, 23. Home Occupation and Article VI. District Use Requirements, Section 6-17. O-I, Office-Institutional District, D. Conditional Uses; Section 6-18. C-C, Community Commercial District, B. Permitted Uses and C. Conditional Uses; Section 6-19. C-H, Highway Commercial District, B. Permitted Uses and C. Conditional Uses; Section 6-21. M-1, Light Industrial District, C. Conditional Uses; and Section 6-22. M-2, Manufacturing and Heavy Industrial District, C. Conditional Uses as presented by the Planning & Zoning Department.**

Pete Frisina explained that the PC previously recommended approval of allowing a Home Occupation in the O-I, C-C, C-H, M-1, and M-2 zoning districts under Article VII.; however, by doing so those nonresidential zoning districts must also be amended under Article VI. He stated that this is basically a "housekeeping" item.

Staff's additions to the current ordinance are indicated in **bold**, underline, and *italics*. Strikethrough indicates deletion.

ARTICLE VII. CONDITIONAL USES, EXCEPTIONS, AND MODIFICATIONS

7-1. Conditional Use Approval, B. Conditional Uses Allowed:

23. Home Occupation. (Allowed in A-R~~1~~ and residential zoning districts, and the following nonresidential zoning districts: O-I, C-C, C-H, M-1, and M-2.) (See *Single-Family Residence under Section 7-1.,B.*)
 - a. Residents. Only residents of the dwelling may be engaged in the home occupation.
 - b. Incidental Use. The home occupation shall be clearly incidental to the residential use of the dwelling and shall not change the essential residential character of the building.
 - c. Display, Sale. No display of products shall be visible from the street, and only products produced on the premises may be sold on the premises, except that bonafide agricultural products grown on the premises may be displayed in an Agricultural-Residential Zoning District.
 - d. Area. Use of the building for this purpose shall not exceed thirty-five (35) percent of the principal building.
 - e. Alterations. No internal or external alterations inconsistent with the residential use of the building shall be permitted.
 - f. Accessory Buildings. No accessory buildings or outside storage shall be used except as otherwise provided herein.
 - g. Music, etc. Instruction in music and similar subjects shall be limited to two (2) students at a time.
 - h. Vehicles. Only vehicles used primarily as passenger vehicles shall be permitted to remain on the premises.

- i. Uses. The following and similar uses shall not be considered home occupations: automobile service station, automobile and related machine sales, automobile repair or maintenance, ambulance service, rescue squad, amusement or recreational activities (commercial), animal hospital, commercial kennel, veterinarian clinic or animal boarding place, pawn shops, acid storage and manufacturing, heavy manufacturing, fortune teller, palm reader, and massage therapy.

For Your Information Only

37. Single-Family Residence. (Allowed in the C-C, C-H, M-1, M-2, and O-I Zoning Districts).
 - a. Said residence shall be a single-family detached residence.
 - b. Said residence shall not be less than 1,200 square feet, and said residence shall not be allowed in subdivision developments as defined by the Subdivision Regulations of Fayette County.

ARTICLE VI. DISTRICT USE REQUIREMENTS

6-17. O-I, Office-Institutional District. (Adopted 05/26/88)

- D. Conditional Uses. The following Conditional Uses shall be allowed in the O-I Zoning District provided that all conditions specified in Section 7-1 herein are met:

5. Home Occupation;

- ~~5-6.~~ Hospital;

6-18. C-C Community Commercial District.

- B. Permitted Uses. The following uses shall be permitted in the C-C Zoning District as long as the area devoted to inside storage does not exceed twenty-five (25) percent of the gross floor area of the principal structures except as excluded herein.

- ~~26.~~ Home occupation;

- ~~27-26.~~ Jewelry shop;

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- C. Conditional Uses. The following Conditional Uses shall be allowed in the C-C

Zoning District provided that all conditions specified in Section 7-1 herein are met:

12. Home Occupation;

~~12~~.13. Hospital;

6-19. C-H Highway Commercial District.

B. Permitted Uses. The following uses shall be permitted in the C-H Zoning District as long as the area devoted to inside storage does not exceed fifty (50) percent of the gross floor area of the principal structures except as excluded herein for Business Parks.

~~45.~~ ~~Home occupation;~~

~~46~~.45. Horse show (temporary in nature); (Amended 07/22/04)

C. Conditional Uses. The following Conditional Uses shall be allowed in the C-H Zoning District provided that all conditions specified in Section 7-1 herein are met:

14. Home occupation;

~~14~~.15. Hospital;

6-21. M-1 Light Industrial District.

C. Conditional Uses. The following Conditional Uses shall be allowed in the M-1 Zoning District provided that all conditions specified in Section 7-1 herein are met:

5. Home Occupation;

~~5~~.6. Outdoor Amusement Facilities, Rides, Structures over thirty-five (35) feet in height, including, but not limited to Bungee and Parachute Jumping;

6-22. M-2 Manufacturing and Heavy Industrial District.

C. Conditional Uses. The following Conditional Uses shall be allowed in the M-2 Zoning District provided that all conditions specified in Section 7-1 herein are met:

4. Home occupation;

4.5. Junk Yard or Auto Grave Yard;

Chairman Powell stated that there was no public present. He closed the floor from public comments.

Jim Graw made a motion to recommend approval of the proposed amendments as submitted. Al Gilbert seconded the motion. The motion unanimously passed 5-0.

* * * * *

Chairman Powell asked if there was any further business.

Chairman Powell reminded the P.C. of the Public Meeting/Workshop scheduled for Thursday, October 16, 2008, in the Board of Commissioners Conference Room, First Floor at 7:00 P.M. He stated that there were no public hearing items for November.

Chairman Powell stated that he had received a public notice in his water bill regarding walls and fences. He thanked Mr. Frisina on a good way of getting the word out about the revisions to the wall and fence ordinance.

There being no further business, Jim Graw made the motion to adjourn the Public Hearing. The motion for adjournment unanimously passed 5-0. The Public Hearing adjourned at 9:12 P.M.

**PLANNING COMMISSION
OF
FAYETTE COUNTY**

ATTEST:

**DOUG POWELL
CHAIRMAN**

**ROBYN S. WILSON
SECRETARY**