

March 22, 2006

W. Bradley Helms
481 Plymouth Avenue
Winston-Salem, NC 27104

RE: ZONING TEXT AMENDMENT UDO-156

Dear Mr. Helms:

The attached report of the Planning Board to the Forsyth County Board of Commissioners and City of Winston-Salem City Council is sent to you at the request of the Commissioners and Council Members.

When the text amendment is scheduled for public hearing, you will be notified by Jane Cole, Clerk to the County Commissioners and Renee Henderson, City Secretary, of the date on which the Commissioners and City Council will hear this petition.

Sincerely,

A. Paul Norby, AICP
Director of Planning

Attachment

pc: Jane Cole, County Manager's Office
Renee Henderson, City Secretary
Mike Brough, 1829 East Franklin Street, Chapel Hill, NC 27514
Bruce Hubbard, 2110 Cloverdale Avenue, Winston-Salem, NC 27103
Kara Helms, 481 Plymouth Avenue, Winston-Salem, NC 27104
Lewis Hubbard, 2831 Bitting Road, Winston-Salem, NC 27104
Melynda Dunigan, 1875 Mallard Lakes Drive, Winston-Salem, NC 27106
Jim Vaughan, 206 N. Spruce Street, Suite 2-A, Winston-Salem, NC 27101
Doug Jotcham, 3056 Fairfax Drive, Winston-Salem, NC 27104
Merv Woodward, 1836 Buddingbrook Lane, Winston-Salem, NC 27106
Emmett McCall, 100 N. Cherry Street, Winston-Salem, NC 27101
Brian Bryan, 2020 Duckworth Court, Winston-Salem, NC 27106

ACTION REQUEST FORM

DATE: March 22, 2005
TO: The Honorable Mayor and City Council
FROM: A. Paul Norby, AICP, Director of Planning

COUNCIL ACTION REQUEST:

Request for Public Hearing on Zoning Text Amendment proposed by W. Bradley Helms

SUMMARY OF INFORMATION:

Zoning Text Amendment proposed by W. Bradley Helms to amend Chapter B Section 2-1.6(a)(2)(a) of the *Unified Development Ordinances* to provide a five-year grace period for construction on certain lots within NCO districts (UDO-156).

PLANNING BOARD ACTION:

MOTION ON PETITION: APPROVAL
FOR: CLARK, KING, LAMBE, MITCHELL, MULLICAN, SMITH
AGAINST: EICKMEYER
SITE PLAN ACTION: NOT REQUIRED

STAFF REPORT

DOCKET #: UDO-156

STAFF: Chris Murphy

REQUEST

UDO Text Amendment proposed by W. Bradley Helms to amend the Neighborhood Conservation Overlay (NCO) District to exempt existing lots and lots in previously approved preliminary subdivisions from the NCO regulations for a period of up to five (5) years after establishment of an NCO.

BACKGROUND

The Neighborhood Conservation Overlay (NCO) District has been in the UDO since 1995, but, to date, has never been used. After interested neighborhoods inquired on how to make use of it, staff examined the NCO District provisions and proposed a text amendment (UDO-143) establishing more defined procedures and standards in the Fall of 2005. The revised provisions establish a two (2) step process for the determination of eligibility, the completion of an existing neighborhood inventory, the proposed conservation regulations, and the rezoning process. The City-County Planning Board recommended adoption of UDO-143, which was subsequently enacted by the Elected Bodies in October of 2005.

The petitioner has discovered that UDO provisions governing implementation of the NCO District provide for no exception to allow the development of lots in subdivisions having preliminary approval which have been rendered undevelopable by a subsequent NCO rezoning. Following study of this issue and the proposed text amendment, staff has determined that the application of NCO District regulations to existing lots and lots in subdivisions having preliminary approval should be addressed.

ANALYSIS

The NCO District is intended to preserve and enhance the appearance and special character of certain established and older neighborhoods by

- Encouraging the reuse of existing buildings and 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.

An NCO District established to assist a neighborhood in its preservation efforts would limit development otherwise permitted by the underlying zoning district. The text amendment proposed by the petitioner would establish a five (5) year period of time during which the regulations of the NCO District would not apply to lots that existed when the NCO District was approved or to lots approved in a subdivision having preliminary approval but not yet recorded.

Under the current UDO, newly adopted NCO District regulations could make unusable existing vacant lots and lots in subdivisions having only preliminary approval, and prevent additional improvements to existing developed lots. On the other hand, the proposed amendment would provide a rather lengthy five (5) year exemption from new NCO District regulations.

A balance between these two conflicting results would appear appropriate to provide reasonable protection for the neighborhood, developers, and individual residents. To strike such a balance, staff proposes the following changes:

- The five (5) year exemption period be reduced to two (2) years;
- The preliminary subdivision lots must have been approved within two (2) years of the creation of the NCO District;
- The exemption from NCO District regulations would also apply to improvements on the exempted lots; and
- The portion of the text amendment that begins “However, from and after ...” be deleted because this is redundant.

Neighborhoods can proceed with an NCO District request knowing that, if adopted, the regulations would prevent approval and creation of new lots that do not meet the minimum regulations of the NCO District. Developers and property owners can be assured that subdivisions which have preliminary approval can be recorded and that improvements on existing lots and lots in subdivisions with preliminary approval may go forward during the two (2) year “grace period.”

The NCO District stands a better chance of being successful over the long-term by providing a “grace period” during which development can occur under the underlying district regulations. The two (2) year “grace period” provides the development community and individual property owners the necessary time to complete projects while still safeguarding the neighborhoods by preventing further incompatible development following the two (2) year “grace period.”

RECOMENDATION

DENIAL of proposal as submitted;
APPROVAL of the **Staff Alternate Proposal**.

Chris Murphy presented the staff report.

PUBLIC HEARING

FOR:

Brad Helms, 481 Plymouth Avenue, Winston-Salem, NC 27104

- Our *Legacy* plan strongly encourages infill development and for many good reasons. Infill development utilizes excess capacity of existing infrastructure thereby reducing the overall tax burdens on the citizens. It curbs further suburban sprawl. It increases property values and therefore increases the tax base. As a developer, I use the *Legacy* plan as a blue-print to help create a better Winston-Salem.

- The NCO District ordinance has unintended consequences of being utilized in an offensive manner to prevent infill development as well as development in general throughout the county. The ordinance makes no provisions to protect a developer's investment in a project started in accordance with existing zoning laws.
- I purchased two obsolete homes and paid top dollar under the real estate principal of highest and best use under the current zoning laws.
- Some neighborhood residents disagreed with the highest and best use of this property and embarked on a program to prevent the project. They chose to use the NCO as their vehicle of prevention. Without the relief afforded in this text amendment, they could possibly be successful and the result for me would be financial devastation. The current NCO District has no boundaries under which it can be enacted other than the development of the area must have begun 25 years ago. It has no parameters as to the scope or type of restrictions it may propose. It also requires a very low percentage of property owners to approve the process enacting the ordinance.
- Every developer doing business in Forsyth County is in danger of having an NCO proposed or enacted around any project they are working on and they too may face the same financial devastation I face. There's something fundamentally wrong when a citizen begins a project clearly following the rules of the County only to be subjected to the consequences I face.
- The Planning staff, after much thoughtful debate, seems to understand and agree that there is unfairness in this ordinance and has recommended that you agree their alternate proposal. I hope you will agree with the Planning staff and recognize the need to protect the citizen doing business in Forsyth County, but I would also ask you to consider the five-year grace period I have proposed because clearly there will be instances in the future where development will require at least five years for a build-out.
- Thank you very much for your consideration.

Mike Brough, 1829 East Franklin Street, Chapel Hill, NC 27514

- I'm an attorney representing Mr. Helms.
- We drafted the ordinance to address two issues. First, small developers who look at infill as a positive thing, obtain property and get it subdivided, and then the NCO process is initiated. They have spent a considerable amount of money to buy the property and begin making necessary improvements. You would assume that at that point they would be grandfathered in and be allowed to complete the project. If the property were to be approved for an NCO District even if they were two-thirds of the way through with putting in streets, etc., work would be unable to be completed. They would not be able to get final plat approval for a development they were in the midst of completing if the NCO District simply raised the lot sizes. We checked with the attorney's office because that was surprising to us. They confirmed that was the case.
- Even if they could hurry up and get final plat approval, these projects are proposed with specific houses in mind and have been marketed that way. If they suddenly have to deal with extraordinary setback requirements that are substantially more restrictive than current ones, or maximum percentage of lot coverage which are being proposed in this case, they could end up with a case where even if the lots are approved, no one is going to buy them because they can't build the type of unit they wish.
- This amendment is designed to prevent this situation and give them a grace period to complete their project.

- We asked for the five years because the lots have to be sold and developed. That just may take longer than two years which is why we asked for five years.
- The other element is existing lots. People may have bought lots and thought about adding a garage or bedroom based on the existing setback. Suddenly the NCO District comes along and they cannot do what they purchased the property to do.
- There are unintended consequences to this ordinance.
- In the absence of this, the *Legacy* direction to be favorable toward infill development isn't going to go very far because no one will go out and make this kind of investment with this kind of risk hanging over them.
- Please endorse this and seriously consider our original proposal of five years or at least something more than two years.
- Lots aren't sold overnight, so in eighteen months someone may be looking at a lot and not want to buy it because they only have six months to complete their building.
- You have to complete the layout and infrastructure, sell the lots, and people have to get their building permits before the two years are up. That just doesn't happen very much. Once that two year mark is up, the lots may be approved, but the building permit would have to be under the NCO District regulations which could mean a significantly smaller unit.
- We're talking about infill development which is often smaller, local developers rather than big firms. They simply cannot afford this regulation.

Bruce Hubbard, 2110 Cloverdale Avenue, Winston-Salem, NC 27103

- Thank you for the opportunity to speak today.
- If the proposed staff amendment of two years is approved, an existing lot today would have two years to build a house on it.
- I've been a developer for 30 years now and my experience is that developments can take two years to get the plat recorded. I don't have the opportunity to build on a lot until I get my plat recorded.
- I'm in favor of the proposed amendment which Mr. Helms has submitted requesting five years. In actuality, I'm asking via written letter for you to consider at a later date an even longer time because of the complexities of development on infill sites. Some are more difficult, require more engineering and design than you have in a larger subdivision because of the infill concept. Please go ahead and approve today the five year period, but please give consideration to a longer time because market absorption of houses once the plat is recorded will be impacted by many things in the market place which are beyond a developer's control such as rising interest rates, health of the local economy.
- The last thing you want to have happen is someone rushing to complete a development to beat these new imposed zoning requirements because what's going to happen is you'll find a lack of quality construction because something's got to be on the ground. Or you'll have a development which is partially complete.

Kara Helms, 481 Plymouth Avenue, Winston-Salem, NC 27104

- Initially when the staff introduced this to the Board earlier today, one very important point was made. This was drafted in 1995 and has never been used. When something hasn't been used before, it doesn't always forecast the issues and circumstances that are

going to arise and which haven't been thought of in advance. We have no opposition to a developer coming in after a UDO is in place and having to comply with UDO standards. But this subdivision received preliminary plat approval long before the association was established and the association was established to circumvent the development that we are already half-way through. Please consider the fact that UDOs should apply to everybody after they are in place, but please have some consideration for those of us who are half-way through a project and could be circumvented to the point of financial devastation by a UDO that comes into play after our project has begun.

Lewis Hubbard, 2831 Bitting Road, Winston-Salem, NC 27104

- I really am opposed to how this thing has come about.
- I have never been invited to one of the meetings. My property is in this district. The only time I've gotten any correspondence is the registered letter that had to be sent by the group.
- Some of my neighbors are definitely misinformed about what's going on. They think it's basically a neighborhood association which they were in favor of. But now when they come back to restricting things to this point, they're not in favor of it.
- This thing needs to be looked at really strongly.
- If you're going to be involved with it, please invite everyone to all the meetings.
- We received one more letter, but it was sent to the office not to our home and it was three weeks before we knew it was there.
- I think a lot of the 70% of people who said they'd vote for this would be voting against it if they knew all the details.

AGAINST:

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

- I represent the 30 member neighborhood associations of the Winston-Salem Neighborhood Alliance.
- We are strongly in opposition to this amendment.
- We were very excited last October when the NCO guidelines were approved that we could use the NCO as a tool to enhance and protect the special character of our neighborhoods.
- Since then, two of our neighborhoods have gotten to work applying for NCO status. The proposed text amendment would really negate all the time and effort that these people have put into the NCOs in these neighborhoods.
- In response to a request from Ms. Dunigan, several people stood in opposition to this amendment.
- We are opposed to the amendment for two reasons. The proposal would completely undermine the concept of NCOs to the point of really rendering them meaningless. Second, we see no reason for a grace period on NCO standards.
- It's obvious that a grace period, whether for five years or two years, would encourage the very type of development that neighborhoods are trying to prevent by establishing an NCO. There would be this rush to build out that was discussed earlier. It would effectively kill NCOs because no neighborhood would risk spurring this kind of development by establishing an NCO.

- Even more detrimental would be this provision that would allow developers to create new lots that would also be exempt from the standards simply by receiving preliminary subdivision approval prior to the approval of the NCO. It takes relatively little time and effort to apply for and receive preliminary subdivision approval. Creating an NCO District would take at least 6-8 months for an extremely organized association. A more realistic time estimate for most neighborhoods would be sometime like 9-12 months. This provision would allow developers to subdivide their lots while the neighborhood is working through the NCO process, defeating the purpose of the NCO.
- This opens a huge loop-hole which allows developers to effectively throw a blanket over all their property before the NCO is approved. So by the time the NCO is approved, there's nothing left for the neighborhood to protect.
- In the staff report, staff presents its proposal as a compromise or balance. Allowing these after-created lots to be exempted from standards provides no balance at all. It totally undermines the whole concept of the NCO. It makes it essentially null and void. If you want to repeal the NCO ordinance, this is the way to do it.
- There's been no demonstrated need for a grace period for NCOs. We don't have a grace period for Historic Overlay or Historic Districts.
- There is an approval process that is very lengthy and calls for a large amount of public notice and involvement. It includes petitions, agreement forms, neighborhood meetings, public hearings, all of which would provide ample opportunity for someone inconvenienced by the proposed standards to make their concerns known. The elected body will take these concerns into consideration before approving an NCO. If the neighborhood standards are such that they would be an undue burden on current property owners, the NCO will not be approved.
- The need for a grace period wasn't brought up last October when the NCO guidelines were approved. With the exception of Mr. Helms and those associated with his project in Country Club Estates, there hasn't been an outcry of people asking for a grace period. On the other hand, it's my understanding that you've received a number of letters from Neighborhood Associations who are involved in NCO and residents in those associations who are thinking of pursuing NCOs, all of them opposed to this amendment.
- Basically if you approve this amendment today, you'd be resolving the concerns of a single individual at the expense of neighborhoods throughout the City.
- In conclusion, our position is that you should reject both the original version of UDO-156 as well as the staff's proposed alternative in their entirety.
- Not only is a grace period not a good idea, it's also unnecessary. The exemption of after-created lots from NCO standards would deprive the NCO of any meaningful content.

Jim Vaughan, 206 N. Spruce Street, Suite 2-A, Winston-Salem, NC 27101

- I represent Country Club Estates.
- What you have before you is a proposal from one property owner who believes that this NCO which is in the process of being applied for will negatively impact him.
- The text amendment before you, however, would effectively abrogate the NCO District and its purpose for existing before any of these districts are in effect.
- The staff recommendation for a shorter grace period would have the same effect in our opinion.

- The NCO concept exists to protect and preserve existing neighborhoods. Based on what you heard Mr. Norby say, this is not an opportunity for a neighborhood to decide they want bigger lots. This is an opportunity to preserve what is there. Yes, to a certain extent most of these applications will come up in the context of an anti-development context. I don't have any question about that. But keep in mind that it is not an absolutely anti-development movement; it's an anti-nonconforming development. If someone wants to come into a neighborhood and build something that fits in with the character of a neighborhood, that's completely appropriate. But when someone comes in to carve up half acre lots into seven lots, or put a lot of lots into something that is nowhere near the conforming situation that the neighborhood currently has, that's what we're talking about and that's what the NCO is intended to protect.
- We hear a lot of talk about *Legacy*. *Legacy* doesn't just say "do infill development". If you're going to do infill development, that's certainly an appropriate thing and *Legacy* does address that. But, the development should still be consistent with what's in the neighborhood. It doesn't say cram 50-unit apartment buildings into a single family neighborhood, because there's a lot there. We need to not lose sight of that.
- If the moratorium is passed, I submit the effect would be to eliminate any of the protections the NCO was intended to provide.
- Even the establishment of an NCO is not always the answer if the intent is to stop impending development. Establishment of an NCO is going to take a minimum of six months. That is plenty of time for a developer to figure out where they are and what they are going to do. It's not like this will be happening overnight.
- State law, the common law, state statutes, and the UDO all address vested rights very specifically. This moratorium would grant a vested right. That's a very significant problem. Vested rights come into being from several different ways. But the common theme is a site specific development plan that has been approved after a public hearing. I think what Mr. Helms has uncovered here is a flaw in our subdivision regulations which allow preliminary plats to be filed and people to spend a bunch of money trying to develop their subdivisions without ever having a public hearing. A simple solution would be to change the subdivision regulations. Two things would have to happen: The definition of site-specific development plan would have to be changed. Preliminary plat approvals are not listed as that definition in the ordinance. Secondly, subdivisions would have to be public hearing items.
- We're talking about a handful of developers versus about 168 property owners in the case of Country Club Estates.
- The consideration of this text amendment puts the cart before the horse. I submit that whether or not a moratorium should be put into effect for an NCO is the neighborhood's decision.
- Please consider three questions: 1) Should this board consider a text amendment which is designed to benefit one property owner while placing in jeopardy the property rights of the vast majority of property owners in a neighborhood that is overwhelmingly in favor of an NCO District? 2) *Legacy's* intent is to encourage people to move inward, not outward into suburbs. New suburban neighborhoods have the benefits of deed and covenant restrictions. Why should older neighborhoods not have the same benefits? 3) There is no other zoning ordinance in this City that has a grace period or moratorium.

Doug Jotcham, 3056 Fairfax Drive, Winston-Salem, NC 27104

- President of Country Club Estates.
- There seems to be an effort to balance the needs between neighborhoods, citizens and developers.
- Between 75-79% of our neighborhood wants to conserve our neighborhood. The key word is conserve.
- It's not anti-development or anti-higher density, it's wanting to preserve what currently exists.
- It's all about people and how they feel.

Merv Woodward, 1836 Buddingbrook Lane, Winston-Salem, NC 27106

- I'm the co-chair of the Mallard Lakes NCO group.
- I'm in opposition to this text amendment.
- Detailed how Mallard Lakes meets the requirements of NCO eligibility.
- We've invested time and effort toward protecting our neighborhood. There's already a grace period of 25 years before an NCO can even be considered.
- Please just forget this proposal.

Emmett McCall, 100 N. Cherry Street, Winston-Salem, NC 27101

- This really ought to be continued because it's fundamentally illegal right now.
- It provides for a homeowners association to be established. It doesn't say if its going to be a corporation, a limited liability company, and there are other defects in there such as putting restrictive covenants on real property without the homeowner's approval.

Brian Bryan, 2020 Duckworth Court, Winston-Salem, NC 27106

- We were excited that you had provided us with a tool to conserve what we've got. We got almost through the process only to find out there may be a loophole here which would wipe out the whole effort.
- We're against this. It doesn't seem to make sense.

WORK SESSION

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

1. Paul Norby: This would treat an existing lot of record and a lot being newly created through a preliminary plat approval that was approved prior to the NCO the same way. It would give both a grace period to complete anything that had been contemplated which might not conform with the new rules.
2. When the NCO is formally proposed, all property owners have to be notified, just as they would for a regular rezoning..
3. The board expressed interest in having more specific information in the required mailing which would explain that this could impact the way in which the owner could develop his/her property.

4. 55% of the lot owners must support the NCO request for it to even be presented. However, practically speaking, even if a large minority of the owners are opposed to the request, elected and appointed officials are going to have difficulty supporting it.
5. Brenda Smith: There has to be some way to look at both sides of this and be fair to everyone. No one has talked about the property owners that don't agree with this and the restrictions that would be put on them and the lost of use of their property if NCO was approved. I think they're being left out of the conversation we're having. That's not right.
6. Jerry Clark: When we voted for this, I never saw this as being used as a protest. I didn't see a neighborhood waiting until someone started to build and then using this to try to stop them from building. I'm really perplexed.
7. Carol Eickmeyer: We don't have an NCO before us right now. All we've done is say to the neighborhood that it seems they are eligible and go ahead and do all the work. We just don't know yet what the NCOs are going to contain. I don't understand how we can change the rules in mid-stream.
8. Paul Norby: The version of NCO that's been in the UDO since its adoption in 1994 has the same situation. All that we did last fall was to get more specific about rules and procedures for how one is created. The basic situation concerning the possible elements of an NCO is the same as it was in 1995.
9. This text amendment was prompted when the petitioner's attorney met with the City Attorney who determined that even a preliminary plat approval would be affected by this District if the building permits were not issued.
10. Staff's recommendation for a two-year period was an attempt to find a balance between five years which appeared to be an awfully long time, and zero. Some recognition needed to be given to projects which were already begun, but five years was a very long time. Two years also conforms with other features in the UDO that allow for site plans to be valid for a period of two years before they are subject to having to redo it. Since that time period has been recognized for other types of plans, staff thought it may be appropriate in this case.
11. In these other situations, if construction is not started on an approved site plan within two years, the petitioner has to go through the site plan approval process again and more recent changes to the UDO requirements would have to be incorporated into the new approval.

12. Construction would not have to be completed; they would just have to have the building permit.
13. Paul Mullican: Two years is simply not long enough.
14. Lynne Mitchell: Something about this just doesn't set well with me when I hear the word conservation being used. To me, it's maintaining the status quo and I worry about the lack of welcome-ness of diversity in neighborhoods, density, and I get some really uncomfortable feelings about what may be underlying this. It just doesn't set well with me in the way it's being used. I don't know what the problem here is, but it's a big problem.
15. Arnold King: I think everyone on the board supported the NCO District back in the fall and never envisioned it being used as a tool to block or take away someone's rights. I cannot see us approving an NCO if the underlying reason is just to stop this. I hate for them to go to all the work and trouble they're going to and then it not get approved. There's some validity to what they're trying to do. Most of the developers going into these neighborhoods are trying to build stuff that would be compatible with the neighborhood anyway. It doesn't sell if it sticks out too much like a sore thumb. But if you're going to take away the rights to lots and sizes and that sort of thing, that isn't right. And I certainly agree that two years is not long enough. The neighbors are not going to be satisfied even with two years - they want zero. We are way apart on this. This amendment doesn't amount to anything if we don't approve the NCO when it comes before us anyway.
16. Arnold King: I can certainly understand the petitioner's reason for wanting to do this. He's really been put in a difficult position without this. We can take action on this or wait.
17. By request of Jerry Clark, Paul Norby explained the reasons why infill is encouraged in the City. Infill is not one-size-fits-all. Infill is desirable because it reduces pressure to move outward which stretches services. At the same time, *Legacy* takes pains to talk about infill fitting into the neighborhoods. Lots which were originally passed over for development sometimes have very good reasons why they were passed over. It may take higher density to make those lots work, but in those cases, good design to assure compatibility is critical.
18. Jerry Clark noted that sometimes infill seems illogical initially, but once it's constructed, it's nice and helpful and can have minimal impact on pre-existing neighborhoods.
19. Carol Eickmeyer: I'd like for us to actually see the NCO as it comes forward before we consider an amendment. The reason for that is you can see how we're feeling about the protection of existing property rights and that sort of thing and very specific projects that are in process. You're going to have to say to us that a large number of the property owners in the neighborhood approve of this for it to pass not only us, but the elected body. There may be a need to put something in

your NCO that specifies when it starts. This NCO is a direct response to a proposal that the neighborhood doesn't want and it's a specific attempt to keep this project from happening. Personally I feel that may be inappropriate use of our process, but I'm willing to be swayed if so many people in the neighborhood think it's important to stop this particular process. Then we may come back and amend our text amendment to say we have to give these people a chance because it's already on the ground. We're doing a text amendment here for a specific case and that's not the right process. Because we haven't done an NCO in the whole time we've had one, we don't know all the pieces of it. This has alerted us to a potential problem with it. On the other hand, creating tools to preserve neighborhoods is not a bad thing. There are a lot of urban neighborhoods in this community that are under a tremendous amount of stress and tools to preserve quality of life are important. But we need to do it slowly and figure out a way to really balance it.

20. Arnold King: The situation that started this process did not include a rezoning. It was just a subdivision. The underlying zoning (RS-12) has been in place for years. Anything we do now that starts taking that away is really overstepping our bounds.
21. Someone from Country Club Estates, I believe, said in all the discussions with staff it was very clear that "under-performing" lots would be grandfathered. Staff stated that they could NOT be grandfathered, based on recent discussions with the City Attorney.
22. The developer is in a position where he's putting in storm water and utilities. This doesn't impact him if we don't act on this today.
23. Paul Norby: It sounds like the Board's intention is to continue this for one month. The public hearing has been held and closed. Would you like to discuss this some more at work session to see if maybe you can find an approach that you want to take on this so you're not right back in the same spot a month from now?
24. Brenda Smith stated that her idea of the purpose of discussion at a work session would be to discuss an appropriate length of time.
25. The Board asked Brad Helms how continuing this for a month would impact them. Mr. Vaughan, speaking for Mr. Helms, noted that the more money he spends, the more he stands to lose if the ordinance is not amended.
26. Carol Eickmeyer: This is the first unintended consequence. I think by taking it to the work session we may be able to figure out something that will help with more unintended consequences.
27. We can look at the time period, the exact wording of the amendment, if there's an advance trigger.

MOTION: Jerry Clark moved to continue the zoning text amendment to March 23, 2006 where the Board will discuss the amendment and make a decision at that point.

SECOND: Carol Eickmeyer.

28. Arnold King noted that he doesn't want NCOs to override existing zoning.
29. Clarence Lambe: My problem is with the City Attorney's interpretation. That's a new development which attacks the justification of the NCO District.
30. Arnold King stated that when we find a problem, we need to fix it instead of waiting until all the problems can be fixed at one time.

Motion was withdrawn.

MOTION: Clarence Lambe moved approval of the zoning text amendment with a time of five years.

MOTION: Clarence Lambe amended his motion to move approval of the zoning text amendment with staff language and a time of three years.

SECOND: Jerry Clark

VOTE:

FOR: Clark, King, Lambe, Mitchell, Mullican, Smith

AGAINST: Eickmeyer

EXCUSED: None

Written comments submitted by Planning Board members:

Carol Eickmeyer: This is flawed text amendment - it doesn't solve either the loophole or the amount of time the petitioner needs. We need a moratorium on the NCO process to catch any of the other unintended consequences.

A. Paul Norby, AICP
Director of Planning

STAFF ALTERNATE PROPOSAL
(as modified by the Planning Board)

UDO-156
AN ORDINANCE AMENDING CHAPTER B OF THE *UNIFIED DEVELOPMENT*
***ORDINANCES* PERTAINING TO THE NEIGHBORHOOD CONSERVATION**
OVERLAY (NCO) DISTRICT

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

Section 1. Chapter B, Article II, Section 2-1.6(A)(2)(a) of the UDO is hereby amended by adding a new subsection (A)(2)(a)(v) as follows

(A) NCO NEIGHBORHOOD CONSERVATION OVERLAY DISTRICT

(2) NCO District Requirements

(a) Applicability.

(v) Notwithstanding the other provisions of this section, for a period of three (3) years from the effective date of an ordinance creating a NCO District, the regulations (e.g. lot size, lot width, setback, lot-area ratios, etc.) of such NCO District shall not apply to the lots or proposed improvements on such lots that are in existence at the time such NCO District is approved, or to the lots or proposed improvements on such lots that are created by the filing of a final plat after such NCO District is approved (“after-created lots”), so long as a preliminary plat for such “after-created lots” was approved two (2) years or less before the creation of the NCO District. For the purposes of this subsection, the creation date for the NCO District shall be the date the Elected Body adopted the rezoning.

Section 2. This ordinance shall be effective upon adoption.

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APPLICANT PROPOSAL

UDO-156

AN ORDINANCE AMENDING CHAPTER B OF THE *UNIFIED DEVELOPMENT ORDINANCES* PERTAINING TO THE NEIGHBORHOOD CONSERVATION OVERLAY (NCO) DISTRICT

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

Section 1. Chapter B, Article II, Section 2-1.6(A)(2)(a) of the UDO is hereby amended by adding a new subsection (A)(2)(a)(v) as follows

(A) NCO NEIGHBORHOOD CONSERVATION OVERLAY DISTRICT

(2) NCO District Requirements

(a) Applicability.

- v. Notwithstanding the other provisions of this section, for a period of five (5) years from the effective date of an ordinance creating a NCO District, the regulations of such NCO District shall not apply to lots within such district that are in existence at the time such NCO District is approved, or lots that are created by the filing of a final plat after such NCO District is approved (“after-created lots”), so long as a preliminary plat for such “after-created lots” was approved prior to the creation of the NCO District. However, from and after the effective date of such ordinance, nor an “after-created lot” as described herein may be divided or reduced in size if doing so would be inconsistent with the minimum lot size or minimum lot width regulations applicable to such NCO District. **For the purposes of this subsection, the creation date for the NCO District shall be the date the Elected Body adopted the rezoning.**

Section 2. This ordinance shall be effective upon adoption.

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ADOPTED NCO DISTRICT 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 integrity of property and neighborhoods; and,
- (d) To reduce conflicts between new construction and existing development.

(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.
- (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-~~;~~

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- (b) Exemptions. The following types of activities are exempt from the provisions of this section where applicable:
- (i) Interior alterations.
 - ii) Routine maintenance where no changes are made to the appearance of the structure or 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 (F,W,L)/Superintendent of Inspections (C) 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 or designee. The plans shall meet the requirements of Article VII.
 - (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. 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

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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) years prior to the application for zoning to the NCO District.
- (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.
- (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 a NCO District is a five-step process. The petitioner (neighborhood) will take the lead for 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, the petitioner will first need to go through the pre-application process to determine their eligibility.

The pre-application process will require:

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- (i) The support, in writing, of an official Neighborhood Association Committee with by-laws (For each neighborhood/application).
 - (ii) The signature of fifty-five percent (55%) of the property owners in the defined district.
 - (iii) When support and eligibility is established, the pre-application request will go to the Historic Resources Commission for review and recommendation to the City County Planning Board (CCPB).
 - (iv) The CCPB will make a determination on eligibility. If approved, the petitioner shall continue with the Establishment Procedure of the Study.
- (b) An inventory and description of the distinctive natural and built 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 as a part of the inventory submission.

The inventory shall include the following information:

- (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 documented.

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- (c) A listing of the conservation standards to be met within the area if NCO District 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 must be tied to the characteristics defined in the inventory and demonstrate the retention of existing features.
- (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 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)
 - (iii) Voluntary Standards: Same as listed above in Section 2-1.6(A)(4)(e)(ii) of the Zoning Ordinance.
 - (iv) Proof of neighborhood support including the signatures of 55% of the property owners as defined in the NCO district
 - (v) List of property owners for notification in label format
 - (vi) Signed memorandum of understanding with the Neighborhood Association concerning their responsibility for continued property owner notification and monitoring of District. The memorandum of understanding term limit will extend through the duration of the district.
- (f) Once all the previous procedural steps have been met, an application for rezoning the said general area to an NCO District shall be accepted. The County/City/Town/Village 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 Chapter B, Section 6-2 of the Zoning Ordinance.
- (g) When a NCO District is approved, the conservation standards contained in the applicable Neighborhood Design Study are adopted by reference and become a part of the *Zoning Ordinance*, and are included as an appendix item to the *Zoning Ordinance*.

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(5) 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 concerning continued property owner notification and monitoring of the District according to the signed memorandum of understanding as stated in Section 2-1.6 (A)(4)(e)(vi) of the Zoning Ordinance.

(6) Amendment 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 and thus agrees to rezone the NCO District off the official zoning map.
- (b) If the memorandum of understanding signed by the Neighborhood Association is violated by lack of participation by the neighborhood.
- (c) The County/City/Town/Village 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 Chapter B, Section 6-2 of the Zoning Ordinance.

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