

**THE FAYETTE COUNTY PLANNING COMMISSION** met on April 18, 2013 at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Board of Commissioners Conference Room, Suite 100, Fayetteville, Georgia.

**MEMBERS PRESENT:** Al Gilbert, Chairman  
Jim Graw, Vice-Chairman  
Douglas Powell

**MEMBERS ABSENT:** Bill Beckwith  
Tim Thoms

**STAFF PRESENT:** Pete Frisina, Director of Community Services  
Patrick Stough, Interim County Attorney  
Phil Mallon, County Engineer  
Hank Derbyshire, Marshal

**Welcome and Call to Order:**

Chairman Gilbert called the Planning Commission Meeting to order. Chairman Gilbert introduced Hank Derbyshire of the Marshal's office and Pete Frisina of Planning and Zoning and the Commission Members Doug Powell, Jim Graw and Chairman Gilbert, Chairman. Chairman Gilbert stated that Bill Beckwith and Tim Thoms were absent and the chairman recognized David Brill with the North Fayette Community Association.

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**1. Consideration of the Minutes of the Meeting held on April 4, 2013.**

Jim Graw made a motion to approve the minutes. Doug Powell seconded the motion. The motion passed unanimously 3-0. Bill Beckwith and Tim Thoms were absent.

**NEW BUSINESS**

**2. Discussion of proposed amendments to the Fayette County Code of Ordinances, Chapter 20. Zoning Ordinance, Article VI, Sec. 6-26., G-B General Business District regarding: building height.**

Pete Frisina stated this building height issue came up with the rezoning for the Pinewood movie studio and the Staff Report cited items that were in conflict with County regulations that would need to be discussed in terms of possible ordinance amendments. He said the height of 65 feet is for the soundstage portion of the buildings and the soundstage is basically a shell where the sets are built and there is a catwalk where the riggings and lights will hang and the Board has asked the staff and Planning Commission to look at this issue. He said he what he has prepared for discussion is a definition for a "soundstage" and a proposal in G-B that a soundstage only could be 65 feet high but for every foot the building is over 40 feet the setback will increase. He

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said this ratio increase in a setback is standard for zoning and the County currently has similar regulations in A-R for agricultural structures such as silos.

Jim Graw said the proposal states “for soundstages associated with movie/media productions.”

Pete Frisina responded that that is the listed use within the G-B district.

Doug Powell asked if these proposed amendments would allow the studio owner on SR 138 to go up to 45 feet as he originally wanted.

Pete Frisina responded that it would give him the ability to go to 45 feet or higher as long as he could meet the increased setbacks.

Al Gilbert said he thought we should look at all of the non-residential zoning districts in terms of building height as a Conditional Use with certain criteria that would need to be met such as a minimum lot size like 250 acres so you couldn't have a small postage stamp size lot with a 65 foot tower.

Doug Powell said the increased setbacks may not allow a large structure on a small lot.

Jim Graw said he was concerned about the property on SR 138 because there are homes around the property and a 65 foot building may not be appropriate in the area and he likes the Conditional Use aspect of setting criteria such as lot size. He said he does not know what the purpose of increasing the setbacks achieves.

Al Gilbert said it pushes the buildings further from the road.

Jim Graw said if you have 250 acres the buildings will be well off the road anyway.

Pete Frisina said the standard setback in the G-B is 100 feet from the right-of-way and based on this proposal and increase from a building height of 40 feet to 65 feet would increase the front setback from 100 feet to 225 feet.

Doug Powell said that he would want to make sure that the setback increase did not create a problem for the Pinewood studio.

Pete Frisina stated that the Pinewood studio had the soundstages set back 300 feet from the road.

Doug Powell asked if the property of SR 138 is large enough to allow a taller building.

Pete Frisina said if the building was increased from 40 feet to 45 feet it would increase the setback to 125 feet but an increase to 65 feet would increase the setback to 225 feet.

Doug Powell said that could push the building back to the back of the lot.

Jim Graw suggested increasing the base building height in G-B to 45 feet and then anything higher than 45 feet would be a Conditional Use.

Doug Powell said the only question is; are we comfortable with a base building height of 45 feet in G-B.

Jim Graw said allowing a 65 foot building on SR 138 may not be a good idea as there are more homes in that area.

Al Gilbert said is there a way to determine how much of the building will be visible from the road and make that part of the Conditional Use.

Doug Powell asks what happens if the elevation of the road changes.

Jim Graw said the property on SR 138 is flat and there is no change in elevation.

Doug Powell said that if you move the structure back from the road as the height is increased then the perspective would remain the same. He said his concern is; are we setting precedence for 65 feet.

Pete Frisina said we would set a regulation for 65 feet which is beyond precedence.

Patrick Stough said but it is limited to soundstages only.

Al Gilbert said that in the past it was implied that the 35 foot height limit was based on fire protection and if you see the response from the Fire Chief they don't have a concern as long as people are not occupying that area.

Pete Frisina said in the past 35 feet was an issue with the Fire Department's ladders but now they have ladder trucks that go up higher. He added the fire marshal's comment say that he is not concerned with these types of buildings with 65 feet as this is not occupied space.

Doug Powell asked what would happen if someone in G-B wanted a 65 foot tall non-retail office structure, basically five stories tall.

Pete Frisina said the proposal limits it to soundstages only.

Doug Powell said but by approving the soundstages at 65 feet are we not opening up ourselves to be challenged for occupied buildings at 65 feet.

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Patrick Stough said the justification to limiting it to soundstages, is the area at 65 feet is an unoccupied space where an office building is occupied and has a different fire safety concern.

Jim Graw asked if the studio proposed on SR 138 would have soundstages that fit into this definition.

Pete Frisina said he thought the studio on SR 138 would have soundstages that meet this definition.

Doug Powell he didn't know if he would raise the building height to 45 feet and would leave it at 40 with the increased setbacks for greater building height.

Jim Graw asked; what is the reasoning of increasing the setback in relation to the building height.

Pete Frisina said that it was a standard zoning practice and the County has something in A-R for agricultural structures such as silos and it keeps the visual perceptiveness from the road.

Patrick Stough said the further from the road the less high the structure appears.

Doug Powell asked if the height setback ratio should be made a Conditional Use.

Jim Graw said we should make it a Conditional Use and add a lot size requirement.

Doug Powell asked Patrick Stough for his opinion on the Conditional Use suggestion of requiring additional acreage for an increase in the building height.

Patrick Stough said it is something we could add, but he questions how the increased setback would affect the property on SR 138.

Pete Frisina said he had not looked the property to determine how it would be affected.

Jim Graw asked if the increased setback was a way to preclude small properties from getting 65 feet.

Pete Frisina said we only have two properties in the County zoned G-B and the property on SR 138 may have enough room to allow a 65 foot building but it would be pushed back further from the road and surrounding properties.

Jim Graw said this looks like a way to prevent somebody with a small lot from increasing their setbacks and you add a requirement for 250 acres.

Pete Frisina said requiring 250 acres would really prevent a 65 foot building.

Jim Graw said it would prevent the 65 foot building but you are limiting it based on acreage and not space on the lot.

Pete Frisina said it would allow someone to increase building height on a small lot to the point where they can't meet the setback and if we limit to 250 acres we have precluded any property under 250 acres.

Jim Graw said that is right and you are not forcing someone into something like an increased setback and they know coming in they don't have 250 acres and they can't have 65 feet, or 200 acres I don't know what the exact number needs to be required.

Patrick Stough said the issue is agreeing on the number of acres.

Al Gilbert said if you set a number of acres, what happens when the next studio comes in and they don't have the required acreage and we have to change it again.

Pete Frisina said he recently has had two issues with building height with other buildings in other zoning districts such as churches that were allowed to be higher than 35 feet and rumor is it was based on unoccupied space but the ordinance should have been changed to address this when the church was built and another recent instance is an industrial facility that needs clearance for a crane mechanism to build electrical components that are 30 feet tall that need clearance for the build to prevent electrical arching, so we are dealing with some uses we have never seen before.

Al Gilbert said again we may have to look at all the nonresidential zoning categories with the issue.

Jim Graw asked if the property on SR 138 could meet the increase setbacks.

Pete Frisina said he didn't know.

David Brill suggested increasing the front setback ratio to 10 feet for every one foot of building height and the side and rear setback ratio to five feet for every one foot of building height and would it be guaranteed that the additional space would be greenspace.

Pete Frisina said that only a soundstage and or portion of a soundstage that is greater than 35 feet would have to meet the increased setback and buildings of 40 feet or less would just meet the standard G-B setbacks.

Patrick Stough suggested increasing the front setback ratio to 8 feet for every one foot of building height suggested that would make the setback 300 feet.

Jim Graw asked what are the side and rear setbacks in G-B.

Pete Frisina said both side and rear setbacks would be a 50 foot buffer and a 25 foot setback.

Doug Powell asked what the timeline is for this amendment.

Pete Frisina said it is on a fast turnaround.

Doug Powell said we need to look at the two properties and determine the right distances to propose.

Jim Graw said we need to know if we increase the front to eight feet and the side and rear to five feet how it affects the property on SR 138 and he does not want to see a 65 foot building on SR 138.

Doug Powel said he would like to know what this formula does to the property on SR 138.

Pete Frisina said he wanted Mr. Brill and the Fayette Community Association to be aware of any changes so we could get their input.

Al Gilbert asked Pete Frisina to look at the two properties and determine how the various formulas that were discussed tonight would affect them and present this at the next meeting and also asked if he could research if there are any acreage requirements for buildings in other zoning ordinances we could review.

Doug Powell asked; what is the schedule for the annexation of the Pinewood studios because we are making changes to our ordinances that may not be even needed especially if the property is annexed into the city.

### **3. Discussion of the dedication of right-of-way associated with the platting of lots and the Hanners Plat**

Pete Frisina said we have an issue with the dedication of right-of-way per the Subdivision Regulations and the dedication of right-of-way reducing the lot size below the required minimum lot size and he has not encountered this before. He added that the Phil Mallon had come up with an innovative solution of getting an easement instead of right-of-way, however the ordinance requires right-of-way. He said he talked to legal today about the issue.

Patrick Stough said the issue is the property owner has come to the County with a plat that has five acres as required for A-R and our ordinance requires right-of-way which will bring the lot under five acres, however the only reason it is below five acres is the County is asking for right-

of-way for the benefit of the County so it is a question of balance between the two alternatives and which one is more fair. He said it would be better to get the right-of-way and create a nonconforming lot.

Matthew Rice said the property owner has done everything the County has asked but because of mortgages and conservation tax use he can't change property lines anymore.

Pete Frisina said his understanding from legal is in this situation we are dealing with one lot not a subdivision of property with a 100 lots and we can make that consideration.

Jim Graw asked how big the lot will be after the right-of-way is donated.

Phil Mallon estimated the right-of-way at about a quarter acre.

Doug Powell asked if the right-of-way could cause a problem with the contiguous Area requirement as well.

Phil Mallon said it could reduce the contiguous area as well and an easement meets the intent of the Development Regulations in his opinion but apparently doesn't meet the Subdivision Regulations.

Jim Graw asked what the difference between an easement and right-of-way is.

Patrick Stough said an easement is not outright property ownership.

Phil Mallon said with an easement the property owner technically owns it but the County has access to it for repairs.

Jim Graw said can the County widen the road with an easement.

Phil Mallon said if the County widens the road we would acquire right-of-way at that point by donation or purchase.

Jim Graw said if the County had an easement now and acquired right-of-way later it would still become a nonconforming lot.

Patrick Stough said keep in mind if the County has to come back in the future and acquire the right-of-way it would probably have to purchase the right-of-way where is now it will be dedicated.

Al Gilbert asked if we are setting precedence for an easement as opposed to getting right-of-way as the ordinance requires.

Patrick Stough said our procedure is to get right-of-way instead of an easement could be creating precedence in that sense.

Al Gilbert said is he worried that in the future the County would not be able to get right-of-way.

Jim Graw said would prefer right-of-way.

Doug Powell asked if the lot would be considered as a "legal lot" but nonconforming.

Pete Frisina said it would be approved as a nonconforming lot and be legal.

Phil Mallon said he would prefer that approach.

Pete Frisina said the County needs legal to assist in creating a policy for these one lot situations.

Patrick Stough said the property owner needs to come to the County with a lot that meets the minimum lot size before the right-of-way is donated.

Pete Frisina said we are taking the advice of legal to proceed with the plat and approve it because of the donation of right-of-way as a nonconforming lot.

Jim Graw asked Mr. Rice if he could go back and get additional property.

Mr. Rice said the surrounding property is now tied up by mortgages and a conservation tax use that they can't change.

Al Gilbert asked if by the next meeting the plat could be ready.

Pete Frisina said if the surveyor could get the plat corrected and the acreage calculated staff would fast track the plat and if the contiguous is affected the Planning Commission could consider it again when they approve the plat.

Phil Mallon asked about the front setback and the existing house when right-of-way is donated.

Pete Frisina said since it is the right-of-way dedication that is creating the problem the house would be grandfathered. He added that staff will turn this around as quickly as possible to get it on the May 2<sup>nd</sup> Planning Commission agenda.



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

Pete Frisina said this is a continuance of the issue with the LNS procedure that is scheduled to come out of the zoning ordinance and comp plan at the April 25<sup>th</sup> BOC meeting. He added that Commissioner Oddo had brought this issue up to the BOC and asked to consider another solution to illegal lots.

Patrick Stough said legal's opinion was the LNS procedure created a conflict in the zoning ordinance and a variance with additional criteria would be a more appropriate mechanism. He said the draft criterion would be in addition to existing variance criteria and contains a time frame from the purchase date of the lot that has to be a minimum of 10 years as a warranty deed would allow the buyer 20 years to go back to the seller of the property and a quitclaim deed would not allow the buyer to go back to the seller.

Pete Frisina asked if a warranty deed vs. a quitclaim deed is critical to this criterion.

Patrick Stough said it was not part of the criterion and ten years is suggested as the time frame for discussion.

Jim Graw asked if the criterion could be tied to a warranty deed only.

Patrick Stough said that was not the intent.

Pete Frisina said even though there is a 20 year window for a warranty deed, the chances of prevailing after so many years is not likely and 10 years is a long time to wait for a solution. He said his concern is some of these lots were made illegal 10 or 15 years ago and have had many owners.

Phil Mallon asks if the last property owner would have had to own the lot for a minimum of ten years.

Patrick Stough stated yes.

Pete Frisina said as that property sells it pushes that window out ten years each time and the issue is we don't want the window too short that it encourages people to create illegal lots but you don't want it too long where a solution seems unachievable.

Pete Frisina stated that the draft contains language that limits this variance for lot size, lot width or road frontage to lots that are improved as opposed to vacant lots.

Doug Powell asked if the ZBA has looked at this draft.

Pete Frisina said the Planning Commission was the first to look at the draft but the ZBA would also get a chance to look at it as well.

Patrick Stough said the second criteria says the owner did not create the illegal lot or a family member did not create the illegal lot and a list of what constitutes a family for the purposes of the criteria is included.

Al Gilbert suggested that grandparents be included in the family list.

Patrick Stough said the third criteria involves whether self-help is available such as additional property is available to make the lot conforming as long as it doesn't make adjacent properties nonconforming. He added that it doesn't matter if the adjacent property owner is not willing to sell any property or how much it would cost to buy additional property.

Al Gilbert said that is going to be rough if the adjacent property owner is unwilling to sell.

Patrick Stough said the finding that ample property exists to make the lot conform as oppose to its availability based on the willingness to sell or purchase price is more objective.

Jim Graw said criteria three says no adjacent property is available and let's says there is adjacent property available but due to a feud the person won't sell any property, the applicant can't meet that criteria.

Patrick Stough said that is correct.

Phil Mallon said if the sale of adjacent property would create a nonconformance then you meet the criteria.

Patrick Stough said that is correct and there is language which states if your lot is illegal and the adjacent property is illegal you would have to acquire all of the lot and the combination of those lots would need to meet the minimum requirements.

Al Gilbert said this criteria concerns him as he can see situations where they won't be able to buy additional property and will be stuck.

Jim Graw said he has similar concerns.

Patrick Stough said a buyer needs to be aware of what they are buying.

Pete Frisina said very few buyers know enough about real estate to determine if the lot is legal and his issue is even if you can go back to the seller the County still has an illegal lot on its hands.

Al Gilbert said his concern is the worst case scenario of the house being destroyed and it not being able to be rebuilt and the County has to clean up the mess when the land owner walks away from the property.

Pete Frisina said in some of these cases the County issued permits in error which perpetuated the problem.

Phil Mallon said this puts a burden on the neighbor to sell property which could cause ill will.

Pete Frisina asked the Planning Commission what concerns they have.

Al Gilbert said criteria three concerns him.

Jim Graw asked if the time frame could be five years.

Pete Frisina said to recap, criteria one, 5 to 10 years is suggested, criteria two, add grandparents and criteria three, Al Gilbert has concerns that it is too hard to meet.

Jim Graw said he has some concerns with criteria three.


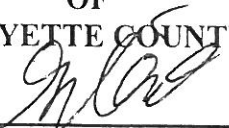
Pete Frisina said this item would be discussed at the next meeting.

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

Doug Powell said so moved.

Chairman Gilbert said the meeting was adjourned.

PLANNING COMMISSION  
OF  
FAYETTE COUNTY  
   
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AL GILBERT, CHAIRMAN

ATTEST:   
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