SUBJECT:-

A. Public Hearing on Zoning Text Amendment proposed by the City-County Inspections Division to amend Chapter B, Article V, Section 5-4 NONCONFORMING STRUCTURES AND IMPROVEMENTS (UDO 133).

B. Ordinance amending the Forsyth County Zoning Ordinance and Official Zoning Map.

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:-

SUMMARY OF INFORMATION:-

See attached staff report.

After consideration, the Planning Board recommended approval of the zoning text amendment.

ATTACHMENTS:-   X  YES   ___NO

SIGNATURE: ________________________________  DATE:
ACTION REQUEST FORM

DATE: May 25, 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 the City-County Inspections Division

SUMMARY OF INFORMATION:

Zoning Text Amendment proposed by the City-County Inspections Division to amend Chapter B, Article V, Section 5-4 NONCONFORMING STRUCTURES AND IMPROVEMENTS (UDO 133).

PLANNING BOARD ACTION:

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

DOCKET #: UDO-133
STAFF: David Reed

REQUEST

UDO Text amendment proposed by the Inspections Division to amend Chapter B – Zoning Ordinance, Article V - NONCONFORMING SITUATIONS, Section 5-4 NONCONFORMING STRUCTURES AND IMPROVEMENTS to reorganize section 5-4.1 APPLICABILITY as recommended by the City Attorney’s Office and to add a new section regarding acquisition or condemnation of property for a public purpose by an entity having the power of eminent domain.

BACKGROUND

Inspection’s staff was recently approached by the Engineering Department of the City of Winston-Salem regarding the proposed widening of Country Club Road from Jonestown Road to Peace Haven Road. If the City condemns portions of these commercial and residential properties and that condemnation leaves the property in a nonconforming situation, what will have to be done to comply with the UDO.

Currently the UDO has the following regulations for nonconforming structures and improvements.

1. Violates Dimensional Requirements. The location of any structure or improvement on the lot results in a violation of the dimensional requirements of this Ordinance; or,

2. Not Meet Other Standards. The structure or improvement does not meet one or more of the other applicable requirements of this Ordinance; and,

3. Existed as of Effective Date. The structures or improvements existed on April 3, 1967 (F,C,L)/September 16, 1968 (W)/May 8, 1968 (K) and continue to exist, the structures or improvements legally existed as of the effective date of this Ordinance, or the structures or improvements legally existed as of the effective date of subsequent amendments thereto.

Basically this section says that structures or improvements that do not meet the requirements of the UDO must have existed prior to April 3, 1967 for Forsyth County, Clemmons and Lewisville and prior to September 16, 1968 for Winston-Salem or existing prior to the adoption of the UDO or subsequent amendment to the UDO to be grandfathered. This current language does not include any properties that could be made nonconforming from public acquisitions.
ANALYSIS

In the past, properties that were made nonconforming from public acquisitions were sent to the Zoning Board of Adjustment for variances. These variances included such UDO requirements as building setbacks, lot area, parking and landscaping. One of the hardship findings required for a variance in the UDO is the “act of a public agency”. In all these previous cases, this hardship finding was used to grant variances.

It seems to be a moot point in sending these cases to the Zoning Board of Adjustment. The property is being acquired by condemnation from a public entity having the power of eminent domain. This is not a self created hardship to which the Board could deny such a request. The Board of Adjustment would also be in a difficult position of denying such a request for a variance. Denying the request would not stop the public project it would simply require the public entity to acquire the entire property. Acquiring additional property would add cost to the project and would be contrary to previous negotiations between the public entity and the property owner for settlement on acquisition.

Inspection’s staff checked with the City Attorney’s Office about any other state or prescribed law that might supersede the provisions in the UDO for public acquisitions. Chuck Green, Assistant City Attorney, said they were not aware of any such law but did recommend the reorganization of the existing language for Section 5-4.1. This reorganization only affects the structure of the wording in this section and does not change any of the current regulations. The Attorney’s Office recommends the following reorganization of the existing language in the UDO for better clarification:

(A) Definition
Any structure or improvement to real property is considered nonconforming in any of the following circumstances:

(1) The location of any structure or improvement on the lot results in a violation of the dimensional requirements or other applicable requirements of this Ordinance provided:

(i) The structures or improvements existed on April 3, 1967 (F,C,L)/September 16, 1968 (W)/May 8, 1968 (K) and continue to exist; or

(ii) The structures or improvements legally existed as of the effective date of this Ordinance and continue to exist; or

(iii) The structures or improvements legally existed as of the effective date of subsequent amendments of this Ordinance and continue to exist.
Inspection’s staff also contacted the Institute of Government in Chapel Hill to see if they were aware of any other state laws which affect public acquisitions and compliance with local zoning ordinances. Rich Ducker with the Institute was very helpful but said he was not aware of any such provisions in state law. He said he was familiar with many local zoning ordinances and that some of them had provisions to make public acquisitions nonconforming situations. He praised our attempt to place such a regulation in the zoning ordinance quoting “I think you have built a better mouse trap”.

Inspection’s staff notified the City’s Real Estate Office on this matter. Kirk Bjorling, Real Estate Administrator, feels that having such a provision in the UDO would be helpful in negotiating a settlement with property owners. The current procedure of sending an application to the Zoning Board of Adjustment for a variance would be time consuming and cause a delay in the acquisition of property. There is also the possibility of the Board of Adjustment denying the variance and the real estate staff would have to renegotiate with the property owner which would increase the cost of the project and further delay the project.

Based on these findings and review by the City Attorney’s Office, the Inspection’s staff recommends the following new section (2) be added to the City Attorney Office’s reorganized wording above:

(2) If, as the result of the acquisition or condemnation of property for a public purpose by an entity having the power of eminent domain, the location of any structure or improvement on a lot thereby violates the dimensional requirements or other applicable requirements of this Ordinance.

**RECOMMENDATION**

**APPROVAL.**

David Reed presented the staff report.

**PUBLIC HEARING**

FOR: None

AGAINST: None

The Board asked questions concerning the proposed amendment which were answered by Inspections and City Real Estate staff. One of the reasons for this text amendment is the proposed widening of streets such as Country Club Road and the unintentional impacts of such widenings on building setbacks and other dimensional requirements.

Kirk Bjorling, City of Winston-Salem Real Estate Administrator

- I hope all the properties under consideration along Country Club can be purchased through agreement based on appraisals and that none of them have to be condemned through the use of eminent domain.
• Realistically, there probably will be a few that have to go that route. We are not going in expecting to use eminent domain.
• The property owners would be offered appraisal value for their property.
• If right-of-way is being purchased and would affect set-backs and the like, that purchase is being based on the appraised value. It's not contingent upon anything else.

• This would stream-line the process and accomplish the same thing.
• However, this would take the uncertainty away for the property owner.

AGAINST: None

WORK SESSION

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

1. The Board discussed the impacts of this text amendment when properties are made nonconforming by the acquisition of land for public use. This amendment simplifies the process and removes ambiguity about the process.

MOTION: Dara Folan moved approval of the zoning text amendment.
SECOND: Jimmy Norwood
VOTE:
  FOR: Clark, Eickmeyer, Folan, Glenn, King, Lambe, Mullican, Norwood, Smith
  AGAINST: None
  EXCUSED: None

____________________
A. Paul Norby, AICP
Director of Planning
Be it ordained by the Board of Commissioners of Forsyth County, North Carolina that the Unified Development Ordinances (UDO) is hereby amended as follows:

Section 1. Chapter B – Zoning Ordinance, Article V - NONCONFORMING SITUATIONS, Section 5-4 NONCONFORMING STRUCTURES AND IMPROVEMENTS is hereby amended by the following changes:

5-4.1 APPLICABILITY

(A) Definition
Any structure or improvement to real property is considered nonconforming if in any of the following circumstances:

(1) Violates Dimensional Requirements. The location of any structure or improvement on the lot results in a violation of the dimensional requirements of this Ordinance; or,

(2) Not Meet Other Standards. The structure or improvement does not meet one or more of the other applicable requirements of this Ordinance; and,

(3) Existed as of Effective Date. The structures or improvements existed on April 3, 1967 (F,C,L)/September 16, 1968 (W)/May 8, 1968 (K) and continue to exist, the structures or improvements legally existed as of the effective date of this Ordinance, or the structures or improvements legally existed as of the effective date of subsequent amendments thereto.

(1) The location of any structure or improvement on the lot results in a violation of the dimensional requirements or other applicable requirements of this Ordinance provided:

(i) The structures or improvements existed on April 3, 1967 (F,C,L)/September 16, 1968 (W)/May 8, 1968 (K) and continue to exist; or

(ii) The structures or improvements legally existed as of the effective date of this Ordinance and continue to exist; or
(iii) The structures or improvements legally existed as of the effective date of subsequent amendments of this Ordinance and continue to exist.

(2) If, as the result of the acquisition or condemnation of property for a public purpose by an entity having the power of eminent domain, the location of any structure or improvement on a lot thereby violates the dimensional requirements or other applicable requirements of this Ordinance.

Section 2. This ordinance shall be effective upon adoption.
UDO 133
AN ORDINANCE AMENDING CHAPTER B
OF THE UNIFIED DEVELOPMENT ORDINANCES REGARDING
NONCONFORMING SITUATIONS FROM PUBLIC ACQUISITIONS

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

Section 1. Chapter B – Zoning Ordinance, Article V - NONCONFORMING SITUATIONS,
Section 5-4 NONCONFORMING STRUCTURES AND IMPROVEMENTS is hereby amended
by the following changes:

5-4.1 APPLICABILITY

(A) Definition
Any structure or improvement to real property is considered nonconforming if: in any of
the following circumstances:

(1) Violates Dimensional Requirements. The location of any structure or
improvement on the lot results in a violation of the dimensional
requirements of this Ordinance; or,

(2) Not Meet Other Standards. The structure or improvement does not meet
one or more of the other applicable requirements of this Ordinance; and,

(3) Existed as of Effective Date. The structures or improvements existed on
April 3, 1967 (F,C,L)/September 16, 1968 (W)/May 8, 1968 (K) and
continue to exist, the structures or improvements legally existed as of the
effective date of this Ordinance, or the structures or improvements legally
existed as of the effective date of subsequent amendments thereto.

   (i) The structures or improvements existed on April 3, 1967
   (F,C,L)/September 16, 1968 (W)/May 8, 1968 (K) and
   continue to exist; or

   (ii) The structures or improvements legally existed as of the
effective date of this Ordinance and continue to exist; or

NOTE: Items to be deleted are indicated with a strikeout; items to be added are indicated with an underscore.
(iii) The structures or improvements legally existed as of the effective date of subsequent amendments of this Ordinance and continue to exist.

(2) If, as the result of the acquisition or condemnation of property for a public purpose by an entity having the power of eminent domain, the location of any structure or improvement on a lot thereby violates the dimensional requirements or other applicable requirements of this Ordinance.

Section 2. This ordinance shall be effective upon adoption.
UDO-133
AN ORDINANCE AMENDING CHAPTER B
OF THE UNIFIED DEVELOPMENT ORDINANCES REGARDING
NONCONFORMING SITUATIONS FROM PUBLIC ACQUISITIONS

Be it ordained by Board of Aldermen of the Town of Kernersville, North Carolina that the Unified Development Ordinances (UDO) is hereby amended as follows:

Section 1. Chapter B – Zoning Ordinance, Article V - NONCONFORMING SITUATIONS, Section 5-4 NONCONFORMING STRUCTURES AND IMPROVEMENTS is hereby amended by the following changes:

5-4.1 APPLICABILITY

(A) Definition
Any structure or improvement to real property is considered nonconforming if: in any of the following circumstances:

(1) Violates Dimensional Requirements. The location of any structure or improvement on the lot results in a violation of the dimensional requirements of this Ordinance; or,

(2) Not Meet Other Standards. The structure or improvement does not meet one or more of the other applicable requirements of this Ordinance; and,

(3) Existed as of Effective Date. The structures or improvements existed on April 3, 1967 (F,C,L)/September 16, 1968 (W)/May 8, 1968 (K) and continue to exist, the structures or improvements legally existed as of the effective date of this Ordinance, or the structures or improvements legally existed as of the effective date of subsequent amendments thereto.

(i) The location of any structure or improvement on the lot results in a violation of the dimensional requirements or other applicable requirements of this Ordinance provided:

(ii) The structures or improvements existed on April 3, 1967 (F,C,L)/September 16, 1968 (W)/May 8, 1968 (K) and continue to exist; or

(iii) The structures or improvements legally existed as of the effective date of this Ordinance and continue to exist; or
(iii) The structures or improvements legally existed as of the effective date of subsequent amendments of this Ordinance and continue to exist.

(2) If, as the result of the acquisition or condemnation of property for a public purpose by an entity having the power of eminent domain, the location of any structure or improvement on a lot thereby violates the dimensional requirements or other applicable requirements of this Ordinance.

Section 2. This ordinance shall be effective upon adoption.
UDO-133
AN ORDINANCE AMENDING CHAPTER B
OF THE Unified Development Ordinances REGARDING
NONCONFORMING SITUATIONS FROM PUBLIC ACQUISITIONS

Be it ordained by Village Council of the Village of Clemmons, North Carolina that the Unified Development Ordinances (UDO) is hereby amended as follows:

Section 1. Chapter B – Zoning Ordinance, Article V - NONCONFORMING SITUATIONS, Section 5-4 NONCONFORMING STRUCTURES AND IMPROVEMENTS is hereby amended by the following changes:

5-4.1 APPLICABILITY

(A) Definition
Any structure or improvement to real property is considered nonconforming if, in any of the following circumstances:

(1) Violates Dimensional Requirements. The location of any structure or improvement on the lot results in a violation of the dimensional requirements of this Ordinance; or,

(2) Not Meet Other Standards. The structure or improvement does not meet one or more of the other applicable requirements of this Ordinance; and,

(3) Existed as of Effective Date. The structures or improvements existed on April 3, 1967 (F,C,L)/September 16, 1968 (W)/May 8, 1968 (K) and continue to exist, the structures or improvements legally existed as of the effective date of this Ordinance, or the structures or improvements legally existed as of the effective date of subsequent amendments thereto.

NOTE: Items to be deleted are indicated with a strikeout; items to be added are indicated with an underscore.
(iii) The structures or improvements legally existed as of the effective date of subsequent amendments of this Ordinance and continue to exist.

(2) If, as the result of the acquisition or condemnation of property for a public purpose by an entity having the power of eminent domain, the location of any structure or improvement on a lot thereby violates the dimensional requirements or other applicable requirements of this Ordinance.

Section 2. This ordinance shall be effective upon adoption.
UDO-133
AN ORDINANCE AMENDING CHAPTER B
OF THE UNIFIED DEVELOPMENT ORDINANCES REGARDING
NONCONFORMING SITUATIONS FROM PUBLIC ACQUISITIONS

Be it ordained by Board of Aldermen of the Town of Lewisville, North Carolina that the Unified Development Ordinances (UDO) is hereby amended as follows:

Section 1. Chapter B – Zoning Ordinance, Article V - NONCONFORMING SITUATIONS, Section 5-4 NONCONFORMING STRUCTURES AND IMPROVEMENTS is hereby amended by the following changes:

5-4.1 APPLICABILITY

(A) Definition
Any structure or improvement to real property is considered nonconforming if: in any of the following circumstances:

1. Violates Dimensional Requirements. The location of any structure or improvement on the lot results in a violation of the dimensional requirements of this Ordinance; or,

2. Not Meet Other Standards. The structure or improvement does not meet one or more of the other applicable requirements of this Ordinance; and,

3. Existed as of Effective Date. The structures or improvements existed on April 3, 1967 (F,C,L)/September 16, 1968 (W)/May 8, 1968 (K) and continue to exist, the structures or improvements legally existed as of the effective date of this Ordinance, or the structures or improvements legally existed as of the effective date of subsequent amendments thereto.

1. The location of any structure or improvement on the lot results in a violation of the dimensional requirements or other applicable requirements of this Ordinance provided:

1(i) The structures or improvements existed on April 3, 1967 (F,C,L)/September 16, 1968 (W)/May 8, 1968 (K) and continue to exist; or

1(ii) The structures or improvements legally existed as of the effective date of this Ordinance and continue to exist; or
(iii) The structures or improvements legally existed as of the effective date of subsequent amendments of this Ordinance and continue to exist.

(2) If, as the result of the acquisition or condemnation of property for a public purpose by an entity having the power of eminent domain, the location of any structure or improvement on a lot thereby violates the dimensional requirements or other applicable requirements of this Ordinance.

Section 2. This ordinance shall be effective upon adoption.
UDO 133

AN ORDINANCE AMENDING CHAPTER B
OF THE UNIFIED DEVELOPMENT ORDINANCES REGARDING
NONCONFORMING SITUATIONS FROM PUBLIC ACQUISITIONS

Be it ordained by Board of Aldermen of the Town of Walkertown, North Carolina that the Unified Development Ordinances (UDO) is hereby amended as follows:

Section 1. Chapter B – Zoning Ordinance, Article V - NONCONFORMING SITUATIONS, Section 5-4 NONCONFORMING STRUCTURES AND IMPROVEMENTS is hereby amended by the following changes:

5-4.1 APPLICABILITY

(A) Definition
Any structure or improvement to real property is considered nonconforming if: in any of the following circumstances:

(1) Violates Dimensional Requirements. The location of any structure or improvement on the lot results in a violation of the dimensional requirements of this Ordinance; or,

(2) Not Meet Other Standards. The structure or improvement does not meet one or more of the other applicable requirements of this Ordinance; and,

(3) Existed as of Effective Date. The structures or improvements existed on April 3, 1967 (F,C,L)/September 16, 1968 (W)/May 8, 1968 (K) and continue to exist, the structures or improvements legally existed as of the effective date of this Ordinance, or the structures or improvements legally existed as of the effective date of subsequent amendments thereto.

(1) The location of any structure or improvement on the lot results in a violation of the dimensional requirements or other applicable requirements of this Ordinance provided:

(i) The structures or improvements existed on April 3, 1967 (F,C,L)/September 16, 1968 (W)/May 8, 1968 (K) and continue to exist; or

(ii) The structures or improvements legally existed as of the effective date of this Ordinance and continue to exist; or

NOTE: Items to be deleted are indicated with a strikeout; items to be added are indicated with an underscore.
(iii) The structures or improvements legally existed as of the effective date of subsequent amendments of this Ordinance and continue to exist.

(2) If, as the result of the acquisition or condemnation of property for a public purpose by an entity having the power of eminent domain, the location of any structure or improvement on a lot thereby violates the dimensional requirements or other applicable requirements of this Ordinance.

Section 2. This ordinance shall be effective upon adoption.