

ACTION REQUEST FORM

DATE: December 23, 2008
TO: The Honorable Mayor and City Council
FROM: A. Paul Norby, FAICP, Director of Planning

COUNCIL ACTION REQUEST:

Request for Public Hearing on Zoning Text Amendment proposed by City-County Planning Board staff

SUMMARY OF INFORMATION:

Zoning Text Amendment proposed by City-County Planning Board staff amending Chapter B of the *Unified Development Ordinances* to modify the NCO Neighborhood Conservation Overlay District to increase the minimum age of eligibility for NCO districts, require greater property owner support for an NCO, and clarify the existing ordinance language. UDO-171.

PLANNING BOARD ACTION:

MOTION ON PETITION: APPROVAL
FOR: UNANIMOUS
AGAINST: NONE
SITE PLAN ACTION: NOT REQUIRED

STAFF REPORT
UNIFIED DEVELOPMENT ORDINANCES
UDO-171

DOCKET #: UDO-171

STAFF: [Kirk Ericson](#)

REQUEST

This UDO text amendment is proposed by City-County Planning Board staff to amend the UDO by modifying Chapter B, Article II, NCO Neighborhood Conservation Overlay District. These modifications are a follow-up to Planning Board and City Council discussion of NCO District issues in 2006. City Council requested that Planning staff review the existing provisions for establishing NCO Districts so that they are more stringent and require a higher level of property owner support. The proposed changes modify the review process and eligibility criteria for the NCO District as well as clarify how nonconforming situations apply to neighborhoods seeking NCO zoning.

BACKGROUND

The NCO District is intended to preserve and enhance the appearance and special character of certain older neighborhoods. The NCO District achieves these goals by encouraging the reuse of existing buildings and construction of appropriate new infill development, enhancing the visual quality of the existing and proposed buildings by identifying common characteristics, stabilizing and improving property values, and reducing conflicts between new construction or additions and existing development.

The Neighborhood Conservation Overlay (NCO) District has existed since the adoption of the UDO in 1995. The district went unused, however, until 2005. After interested citizens inquired about using the NCO District, staff determined that the existing district procedures and standards were vague and in need of clarification and revision. Staff developed a text amendment, UDO-143, to address these concerns. This text amendment, which was adopted by the elected bodies in October 2005, created several district requirements, including a two step process for the determination of NCO eligibility which required submission of a neighborhood inventory and proposed conservation regulations as part of the district application process.

After the approval of two NCO Districts in 2006 (one of which was very controversial), the City Council requested City-County Planning Board staff revisit the NCO Ordinance language in order to make it more focused in its application. Accordingly, staff identified several changes that could provide a better screening process for potential future NCO Districts. One change would require neighborhoods seeking NCO District status to consult with staff prior to formal district application. Neighborhoods and staff should determine if other tools are better suited to their needs than an NCO District rezoning. Another change would increase the minimum age of a neighborhood seeking NCO status from the current 25 year requirement, and a higher percentage of neighborhood support would also be required for the rezoning process. By working with neighborhoods going through the NCO process, it also became clear to staff that the current NCO regulations do not have provisions that adequately address the expansion of

structures made nonconforming through the adoption of an NCO or the ability to seek variances from the Board of Adjustment. These issues have been addressed by the proposed ordinance language changes.

An initial Planning Board public hearing was held on this text amendment in March 2007, and after discussion the amendment was continued until May 2007. At this time, the Board moved continuance of the text amendment until the residential infill standards for GMA 2 (Urban Neighborhoods) being developed at that time had been considered. These infill standards were adopted by the Winston-Salem City Council in July 2008 (UDO-188). The infill standards promote new residential development that is compatible with the general character of surrounding development in the older, urban neighborhoods of Winston-Salem. The ordinance includes standards for front and street facing building setbacks, garage placement, orientation of buildings on narrow lots, subdivision of property, and includes provisions applying to new single family and multifamily development, and additions to existing single family structures. It is anticipated that these infill standards, which apply across the board in GMA 2 and which rely heavily upon existing neighborhood development patterns, will reduce the need and desire for the more stringent process for establishing an NCO District.

ANALYSIS

While the NCO District is in some cases an effective tool for the preservation of neighborhood character, an NCO rezoning is only one of several zoning tools that neighborhoods can use to address these issues and concerns. Staff believes the newly adopted infill standards provide significant protection to the character of older neighborhoods within the City, and may eliminate the desire of many neighborhoods to request NCO status. With the adoption of these infill standards, the NCO District should only be used to protect well defined, sensitive areas which warrant more restrictive standards than those provided by the infill ordinance.

Currently, neighborhoods may seek an NCO District rezoning if they meet specific criteria. These existing criteria may be too broad, however, and as a result neighborhoods may apply for an NCO District rezoning in situations where other tools may be better suited to addressing their specific neighborhood concerns. This text amendment contains several changes intended to better screen potential NCO Districts and to provide consultation to neighborhoods about other zoning tools.

Staff believes that the required minimum age of neighborhoods applying for an NCO designation should be raised from 25 years to at least 40 years after the development has been platted. A more in-depth preapplication process has been incorporated into this ordinance change as well. A neighborhood will have to explain the reasons they are seeking the NCO designation and the issues they believe an NCO rezoning will resolve as part of the initial information submitted to staff. Staff will evaluate this information to determine if there are other zoning or regulatory tools for the neighborhood to consider that may more effectively accomplish the goals of the neighborhood. A neighborhood can submit a request to the Planning Board for an NCO rezoning regardless of staff's opinion, but this preapplication process could be helpful in avoiding or minimizing time consuming and unsuccessful requests.

Staff recommends requiring a higher level of neighborhood support for final approval of an NCO rezoning. The recommendation is to increase the minimum approval requirement of 55% of neighborhood property owners to 75% of property owners within a proposed NCO. The percentage of approval should remain at 55% in neighborhoods located within a Neighborhood Revitalization Strategy Area (NRSA), which better reflects the lower homeownership rates in these more fragile neighborhoods. These reduced homeownership rates make it difficult to gain support for more stringent regulations in these areas.

As part of this text amendment staff has also developed language addressing nonconforming situations which may result from an NCO district rezoning. This language allows lots and structures made nonconforming by the approval of an NCO District to seek a variance from the Board of Adjustment for additions, changes, or alterations to an existing structure. This provision is similar to ordinances applicable to NCO Districts in Raleigh and Chapel Hill. The City Attorney has advised that under current state law concerning vested rights, a blanket vested rights approval cannot be granted for a plan approval (such as a subdivision plat) that was not established by a public hearing process.

Staff believes these ordinance changes create a more focused application review process and more stringent criteria for establishing NCO Districts while allowing for increased flexibility in addressing nonconforming situations. Additionally, these changes better differentiate the NCO District from the recently adopted residential infill standards. It is anticipated that the new infill standards will help address many situations that may otherwise preempt an initiative to establish an NCO District. In light of that, staff believes these changes make the NCO District a tool for preserving neighborhood character in the more unique cases where it may be appropriate, and recommends approval of this text amendment.

RECOMMENDATION

APPROVAL

Kirk Ericson presented the staff report.

PUBLIC HEARING

FOR:

Nancy Gould, 195 Executive Park Blvd., Winston-Salem, NC 27103

- There've been no formal recommendations by the Homeowners or Realtors, but I wanted to say that I know a while back there was an infill ordinance. Hopefully by adopting that, regulations can be eased up a little bit. Hopefully the infill ordinance addresses many of the concerns that might otherwise need to be addressed by NCOs.

AGAINST:

Carol Strittmatter, 817 Clovelly Road, Winston-Salem, NC 27106

- My neighborhood is 50 years old, but outside GMA 2, where the new infill ordinance provides relief for some of these issues.

- As a neighborhood activist, I have always been interested in preserving neighborhood quality of life and property values.
- When the NCO was first proposed, my neighborhood expressed interest in pursuing this designation for Robinhood Trails. I will speak to several issues proposed in the amendment today.
- First, the change of minimum age for a neighborhood from 25 to 40 years is too long. Some neighborhoods can easily move into decline as early as the 25th year.
- Second, the change from the requirement of 55% of property owners to 75% of property owners is unreasonable and unfair. What happens with absentee landlords, property owners who won't respond, and the percentage of homeowners (and we know that they exist) who will never vote for anything?
- Also, we understand that non-voters will be counted as "no" votes rather than abstention votes. Can you tell me if this is true?
- In this text amendment you have drafted a gutless wonder designed not to be used by anyone.
- This community says it is interested in preserving neighborhoods and encouraging citizen participation. Even with these changes, there are plenty of hoops to jump through.
- I question what person, entity, or pressure group has written these changes.
- I thought this was all about neighborhoods.

Melynda Dunigan, 1875 Mallard Lakes Drive, Winston-Salem, NC 27106

- You might remember that I was the president of the Mallard Lakes Association when it got the NCO approved. I really want to speak to that experience.
- The Winston-Salem Neighborhood Alliance voted last night not to support this amendment for some of the same reasons Ms. Strittmatter talked about.
- The age change: Neighborhoods really do decline starting about 25 years and restrictive covenants tend to expire at 25 years.
- We have neighborhoods in the Alliance which are in the Neighborhood Revitalization Strategy Area. Those are the neighborhoods towards the center city where it's being proposed that there's a lesser threshold for the voting. Those neighborhoods are still not applying for NCOs and the reason is the "non" vote equals a "no" vote. That's part of the existing ordinance that is not proposed for change. That is a huge problem especially for neighborhoods which have a large percentage of absentee land-owners.
- Even in the most optimistic of circumstances, you're going to get people who don't vote. In the case of my neighborhood, we had 83% response rate and all of those people voted in favor of it. No one was against it. But we had some "non" votes and that brought our percentage down. I think our situation was the most favorable category you can have. In most cases, you will be very lucky to get 75% of people even responding.
- I think a reasonable compromise would be to say 75% of the people who vote. That should be enough to approve it if the neighborhood proves it made very strong, documented attempts to inform the existing owners. Or, just leave it as it is. There is no clamor of neighborhoods asking for NCOs right now and there won't be.
- These changes virtually assure there will be none.
- This is equivalent to repealing the ordinance. There is just no way that anybody can meet these standards.

- My big question really is "Why?" What is the rationale for making these changes? It's written in the staff report and was repeated today that the Council asked to make the ordinance more focused in its application. That's a very vague statement. What does it mean? I don't understand why we need to make the changes when there's no clamor for it.
- The infill guidelines only apply to GMA 2, so basically you're disenfranchising all the GMA 3 neighborhoods from any opportunity to ask for changes that would protect their property values and the quality of their neighborhoods.
- In the case of Mallard Lakes, it was very hard process to go through. It was not controversial. There weren't any objections. But it was a huge amount of hoops to go through.
- It takes months and months to go through the process and I just don't understand the need to make these changes.

WORK SESSION

During discussion by the Planning Board, the following points were made:

1. Paul Norby confirmed that the City Council was taken aback at the sharpness of the debate between opposing sides and the difficulty that they had with the Country Club Estates NCO decision even with the majority of support they had in the neighborhood. After that they did ask staff to take another look at it because they felt it did need to be more stringent given the potential property owner impacts of the NCO. This ordinance does not preordain what are the conservation measures. Those are developed for each NCO by the petitioning property owners. That is done by design because those are pretty high impact potential restrictions that would apply. You want to make sure that you have a very strong majority that want those restrictions. As we saw with Country Club Estates, even a minority of property owners had very, very strong opinions and they spoke very articulately and passionately and the Council was concerned about it. That is why the Council asked us to look at it. They did not tell us it should be 75%, but they said it needs to be more than the 55% that is already in the ordinance.
2. Jerry Clark: Even if you had 55% who agreed, you could have 25% of folks who don't want to see this happen and it's being forced onto them. By changing the number to 75%, you have a better chance of more people being happy with it. This is a life-change for everybody in the neighborhood.
3. Paul Norby: This proposed amendment does not restrict NCOs to GMA 2. It would be available to anyone in the County. The idea is that the burden is on the neighborhood to come up with restrictions that are acceptable to the neighborhood. We've heard many complaints in the past that our zoning enforcement is a complaint driven process. That could be a significant problem in situations like this if there is not a very strong home-grown support for the maintenance of an NCO. It may appear that it's very tough and stringent to do this and in many ways it is because there are some fundamental restrictive measures that a neighborhood could come up with.

4. Arnold King: When you start putting in this kind of requirements, you need very strong support. Another thing the higher level of support provides is to require you to be a little more reasonable in what you're asking for. I think the 75% number is probably a good number, although that may change when it goes to City Council. Let's talk about the 25 versus 40 years.
5. Paul Norby: The thinking is that it needed to be a neighborhood that has developed some age. I really appreciate what Ms. Strittmatter is saying about a 25-year-old neighborhood. But the thought again, was that NCO is the next level before a Historic Overlay District. We feel going into this that the neighborhood needs to have some age on it and our feel was that 25 years was a little bit too young on that. You want to have it apply to some neighborhoods that have been established and been around for a good while. Based on the discussion from the Council, we felt we needed to ratchet that up a little bit.
6. Arnold King: I was going to suggest that when you go to Council you have a list of those neighborhoods which are over 40 years old and those which are between 25 and 40 years old. That way the Council will have some idea of who is being excluded.
7. Carol Eickmeyer: Two points were made that this doesn't address. The first is that our infill standards only affect GMA 2. One of the things we've offered to mitigate weird changes in neighborhoods, is infill standards. Perhaps the parts of the community which are not subject to those should have a lower threshold of age since we're not offering them the protection of infill standards. The second point that Ms. Dunigan made is that when restrictive covenants expire in 25 years, that 15 years before an NCO is a possibility gives a lot of chance for some things not to happen as was originally intended. If we move forward with this, I'd like to suggest that we keep it 25 years for those areas that do not have infill standards. I don't have a problem with 40 years where there's infill standards, because I think that takes care of a lot of the issues like Country Club Estates had. With the issue of 75%, I really feel badly about the neighborhood that works really hard and gets blasted out of their hard work by the people who chose not to participate, the non-voters. It should be very clear that if you chose to not express an opinion, you don't count for or against and you drop out. Non-voters should not be considered as "no" voters. If we get 75% of the people who respond who are in favor of this, were moving forward. Our process requires registered letters so you know you've gotten in touch with the property owners. I think it's horribly unfair for people who are afraid to have an opinion to be unable to stop a process.
8. Jerry Clark: I think sometimes people don't have an opinion because they don't understand what you're doing. If someone just shows up at your door and says "sign this" and you don't know anything about it, you're reluctant to sign it.
9. Paul Mullican: Maybe sometimes they don't care. There's the attitude "I've lived here all my life and I don't want anything to change."

10. Arnold King: And maybe they don't want to hurt your feelings. As your neighbor, they don't want to tell you "no".
11. Arthur King: I've been thinking about this and I think the 75% threshold is quite high, but I think a super majority is reasonable and so I would propose a 67% approval, leaving in counting those people who don't vote.
12. Lynne Mitchell: I appreciate going with the 40 years because when you consider the Historic Overlay District and look at other communities, that seems reasonable. I have no problem with 75% either. These have been used in the past. I have a problem with 55% maybe being a little bit too high for the neighborhoods that need it.
13. Clarence Lambe: I think that the 75% is certainly not too high of a number because most of the restrictions we place on use of land in this county are done to protect values. NCOs have been done with the result of the devaluing of the no voters properties, the vacant lots. It doesn't happen all the time, but the classic example would be to go out to Buena Vista. There's a vacant lot out there. When the subdivision was developed, the lots sold for \$8,000 and they built \$40,000 houses. Now you can't build the same size house and make the lot maximize the sales price. You have to build a mega-mansion. That's what the lot's worth now. However, you can use the NCO to cut the lot in two or in thirds or by a quarter. It's not fair for eight of us to say "We want half of your money" if you are the two no votes. I think the elected body recognizes that the NCO has a huge impact on property rights, especially for vacant lot owners. I feel exactly opposite of decreasing that number.
14. Wesley Curtis: I agree with Carol's suggestion that for the areas where infill standards don't apply, they need something to happen sooner rather than later. I would agree to that sort of compromise (leave the 25 years for areas in GMA 3, 4, and 5).
15. Arnold King: So 40 years where there's infill standards and 25 years for everywhere else.
16. The Board agreed that 75% of property owners is a good number for most areas. In areas such as the Neighborhood Revitalization Strategy Areas which are fragmented and deteriorating, it may be just too difficult to get the threshold needed to do the application. The proof of the pudding will still be at the public hearing, so 25% would be appropriate for them to get their foot in the door and get their case heard. Most of those areas are within GMA 2.
17. Jerry Clark: Is there anything in the process which should be changed? Paul Norby stated that if there is any chance of having a successful NCO, you have to have a lot of neighborhood homework. To expect the staff to go out and do that work for the neighborhood, in essence those preapplication requirements are to help the neighborhood understand completely what is involved. Those requirements are there for a reason and are an important safe-guard.

18. It only takes 55% to establish the intent to do that, when it comes to us it only requires 55% to come to us to determine if it's eligible, and then it requires 75% to be implemented.

MOTION: Clarence Lambe moved approval of the zoning map amendment with the following changes:

- a) The threshold age for neighborhoods in GMA 3, 4, and 5 will be 25 years.
- b) The threshold age in other cases is 40 years.
- c) The 75% threshold of support will be required for all neighborhoods with the exception of the Neighborhood Revitalization Strategy Area and that will be 25% for both the formal petition and the preliminary consideration.

SECOND: Jerry Clark

VOTE:

FOR: Jerry Clark, Wesley Curtis, Carol Eickmeyer, Arnold King, Arthur King, Clarence Lambe, Lynne Mitchell, Paul Mullican

AGAINST: None

EXCUSED: None

A. Paul Norby, FAICP
Director of Planning

UDO-171
AN ORDINANCE AMENDING
CHAPTER B OF THE *UNIFIED DEVELOPMENT ORDINANCES*
TO MODIFY THE NCO NEIGHBORHOOD CONSERVATION OVERLAY DISTRICT

Be it ordained by the City Council of the City of Winston-Salem, North Carolina, that the *Unified Development Ordinances* is hereby amended as follows:

Section 1. Chapter B – Zoning Ordinance, Article II – Zoning Districts, *Official Zoning Maps*, and Uses is amended as follows:

Chapter B - Zoning Ordinance
Article II - Zoning Districts, *Official Zoning Maps*, and Uses

2-1 ZONING DISTRICTS

2-1.6 OVERLAY AND SPECIAL PURPOSE ZONING DISTRICTS - PURPOSE STATEMENTS AND REGULATIONS

(A) NCO Neighborhood Conservation Overlay District

(1) Purpose. The NCO District is intended:

- (a) To preserve and enhance the appearance and special character of certain older neighborhoods by encouraging reuse of existing buildings and new infill development which respects the context of the existing built and natural characteristics;
- (b) To recognize these characteristics as a major part of the community's identity and positive image, and thereby enhance the visual quality of the community;
- (c) To stabilize and improve property values; ~~and,~~
- (d) To reduce conflicts between new construction and existing development; ~~;~~
- (e) To be proactive, not reactive; and,
- (f) To be long term in nature.

(2) **NCO District Requirements.**

(a) Applicability.

- (i) New Development. The regulations of the NCO District shall apply to all new development within the boundaries of the NCO District except as specifically exempted by the provision of this section, or as exempted by Section B.1-5.2.
- (ii) Existing Development. A structure existing at the time a NCO District is approved shall not be deemed a nonconformity because of the NCO District regulations.
- (iii) Expansion of Existing Development. The regulations of the NCO District shall apply to all work as described in this section that would include expansion of existing structures including but not limited to work such as additions and porches.
- ~~(iv) Work by Local Governments and Utility Companies. The regulations of the NCO District shall apply to changes in appearance made by local governments or utility companies to walls, lighting, fences, structures and buildings on public property.~~

(b) Exemptions. The following types of activities are exempt from the provisions of this section:

- (i) Interior alterations.
- (ii) Routine maintenance where no changes are made to the appearance of the structure of grounds, or repair of any structure or site feature.
- (iii) Routine maintenance or repair of streets, sidewalks, pavement markings, utility service lines, street signs, traffic signals, and/or replacement of street light fixtures.
- (iv) The construction, reconstruction, alteration, restoration, moving, or demolition of any structure or site feature which the Director of Housing and Neighborhood Services and/or the Director of Inspections determines is required to protect the public safety because of an unsafe or dangerous condition.

(c) Development Review Process.

- (i) Site Plan Requirement. Except for projects as specifically exempted herein, no building, grading, or demolition permit shall be issued within the NCO District prior to the submittal and approval of plans by the Director of Planning. The plans shall meet the requirements of Section B.7.

- (ii) Compliance Required. No site plan or subdivision plat shall be approved which does not demonstrate compliance with the provisions of this section and the conservation standards of the applicable design study.
 - (iii) Appeals. Any aggrieved party may take an appeal from the actions of the Director of Planning to the Board of Adjustment, whether the site plan was approved or disapproved.
- (d) Standards for Development Within the NCO District.
- (i) Conservation Standards. All development within the NCO District shall be subject to the conservation standards contained in the applicable Neighborhood ~~Design Study~~ Conservation Overlay District. These conservation standards may be more stringent or less stringent than the regulations of the underlying zone; in the event of any conflict, the neighborhood conservation standard shall apply. However, the conservation standards shall be objective standards and may regulate only the following: Dimensional requirements, parking requirements, signage, lighting, vehicular access, location of exterior entrances and stairways, roof shape, building orientation and scale, outdoor storage, location and screening of utilities.
 - (ii) Demolition. A demolition permit may not be denied within a NCO District; however, prior to receiving a demolition permit the structure to be removed must be properly documented and submitted to Historic Resources staff.
- (3) **Zoning Applications.** Except for applications filed by the City or County, the Planning Board shall not accept applications for zoning property to a NCO District unless the application meets all of the following criteria:
- (a) The area to be zoned shall contain at least fifteen (15) contiguous acres ~~or shall be an expansion of an existing NCO District.~~
 - (b) The area to be zoned is an area whose development began at least ~~twenty-five (25)~~ forty (40) years prior to the application for zoning to the NCO District in GMA 2, and twenty-five (25) years in GMAs 3, 4, and 5.
 - (c) Each NCO district may only contain one neighborhood as defined: (1) by a National Register District (NRD) eligible area, (2) by an identifiable street and lot patterns, ~~and/or (3) by any other definable attribute that makes the neighborhood unique~~ (3) by an original neighborhood plat, and/or (4) by any other clearly definable physical attributes that unify the neighborhood character.
 - ~~(d) A Neighborhood Design Study which outlines the conservation standards for the area has been adopted by the Elected Body.~~

(4) **Establishment Procedure.** ~~The Neighborhood Design Study required for~~ The creation of a NCO District is a five-step process. The petitioner (neighborhood association) will take the lead for initiate each of these steps. The following shall be the procedure for establishing NCO Districts:

- (a) ~~A determination of eligibility that the area meets the size and age of development criteria.~~ Before proceeding with a Neighborhood Design Study Conservation Overlay zoning request, the petitioner will first need to go through the pre-application process to determine ~~their~~ the eligibility of the proposed district.

The pre-application process ~~will require~~ consists of the following:

- (i) Informal Staff Opinion. The petitioner shall submit to staff its written preliminary proposal for NCO designation, which must include the area being considered, the desired objectives and the goals/reasons for requesting the NCO zoning designation. Staff will consider the age of the neighborhood, the proposed boundaries of the District, and the reasons for the selection of a NCO District over other possible strategies for neighborhood conservation. Staff shall provide comments to the petitioner for consideration.
- ~~(ii)~~ (ii) Petitioners shall submit the support, in writing, of an official Neighborhood Association Committee with by-laws (for each neighborhood/application). This neighborhood association shall have an elected body of officers and shall be open to all neighborhood residents.
- ~~(iii)~~ (iii) Petitioners shall submit the signature of fifty-five percent (55%) of the property owners in the defined district who support the intention of applying for an NCO, except where the proposed NCO is located in an NRSA (Neighborhood Revitalization Strategy Area), signatures of twenty-five percent (25%) of the property owners shall be required. Each developed lot, each buildable lot under the current zoning regulations, and any nonconforming vacant lots which meet the provisions of Section B.5-3 are given a vote. Any of the above may be comprised of more than one tax lot.
- ~~(iii)~~ (iv) When support and eligibility is established When B.2-1.6(A)(4)(a)(i), B.2-1.6(A)(4)(a)(ii), and B.2-1.6(A)(4)(a)(iii) have been completed, the pre-application request will go to the Historic Resources Commission for review and comment. ~~recommendation to the City County Planning Board (CCPB).~~
- ~~(iv)~~ (v) Once B.2-1.6(4)(A)(a)(iv) has been completed, The CCPB Planning Board will make a determination on eligibility. If ~~approved~~ determined to be eligible, the petitioner shall continue with the Establishment Procedure ~~of the Study.~~

- (b) An inventory and description of the distinctive natural and ~~built~~ manmade features of the area/neighborhood.

Conducting the inventory and compiling the information is the responsibility of the petitioner. Staff will supply the petitioner with two (2) base maps. Neighborhoods having NRD (National Register District) inventories shall use ~~those~~ the maps as a part of the inventory submission. The inventory shall include:

- (i) General description and history of the neighborhood.
 - (ii) Documentation of predominate architectural building types in neighborhood including roof forms and pitch. (Representative photos should be part of submission.)
 - (iii) Documentation of block-by-block front setbacks, side setbacks, building-to-land ratio, lot sizes and configurations, and building orientation (to be averaged and used for standards).
 - (iv) General description of natural features including streams, wooded areas, parks and other open spaces.
 - (v) Documentation of standard vehicular access and parking location for existing multifamily residential buildings.
 - ~~(vi)~~ Upon completion of inventory, Planning Staff shall review the inventory to determine if all information needed ~~is correct and~~ has been properly ~~documents~~ documented.
- (c) A listing of the conservation standards to be met within the ~~area if~~ proposed NCO District ~~if~~ zoning is adopted. ~~The creation of the standards used in the NCO District is the responsibility of the petitioner.~~ Standards developed as part of the Neighborhood ~~Design Study~~ Conservation Overlay District must be tied to the characteristics defined in the inventory and demonstrate the ~~retention of existing features~~ preservation of neighborhood character.
- (d) A listing of voluntary conservation guidelines for the area if desired by petitioners to be administered by the neighborhood.
- (e) Final submission, notification and adoption. The final submission shall include:
- (i) The completed inventory (~~4-two~~ 2) copies;
 - (ii) Conservation Standards: ~~Staff will review standards to ensure they relate to the character of the district as described in the inventory and meet NCO district requirements (4 copies);~~ Two (2) copies of the proposed conservation standards

- (iii) Voluntary Standards: As listed in Section B.2-1.6(A)(4)(e)(ii);
 - (iv) Proof of neighborhood support including for rezoning and specific NCO standards as evidenced by the signatures of ~~55%~~ seventy-five percent (75%) of the property owners as defined in the proposed NCO district, except when a proposed NCO District is located within an NRSA (Neighborhood Revitalization Strategy Area) as defined by the map adopted by the Elected Body. When a Neighborhood Conservation Overlay request area is located within an NRSA, signatures of twenty-five percent (25%) of the property owners shall be required;
 - (v) List of property owners for notification in label format;
 - (vi) Signed memorandum of understanding with the Neighborhood Association concerning ~~their~~ its responsibility for continued property owner notification and monitoring of NCO District requirements. The term of the memorandum of understanding ~~term limit~~ will extend through the duration of the district.
- (f) Once all the previous procedural steps have been ~~met~~ accomplished, ~~and~~ an application for rezoning the said general area to an NCO District shall be accepted for consideration by Planning Board and the Elected Body. The ~~County/City~~ Planning Board and the Elected Body shall proceed in the same manner as would otherwise be required for a change in the Zoning Ordinance and the request shall be processed according to the procedures set forth in Section B.6-2.
- (g) When a NCO District is approved, the conservation standards contained in the applicable Neighborhood ~~Design Study~~ Conservation Overlay District are adopted by reference and become a part of the *Zoning Ordinance*.

(5) Nonconforming Structures, Conforming Structures and Nonconforming and Conforming Vacant Lots

- (a) Existing Nonconforming Structures. All additions, changes, expansions, and alterations to a nonconforming structure must comply with the NCO District Standards and/or any applicable zoning standards or a variance must be approved from the Board of Adjustment in accordance with Section B.6-1.4(B) prior to the issuance of a building permit. Reconstruction after demolition or destruction shall be in accordance with Section B.5-4.3(D).
- (b) Existing Conforming Structures on Conforming or Nonconforming Lots. All additions, changes, expansions, and alterations to an existing conforming structures must comply with the NCO District Standards and/or any applicable zoning standards or a variance must be approved from the Board of Adjustment in accordance with Section B.6-1.4(B) prior to the issuance of a building permit.

- (c) Existing Nonconforming and Conforming Vacant Lots. Any new construction on a nonconforming or conforming vacant lot must comply with the NCO District Standards and/or any applicable zoning standards or a variance must be approved from the Board of Adjustment in accordance with Section B.6-1.4(B) prior to the issuance of a building permit.

~~(5)~~**(6) Enforcement.**

- (a) Inspections will review all building permits and rezoning materials, as required in application form, in the NCO District for compliance with conservation standards.
- (b) It is the responsibility of the Neighborhood Association to provide continuing property owner education concerning continued property owner notification and monitoring of the NCO District requirements according to the signed memorandum of understanding as stated in Section B.2-1.6 (A)(4)(e)(vi).

~~(6)~~**(7) Amendment Repeal of District.** The following shall be required to ~~amend, supplement, change, modify, or~~ repeal any district boundaries of the NCO District:

- (a) If fifty-five (55) percent or more of the neighborhood no longer desires a NCO District, the Neighborhood Association may file an application for rezoning to remove and thus agrees to rezone the NCO District off from the official zoning map and be regulated by the underlying zoning district alone.
- (b) If the memorandum of understanding signed by the Neighborhood Association is violated by lack of participation by the neighborhood, the Elected Body may initiate a rezoning action to remove the NCO District from the official zoning map and be regulated by the underlying zoning district alone.
- ~~(c) The County/City shall proceed in the same manner as would otherwise be required for a change in the Zoning Ordinance and the request shall be processed according to the procedures set forth in Section B.6-2.~~

Section 2. Chapter B – Zoning Ordinance, Article VI– Zoning Administration and Amendments is amended as follows:

Chapter B - Zoning Ordinance

Article VI - Administration and Amendments

6-1 ADMINISTRATION

6-1.4 BOARD OF ADJUSTMENT

(B) Variances

- (1) **Authority.** No provision of this Ordinance shall be interpreted as conferring upon the Board of Adjustment the authority to approve an application for a variance of the conditions of a permitted use except with respect to the specific waiving of requirements as to:
- (a) General Dimension Requirements for Zoning Districts listed in Sections B.2-1.2, B.2-1.3, B.2-1.4 and B.2-1.5 shall only include minimum zoning lot area and width, minimum setbacks, maximum impervious surface cover, or maximum height;
 - (b) Floodplain reconstruction as specified in Section C.2-3.1.
 - (c) Vehicular use landscaping requirements as specified in Section B.3-4;
 - (d) Bufferyard requirements as specified in Section B.3-5;
 - (e) Setback and landscaping requirements of the TO District as specified in Section B.2-1.6(B).
 - (f) Width of private access easements where such easement is for single family residential uses and where said private access easement was established prior to April 17, 1978;
 - (g) Off-street parking and loading as specified in Section B.3-3;
 - (h) Delay of building permits within designated *Transportation Plan* corridors as specified in Section B.3-7.1; and
 - (i) Residential infill setback requirements as specified in Section B.3-8; and
 - (j) Conservation Standards for the NCO District as specified in Section B.2-1.6(A).

Section 3. This ordinance shall be effective upon adoption.