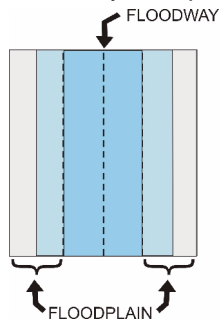


DOCKET #: W2871

PROPOSED ZONING:
RS9 NCO

EXISTING ZONING:
RS9

PETITIONER:
Mallard Lakes Homeowner's Assn. for property owned by others for property owned by Multiple property



SCALE: 1" represents 800'

STAFF: Reed/ Andrade

GMA: 3

ACRE(S): 183

MAP(S): 606890, 606886



July 26, 2006

Melynda Dunnigan, NCO Committee Chair
1875 Mallard Lakes Drive
Winston-Salem, NC 27106

RE: ZONING MAP AMENDMENT W-2871

Dear Ms. Dunnigan:

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

pc: City Secretary's Office, P.O. Box 2511, Winston-Salem, NC 27102
Amy Elliott, 1900 Mallard Lakes Drive, Winston-Salem, NC 27106
Laura Lee Van Hoy, 1841 Buddingbrook Lane, Winston-Salem, NC 27106
Brian Bryan, 2080 Duckworth Court, Winston-Salem, NC 27106
Lloyd Whitehead, 2060 Duckworth Court, Winston-Salem, NC 27106

ACTION REQUEST FORM

DATE: July 28, 2006
TO: The Honorable Mayor and City Council
FROM: A. Paul Norby, FAICP, Director of Planning

COUNCIL ACTION REQUEST:

Request for Public Hearing on Zoning Map Amendment of Mallard Lakes Homeowner's Assn. for property owned by others

SUMMARY OF INFORMATION:

Zoning Map Amendment of Mallard Lakes Homeowner's Assn. for property owned by others from RS-9 to RS-9 NCO: property is the Mallard Lakes Subdivision located between Bethania-Rural Hall Road and Walker Road (Zoning Docket W-2871).

PLANNING BOARD ACTION:

MOTION ON PETITION: APPROVAL
FOR: UNANIMOUS
AGAINST: NONE
SITE PLAN ACTION: NONE REQUIRED

CITY ORDINANCE - GENERAL USE

Zoning Petition of Mallard Lakes Homeowner's Assn.
for property owned by others, Docket W-2871

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 RS-9 to RS-9 NCO the zoning classification of the following described property:

	Tax Block	Tax Lot (s)
<u>District One</u>	4975	45G, 51B, 51C
	4975B	101D, 101F, 101G, 101H, 101J, 101K, 101L
	5039	1-16, 18-30, 33-59, 59A, 60-70, 75-79, 80A, 80B, 82-110, 301-307, 308A, 308B, 308C, 308D
<u>District Two</u>	5039	111-121
<u>District Three</u>	5039A	101

Section 2. This ordinance shall become effective upon adoption.

CITY-COUNTY PLANNING BOARD
STAFF REPORT FOR: Docket # W-2871
July 13, 2006

Staff: Marco Andrade
Petitioner(s): Mallard Lakes Homeowners Association

REQUEST

From: RS-9
To: RS-9 NCO (Neighborhood Conservation Overlay)

Acreage: Approximately 183 acres
Location: Mallard Lakes Subdivision between Bethania-Rural Hall Road and Walker Road
Jurisdiction: City of Winston-Salem
Ward: North

BACKGROUND

A Neighborhood Conservation Overlay District (NCO), Unified Development Ordinances, Chapter B, Article II , Section 2-1.6 (A), and later revision, UDO 143, has been enacted to provide a tool for encouraging compatible infill development in mature and well-established neighborhoods. The purpose of the NCO District is 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.

PROCESS

Mallard Lakes has completed a five-step process required for establishment of an NCO District:

- A. Pre-application Process.** A determination of eligibility that the area meets the size and age of development criteria was completed. An application for an NCO District eligibility determination including a boundary map and support of 84% of the neighborhood was submitted February 8, 2006. After review by the Historic Resources Commission, March 1, 2006, and the City-County Planning Board, April 13, 2006, the neighborhood was determined by the Planning Board to be eligible for a Neighborhood Conservation Overlay District designation

- B. Inventory.** An inventory of the neighborhood including (a) a general description and history of the area; (b) photographs of predominant architectural building types in the neighborhood; (c) a block-by-block documentation of existing front and side setbacks, lot sizes and frontages, and percentage of building coverage in the neighborhood; and (d) general description of natural features within the neighborhood was developed and

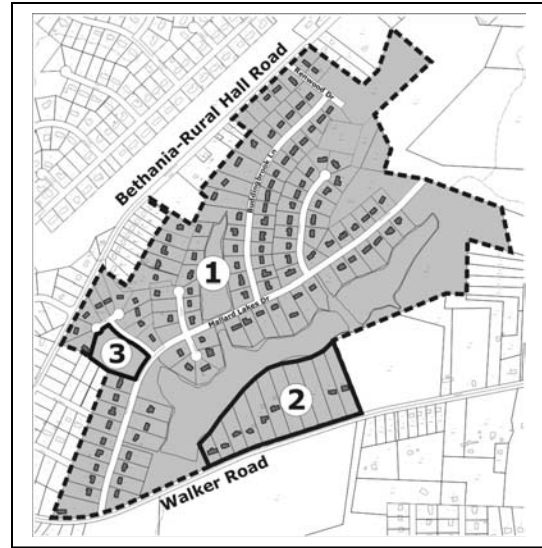
submitted. Staff reviewed the inventory to determine all required information was provided and properly documented.

Subsequent analysis of the inventory led the neighborhood to propose dividing the area into three clearly defined districts:

District One: Includes most of the original Mallard Lakes subdivision.

District Two: Large lots along Walker Road.

District Three: Vacant tract on Foxhunter Court.



Proposed Districts.

C. Conservation Standards. A list of proposed conservation standards to be met within the area was developed by the neighborhood. Proposed standards are tied to the characteristics defined in the inventory and demonstrate the retention of existing features of the neighborhood. For calculation purposes, the neighborhood used the average of the particular characteristic to determine the proposed conservation standards for each one of the districts. Below are the five proposed conservation standards, the table shows the proposed conservation standards for the three districts together with the averages from the neighborhood inventory and how they compare to the base minimum requirements for the underlying RS-9 zoning district. Conservation standards four and five apply to the entire neighborhood.

Neighborhood Proposed Overlay Standards

	RS-9 base requirement	District 1		District 2		District 3	
		Inventory Average	Proposed Standard	Inventory Average	Proposed Standard	Inventory Average	Proposed Standard
1. Minimum lot size (acres)	.20	.69	.50	1.50	1.25	3.15	.50
2. Minimum lot width (feet)	65	121	100	151	130	N/A	100
3. Minimum front setback (feet)	20	71	50	171	125	N/A	20

4. All one-story dwellings will have a minimum footprint of 1700 square feet of heated living area, and all one-and-a-half and two-story dwellings will have a minimum footprint of 1200 square feet.
5. All dwellings will be oriented on lots so that the front entrance faces the street on which the lot fronts.

The neighborhood will request eliminating the conservation standard number four (4) minimum building footprint for all one-and-a-half and two-story dwellings at the City-County Planning Board Public Hearing. (Planning staff supports the change).

D. Voluntary Conservation Guidelines. No voluntary guidelines are proposed for Mallard Lakes..

E. Final Submission. The final submission included copies of the inventory and conservation standards. In addition, proof of neighborhood support was again required including the signatures of at least 55% of the property owners as defined in the NCO. Mallard Lakes submitted signed originals from property owners in the neighborhood indicating whether they are in support, against or abstained, with regard to the proposed conservation standards. The rule applied was one vote per tax lot or one vote per controlling lot in those instances where two or more consecutive lots are shown together in tax records. Staff reviewed the submitted petitions and calculated the final results.

Total number of lots – 140

For:	123 lots –	88%
Against:	0 lots –	0%
Abstain:	10 lots –	7%

Lots whose property owners did not answer/return certified mail notices were assumed as no vote:

No vote:	7 lots –	5%
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A signed Memorandum of Understanding by the Neighborhood Association acknowledging their responsibility for continued property owner notification and monitoring of the District was also included.

All the previous procedural steps were completed by the neighborhood and an application for rezoning the area to add an NCO District was submitted.

ANALYSIS

A district approach was selected by the neighborhood to try to reflect existing conditions. There are two clearly defined areas within the boundaries of the original Mallard Lakes subdivision plat, District 1 and District 2. The neighborhood used the average of the particular characteristic

to determine the proposed conservation standards for each one of the districts. The proposed standards reflect the general character found in these two areas creating a limited number of nonconforming situations. With a total of 140 lots in Mallard Lakes, the number of nonconforming lots is 30 or 21% of existing lots. All property owners with nonconforming front setback and lot width are in support of the NCO designation. All property owners with nonconforming lot size are in support of the NCO designation, with the exception of one property owner who abstained.

	Number of Lots	Percentage
Minimum Lot Size (acres)	11	8%
Minimum Lot Width (feet)	6	4%
Minimum Front Setback (feet)	23	16%

Nonconforming lots

After the adoption of the Country Club Estates Neighborhood Conservation District (W-2852), staff worked with the Inspections Department and the City Attorney’s Office to clarify all aspects of nonconforming situations for NCO Districts (see attachment).

Staff applauds the effort between the neighborhood and Hubbard Realty, owner of the majority of undeveloped land in the neighborhood, to work out a compromise concerning one large vacant lot facing Foxhunter Court. The back of this tract of land has been filled making it difficult to build homes with a 50’ (feet) front yard setback as proposed for District 1. Both parties agreed on the creation of District 3 with a front yard setback of 20’ (feet). With this arrangement, Hubbard Realty is not opposing the creation of an NCO District for Mallard Lakes.

The majority of the neighborhood (88%) supports the creation of the NCO District. 10 lots are shown as abstaining, however, they are all owned by two property owners. No one has come forward opposing the NCO designation for Mallard Lakes.

CONCLUSIONS TO ASSIST WITH RECOMMENDATION	
Positive Aspects of Proposal	Negative Aspects of Proposal
The existing character of the neighborhood can be protected by requiring new infill or expansions to be more in keeping with existing development patterns.	The new standards will apply to all properties in the NCO District restricting the ability to do expansions or redevelopment of properties at minimum RS-9 standards.

STAFF RECOMMENDATION: APPROVAL with elimination of Conservation Standard number 4, minimum dwelling footprint for all one-and-a-half and two-story dwellings.

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.**

Marco Andrade presented the staff report.

PUBLIC HEARING

FOR:

Amy Elliott, 1900 Mallard Lakes Drive, Winston-Salem, NC 27106

- I represent Mallard Lakes Association which is comprised of all property owners within the neighborhood. The Association is over 30 years ago. There is an annual fee to cover maintenance of common areas, taxes, etc.
- We urge the Planning Board to approve this request.

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

- I'm one of the co-chairs of the Mallard Lakes NCO committee which was formed last fall in response to the proposal to extend sewer lines to our development. Many residents were concerned that the introduction of public sewer could bring new development that's out of character with the existing neighborhood and at a density level which will threaten the water quality of our lake and the integrity of our dam. We have three earthen dams jointly owned by association members and maintained by the neighborhood. My job on the committee dealt primarily with managing the design study process.
- Ms. Dunnigan explained the process the neighborhood had followed in applying for this NCO.

Laura Lee Van Hoy, 1841 Buddingbrook Lane, Winston-Salem, NC 27106

- I'm the other co-chair of this project. My job was collecting data including pictures of the neighborhood.
- Ms. Van Hoy explained that the front setback for District Two (125') seems excessive until you realize that the neighboring houses are set back 225'-300'. The 125' standard is so that a house would not sit up close enough to the road that their neighbors would have to look at the back of the house from their front yards.
- Regarding the minimum house size, the restrictive covenants require 1,700 square foot minimum house size.
- Our average footprint for our one and a half and two story homes was 1,396 square feet which would be excessive for a minimum.
- However, requiring a footprint of 1,200 square foot does not fit with what's already there.
- Having discussed and considered it, we decided we didn't need that standard in the neighborhood and that the quality and character of the neighborhood could be maintained without that standard.
- We request that you delete that standard.

- All of the homes in Mallard Lakes front on the street and we would like to maintain that as a standard to continue the character of the neighborhood.
- If you have questions about common areas or sizes, I would be happy to answer those questions.

Brian Bryan, 2080 Duckworth Court, Winston-Salem, NC 27106

- I'm a past president of the Association.
- We've worked with the neighbors and the committee.
- The neighbors are very thankful for this tool to preserve the development, but they aren't against development, as you've heard by the efforts to work with Mr. Hubbard about the vacant lots he owns.

Lloyd Whitehead, 2060 Duckworth Court, Winston-Salem, NC 27106

- I support this request.
- The committee and association have worked hard to include all homeowners.

AGAINST: None

WORK SESSION

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

1. This one feels a lot easier than the first one felt!

MOTION: Carol Eickmeyer moved approval of the zoning map amendment.

SECOND: Clarence Lambe

VOTE:

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

AGAINST: None

EXCUSED: None

A. Paul Norby, FAICP
 Director of Planning

NEIGHBORHOOD CONSERVATION OVERLAY DISTRICTS/ NONCONFORMING SITUATIONS

What is a nonconforming situation?

Once an NCO zoning district is established, a new set of requirements apply to lots, structures and improvements. Those that do not meet the new requirements are considered nonconforming.

Different types of nonconformities caused by the NCO requirements:

- A. Nonconforming Lots
- B. Nonconforming Structures and Improvements

A. Nonconforming Lots

A lot is considered nonconforming if it does not meet all requirements of the underlying zoning district and the NCO district in which it is located, and such lot legally existed as of the effective date of the adoption of the NCO zoning district.

Lots are nonconforming only as to lot area and lot width. If a structure is built on a nonconforming lot, the structure must meet all applicable setbacks in the underlying and NCO zoning districts. These are the same rules applied to any nonconforming lot of record.

If the nonconforming lot adjoins another nonconforming lot(s) in the same ownership, those lots must be combined into one zoning lot for the issuance of a building permit.

B. Nonconforming Structures

Structure: The *Zoning Ordinance* defines a “structure” as:

Anything constructed or erected which is above grade including a manufactured home and a storage trailer. For the purpose of this *Ordinance* structure does not include landscape features, such as ornamental pools, planting boxes, sculpture, birdbaths, open terraces, at-grade bridges and walkways, at-grade slab patios, driveways, walls or fences, shelters for pets, playhouses, open stairs, recreational equipment, flagpoles, underground fallout shelters, air-conditioning compressors, pump houses, wells, burial vaults, cemetery markers or monuments, bus shelters, or wharves.

Any structure or improvement to real property is considered nonconforming if it violates dimensional requirements by reason of its location in a required setback or exceeds the height requirement, and such lot legally existed as of the date of adoption of the NCO

district. Such nonconforming structures and improvements may continue to be used and occupied in accordance with UDO requirements.

C. Maintenance, Renovation, Expansion and Reconstruction of Nonconforming Structures and Improvements

Normal repair and maintenance of a nonconforming structure and improvements is allowed.

Expansion of nonconforming structure.

A nonconforming structure cannot be expanded so as to increase its nonconformity. Expansion of nonconforming structures is permitted if the expansion complies with the dimensional requirements of the underlying and NCO zoning districts. For example, a nonconforming structure partly located within a required front yard setback may be able to expand into the side or rear yards if all requirements are met. Property owners who desire to expand into a required setback area must obtain a variance from the Zoning Board of Adjustment.

Variances

The Zoning Board of Adjustment has the authority to waive certain requirements of the *Zoning Ordinance* related to lot dimensions, lot area, and building setbacks by granting a variance. The Board may approve a variance if it finds that a practical difficulty or unnecessary hardship in meeting the dimensional requirements exists. Such hardships or practical difficulties must arise from the recorded platting or deeding of land prior to the adoption of this Ordinance or from any act of a public agency, or from natural conditions beyond the control of the property owner.

Dimensional requirements

The underlying zoning district has general dimensional requirements for (1) minimum zoning lot, area and width; (2) minimum setbacks, front, rear, side, and street; and (3) for maximum height. The NCO district may change the dimensional requirements for minimum lot area, lot size, and front yard setback for each district established. Any new construction must meet the NCO dimensional requirements.

Rebuilding demolished or destroyed structures

Demolished or destroyed structures that were lawfully established but do not conform to the new requirements can be rebuilt without any change in location except to provide greater front, rear, or side sideyard area and without any increase in cubical content or floor area.

Any nonconforming structures demolished or destroyed can be reconstructed only upon the issuance of a building permit within two (2) years from the demolition or destruction, and the owner has another two (2) years after the building permit is issued to complete construction and obtain a Certificate of Occupancy (CO).

For additional information contact the Inspections Department at 727-2628.