



October 23, 2013

Bradley & Rachel Kelly
617 Brent Street
Winston-Salem, NC 27103

Re: Zoning Petition W-3196

Bryce A. Stuart Municipal Building
100 E. First Street
P.O. Box 2511
Winston-Salem, NC 27102
CityLink 311 (336.727.8000)
Fax 336.748.3163
www.cityofws.org/planning

Dear Mr. & Mrs. Kelly:

The attached report of the Planning Board to the City Council is sent to you at the request of the Council Members. You will be notified by the City Secretary's Office of the date on which the Council will hear this petition.

Sincerely,

A. Paul Norby, FAICP
Director of Planning and Development Services

pc: City Secretary's Office, P.O. Box 2511, Winston-Salem, NC 27102
Brad Kelly, P. O. Box 6013, Williston, ND 58802
Della Page, 936 Aquaview Drive, Kernersville, NC 27284
Mike Georgoulas, 620 Brent Street, Winston-Salem, NC 27103
Jean Wooten, 1700 W. Academy Street, Winston-Salem, NC 27103

City Council: Mayor Allen Joines; Vivian H. Burke, Mayor Pro Tempore, Northeast Ward; Denise D. Adams, North Ward; Dan Besse, Southwest Ward; Robert C. Clark, West Ward; Molly Leight, South Ward; Wanda Merschel, Northwest Ward; Derwin L. Montgomery, East Ward; James Taylor, Jr., Southeast Ward; City Manager: Lee D. Garrity

Forsyth County Commissioners: Richard V. Linville, Chairman; Gloria D. Whisenhunt, Vice Chair; Mark Baker; Walter Marshall; David R. Plyler, Bill Whiteheart; Everette Witherspoon; County Manager: Dudley Watts, Jr.

City-County Planning Board: Arnold G. King, Chair; Allan Younger, Vice-Chair; Tommy Hicks; Clarence R. Lambe, Jr.; Darryl Little; Barry A. Lyons; Lynne Mitchell; Paul W. Mullican; Brenda J. Smith



Call 311 or 336-727-8000
citylink@cityofws.org

ACTION REQUEST FORM

DATE: October 23, 2013
TO: The Honorable Mayor and City Council
FROM: A. Paul Norby, FAICP, Director of Planning and Development Services

COUNCIL ACTION REQUEST:

Request for Public Hearing on zoning petition of Bradley & Rachel Kelly

SUMMARY OF INFORMATION:

Zoning petition of Bradley & Rachel Kelly from RS9 to RM5-L (Residential Building, Single Family; and Residential Building, Duplex): property is located on the east side of Brent Street, south of Academy Street (Zoning Docket W-3196).

PLANNING BOARD ACTION:

MOTION ON PETITION: APPROVAL
FOR: ARNOLD KING, CLARENCE LAMBE, LYNNE MITCHELL,
PAUL MULLICAN, BRENDA SMITH, ALLAN YOUNGER
AGAINST: BARRY LYONS
SITE PLAN ACTION: NOT REQUIRED

CITY ORDINANCE - SPECIAL USE LIMITED DISTRICT

Zoning Petition of Bradley & Rachel Kelly, Docket W-3196

AN ORDINANCE AMENDING THE
WINSTON-SALEM CITY
ZONING ORDINANCE AND THE
OFFICIAL ZONING MAP OF
THE CITY OF WINSTON-SALEM, N.C.

BE IT ORDAINED by the City Council of the City of Winston-Salem as follows:

Section 1. The Winston-Salem City Zoning Ordinance and the Official Zoning Map of the City of Winston-Salem, N.C. are hereby amended by changing from RS9 to RM5-L (Residential Building, Single Family; and Residential Building, Duplex) the zoning classification of the following described property:

PIN# 6825-61-6784

Section 2. This Ordinance is adopted after approval of the Special Use Limited District Permit issued by the City Council the _____ day of _____, 20___ to Bradley & Rachel Kelly.

Section 3. The City Council hereby directs the issuance of a Special Use Limited District Permit pursuant to the Zoning Ordinance of the *Unified Development Ordinances* for a development to be known as Bradley & Rachel Kelly. Said Special Use Limited District Permit with conditions is attached hereto and incorporated herein.

Section 4. This Ordinance shall be effective from and after its adoption.

CITY - SPECIAL USE LIMITED DISTRICT PERMIT

SPECIAL USE LIMITED DISTRICT PERMIT

Issued by the City Council

of the City of Winston-Salem

The City Council of the City of Winston-Salem issues a Special Use Limited District Permit for the zoning petition of Bradley & Rachel Kelly, (Zoning Docket W-3196). The site shall be developed in accordance with the conditions approved by the Board and the following uses: Residential Building, Single Family; and Residential Building, Duplex, approved by the Winston-Salem City Council the _____ day of _____, 20____" and signed, provided the property is developed in accordance with requirements of the RM5-L zoning district of the Zoning Ordinance of the *Unified Development Ordinances*, the Erosion Control Ordinance, and other applicable laws, and the following additional condition be met:

- **OTHER REQUIREMENTS:**
 - a. Existing principal structure on PIN # 6825-61-6784 shall remain.

**CITY-COUNTY PLANNING BOARD
STAFF REPORT**

PETITION INFORMATION	
Docket #	W-3196
Staff	Byron Brown
Petitioner(s)	Bradley Kelly and Rachel Kelly
Owner(s)	Same
Subject Property	PIN # 6825-61-6784
Address	617 Brent Street
Type of Request	Special limited use rezoning from RS9 to RM5-L
Proposal	<p>The petitioner is requesting to amend the Official Zoning Maps for the subject property from RS9 (Residential Single Family) to RM5-L (Residential, Multifamily special use limited district; 5 units per acre maximum density). The petitioner is requesting the following uses:</p> <ul style="list-style-type: none"> • Residential Building, Single Family and Residential Building, Duplex <p>NOTE: Special use limited and special use district zoning were discussed with the petitioner(s) who decided to pursue the rezoning as presented.</p>
Continuance History	The request was continued from the September 12, 2013 Planning Board meeting to the October 10th meeting at the request of the petitioner in order to amend their request from a RSQ-L to a RM5-L.
Neighborhood Contact/Meeting	The applicant has indicated they have reached out to the surrounding community and Ardmore Neighborhood Association.
Zoning District Purpose Statement	The RM5 district is primarily intended to accommodate low density, pedestrian-oriented sites and communities containing duplexes, twin homes, multifamily and townhouse residential buildings with three or four units, and similar residential uses at a maximum overall density of five (5) units per acre. This district is intended for Growth Management Areas (GMAs) 2 (Urban Neighborhoods) and 3 (Suburban Neighborhoods) and may be suitable for GMA 4 (Future Growth Areas) and Metro Activity Centers where public facilities, including public water and sewer, public roads, parks, and other governmental support services are available.
Applicable Rezoning Consideration from Chapter B, Article VI, Section 6-2.1(R)	(R)(1) - Is the proposal consistent with the purpose statement(s) of the requested zoning district(s)?
	The subject property is a single family detached structure that has been converted into a duplex. However, the proposed zoning request is not consistent with the purpose statement of the requested RM5 zoning district. Based upon density calculations, this site equates to ten (10) dwelling units per acre, which is greater than the density allowed in the RM5 zoning district (maximum 5 dwelling units per acre).

GENERAL SITE INFORMATION				
Location	East side of Brent Street, south of Academy Street			
Jurisdiction	City of Winston-Salem			
Ward(s)	Southwest			
Site Acreage	± 0.21 acres			
Current Land Use	Duplex located in single family dwelling. The second unit is accessed by exterior stairway located on north side of house.			
Surrounding Property Zoning and Use	Direction	Zoning District	Use	
	North	RS9	Single family residential	
	South		Single family residential	
	East		Single family residential	
West	Single family residential			
Applicable Rezoning Consideration from Chapter B, Article VI, Section 6-2.1(R)	(R)(2) - Is/are the use(s) permitted under the proposed classification/request compatible with uses permitted on other properties in the vicinity?			
	Duplexes are not allowed on the adjacent RS9 zoned properties. Duplexes are allowed in the RM5 multifamily zoning district located approximately 100' to the northeast.			
Physical Characteristics	The building is built on a lot that slopes down gently from west to east.			
Proximity to Water and Sewer	Public water and sewer are available to the site.			
Stormwater/ Drainage	No known issues.			
Watershed and Overlay Districts	This site is not located within a water supply watershed.			
Historic, Natural Heritage and/or Farmland Inventories	The building on this site is a contributing structure to the National Registered Ardmore Historic District. Historic Resources staff recommends preservation of said structure which has been agreed to by the petitioner.			
Analysis of General Site Information	The subject property is located in the Ardmore neighborhood, a National Register Historic District. The following is an excerpt from the 2004 Ardmore National Register Nomination regarding the subject property:			
	<p>617 Brent Street Parker House c.1926 Contributing Bungalow. One and a half story; side gable; asbestos shingle siding; one-over-one replacement windows; shed-roof porch; metal posts on stone piers; stone retaining wall. 1926 CD: W. S. Parker</p> <p>The area is comprised predominately of single family detached homes. The site includes no regulatory floodplains, steep slopes or watersheds.</p>			
SITE ACCESS AND TRANSPORTATION INFORMATION				
Street Name	Classification	Frontage	ADT Count	Capacity/LOS D
Brent Street	Local Street	60'	NA	NA

Proposed Access Point(s)	The site is accessed from Brent Street. The building has two entrances, one facing Brent Street and the second located on the north side of the building.
Trip Generation - Existing/Proposed	Staff anticipates a minimal increase in traffic since the site would allow two units instead of one.
Sidewalks	No sidewalks are located on Brent Street. Sidewalks can be found north of the site on West Academy Street.
Transit	Routes 23 and 18 run along portions of Academy Street ± 300 ft north of subject property.
Analysis of Site Access and Transportation Information	Staff anticipates a minimal increase in estimated trip generation. The site does have accessibility to other transportation options. Brent Street does provide opportunities for on street parking, however staff would encourage the petitioner to explore rear site parking alternatives.
CONFORMITY TO PLANS AND PLANNING ISSUES	
Legacy GMA	Growth Management Area 2 – Urban Neighborhoods
Relevant Legacy Recommendations	<ul style="list-style-type: none"> • Encourage a variety of housing types throughout the county. • Legacy recommends bringing older housing up to code. • Promote the concept of gentle density in existing neighborhoods.
Relevant Area Plan(s)	<i>Southwest Area Plan (2009)</i>
Area Plan Recommendations	<ul style="list-style-type: none"> • Quality infill development, increased residential densities where appropriate. • Historic preservation, rehabilitation, and the reuse of existing structures should be encouraged. • Low-density residential development (0 to 5 dwelling units per acre) and consists mostly of single-family, detached units.
Addressing	Currently this site is using one address. Mail is divided using units A & B. If rezoning is approved, the unit accessed by the front door of this property will be assigned a new address number.
Applicable Rezoning Consideration from Chapter B, Article VI, Section 6-2.1(R)	(R)(3) - Have changing conditions substantially affected the area in the petition?
	No
	(R)(4) - Is the requested action in conformance with Legacy?
	No, Legacy and the <i>Southwest Area Plan</i> recommend low-density residential development for this area. Low density being defined as 0 to 5 dwelling units per acre.
Analysis of Conformity to Plans and Planning Issues	<p>The site is currently being used as duplex with accessibility to the upper floor unit using an exterior side stairwell. Its current use is not an approved or legal use under its current zoning designation, nor was the structure originally constructed as a duplex.</p> <p>Legacy does encourage a variety of housing types and exercising flexibility in land use options. The subject site is located within a pedestrian-oriented area, with a variety of housing types in a low-density community. Legacy also promotes historic preservation and reuse of sites.</p>

	<p>However, this site is located within an area of predominately single family detached homes. <i>The Southwest Area Plan</i> recommends low-density residential development for this area with a maximum of five (5) dwelling units per acre. Staff is cautious of the precedence that such a rezoning may have in the community. This rezoning could encourage future requests that will have an impact on the community’s character and resources.</p>
CONCLUSIONS TO ASSIST WITH RECOMMENDATION	
Positive Aspects of Proposal	Negative Aspects of Proposal
Petitioner has agreed that the existing structure shall remain.	Rezoning may set precedence for future multifamily rezoning requests.
Brings current use into conformance with UDO.	Structure was not originally built as duplex and it was never permitted as such.
A form of gentle density.	Site is located within an area that is predominantly zoned RS9.
SITE-SPECIFIC RECOMMENDED CONDITIONS OF APPROVAL	
<p>The following proposed conditions are from interdepartmental review comments and are proposed in order to meet codes or established standards, or to reduce negative off-site impacts.</p> <ul style="list-style-type: none"> • <u>OTHER REQUIREMENTS:</u> <ul style="list-style-type: none"> a. Existing principal structure on PIN # 6825-61-6784 shall remain. 	

STAFF RECOMMENDATION: Denial

NOTE: These are **staff comments** only; final recommendations on projects are made by the City-County Planning Board, with final decisions being made by the appropriate Elected Body, who may approve, deny, table or request modification for any project. **THE APPLICANT OR REPRESENTATIVE IS STRONGLY ENCOURAGED TO ATTEND THE PUBLIC HEARINGS WHERE THE CASE WILL BE CONSIDERED BY THE PLANNING BOARD AND THE ELECTED BODY.**

CITY-COUNTY PLANNING BOARD

PUBLIC HEARING

MINUTES FOR W-3196

OCTOBER 10, 2013

Byron Brown presented the staff report.

PUBLIC HEARING

FOR:

Brad Kelly, P. O. Box 6013, Williston, ND 58802

- This has been a duplex for 22 years.
- We had significant damage when a pipe burst just after we bought the house three years ago. We have totally restored the building.
- Every professional who dealt with the house missed the fact that it wasn't zoned for a duplex. This includes Inspections staff who looked at the situation with the stairs being external to the building.
- When people called for information about this request, CityLink was telling people that the request was for a quadraplex and that I was asking for rezoning of all the land between this site and Academy Street. As a result, people were very riled up.
- I called CityLink myself and was given that same inaccurate information. As a result, I flew in from North Dakota and walked to each of the 84 homes in this area to talk with them about this request.
- That is not what we are requesting. We simply want to keep the property the same.
- City Inspector Dwain Freedle wanted us to take the stairs off the side of the building and flip them around because the code says you can't have any structure within ten feet of the electrical box. Both electrical boxes have been there for decades.
- There are two separate electric meters, with each unit receiving it's own bill. That cannot be done by Duke Power without proper approval so a permit had to be pulled by somebody. We were unable to trace that permit.
- We were quite shocked to find it wasn't zoned for a duplex when so many people from the City had been by the house when it was completely destroyed. It was under construction for seven months.
- The City's development plan recommends increased density in neighborhoods where people can walk to downtown. We definitely fill that need.
- This is done in a tasteful way.
- Mr. Kelly referenced ten other duplexes within one mile of this site.
- The "L" on the zoning request limits us to a duplex or single family home.
- We will be glad to put in a driveway and put parking in the back.

- Due to the reconfiguration of the interior of the house 22 years ago when the stairs were placed on the outside of the structure, there is no feasible way to put stairs inside the house again.
- We cannot afford to convert this back to a single family home and we don't need another vacant home on Brent Street.

AGAINST:

Della Page, 936 Aquaview Drive, Kernersville, NC 27284

- I have owned the property at 634 Brent Street for almost 30 years.
- A blind eye has been turned by both City employees and professionals for many years on this property.
- Mr. Kelly is correct that a permit is required to install a separate meter. However no one is willing to tell us when that second meter was installed.
- The person who converted this house to a duplex was a corner cutter and I am certain that in some way he manipulated to get that second meter installed.
- Many City inspectors have been down that street. They notice a missing brick on an immaculate house next door but never noticed brand new pressure treated steps leading up to a brand new door. Either they didn't notice or they turned a blind eye to it. The real estate people also did not do their job.
- Bottom line is the Kellys speculated that this house would be a good income property. They didn't do their homework well and then over-improved the property.
- They can't rent or sell it as a duplex because it isn't legal. So basically they are stuck with it. The problem is that they are not willing to accept the responsibility or accountability for the mistake they made.
- We are being asked to change something that was instituted 20-30 years ago to keep this a single family neighborhood. This is a historic neighborhood.
- There are other houses on this street which have basements with exterior entrances and full kitchens and bathrooms. We don't want to open the door to more properties like this in that particular neighborhood.
- Approximately 70 - 75% of this neighborhood is already rental property.
- If we do this for this situation to avoid foreclosure, what do we do for all the other people in Winston-Salem who speculated poorly and have lost or will lose their homes to foreclosure?
- The Kellys have other options. A spiral staircase would work beautifully in that house.
- We already have a watershed problem on this street. We don't need more pavement.
- All the water running off because of that pavement will go right into the basement of that house. It has a dirt basement and will be severely impacted.
- We shouldn't have to bear the brunt of their poor decision making and their lack of accountability and responsibility for that.

WORK SESSION

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

Ardmore became a National Register District several years ago. At that point if the house was determined to be a contributing structure, its recent information as well as its history would be part of that documentation.

Mr. Kelly mentioned 10 duplexes within a mile of this site. To determine if they were legally zoned, staff would need to check on the zoning for each address. **(Note: Staff researched the ten addresses given by Mr. Kelly during the public hearing. Of the ten: nine were either originally constructed as duplexes or are located within zoning districts that allow duplexes. One duplex is located within RSQ zoning which allows duplexes, however it is unclear whether or not it meets all requirements of the RSQ district.)**

If there are two units on one lot and the individuals living in both units are related you can get a Special Use Permit from the Zoning Board of Adjustment as long as the secondary dwelling is no more than 25% of the size of the structure's total square feet.

RM5 is a zoning district which would allow five units/acre. However, by adding the "L" with use limitations, they are restricting themselves to no more than two units.

There are other properties on this street which are in a position to request this same rezoning. Right now *Legacy* and the area plan designate this as single family which appears to be what the neighborhood wants. Allowing duplexes in this area is not a precedent which needs to be set.

This has been here for 22 years and is a different situation than a new request. Approving this rezoning will not increase the impact on the neighborhood and does not change the value of surrounding properties.

Chris Murphy stated that there has only been one permit issued for this site between 1985 and 2004. That was for an HVAC change-out, so there are no permits for the electrical meter. Since 2004 there are several building permits for this site as a single family structure. Building and trades inspectors go on site to inspect for compliance with building code. We are a complaint driven system. There is no record of complaints against this property in our current system. At this point, this is considered an illegal nonconforming use.

Housing choices are changing with being close to downtown becoming more desirous. Having this in my neighborhood wouldn't bother me if it has been there 22 years. However I would not want a new unit placed there.

In the area to the north, it looks like 20% of the homes are higher density. If we are going to consider affordable housing or increased density, this is one of those opportunities.

When this went through the review for the Historic neighborhood, if it stuck out as being different from the neighborhood it would not have been designated as a contributing structure.

This is an opportunity to increase density without affecting the way the neighborhood has looked for the last 22 years,

MOTION: Clarence Lambe moved approval of the zoning petition.

SECOND: Brenda Smith

VOTE:

FOR: Arnold King, Clarence Lambe, Lynne Mitchell, Paul Mullican, Brenda Smith,
Allan Younger

AGAINST: Barry Lyons

EXCUSED: None

A. Paul Norby, FAICP
Director of Planning and Development Services