

**THE FAYETTE COUNTY PLANNING COMMISSION** met on December 5, 2013 at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Fayetteville, Georgia.

**MEMBERS PRESENT:** Al Gilbert, Chairman  
Bill Beckwith  
Douglas Powell  
Tim Thoms

**MEMBERS ABSENT:** Jim Graw, Vice-Chairman

**STAFF PRESENT:** Peter A. Frisina, Director of Community Services  
Dennis Dutton, Zoning Administrator

**Welcome and Call to Order:**

Chairman Gilbert called the Planning Commission Meeting to order. Chairman Gilbert introduced the Commission Members and Staff.

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**1. Consideration of the Minutes of the Meeting held on November 7, 2013.**

Tim Thoms made a motion to approve the minutes. Doug Powell seconded the motion. The motion passed 4-0. Jim Graw was absent.

**PUBLIC HEARING**

**2. Consideration of Petition No. 1232-13, Jerry M. Gable and Lowell T. Mullins, Owners, and Christine Flanigan, Agent, request to rezone property from A-R Agriculture-Residential to R-40 Single-Family Residential to develop two (2) residential lots. This property consists of 3.35 acres located in Land Lot 88 of the 5th District and fronts on South Jeff Davis Drive and Callaway Road.**

Chairman Gilbert advised the petitioners that there were only four Planning Commissioners present tonight and that they had the option to table to the next meeting.

Carol Mullins stated that they would go ahead with the petition. Mrs. Mullins said that she and her husband Tom have lived in the County for 17 years and they purchased this property to rehab and remodel the home so they could downsize from their present home. She added that they had no idea that any problems would result from purchasing this property as the lot is only 1.4 acres with a little house that they want to bring up to standards. She said that they have no intention of encroaching on anyone else's property or cause any problems.

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

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Phillip Anderson asked if it is correct that this land has been divided and these folks have been allowed to purchase and close on the property that has not been rezoned and he is wondering what this is and can he ask the question.

Pete Frisina said the property was subdivided but not through the proper procedures and now to meet the procedures the property has to be rezoned to allow for a smaller than five (5) acre lot so the lots can be legally platted.

Phillip Anderson asked if they have been allowed to close on the 1.4 acre lot.

Pete Frisina said they have closed on the 1.4 acre lot.

Phillip Anderson said it makes no sense to him how you can buy something that is illegal.

Pete Frisina said there is no way to stop it.

Phillip Anderson said it seems like the cart is before the horse and why are we rezoning this to start with as you have a piece of property that kind of fits with the area with the exception of the Woodlands Subdivision across the street and it has a house on so why don't they just sell the property as is and why do we have to subdivide the property. He added that is kind of a dumb question because it comes down to money and two (2) pieces of property are make more money than one (1) piece of property and he would prefer that they just sell the house and the property without subdividing the property. He said he thinks everybody understanding that if you live in an area where the County is going to rezone for quarter acre with 1,200 square foot houses your property values are going to go down. He stated that his other concern is the rain water runoff that will run in a ditch toward his property to the north and development is going to make it worse. He said he questions the 10 foot strip of on Callaway road attached to Lot 1 and he was told it was for utilities but is it big enough to put a driveway on it and the driveway should be on South Jeff Davis Road and no Callaway Road. He stated that he would like to see the entire property sold to these folks and left as it is and they are doing a nice job of cleaning it up and that will add to the value of the neighborhood.

Charles Kilpatrick said he agrees with Mr. Anderson's points and he does see that this will benefit anyone but the seller of the property, the Mullins are doing a good job cleaning up the property and he doesn't know what R-40 means in terms of how many square feet is required for the house.

Doug Powell said 1,500 square feet is required for the house in R-40.

Mr. Kilpatrick said he has a problem with the lot being cut up so another house can be there and that will start lots being cut up with small house on them on South Jeff Davis Road and Callaway

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Road and has no problem with these folks fixing up this house and keeping the property together.

Doug Powell said the property has been subdivided, but not legally. He said the County can't stop the sale of the property because that doesn't go through the County and the new owners find out it is illegal when they come to the County to get a building permit.

Mr. Kilpatrick asked if the property is legally or illegally subdivided, so let these people have the whole property and he would like it to be kept in one piece.

Jerry Dickson said he had a piece of property that is to the west and it was done somewhat like this property was done to get below the five (5) acre deal. The Gable's bought this property back in the 50's and it was a big farm and they sold off parts of it and this house was and the property was left over. He said his property was subdivided by the family and a house was left with one (1) acre and when he tried to build a sunroom on his house the County wouldn't issue the permit and they wanted a plat and the plat I had showed the different lots and the one (1) acre lot with the house. He said the lady at the permit office went through the roof and said he would never get a permit and to finally get the permit he had to write up the property deed to suit her and get it recorded.

David Dykes said he is the Secretary of the Woodlands Homeowner's Association we like what the folks are doing to the property but he wants to leave it as A-R and keep the property together.

Chairman Gilbert asked if there was anyone else to speak in opposition hearing none he asked if Mr. Mullins wanted to rebut.

Tom Mullins said he just wanted to buy the house and fix it up. He said there is an existing circular driveway on South Jeff Davis Road to serve both lots and he thought the strip in the back was to run County water down. He plans to add an addition to the house and bring it up to 1,500 square feet and up to code.

Chairman Gilbert asked Mr. Mullins if he agreed with the three (3) conditions.

Mrs. Mullins said they were in agreement with the three conditions (3).

Tim Thoms read the Recommended Conditions as follows:

1. The owner/developer shall provide, at no cost to Fayette County, a quit-claim deed for 50 feet as measured from the centerline of South Jeff Davis Drive prior to the approval of the Minor Subdivision Plat and said dedication area shall be shown on the Minor Subdivision Plat. *(This condition is to ensure the provision of adequate right-of-way for future road improvements.)*

2. That a variance for the existing single-family dwelling's encroachment into the front yard setback be authorized by the Zoning Board of Appeals prior to any improvements to the existing structure to meet the required minimum floor area. If the variance is denied, that portion of the existing single-family dwelling encroaching into the front yard setback must be removed prior to the submission of the Minor Subdivision Plat. *(This requirement is required for compliance with the Zoning Ordinance, Article VI.)*
3. That the applicant brings the existing single-family dwelling into compliance with the R-40 zoning district prior to the submittal of the Minor Subdivision Plat. This can be achieved either by adding square footage to the existing single-family dwelling to bring it into compliance or through a variance, approved by the Zoning Board of Appeals, to reduce the square footage requirement. If the variance is denied, square footage shall be added to the residential structure prior to the submittal of the Minor Subdivision Plat which will require a variance from the Subdivision Regulations to issue a building permit prior to the approval of the of the Minor Subdivision Plat. *(This requirement is required for compliance with the Zoning Ordinance, Article VI.)*

Mrs. Mullins said Mr. Gable at first did not want to sell this property because this was his grandfather's home and he thought we were going to tear it down and build something else and he has a sentimental attachment to the is house so we assured him that we wouldn't tear it down and we were going to fix it up and live there and Mr. Gable owns the other portion of this land and he told the Mullins that if he ever sells the property he would give them the first right of refusal.

Chairman Gilbert said he would bring this back to the board for discussion.

Bill Beckwith said please understand that if the Zoning Board of Appeals does not approve the variance for the encroachment of the house, the house or the portion that encroaches will have to be removed.

Mr. Mullins said he didn't know how that would be possible because you would have to tear the house down.

Bill Beckwith said that is quite possible.

Mr. Mullins said how I can meet Condition #2 if I can't get a permit.

Pete Frisina said the last part of the Condition #3 is to come back to the Planning Commission for a variance to the Subdivision Regulations to get a building permit before the plat is approved.

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Bill Beckwith said if this petition were to be approved what would the next step be.

Pete Frisina said go before the ZBA to get the variance to let the house remain in the setback.

Bill Beckwith as if that variance was not approved then what would happen.

Pete Frisina said the house would have to be removed from the setback.

Doug Powell said the zoning is changing the setback from an A-R setback to an R-40 setback and you had a Nonconforming lot that is less than the required five (5) acres and the property has been subdivided the lots are now illegal so now the house does not meet the R-40 setback.

Pete Frisina said the house does not presently meet the A-R setback either.

Tim Thoms said the house was probably built before zoning and setbacks, and is now nonconforming when the zoning was applied to the property but if you make changes to it you have to bring it up to the current standards.

Mrs. Mullins said her real estate agent went to the Zoning Department and was assured this was not going to be a problem.

Tim Thoms said we as the Planning Commission have been doing a lot of work on illegal lots lately and you are trying to bring the property into compliance which is good and you will have to apply for some variances as well but as Mr. Beckwith said there is no guarantee that you will get the variances.

Tim Thoms said we look at a rezoning request and how it complies with the Land Use Plan and how it affects traffic, schools, and surrounding property and in his mind this rezoning meets the criteria for rezoning as there are similar zonings in the immediate area.

Chairman Gilbert said if you want anything done to the house, it is limited what can be done under A-R as that is an illegal lot and most people that spoke tonight said they want the house brought up to standards. He added that there are similar zonings in the immediate area.

Doug Powell said even if the rezoning is approved there is no guarantee that the ZBA will approve the required variances.

Bill Beckwith said if we don't approve the rezoning then they can't do anything to the house.

Pete Frisina said this was a nonconforming lot and a nonconforming structure and it was the subdivision of the lot that created the problem and even to do something to the house as a

nonconforming structure would still require some variances but the situation has been made more difficult because the lot was illegally subdivided.

Doug Powell said if there were no home on the lot and you took the original A-R lot and subdivided it properly we wouldn't be having these problems and it is because where the house is located and if the lot was properly subdivided the resulting new homes would meet the setbacks.

Tim Thoms said he wanted to repeat that even if the rezoning is approved there is no guarantee the variances will be approved and he would make the motion to recommend approval of the rezoning petition with the three (3) recommended conditions as agreed to by the petitioner.

Bill Beckwith seconded the motion. The motion passed 3-1 with Doug Powell voting in opposition to the motion. Jim Graw was absent.

Chairman Gilbert said rezoning the property is the best avenue to improve the property and house as you are limited in what you can do with a nonconforming structure.

Mrs. Mullins said the house was in shambles until we started making improvements and she can't imagine not being able to improve the house.

**3. Consideration of Petition No. 1233-13, Tony Harris, Owner, request to rezone property from A-R Agriculture-Residential to R-40 Single-Family Residential to develop two (2) residential lots. This property consists of 4.05 acres located in Land Lots 227 and 254 of the 5th District and fronts on Kenwood Road and South Kite Lake Road.**

Tony Harris said he wants to rezone the property to build another house and he lives in the existing house and plans to add addition square footage by finishing the basement. He said he plans to live in the new house with his family and his mother-in-law will live in the existing house.

Chairman Gilbert asked if anyone else would like to speak in favor of the petition. Hearing none he asked if anyone would like to speak in opposition to the petition. Hearing none Chairman Gilbert said he is bringing it back to the board for discussion.

Tim Thoms said the recommended conditions are as follows:

1. The owner/developer shall provide, at no cost to Fayette County, a quit-claim deed for 50 feet as measured from the centerline of Kenwood Road and South Kite Lake Road prior to the approval of the Minor Subdivision Plat and said dedication area shall be shown on the Minor Subdivision Plat. *(This condition is to ensure the provision of adequate right-of-way for future road improvements.)*

2. That the applicant brings the existing single-family dwelling into compliance with the R-40 zoning district prior to the submittal of the Minor Subdivision Plat. This can be achieved either by adding square footage to the existing single-family dwelling to bring it into compliance or through a variance, approved by the Zoning Board of Appeals, to reduce the square footage requirement. If the variance is denied, square footage shall be added to the residential structure prior to the submittal of the Minor Subdivision Plat. *(This requirement is required for compliance with the Zoning Ordinance, Article VI.)*

Bill Beckwith asked Pete Frisina for clarification that the required on right-of-way on South Kite Lake Road should be 40 feet and not 50 feet.

Pete Frisina said that he was correct and the condition should be for 40 feet on South Kite Lake Road and not 50 feet.

Doug Powell asked Mr. Harris if he had started the process of adding the required square footage to the existing house by finishing the basement.

Mr. Harris said he had pulled the permit and then had an accident and is now getting back on his feet so he will finish the basement.

Pete Frisina said that Condition #2 should reference Article VI and not Article VII and Condition #1 should be for 40 feet on Kite Lake Road.

Bill Beckwith said if Mr. Harris finishes the basement he won't need a variance as Condition #2 states.

Pete Frisina said that is correct.

Doug Powell made a motion to approve the petition with the two (2) recommended conditions and he would not enumerate the changes to the Conditions that were just discussed. Bill Beckwith seconded the motion.

Tim Thoms said that there is not as much one acre zoning in the immediate area as the last petition but the request does meet the Land Use Plan.

Chairman Gilbert called the question and the motion passed 4-0. Jim Graw was absent.

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Dennis Dutton said the Planning Commission would meet on the 19<sup>th</sup> to consider a Minor Subdivision Plat.



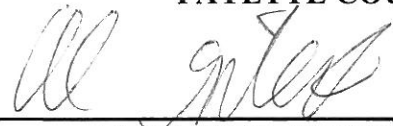
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Chairman Gilbert said he would entertain a motion to adjourn the meeting.

Bill Beckwith said so moved.

Chairman Gilbert said the meeting was adjourned at 8:05 pm.

PLANNING COMMISSION  
OF  
FAYETTE COUNTY



AI GILBERT, CHAIRMAN

ATTEST:

