

ORDINANCE NO. 1938

**AN ORDINANCE OF THE CITY OF WALNUT CREEK ADOPTING AN
OVERLAY ZONE ON PROPERTIES LOCATED ON CARINA COURT
(REZONING APPLICATION NO. 708-112)**

The City Council of the City of Walnut Creek does ordain as follows:

Section 1. Findings.

1. On December 15, 1998, the City Council held a public hearing on the proposed Rezoning Application No. 708-112 filed by the City of Walnut Creek and initiated by the City Council on October 6, 1998, for a proposed zoning amendment of the property at 2702-2733 Carina Court.
2. On May 7, 1996 the Walnut Creek City Council adopted Resolution No. 96-25 approving Tentative Map No. MS 805-95, Application No. 0778, Haist Minor Subdivision, located on 780 Snyder Lane (now Carina Court).
3. City Council Resolution No. 96-25 established, among other things, four "Planning Conditions," which regulated that location, design and size of the proposed single family homes to be constructed within the four-lot subdivision. The subdivider of the property voluntarily suggested these "Planning Conditions."
4. The project qualifies for a Categorical Exemption, Class 5, under the California Environmental Quality Act Guidelines (Section 15305).
5. The Land Use Element of the General Plan designates this site as Single Family Medium. This project is consistent with the General Plan land use designation.
6. City Council Resolution No. 96-25, Planning Condition 2. states that: "Any future swimming pools, spas, cabanas, and/or sheds shall be sited entirely within the required rear and side yard setbacks for each lot currently applicable to the R-12 zoning district."
7. City Council Resolution No. 96-25, Planning Condition 3. states that: "Design Review Commission approval of the proposed home designs, footprint locations, perimeter landscaping and the location of second story elements on homes which front on Snyder Lane shall be required for this project."
8. At the time the final subdivision map was recorded for Tentative Map No. MS 805-95, the "Planning Conditions" that the City Council had placed on the tentative map became legally ineffective because they had not been incorporated in a recorded document.
9. City staff and the developer of the subdivision, Affinity Land and Construction Company were unable to reach agreement regarding recordation of the tentative map "Planning Conditions" against the four lots prior to the sale of the first lot.
10. Based on the zoning study initiated for Carina Court by the City Council, the Council has considered whether to reinstate the "Planning Conditions," which may still be applicable from

Resolution No. 96-25 in the form of a zoning ordinance that will provide on-going conditions for these properties.

11. On August 7, 1998 the owner of the property at 2715 Carina Court received a building permit to allow construction of a swimming pool within 6' of the rear and side yard property lines. Because the tentative map conditions had dissolved, and no restrictions had been recorded against the property, the building permit was issued legally and in conformance with all existing regulations.

12. An overlay zone which prohibits swimming pools within the rear or sideyard setback areas applied to 2715 Carina Court would render the existing swimming pool within the setbacks a legal non-conforming use.

13. City Council Resolution No. 96-25, Planning Conditions Nos. 1 and 4 are completed, and are no longer necessary to regulate future development of the four existing homes on Carina Court.

14. Regulation of the location of swimming pools, spas, cabanas and/or sheds through the Minor Use Permit process will allow the Zoning Administrator to ensure that the location of such structures generally meets the City Council's original expectations as described in the Tentative Map conditions and can also be used to require mitigation so that the structures do not result in excessive off-site impacts to properties adjoining this subdivision.

15. Review of proposed new second story elements through the Design Review process will ensure that any new second story construction is compatible with the neighborhood and provides adequate consideration for the privacy of the adjacent residences.

16. The proposed overlay zoning is consistent with the General Plan, and the spirit of Chapter 2, Title 10 of the Walnut Creek Municipal Code.

17. The health, safety, welfare, and general prosperity of the residents of the City of Walnut Creek will be served by the proposed change in land use district because it will ensure that the original land use protections established by the City Council in Resolution No. 96-25 shall be enforced and also provides for a reasonable level of review and consideration for future new accessory structures or second story additions which may be requested by the properties on Carina Court.

Section 2. Decision.

The City Council hereby adopts the Carina Court Overlay Zone, and amends the Walnut Creek Municipal Code, for the four parcels located at Carina Court (APN's: 139-080-055, 139-080-056, 139-080-057, and 139-080-058) presently zoned R-12, and subjects those properties to the following conditions:

(a) The restrictions in this paragraph shall apply within any rear or side yard in the Carina Court Overlay Zone that adjoins real property to the north, east or south of minor subdivision MS 805-95. Any swimming pools, spas, cabanas and/or sheds which are to be located within such required rear or side yard setbacks for each lot as established in the R-12 zoning district shall require approval of a minor use permit. In considering a minor use permit, the Zoning Administrator shall consider privacy and separation issues for adjacent properties and may impose appropriate conditions in granting such permits.

