

AN ORDINANCE**AN ORDINANCE TO AMEND THE CODE OF
DEKALB COUNTY, GEORGIA, CHAPTER 27,
REGARDING THE MERGER OF CONTIGUOUS LOTS HELD IN
COMMON OWNERSHIP, AND FOR OTHER PURPOSES**

WHEREAS, the Board of Commissioners wants to encourage property owners to develop their land in conformity with current zoning regulations and wants to eliminate reliance on lot configurations that no longer encourage appropriate development according to modern standards; and

WHEREAS, legislation to merge single family nonconforming lots of record for zoning purposes when such lots are held in common ownership is a reasonable regulation that will encourage development with an appropriate density in light of current standards in the County's comprehensive plan and in its zoning ordinance; and

WHEREAS, this text amendment will protect the health, welfare and public safety of Dekalb County citizens because it balances the rights of private property owners with the rights of the community to ensure that neighborhoods are not over developed and to encourage rational growth patterns that assure the long term adequacy of public and private infrastructure for such lots; and

WHEREAS, enactment of this legislation will preserve the established character of neighborhoods and will protect against the overcrowding of land in relation to existing and available community facilities; and

WHEREAS, this legislation will help to ensure that adequate public infrastructure including but not limited to police and fire protection, as well as water, sewerage systems, parks, playgrounds and other public facilities, is provided to DeKalb County's citizens.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of DeKalb County, Georgia, and it is hereby ordained by the authority of same, that Chapter 27 of the Code of DeKalb County, Article I, Division 1, and Article V, Division 5 shall be amended to read as follows:

PART I. ENACTMENT

By amending section 27-31 to add the following definitions in alphabetical order:

“Common ownership” in section 27-938 means ownership as recognized by law of real property by one or more persons, their parents, brothers, sisters, children over the age of eighteen, spouses or any association, firm, corporation or partnership in which such person or spouse is a corporate officer, partner or is a stockholder with an ownership interest of ten (10) or more percent.

“Lot, contiguous lot(s)” in section 27-938 means lots adjoining the rear or either side of the lot(s) but does not include adjoining lot(s) if such lot(s) are separated by a zoning district line.

By deleting section 27-938 in its entirety by adding a new section 27-938 to read as follows:

Sec. 27-938. Merger.

- (a) In any zoning district in which single-family dwelling units are allowed, a single-family dwelling unit and allowed accessory structures may be erected on any single nonconforming lot of record so long as such single nonconforming lot of record is not in common ownership with any other contiguous lot or lots. A property owner shall not be permitted to erect a structure on a nonconforming lot of record if he could have used his contiguous land to avoid the nonconformity.
- (b) Two or more contiguous lots of record that are held in common ownership on the effective date of this section or come into common ownership after the effective date of this section shall be governed by section 27-938 (b) or (c). If any contiguous lot of record held in common ownership does not meet the requirements established in this code for street frontage, access requirements, lot width and lot area, then all of the contiguous lots of record held in common ownership shall be considered to be an undivided lot for the purpose of compliance with the provisions of this code. No portion of said undivided lot shall then be considered a separate lot, a nonconforming lot of record or used

or conveyed in a manner which is not in compliance with the then current street frontage, access requirements, lot width and area requirements established by this code and/or any amendments thereto. No division of any contiguous nonconforming lots of record held in common ownership shall be made which creates a substandard lot. If two or more contiguous nonconforming lots of record are in common ownership and, as combined, the property is usable without violating the provisions of this code, then one of the separate nonconforming lots of record may not now or hereafter be considered nonconforming. A property owner shall not be permitted to create a nonconforming lot of record if he could have used his contiguous land to avoid the nonconformity.

- (c) Two or more contiguous lots of record that are held in common ownership as of the effective date of this section, or that come into common ownership after the effective date of this section shall be governed by the requirements of Section 27-938(b) unless the owner obtains a variance from the DeKalb County Zoning Board of Appeals pursuant to the provisions of Section 27-915 and the criteria set forth in Section 27-916.
- (d) Whenever a variance from the strict application of Section 27-938(b) is sought with respect to properties located within a historic district as defined in chapter 13.5 of this code, the variance applicant shall first obtain a certificate of appropriateness from the Historic Preservation Commission finding that the proposed variance allowing the subject lot to retain its legal nonconforming status will not have a substantial adverse effect on the aesthetic, historic, or architectural significance and value of the historic property or the historic district. In approving such a certificate of appropriateness, the Historic Preservation Commission may include a finding that merger of lots pursuant to the strict application of Section 27-938(b) would have a substantial adverse effect on the aesthetic, historic, or architectural significance and value of the historic property or the historic district.

PART II. EFFECTIVE DATE

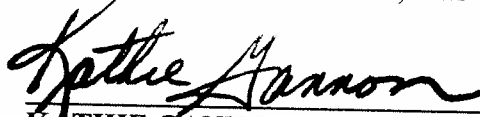
This ordinance shall become effective upon adoption by the Board of Commissioners and approval by the Chief Executive Officer.

PART III. SEVERABILITY

Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the ordinance as a whole nor any part thereof other than the part so declared to be invalid or

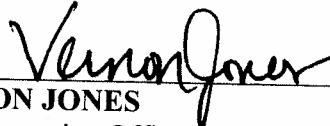
unconstitutional. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are repealed.

ADOPTED by the DeKalb County Board of Commissioners, this ____ day of _____, 2008.

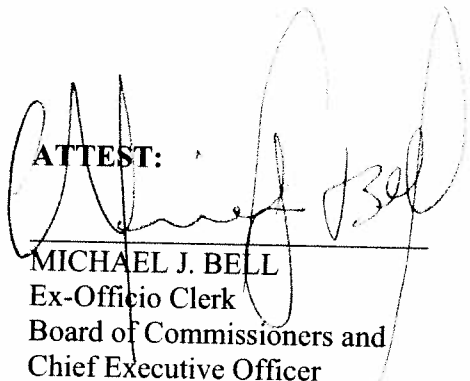


KATHIE GANNON
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this ____ day of _____, 2008.

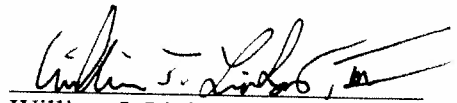


VERNON JONES
Chief Executive Officer
DeKalb County, Georgia



ATTEST:
MICHAEL J. BELL
Ex-Officio Clerk
Board of Commissioners and
Chief Executive Officer

APPROVED AS TO FORM



William J. Linkous, III
County Attorney
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE

Patrick Ejike
Director of Planning and Development
DeKalb County, Georgia

RESOLUTION

**A RESOLUTION TO END THE MORATORIUM
ON THE ACCEPTANCE OF APPLICATIONS FOR CERTAIN CERTIFICATES OF
APPROPRIATENESS, LAND DISTURBANCE PERMITS AND BUILDING PERMITS
FOR STRUCTURES ON CONTIGUOUS LOTS OF
RECORD HELD IN COMMON OWNERSHIP
IN DEKALB COUNTY GEORGIA, AND FOR OTHER PURPOSES.**

WHEREAS, in July of 2007 the Board of Commissioners enacted a moratorium on the acceptance of new applications for certificates of appropriateness, land disturbance permits or building permits for structures on contiguous nonconforming lots of record held in common ownership and the extension of that moratorium expires on February 11, 2008; and

WHEREAS, DeKalb County has revised Section 27-938 of the Code of DeKalb County, to merge contiguous nonconforming lots of record when held in common ownership; and

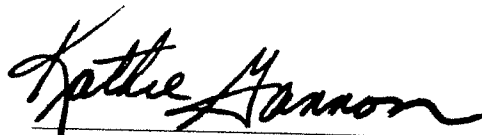
WHEREAS, because of the enactment of a revised Section 27-938, the need for a moratorium no longer exists and the Board of Commissioners intends to end this moratorium.

NOW, THEREFORE, BE IT RESOLVED AND IT IS DECLARED BY THE BOARD OF COMMISSIONERS OF DEKALB COUNTY, GEORGIA, AS FOLLOWS:

1. The complete moratorium on the acceptance of any application for a certificate of appropriateness, a land disturbance permit or a building permit for the construction of a structure on any contiguous nonconforming lots of records held in common ownership is extinguished. The moratorium shall expire at 5:00 p.m. on January 22, 2008 and shall be of no further force and effect.
2. If any section, subsection, sentence, clause, phrase or other portion of this Resolution, or its application to any person, entity or circumstance, is held by a court of competent jurisdiction to be unconstitutional or invalid, the remainder of the Resolution, or application of the provision to other persons, entities or circumstances shall not be affected.

ADOPTED by the DeKalb County Board of Commissioners, this _____ day of

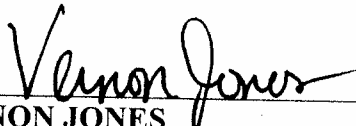
_____ 2008.



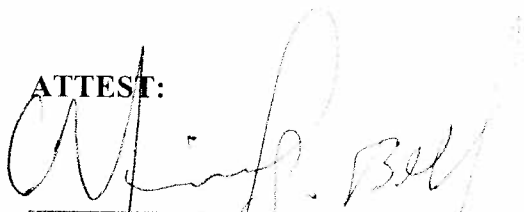
KATHIE GANNON
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

January 11, 2008

APPROVED by the Chief Executive Officer of DeKalb County, this _____ day of _____, 2008.

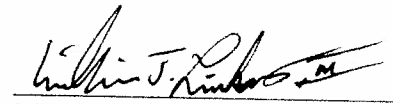


VERNON JONES
Chief Executive Officer
DeKalb County, Georgia

ATTEST:


MICHAEL J. BELL
Ex-Officio Clerk
Board of Commissioners and
Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO FORM:



WILLIAM J. LINKOUS, III
County Attorney
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:

PATRICK EJIKE
Director of Planning and Development
DeKalb County, Georgia

