

**City of Fairburn  
Planning and Zoning Commission Minutes  
May 6, 2014**

**Attendance**

Present were Chairman Elise Stoney, Commission Members-Vice-Chair Shelby Phillips, Andrew Whitmore, Mark Wade, Elizabeth Echols, and Jerry Williams. Also present were the Community Development Director/City Engineer - Troy Besseche; City Planner - Toussaint Kirk, Planning Consultant – Jahnee Prince; City Attorney - Valerie Ross and Recording Secretary Njeri Gillard.

**Call to Order**

Chairman Elise Stoney called the meeting to order at 7:00 pm in the City Hall Council Chambers.

**Pledge of Allegiance**

The meeting opened with the reciting of the Pledge of Allegiance.

**Roll Call – Determination of Quorum**

A quorum was confirmed for meeting.

**Public Comments**

No Comments

**Adoption of Agenda**

Commissioner Whitmore made a motion to approve the agenda. Vice-Chair Phillips seconded the motion and it was unanimously approved.

**Adoption of Minutes**

Commissioner Whitmore made a motion to approve the minutes from April 1, 2014. Commissioner Williams seconded the motion, and it was unanimously approved.

**Public Hearing:**

**2014-TA-06-Text Amendment-** To add, replace or modify definitions of Family and Primary Variance- Chapter 80 Article I, In General Section 80-4 Definitions

Vice-Chair Phillips asked why the ordinance changed from 5 persons to 3 persons? Mr. Kirk answered that the change was based on research of different municipalities. Many municipalities averaged 2-3 unrelated persons that constitute the definition of a family - with 3 being the maximum.

Vice-Chair Phillips commended that Staff did a good job with preparation of packets. He did have some concerns that need addressing.

First concern: Section 80-138 Home Occupation definition- "A home occupation is permitted as an accessory use of a dwelling unit in residential zoning districts and its operation and employees are limited to members of the resident family only or one member of the resident family and one non-resident. Please research this definition to ensure that it is in line with our current ordinance.

Second concern: Section 80-138 c.9 "Vehicles kept on site in association with the home occupation shall be used by residents only?" Question: what if a non-resident is there can they use a vehicle? Vice- Chair Phillips requested that Staff please research.

Third concern: Section 80-138 c. 21 when there is one permitted home occupation in a dwelling unit, no more than 2 residents or one resident and one non-resident shall be engaged in such home occupation(s). Vice-Chair Phillips requested that this be follow up on this as well.

Mr. Kirk stated that much discussion goes into the changing of ordinances, so he will discuss with City Attorney Valerie Ross and provide a response.

Chairman Stoney asked if the number of occupants for family and non-family is it based on a formula, for example, if it is a 5 bedroom home, is it 2 persons per bedroom.

Mr. Kirk gave an example of a gentleman that wanted to rent rooms; he had a 5 bedroom 3 bath house. So with the current ordinance, there could potentially have 10+ people living there and numerous cars in the driveway. Staff is trying to minimize some potential damages/issues that could result from overcrowding.

City Attorney-Valerie Ross commented that these issues could result, for example if 6 college students live in a home there would be cars, parties and traffic could affect other families that live in a single-family neighborhood. Ms. Ross stated the ordinance is trying to keep to the single family use in those types of neighborhoods and not allowing 5 or 6 unrelated people living in that type of home. Ours (City of Fairburn) is the highest number that she has seen, therefore it would be more in line when there are 2-3 unrelated people to address that type of issue.

Commissioner Williams commented that he noticed in the ordinance also that needed to be addressed the difference between boarding houses and family dwellings.

Public Comment: Opened and closed with no comments

Commissioner Jerry Williams made a motion to accept the recommendation from staff for 2014-TA-06 Text Amendment as referenced. Vice-Chair Phillips seconded the motion, and it was unanimously approved. The motion carried.

**2014-TA-07-Text Amendment-** To properly reference the lot area dimensions. Chapter 80 Article II, Zoning Section 80-73(e) (5) R-2 (Single Family) Residential District Staff- The purpose of this agenda item is to reference the correct lot dimensions in Chapter 80

Art.2, Zoning Section 80-73(e) (5) R-2. The current ordinance states minimum lot area is one half square feet, this wording should be corrected to reflect one half acre to represent an area reasonable for construction.

Vice-Chair Phillips stated that he has issue with the development standards. For drawing provided on Shadow Creek has 2 lots, one half acre is approximately 21,700 sq ft. The lot dimensions in question are .14 acre and .16 acre therefore this lots do not meet the criteria of ½ acre. Vice-Chair Phillips requested Staff to please revisit whether the zoning should be ½ acre or ¼ acre for R-2.

Mr. Kirk stated that the 2 lots in question were platted in 2006 or 2007 and he was not sure of the requirements then so that may be the difference. Mr. Kirk stated that anything going forward zoned R-2 should be ½ acre. Vice-Chair Phillips stated that the ordinance should match the records and also wanted to know if it made a difference for a property with a septic tank. Mr. Kirk replied far as lot size - yes, it would make a difference. It depends on what the development standards.

Chairman Stoney asked is it possible that this could be zoned R-3. Mr. Kirk confirmed that the Shadow Creek properties where zoned R-3. Mr. Kirk states the light blue area on the zoning map is R-2. Chairman Stoney asked are all the R-2 zoning ½ acre? Mr. Kirk couldn't say whether all R-2 are ½ acre due to lots being developed prior to the adoption of the new city ordinance. However, going forward all R-2 lots will be ½ acre.

Vice-Chair Phillips wants to suspend discussion until further research. Vice-Chair Phillips wants to make a motion to table until further research. Ross stated her concern about tabling the motion, is that the discussion is about correcting the ordinance to read ½ acre instead of ½ ft. She states later you can come back and change the amount of acres and it will also need to be advertised before making a change. The discussion of change could happen as early as August.

Commissioner Williams asked instead of tabling the motion, could the text be approved with the conditions made by Vice-Chair Phillips. Mr. Kirk wanted to know if he clarified the difference in zoning districts (R-1, R-2, R-3, and R-4).

Public Comment: Opened and closed with no comments

Commissioner Williams made a motion to accept the change from ½ square feet to ½ acre with the stipulation to review this again to comply with the request of Vice-Chair Phillips rather than to table. Vice-Chair Phillips seconded the motion.

Commissioner Whitmore asked if staff had addressed the 1 acre, ¼, and so forth. Vice Chair Phillips states to review Section 87-3- R-2 Single family residence.

Mr. Kirk stated that the ¼ acre is R-4, ½ acre is R-2 and that the only correction being made is for ½ sq. ft. to correctly reflect ½ acre.

The City Attorney Valerie Ross clarified that the text amendment is only to change the ½ square foot to the ½ acres. The additional 1/3 acre and ¼ acre are discussed as minimal development standards and are addressed in R-3 & R-4. The motion failed for lack of majority vote, all opposed.

Motion restated - Commissioner Whitmore made the motion to the text amendment as submitted by Staff for R-2 Single Family residential districts are accepted as submitted. Commissioner Wade seconded the motion and it was unanimously approved. The motion carried.

**2014-TA-08 - Text Amendment** - Festivals or Events, Outdoor/Indoor-To correctly cross-references a section of the existing code that provides the requirements for special events permits. Chapter 80 Article VI, Administrative Permits and Use Permits Section 80-210

Mr. Kirk reads the purpose of the amendment is to correctly reference the code section under Section 80-179. Currently it reads "See Article VI, Special Events Permits". Article VI references the procedure for requesting an appeal of zoning.

Public Comment: Opened and closed with no comments

Commissioner Williams made a motion to approve the recommendation from staff for 2014-TA-08 Text Amendment as referenced. Vice-Chair Phillips seconded the motion and it was unanimously approved. The motion carried.

**2014-TA-09 - Text Amendment** - To eliminate trade schools, colleges and universities as a permitted use under this ordinance. Chapter 80 Article II, Zoning Section 80-85(c) (44) (M-1) Light Industrial District

Vice-Chair Phillips wanted an explanation for the elimination of trade schools, college and universities. Mr. Kirk stated it's better to expand the use permit versus limiting to one area. Vice-Chair Phillips queried is it the intent to capture schools under different zoning districts. Mr. Kirk said yes.

Public Comment: Opened and closed with no comments

Vice-Chair Phillips made a motion to approve the recommendation from staff for 2014-TA-09 Text Amendment referenced. Commissioner Echols seconded the motion and it was unanimously approved. The motion carried.

**2014-TA-10 - Text Amendment** - To add a Use Permit that establishes standards that apply to colleges, universities and trade schools, private, within the city limits of Fairburn. Chapter 80 Article IV, Administrative Permits and Use Permits-Section 80-230A Colleges, Universities and Trade Schools, Private as a permitted use under this ordinance.

Vice-Chair Phillips questioned item 4 as to why would you allow a university to obtain the same permit as a daycare center? They are two different entities. Mr. Kirk stated there will only be one permit and one fee, daycare centers are on campus.

Other states have pushed to have daycares in facilities to help students stated Commissioner Williams. Commissioner Whitmore commented that the campus would have a daycare for the sole purpose of the student's children not open to the public. Per Commissioner Echols the facility needs to be clear that the daycare is not open to the public. Mr. Kirk commented that it would be a great teaching tool for someone going into the field of childcare and it would help the students that need childcare for their children so they wouldn't have to go elsewhere. Commissioner Wade stated it would not be feasible to only have 5 students utilize the daycare.

Commissioner Williams would like to have the proposed amendment to address drop off for students and to make sure the parking requirements are covered to maintain safety. Mr. Kirk stated there will not be a prescribed drop off per this amendment.

Mr. Kirk stated issues can be addressed once a site plan has been proposed.

Public Comment: Opened and closed with no comments

Commissioner Whitmore made a motion to approve the recommendation from staff for 2014-TA-10 Text Amendment referenced. Commissioner Williams seconded the motion. The motion was unanimously approved. The motion carried.

**2014-TA-11 - Text Amendment** - To revise distance requirements for massage therapy establishments within the city limits of Fairburn. Chapter 80 Article IV, Administrative Permits and Use Permits Section 80-238 Massage Therapy Establishments

Vice-Chair Phillips states you can't put a ruler on the measurement from item 3. Ms. Prince described the method of measurement for clarity and talked about how we are steering the message therapy establishments to certain areas. No real measurement is required for parcels identified in orange. This area allows message therapy establishments. Vice-Chair Phillips wanted to know where the churches & schools are as related to the massage parlors. Ms. Prince responded churches change locations and open so fast that some were being missed. This method funnels the massage parlor in the areas where we wanted them. Churches and schools are taken out of the equation because churches appear a lot and we want to take a simple approach and either allows the massage parlors to be in the shopping center on Highway 74 or downtown.

Commissioner Williams questioned whether section 80-238-80-242 was in reserve. Mr. Kirk responded that section 80-238 was adopted in December 2013. Commissioner Williams is concerned based on the map and the fact that we are trying to adopt specific areas; that we are not monitoring the massage parlors like we initially stated. Due to many churches and schools, there would not be many areas a massage parlor could go states Ms. Prince. The restrictions are still in place. Commissioner Whitmore stated the

massage therapy establishments are not like the establishments from back in the day and per the language in the ordinance, any illegal facility will be removed fast. Commissioner Williams state he has read about places in San Francisco where they have not been able to close places that are performing illegal activities in massage parlors even with the regulatory laws in place and that's why he is concerned about having these places near churches and schools. Mr. Kirk stated the City will act swiftly to close any facilities that violate the adult entertainment section.

Public Comment: Opened and closed with no comments

Commissioner Williams made a motion to approve the recommendation from staff for 2014-TA-11 Text Amendment referenced. Commissioner Whitmore seconded the motion and Vice-Chair Phillips opposed. The motion was approved. The motion carried.

**2014-TA-12 - Text Amendment** - To add, replace or modify where changeable copy and illuminated signs are allowed and prohibited; and to add, replace or modify where freestanding, wall and monument signs are permitted. Chapter 80 Article XII, Sign Regulations Section 80-431 Regulated Signs

Commissioner Williams stated the ordinance (C-2) did not state what color is allowed for signs, (no definition). Mr. Kirk responded since the ordinance was not available, he couldn't really speak as to what the intent was for the ordinance but that would be another reason as to why the text amendment should be approved to give clarity. Mr. Kirk also gave an example about a sign at the front of a subdivision that either has 1 double side or 2 single signs.

Mr. Kirk read the ordinance pertaining to Commissioner Williams question about (C-2) color of signs and he stated a plan will have to be submitted and discussed before color is approved.

Public Comment: Opened and closed with no comments

Commissioner Whitmore made a motion to approve the recommendation from staff for 2014-TA-12 Text Amendment referenced. Commissioner Williams seconded the motion. The motion carried.

#### **New Business:**

#### **Kelvin Edwards – Re-plat 136/138 Shadow Creek Court**

Staff recommends approval of the re-plat of two parcels located at 136 & 138 Shadow Creek Court. The home was permitted for construction in 2006. The foundation was poured, but the home was never built. Unfortunately, the poured foundation encroached 1-1.5 feet into the property line. To correct the issue, staff recommends that the owner re-plat the parcels.

Commissioner Whitmore wanted to have Staff to explain how side setbacks could be missed prior to concrete being poured. Staff allows Mr. Edwards to address this concern.

Kelvin Edwards 270 17 Street Unit 3904 NW, Atlanta, Georgia 30363

Mr. Edwards, the applicant, explained what took place when the concrete was poured. Commissioner Whitmore asked if the property would be visibly off once erected. Mr. Edwards responded no. Commissioner Whitmore explains that the encroachment will affect the person that purchases the property.

Mr. Kirk stated Mr. Edwards would like to re-plat a lot so existing foundation will fit on said lot. The re-plat would need to allow for encroachment on lot 19.

Vice-Chair Phillips asked if both lots were owned by the same person. Mr. Kirk responded yes.

Commissioner Whitmore had several questions pertaining to procedures of clearing property and setbacks being missed prior to concrete pouring. Mr. Kirk stated he can't attest as to how it was missed back in 2006.

Mr. Edwards explained the cost involved in having the concrete poured and that approval was issued by the City of Fairburn's inspector and engineer in 2007, before and after the slab was poured.

Commissioner Williams asked when reviewing Article 7 final plat specifications, were there any allowance for error when pouring the slab for inches or feet. When he read it had an allowance for 1/100 foot. What is the correct encroachment 1 ft. or 1½ foot? Mr. Kirk answers the property is 1 ft. off. Commissioner Williams states that Section 77-157 (c) 11 allows 1/100 of a foot for error. Once the re-plating is done, would it solve the encroachment and would this result in a legal matter? And would it be within the codes?

Mr. Kirk explained that it would solve the encroachment issue. Mr. Edwards replied that there would be no legal ramifications. The buyers of both properties would have the option to buy or walk away after receiving the plats.

Commissioner Williams explained the purpose of re-platting. Ms. Ross stated that she was unable to look up the codes and would have to refer to the City Engineer and Building Inspector since she was unable to research.

Commission Whitmore recommended since the City Engineer was not present and that there are additional questions regarding the specifications, that this be removed from the agenda and referred back to the City Engineer and Building Inspector.

Mr. Edwards stated that there is more of an issue because if he must remove the slab, there will be a different liability issue and he prefers to have the situation handled with a minimal cost to everyone. The re-plat is not affecting anyone other than his company.

They would be the one that would lose out if he cannot sell the lots once the homes are erected. He stated that the inspector and engineer signed off to be approved.

Ms. Ross explained the procedure for tabling an item.

Ms. Prince explained that this problem is common due to human error. The most common way to correct this issue would be to re-plat; since there is only one owner and the homes are not erected. Both properties have enough room to build houses on both lots. The final platting should reflect what is actually on the ground.

Commissioner Williams stated that since there are no current structures and there is a simple fix, he recommends the re-plat.

Vice-Chair Phillips asked about the setback and how many more errors could there be and will someone need to re-inspect to detect errors for undeveloped lots. Mr. Kirk explained that since the lots currently have no foundations, they can check the house plans and foundation surveys at a later time when they are ready to build.

Commissioner Williams made a motion to approve the re-plat as recommended, Vice-Chair Phillips seconded the motion, Commissioner Whitmore opposed, and the motion was approved. The motion carried.

#### **Unfinished Business:**

None

#### **Staff Report**

Planning and Zoning Board Member Training May 20, 2014 at the UGA Gwinnett Campus

#### **Commissioner Comments**

Vice-Chair Phillips commended on how he was impress with the April 5<sup>th</sup> trip to the City of Smyrna. He stated that they have a budget close to four times the City of Fairburn and it provided our City with a good example of what we could be done in Fairburn. He was also impressed by the many community partnerships that were formed and the South Cobb Aquatic Center.

Commissioner Whitmore agreed that he also enjoyed the trip.

#### **Adjourn**

There being no further business to discuss, a motion was made by Commissioner Whitmore to adjourn the meeting. The motion was seconded by Vice-Chair Phillips and it was unanimously approved at 8:55 pm.





Chairman  
Elise Stoney



City Planner  
Toussaint Kirk



Recording Secretary  
Njeri Gillard