

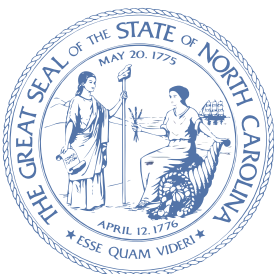
Report and Recommendations for DOWNTOWN ZONING REPAIR



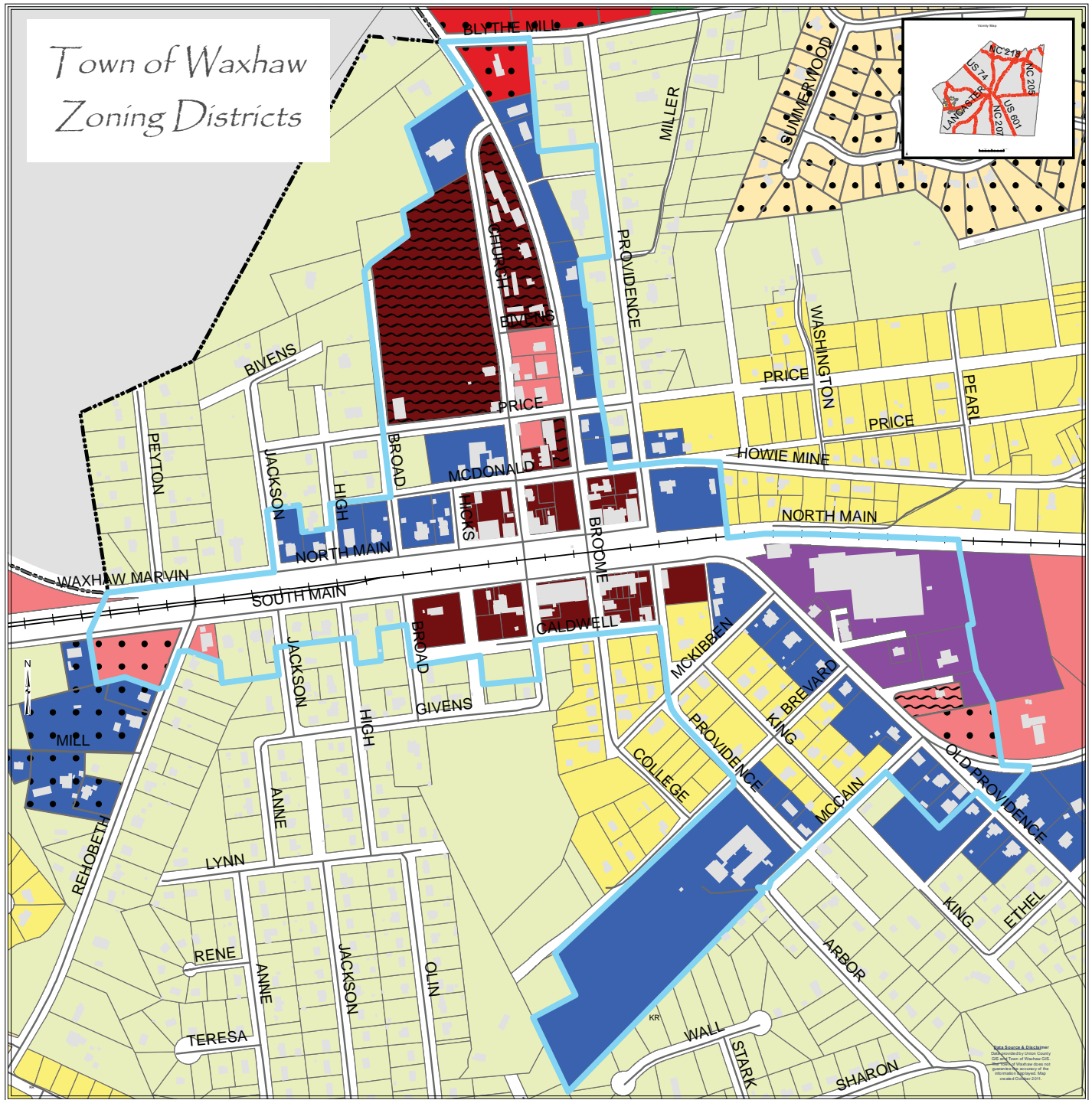
Produced for the Town of Waxhaw

by the North Carolina Department of Commerce
Division of Community Assistance

June 2012



LOCATION AND ZONING OF THE WAXHAW SMALL TOWN MAIN STREET DISTRICT



- The C-1, Neighborhood Business District is to provide for the commercial use of land developed in harmony with surrounding residential Zoning Districts. All establishments developed under the C-1 classification should be scaled to meet the convenience shopping needs of the immediate area and should not be scaled to detract from the C-4 Zoning District.
- The C-2, Highway Commercial District provides for the commercial use of land developed for ease of access, visibility and convenience to arterial and collector streets and their surrounding land uses. Commercial development should be compatible with highway activity and enhance the quality of service available to traveler, commuter and nearby residential alike.
- The C-3, General Commercial District provides for the commercial use of land developed as an agglomeration of business activity sufficiently separated from residential Zoning Districts by either transitional Zoning Districts such as C-1, C-2 and/or OIS; or, by sufficient buffering and screening measures. Commercial development should be compatible with arterial and collector street systems and accessibility.
- The C-4, Central Business District encourages land uses which are characteristic of main streets and pedestrian districts and that are solely intended for application in the central core of the Town. This district will allow a mixture of complementary land use types, which may include housing, retail, offices, commercial services, and civic uses.
- The OIS, Office, Institutional and Specialty District provides for the office and institutional use of land developed around a general theme of manufacturing, fabricating, processing and servicing at a moderate scale. Industrial and service development should be of compatible nature to surrounding activities including residential, commercial, institutional and governmental.
- The R-1, Single-family Residential District provides for the residential use of land developed in a very low-density pattern. The principal structure of the R-1 Zoning District is the Single-family Detached Dwelling. Minimum lot size is 100,000 square feet.
- The R-2, Single-family Residential District provides for the residential use of land developed in a low-density pattern. The principal structure of the R-2 Zoning District is the Single-family Detached Dwelling. Minimum lot size is 40,000 square feet.
- The R-3, Single-family Residential District provides for the residential use of land developed in a medium density pattern. The principal structure of the R-3 Zoning District is the Single-family Detached Dwelling. Minimum lot size is 20,000 square feet.
- The R-3 PRD, Single-family Planned Residential Development District provides similar land use patterns as the R-3 Single-family Residential District with more flexibility. The principal structure of the R-3 PRD District is a Single-family Detached or Attached Dwelling.
- The R-4, Single-family Residential District provides for the residential use of land developed in a high-density pattern. The principal structure of the R-4 Zoning District is the Single-family Detached Dwelling. Minimum lot size is 12,000 square feet.
- The R-4 PRD, Single-family Planned Residential Development District provides similar land use patterns as the R-4 Single-family Residential District with more flexibility. The principal structure of the R-4 PRD District is a Single-family Detached or Attached Dwelling.
- The RM-1, Multi-family Residential District provides for the residential use of land developed in a medium to high-density pattern. The availability of land zoned for RM-1 purposes is to encourage development at higher densities utilizing Cluster Development techniques, Condominium ownership arrangement, Garden Court Dwellings and conventional Two-family and Multi-family arrangements.
- The RM-2, Multi-family Residential District provides for the residential use of land developed in a high-density pattern. The availability of land zoned for RM-2 purposes is to encourage development at a high density using Cluster Development techniques, Condominium ownership arrangements, Garden Court Dwellings, Zero Lot Line arrangements and conventional Two-family and Multi-family Dwelling arrangements.
- The split zoned R-3 Single-family District and OIS, Office, Institutional and Specialty District provides the opportunity to co-locate housing and services on large tracts of land. The exact proportions and specifications can be found in the official town minutes in the Town Clerk's office.
- The split zoned R-3 Single-family District and C-3 General Commercial District provides the opportunity to co-locate housing and services on large tracts of land. The exact proportions and specifications can be found in the official town minutes in the Town Clerk's office.
- The MH-1 Manufactured Home Overlay District provides for the principal use of land developed in harmony with the primary or underlying zoning district regulations however, permitting the substitution of manufactured homes as a principal use type provided the specific design and/or installation regulations appearing in Section 6.1 of the Unified Development Ordinance are met.
- The conditional use district ensures that uses would be compatible with surrounding development and in keeping with the purposes of the general zoning district in which they are located and would meet other criteria set forth in Section 14 of the Unified Development Ordinance.
- Conditional zoning districts provide for those situations where a particular use, properly planned, may be appropriate for a particular site, but where the general district has insufficient standards to mitigate the site-specific impact on surrounding areas. Zoning of a conditional zoning district is not intended for securing early or speculative reclassification of property.

ACKNOWLEDGEMENTS

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ABOUT THE NORTH CAROLINA MAIN STREET AND SMALL TOWN MAIN STREET PROGRAMS

The N.C. Main Street program assists selected communities across the state in restoring economic vitality to their historic downtowns. Using a comprehensive downtown revitalization process developed by the National Trust for Historic Preservation, Main Street encourages economic development within the context of historic preservation.

Main Street staff provide technical assistance, guidance and training to participating communities. While grant funds for specific projects occasionally become available, Main Street is a self-help program, and it is up to local communities to provide the human and financial resources necessary to operate their downtown programs.

New Main Street communities are selected every three years through a competitive application process. Eligible communities must have a certified population under 50,000 and commit to hiring a full-time downtown manager and providing funding for operating the program for an initial three-year period.

SMALL TOWN MAIN STREET

Based on the same concepts as the original Main Street program, Small Town Main Street offers downtown revitalization assistance to the state's smallest communities. With offices in both eastern and western North Carolina, Small Town Main Street serves selected towns throughout the state that lack the resources to hire professional downtown managers. STMS staff work closely with committees within these communities, providing technical assistance and helping facilitate local initiatives in the areas of organization, design, promotion and economic restructuring.

The Small Town Main Street program selects new communities annually through a competitive application process. Eligible communities must have a certified population of less than 7,500.

ABOUT THE COMMUNITY PLANNING PROGRAM

The Community Planning Division of the N.C. Department of Commerce provides planning, revitalization, and growth management services for towns and counties, especially in rural and economically challenged regions. Its mission is to help build communities for a better future through land use planning, facilitation, and training services. Assistance is provided through five regional offices serving all areas of the state and located in Asheville, Winston-Salem, Fayetteville/Wilmington, Raleigh, and Washington.

Services provided include:

- Comprehensive and strategic planning
 - Community revitalization
 - Meeting facilitation
 - Growth management (annexation, zoning and subdivision regulations)
 - Training for planning boards and commissions
 - Geographic Information Systems (GIS)
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INTRODUCTION

This report is the result of the Town of Waxhaw's participation in the pilot testing of a new "Downtown Zoning Repair" checklist developed in cooperation by the Office of Urban Development (OUD), which operates the North Carolina Main Street program, and the Community Planning Division (CPD) in the North Carolina Department of Commerce.

The Downtown Zoning Repair checklist was created after staff members in OUD and CPD observed that zoning and related regulations in many towns often stood in the way of downtown economic and strategic goals. When done right, zoning can ensure community readiness for economic success. The checklist was developed to find, diagnose, and treat zoning problems.

Created especially for Main Street communities, the checklist was intended as a tool for finding typical, ineffective zoning policies that stand in the way of downtown revitalization, and provide recommendations for better, updated rules, so that towns are prepared for downtown market success.

BACKGROUND OF THE PROJECT

In October of 2010, a Call for Participants was issued by OUD and CPD seeking participant communities to serve as models to help the Department of Commerce test the usefulness and effectiveness of the checklist as a tool for downtown communities. Three municipalities representing different geographic areas of the state were selected, with Waxhaw representing the Piedmont. Goldsboro and Burnsville were selected from the coastal plain and mountain regions, respectively.

In February 2011, the project began in Waxhaw with a three-day site visit to the Town by CPD staff member Betsy Kane. The site visit included field survey work, a public presentation and Q&A session, interviews with downtown stakeholders (in groups and individually), visits to a variety of downtown business establishments, and consultation with Town staff.

After the site visit, Ms. Kane conducted a review in depth of the town's zoning ordinance and related maps and materials. The Downtown Marketplace Report that had been performed for the Town in 2010 was also reviewed to gain an understanding of market potentials and brand positioning of the downtown, and its circumstances within the wider regional setting of Union County and the Charlotte metro region.

As a result of the field work and review, this report with recommendations was developed.

It is hoped that the contents of this report will aid downtown revitalization in Waxhaw and that it may provide useful information and recommendations to all who are involved with that effort: downtown merchants, restaurateurs, and business owners; property owners; Town elected and appointed board members; Town staff; non-profit organizations; and volunteers and other interested citizens.

SUMMARY OF RECOMMENDATIONS

In many respects, Waxhaw's zoning ordinance and related public policies serve downtown well. The Town has made adjustments to the regulations over time in response to citizen and staff suggestions to meet downtown's unique needs.

Nonetheless, Town zoning and policies can be amended in many subject areas to better serve downtown's needs by removing both substantive and procedural obstacles to downtown business success.

Key recommendations are summarized as follows:

- Adjust setback standards for the primary downtown area (C-4 and OIS), as well as adjacent blocks and parcels that are likely to be redeveloped in the next five years, to reflect traditional downtown building footprints and ensure that builders can adhere to them in new development without extra processes.
- Reduce the front, side, and street side setbacks in the R-3 and R-4 districts to render nearly all houses conforming, and consider adopting a build-to line or a combination of maximum-and-minimum setbacks for infill in the older and more historic parts of the downtown neighborhoods.
- Consider applying an overlay zone in the downtown commercial and mixed-use area to adjust setbacks, exempt sites from suburban-style buffering requirements, prohibit on-site parking or regulate its location, and apply building, landscaping, and site design standards that are appropriate to traditional downtown development typology, along with other recommended changes. The overlay zone approach may be easier than changing multiple underlying commercial zoning districts to conform to the recommendations in this report.
- Adjust landscaping standards to reflect a more downtown-appropriate typology (street trees, planter boxes and the like).
- Adopt a wider commercial sidewalk cross-section, to be applied to new areas to be developed along main shopping and commercial streets (primarily South Main and possibly North Broome).
- Adopt formal policy statements favoring Complete Streets and Context-Sensitive Design in town plans and public works capital improvement plans, in anticipation of any future town or state sponsored road projects that may involve re-design of the existing Main Street extents.
- Limit and prohibit driveway cuts where appropriate, and require a rear access system in new development on expansion areas.
- Exempt downtown development from off-street parking requirements and prohibit new off-street parking lots serving just one or a few establishments.
- Have a professional parking study done; move forward with better wayfinding and signposting of existing lots, and apply best parking management principles to the existing supply of on-street and publicly owned parking.
- Manage loading with a general waiver of the off-street loading requirement for sites within the downtown boundary, while requiring rear (internal to the block) access systems for major new infill development.
- Streamline the sign permit process with short-form administrative permits or no permit requirement for change of sign copy; replace the master signage plan requirement with a maximum area limit, for multi-tenant downtown buildings.
- Allow more flexibility in design, copy, and coloration of signage; ensure that any design standards are clear, supportable, and applied through a concise process.
- Flatten, simplify, and combine the extensive, overly narrow, and duplicative listings of retail and retail service uses in the Zoning Table of Uses. Redesign the Use Table to be much shorter and easier to use by eliminating alternative wordings, combining retail uses, and defining retail and retail-service categories in the definitions.

SUMMARY OF RECOMMENDATIONS

- Allow a full range of retail and retail service uses by right in C-4, using an overall square foot limitation to control scale (such as under 5,000 square feet).
- Remove automotive-oriented uses from the allowed uses in the downtown area.
- Allow new office uses only in space other than traditional ground-floor storefronts. Take pressure off of retail space and keep retail rents manageable by ensuring that a reasonable supply of suitable office space can be developed in and near downtown (in locations off the primary shopping frontages and in upper floors.)
- Prohibit check cashing and payday-loan establishments and laundromats in downtown commercial districts, and remove boarding and rooming houses from the listed allowed uses in residential districts around downtown.
- Eliminate the density cap on housing which now practically prohibits development of upper-floor dwellings; instead, apply a three-story limit and quality standards. Embrace downtown housing with quality standards and clear design guidance in the ordinance, instead of uncertain and lengthy discretionary review, to produce well-designed dwelling units that will appeal to buyers and stable lessors in Waxhaw's mid-level and upscale market niches.
- Allow artisan and craft manufacturing in appropriate locations and with standards to ensure compatibility with the core retail components of the downtown niche.
- Ensure that outdoor dining and sidewalk merchandise display are explicitly allowed as accessory uses, as long as they meet reasonable standards for sidewalk width and usage and minimum quality standards.
- Allow special events of private businesses (gallery openings, musical performances, children's parties, etc.) as accessory uses, so long as standards to ensure compatibility are met. Allow a generous number of events, but delineate reasonable hours of occurrence, and limits on noise outside of buildings. Remember that evening activity and plentiful visitation downtown is good, not bad.
- Clarify that more than one principal use, and a mix of uses, in a building and on a site is allowed.
- Allow by right additional benign and desirable uses (as identified more specifically in this report) that now require a time-consuming and uncertain Conditional Use Permit.
- Vest responsibility for most board-reviewed development decisions (other than text amendments and rezonings) in the Planning Board rather than the governing board. This approach is the accepted best practice for several well-founded reasons.
- Create a lesser permit type, a Special Use Permit, for review and approval by the Planning Board. Use it instead of the Conditional Use Permit for most uses that need board review. Reserve the full Conditional Use process, with Town Board review, only for truly major development proposal types with the potential for considerable impact on the community and requiring extensive examination.
- Remove the more minimal types of changes from the board review process entirely, as is now done with awnings and paint color. Review recent, typical board-reviewed permit approvals to find types of requests that could be routed through an administrative review process.
- Reduce the time required for submittal of permit applications to the minimum required to advertise the hearing, at least for the lesser permit type recommended above. Use "sufficiency review" to make applicants responsible for submitting complete applications by the deadline.
- Firm up the discretionary review standards and add specificity and objectivity to them. Identify the issues that are of particular concern (such as context and transitions between existing and infill development; traffic, noise, lighting, and hours of operation; and visual and functional compatibility). Then, tailor clear, objective standards to ensure good results in those particular areas, rather than leaving unfettered discretion in the board review process.

ZONING DISTRICTS

In Waxhaw, a number of zoning districts are applied to the downtown commercial and downtown residential areas. These are as follows:

The **C-4 Central Business** District covers most of the traditional downtown, the area delineated by the Small Town Main Street Committee (“STMS boundary”) for purposes of downtown revitalization.

- The stated purpose of the district is for the traditional main street pedestrian area in the central core of the Town and a mix of complementary land use types, including housing, retail, offices, commercial services, and civic uses.

The **C-4 Conditional Central Business** district covers an area that will be the site of a major new infill development north of the traditional business blocks, on both sides of North Church Street.

- The Conditional C-4 district allows for the application of the C-4 district with additional site-specific conditions (imposed through a conditional rezoning authorized by the Town Board) to control the manner, type, and performance of development.

The **OIS Office, Institutional, and Specialty** district covers some edge areas around the main “business blocks” downtown, as well as the residential conversions housing some businesses on Old Providence Road leading into downtown from the east, and some uses on North Broome Street leading into downtown from the north.

- According to the purpose statement, this district is for the office and institutional use of land and the adaptive reuse of larger housing stock into specialty shops serving adjacent neighborhoods and business district.

The **C-2 Highway Commercial** district is applied to just one parcel at the far west end of the STMS boundary and a handful of small parcels between McDonald, Church, and Broome Streets in the northern part of the STMS area. A Conditional Use version of this district is applied to two properties at the east and west ends of the STMS boundary, and a Conditional C-2 district is applied to one parcel at the east end that was previously zoned Light Industrial.

- This district is intended for commercial uses developed for ease of access, visibility, and convenience to arterial and collector streets and nearby land uses, in a development pattern compatible with highway activity.

The **R-3 Single-Family Residential** district covers primarily a handful of parcels fronting on Main Street at the western end of the STMS area.

- It is a single-family district according to its purpose statement. The minimum lot size is 20,000 square feet (slightly less than one-half acre), which is a conventional size for rural residential lots at the outer edge of small towns.

The **R-4 Single-Family Residential** district covers a number of residential lots one and two streets behind Old Providence Road on the eastern end of the STMS area.

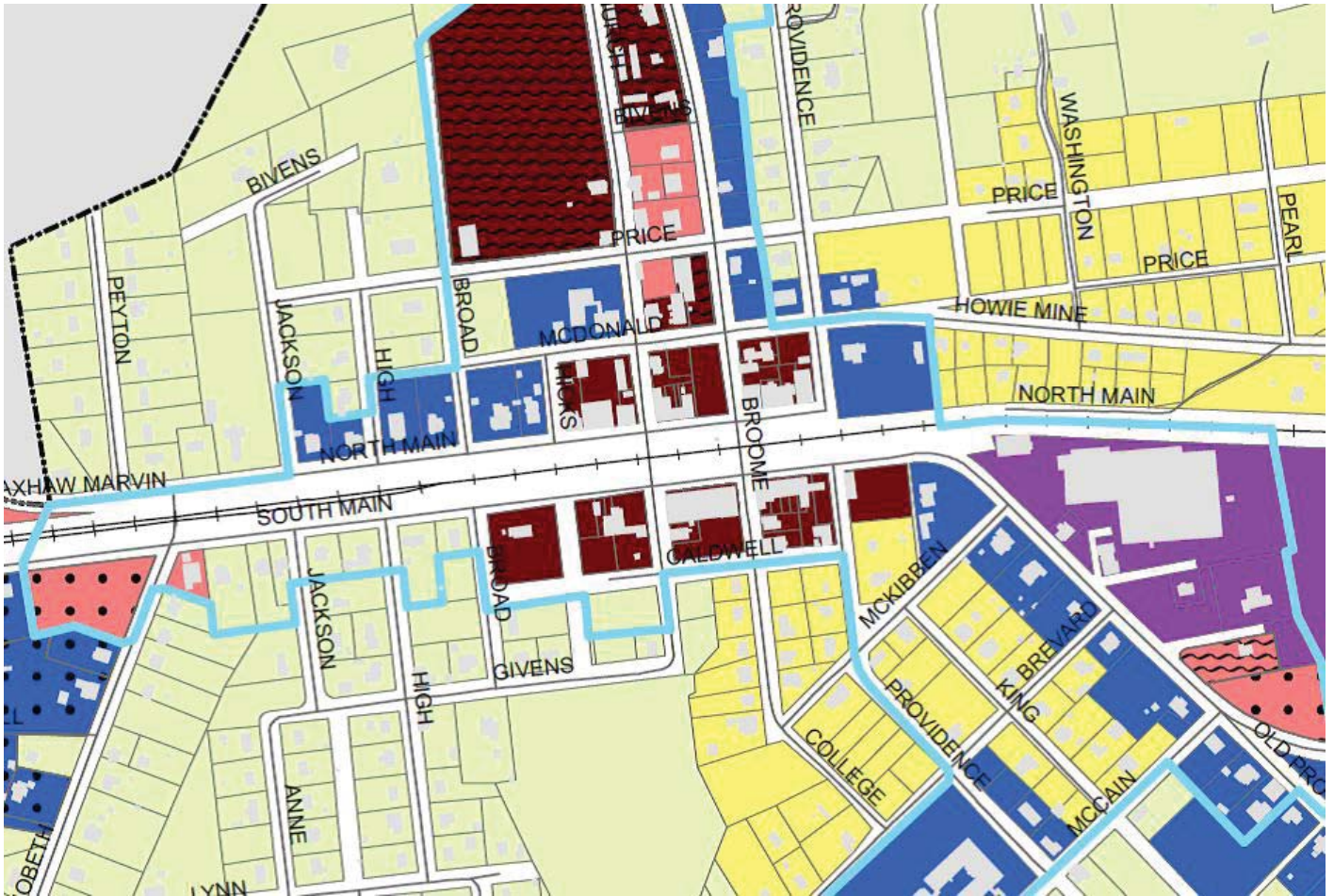
- It is a single-family district according to its purpose statement. The minimum lot size is 12,000 square feet (slightly more than one-quarter acre), a typical size for a conventional suburban lot.

The **I-1 Light Industrial and Service** district covers the mill site and adjacent parcels on the northeast side of Old Providence Road.

- The purpose statement says this zoning district is intended for industrial and service uses.

There is one area of property between North Broome Street and Providence that is zoned both R-3 and OIS. The reason for this dual zoning is not apparent and its validity and effect is subject to question.

ZONING DISTRICTS



A snapshot of zoning districts in downtown Waxhaw. The light blue line delineates the Small Town Main Street boundary for purposes of downtown economic revitalization.

ANALYSIS

The core blocks of traditional, older storefront commercial buildings are accommodated in the C-4 Central Business District, a district specially applied only to the traditional downtown core. Overall, the C-4 district is highly suitable to downtown in many ways, and it is appropriate that downtown has been assigned a separate, tailored zoning district. Other sections of this report provide details on how the regulations of this district could be refined and changed to improve how it handles downtown uses and development.

In the UDO, Paragraph 11 of Section 4 states that “the C-4, Central Business District, will be expanded over time through the zoning change process” based on the Future Land Use Plan. This intention, if carried out, will serve the downtown area well, since some lands within the Small Town Main Street downtown boundary are not currently zoned C-4 and, therefore, are subject to zoning rules less suited to a downtown setting.

Older residential areas around downtown Waxhaw are covered by the same R-3 and R-4 residential zoning districts that serve many outlying areas. This is beneficial in that it treats older neighborhoods as gently as outlying suburban neighborhoods, both being covered by some of the same zoning districts. Some jurisdictions treat older neighborhoods of single-family houses too harshly in comparison to suburban subdivisions, putting them into a general purpose multi-family district or other zoning district that allows uses that are intrusive as seen through a homeowner’s eyes. Waxhaw fortunately has avoided imposing on these neighborhoods in that way.

A downside of using the same zoning districts is that downtown neighborhoods and suburban subdivisions have different needs (particularly in terms of development pattern, lot size, and house placement), and standard residential

ZONING DISTRICTS

zoning districts tend to serve suburban development better on these matters. The needs of downtown neighborhoods are covered in more detail in other sections of this report, which give some suggestions for how the regulations of these R-3 and R-4 districts could be adapted to better suit them.

RECOMMENDATIONS

Commercial Districts

- Continue applying the C-4 district to downtown, and adjust the regulations of the district to adhere more closely to downtown needs, as elsewhere discussed in this report.
- Consider whether it might be good to apply C-4 zoning to additional areas just around the existing downtown buildings.
 - One strategy to consider (if the downtown continues to prosper and there is economic demand and citizen opinion in support of a modest expansion) is to pro-actively rezone to C-4 some additional parcels fronting the main retail street that contain non-historic buildings fronting on parking lots and could be redeveloped in a built pattern more like the older storefronts. This would allow for infill development under C-4 regulations to supplement the existing downtown buildings.
 - Another approach would be to allow property owners to bring forward rezoning petitions to C-4 on their own initiative. Each approach has merits; pro-active “pre-zoning” allows a coordinated approach and is more reflective of the overall public vision of what the downtown should become, while responsive (reactive) rezoning is more sensitive to actual market conditions but does depend on the willingness, insight, and initiative of property owners



The strip mall site at the southwest corner of South Church Street and West South Main Street could be ripe for redevelopment. Any new project on this site should use a building type and site layout that is more appropriate for downtown. This typology would include ground-floor retail facing Main; upper-floor offices; and residential units. Redevelopment of the site would need to include a wider sidewalk cross-section to accommodate all three functional zones of a sidewalk. Any parking on-site should be eliminated or absolutely minimized and should consolidate parking spaces so that they are shared between daytime peak (offices) and evening / night / weekend peak usage (residences).

ZONING DISTRICTS

Residential Districts

- It would be good to update the zoning of the older neighborhoods around downtown with standards tailored to their needs, as recommended in more detail elsewhere in this report. If these changes to R-3 and R-4 regulations are incompatible with the application of those same districts in other areas of town, it would be advisable to create a new zoning district to apply the improved standards only to the neighborhoods around downtown



A view of a house and lot in one of Waxhaw's residential districts. Narrow roads, swales, and soft pavement edges (without curbs) make up a small-town typology that has an informal charm, especially when compared to urban and new suburban curb-and-gutter sections on over-wide streets. Swales and narrow streets are also much better for water quality and minimizing stormwater runoff than wider streets with curb-and-gutter edges.

DIMENSIONAL STANDARDS (LOT SIZE & WIDTH; BUILDING SETBACKS)

The Waxhaw UDO applies standards for lot dimensions and building placement on lots for the various zoning districts, as follows.

DOWNTOWN COMMERCIAL DISTRICTS

Section 11.2 of the UDO provides dimensional requirements such as lot size (minimum area and width) and front, side, and rear setbacks.

C-4 District

The minimum requirement for setbacks in the C-4 downtown district is 0 feet, which is appropriate for traditional downtown building placement. The minimum requirement for lot width and depth is 20 feet, which is suitably small. Based on a review of Union County parcel mapping information,¹ this minimum does appear to make two of the storefront building lots nonconforming (110 West North Main and adjoining parcel); but other narrow lots on South Main, including 108 South Main, appear to measure at least 20 feet wide and so are conforming.

The status of the two North Main lots as nonconforming simply means that buildings may be used as long as they meet the required setbacks. Since the setbacks are zero, the use, rehabilitation, or reconstruction of the buildings is not at risk from the status of the lot as nonconforming. In other words, no change in the existing regulations is needed to render the lots usable.

OIS District

The OIS district requires setbacks of 20 (front), 20 (rear), 8 (side), and 18 feet (street side). A number of structures in this district appear to be nonconforming with regard to these setback requirements. One notable structure is the Waxhaw United Methodist Church at 200 McDonald Street, which appears to be just slightly closer by a foot or so, to both the front and the side street lot lines, than is allowed by the zoning requirements. Pursuant to Section 10.4, paragraph 6 of the UDO, this could potentially limit repair and rehabilitation of the structure due to its nonconforming status.



This church building may be nonconforming as to setbacks; it is recommended that zoning setback requirements be adjusted in the development ordinance to ensure they are generally consistent with where historic structures are placed on their lots. Zoning requirements should match the built environment of historic areas.

¹ The review of parcel information was conducted by accessing online Union County maps. Although performed with due care, it was an informal and not an exhaustive review. Because of technical limitations to accuracy (such as the imperfect registration of aerial photos to parcel maps), the dimensions cited in this report are estimates of actual conditions, and should be verified for accuracy by reference to as-built surveys or other reliable sources.

DIMENSIONAL STANDARDS (LOT SIZE & WIDTH; BUILDING SETBACKS)

Other structures appear to have been rendered nonconforming by the regulations with regard to the street side requirement on the west side of High Street (500 N. Main), the front setback requirement (along Old Providence Road on the east edge of downtown), and also possibly at 310 E. South Main and at the northern corner of McCain and S. Providence Streets. Repair and improvements to some or all of these structures could be hampered by the Section 10.4 limitations that are applied to nonconforming structures, perhaps preventing re-investment in these older structures, or requiring procedural delays before repairs could be made.

In general, the OIS setback requirements are somewhat larger than traditional development patterns that characterize Waxhaw's older areas and those of other typical small towns. Any new construction in the OIS district where it occurs in and around the downtown areas could, therefore, fail to carry forward the scale and intimacy of older buildings, thereby diluting and impairing the downtown "brand."

A related issue is that none of the zoning district dimensional requirements mandate that buildings be placed no further back on their lot than a specified maximum. This approach contrasts with minimum setbacks, which stipulate how far forward buildings may be placed. It is sometimes referred to as a "build-to line."

In older parts of town, buildings are typically placed closer to street frontages and side lot lines than in suburban development. The absence of any maximum standard (build-to line) means that new buildings in older areas could be placed inappropriately far back from lot lines, detracting from the scale and pattern of a historic area. While some flexibility in building placement is certainly both important and beneficial, the combined effect of too much suburban-style building placement would be to dilute the brand of older areas. Preserving their appeal is an important component of supporting the downtown brand and enhancing the marketability of these areas.

The OIS district requires a minimum lot area of 5,000 square feet, lot width of 50 feet, and lot depth of 50 feet. This does not appear to render any existing lots nonconforming in the OIS district where it occurs downtown.

C-2 District

The C-2 district requires a minimum front and rear setback of 20 feet and side setback of 10 feet, and limits lot coverage to 80 percent. A scattering of freestanding commercial uses, not well linked by pedestrian connections, and a couple of gas stations occupy the parcels along North Broome Street.

The C-2 properties along this entry to downtown do not do a particularly good job of introducing the visitor to the Waxhaw downtown brand. The nearly continuous asphalt apron and parking lots that front these buildings are visually intimidating and quite dangerous for pedestrians to navigate because vehicle movements across the pedestrian's path are unrestricted.

In anticipation of when these properties are redeveloped, it would be good to make adjustments to the setback standards (along with a requirement restricting the placement of parking from taking up the entire frontage of the properties and mandating sidewalk and street tree installation). Consider re-calibrating the setback standards along this stretch to accommodate a modest front setback (necessary because of the heavy through traffic along North Broome) and also to create a more walkable and contiguous urban fabric by greatly reducing the side setbacks.

RECOMMENDATIONS

- Consider converting the zero setback in C-4 to a build-to line.
- Specify appropriate minimums and maximums, based on typical historic patterns of existing buildings, for the downtown areas in the OIS districts. These steps will ensure that traditional development patterns are not impaired by inappropriate departures from the prevailing pattern, and that they are carried forward in new development to some extent.
- Better than the above two recommendations, but more complicated to achieve initially: Consider adopting an overlay zone (to extend beyond the boundary of C-4 and cover not only the main downtown area of business blocks, but also the blocks and parcels most likely to be redeveloped with commercial or mixed-use development in the next 5

DIMENSIONAL STANDARDS (LOT SIZE & WIDTH; BUILDING SETBACKS)

or so years). In the overlay, modify the setbacks (and possibly other important building dimensional standards) as appropriate for each street frontage.

- o Differentiate the setback regulations by street frontage (that is, apply appropriate setbacks depending on the street, with all parcels along a common frontage regulated similarly).
- o This would allow parcels outside of the C-4 core blocks but essential to downtown, such as those in OIS or along North Broome in the C-2 zone, to retain or change their underlying zoning while being subject to downtown-appropriate dimensional standards.
- o This approach is similar to that taken by “frontage codes” (a kind of form-based zoning) and would ensure that infill development and redevelopment carries forward the traditional downtown pattern that Waxhaw residents love, without subjecting it to unnecessary or unpredictable and lengthy discretionary review processes to get an appropriate dimensional building footprint.
- o Differentiating setbacks by street frontage (rather than by zoning district) is a technique adapted from form-based zoning that defines what the development pattern is along the public edge of private development. Applying the “frontage code” method creates a predictable and solid town fabric along an entire street, even though each parcel and block is individually and incrementally changed and redeveloped over time.

DOWNTOWN RESIDENTIAL DISTRICTS

As stated above, the zoning districts applied to the majority of downtown residential areas are R-3 and R-4. The minimum lot area for R-3 is 20,000 square feet and the minimum width is 60 feet. For R-4, the minimum lot area is 12,000 square feet and the minimum width is 60 feet.

Based on an examination of the parcel map for downtown neighborhoods that are zoned R-3 and R-4, the minimum lot width appears to be reasonably calibrated to meet the needs of these areas. No lots could be identified that are rendered nonconforming by virtue of lot width, because all lots appear to be at least 60 feet wide.

For lot area, it was possible to identify a large number of lots in both R-3 and R-4 that do not meet the minimum lot areas of 20,000 and 12,000 square feet, respectively. In R-3, lot areas in the Jackson, Anne, Olin, and High Street areas appear to come in at about 14,400 square feet. Lot areas for some lots along Peyton Street are in the 19,000 square foot range. In R-4, the areas of lots in the vicinity of Price Street, Howie Mine Road, and North Main range from about 8000 to 13,000 square feet.

The UDO does not prohibit the use of these lots based on the mere fact of their being made nonconforming as to area. Rather, it states in Section 10.3 that lots of record may be used for any use permitted in that zoning district (such as a single-family dwelling in R-3 or R-4), provided that the principal and accessory structures meet all applicable front, side, and rear yard requirements.

This will be impossible to meet on some of these lots that are limited in depth. Lot depths range from as little as 50 feet deep (in one or two instances) to 70 or 80 feet deep. The requirement of a 30-foot front setback and a 20-foot rear setback will render some lots unbuildable or difficult to build on without a variance.

Even if a variance is available, the burden of seeking that permission, along with the uncertainty and procedural delay, will tend to push down demand for houses and lots in these areas. The allowance for nonconforming lots to be buildable as long as setbacks are met is good as far as it goes, but is insufficient.

It is possible to allow setback reductions of as much as 40 to 50 percent and still produce a compatible house on a nonconforming lot. If nonconforming lots are not too numerous, it is unlikely that the small number of infill houses would appreciably change the feel of the neighborhood. Far from being out of character, small houses on small lots are typical of older downtown neighborhoods.

DIMENSIONAL STANDARDS (LOT SIZE & WIDTH; BUILDING SETBACKS)

RECOMMENDATION

- To allow lots smaller than the minimum lot size to be optimally buildable, reduce the setback requirements in the residential areas where the historical development pattern is less than the current required setback in the UDO.
 - Adjust the setback requirement to reflect the lower end of the range of the typical front setback as built. This may be 15 feet or 20 feet depending on the particular area.
 - In addition, the front setback should be revised to include a maximum. In most of the downtown neighborhood it appears the maximum should be set at around 20 feet to ensure that infill houses will carry forward the best development pattern of traditional Waxhaw.

In the R-3 district, the setbacks of 30 (front), 30 (rear), 10 (side) and 20 feet (street side) seem excessive, given the historical pattern of development in the older neighborhoods that make up the R-3 zoning around the downtown. If houses were built closer to the lot lines than these setbacks allow, the regulations (which post-date the houses) cause them to be nonconforming structures, and therefore subject to limitations on repair or construction, pursuant to Section 10.4, paragraph 6. Excessive setbacks imposed by zoning will prevent homeowners from adding to existing houses in the historical development patterns, and will also keep any new infill construction from carrying forward the development pattern consistent with the traditional arrangement of the older areas.

Likewise in the R-4 district, the setbacks of 30 (front), 10 (side) and 20 (street side) may be excessive based on a visual examination of the building footprints in relation to property lines.

An examination of aerial photos with property lines superimposed upon them shows that many R-3 and R-4 houses in the neighborhoods in and around the downtown boundaries appear in fact to be closer than 10 (or 20) feet to their side (or street side) lot lines, and closer than 30 feet to the front lot line.

For example, most houses along Howie Mine Road and along North Main Street are only about 10, 13, or 15 feet from the front property line; a few are less than 10 feet. Along Price Street near Washington Street, many if not most houses are within 14 to 20 feet of the front lot line. Around North Jackson and North High Streets, houses are 17 to 25 or so feet from the front lot line. In the area of South Church and South Broome Streets, houses are 15 to 28 feet from the front lot line.

These patterns are typical of older development and historic downtown neighborhoods, so they should not be thought of as sub-standard dimensions. In fact, some of the most sought-after new and old neighborhoods embody these patterns. It is the zoning requirements that are awkward and which render the homes substandard as to setbacks, even though there may be nothing inherently bad about their position on their lots.

This situation (creating needless nonconformities) puts homeownership in these central and downtown neighborhoods at a disadvantage compared to suburban settings, where lots are wider and larger, and building improvements are less likely, as a result, to be constrained by the setbacks. To the extent that homes in downtown neighborhoods bump into excessive setback requirements, it discourages purchase, re-investment, and home improvements. If people are not re-investing in homes in a neighborhood, the disinvestment leads to decline and decay. In economic terms, all other things being equal, poorly calibrated setbacks will cause disinvestment in downtown neighborhoods, relative to other areas.

Adjusting the standards will ensure that traditional development patterns are not impaired by inappropriate departures from the prevailing pattern, and that the existing norm is carried forward in new development. A maximum front setback would ensure that infill houses are consistent with the prevailing norms and avoid a mish-mash appearance as remaining lots are developed.

RECOMMENDATION

- For properties in the R-3, and R-4 zoning districts in the heart of town (in and around the downtown boundary), re-calibrate the front, side, and street side setbacks so that most if not all existing buildings are rendered conforming.

DIMENSIONAL STANDARDS (LOT SIZE & WIDTH; BUILDING SETBACKS)

- The precise determination of setbacks should be based on an accurate review of the locations of the buildings in relation to property lines.
- In addition to appropriate minimum setbacks, consider applying a maximum front setback based on typical historic patterns of existing buildings. Section 9.8 gives extensive standards for buffers, screening, and landscaping, as elements that must generally be supplied when sites are developed or reused.



The placement of buildings on their sites speaks to us in the language of design, creating a sense of place. Some places read as traditional and walkable; others present the sense of a place designed for automotive movement rather than for the comfort of persons. Building setback patterns are part of the design vocabulary that tells people which kind of place they are in.



Sometimes a shallow setback on a downtown street can provide seating or dining space when the sidewalk lacks the width to accommodate it.



New development can emulate the setback patterns of traditional walkable storefronts. Here, a new building with three retail bays is built to the front lot line (however, they should have been designed with entry niches so as not to interfere with sidewalk passage).

BUFFERING, SCREENING, AND LANDSCAPING

BUFFERING

The buffering requirements of Section 9.8 prescribe a fairly conventional strip of a certain width, planted with shrubs and/or trees, to place additional distance and (mainly vegetative) screening between one site and another.

ANALYSIS

Buffers, as screens and separation devices, tend to support a suburban approach that presumes that buildings and development sites are unlikely to be attractive or tolerable to their neighbors. Leafy screening and buffer zones are certainly useful on commercial sites in suburban locations, where the abundance of car storage lots and car utilization areas (driveways, parking access lanes, and other vehicular facilities) surround development and make it inherently stark and unattractive.

However, in a traditional downtown, the concept of buffers is somewhat misplaced for several reasons:

- a) The scale of development is smaller and sites tend to be smaller; if additional land is required to be devoted to buffers it will often make development unfeasible, or add to the distance between properties to make it less traditional in appearance and less compact and walkable.
- b) Downtowns do not require, and when properly treated are not accompanied by, the quantities of ugly car utilization areas that suburban development must have.
- c) Traditional town patterns, which prevail in downtowns and central neighborhoods, tend to be attractive in and of themselves, and don't need to be hidden by foliage to make them tolerable living environments.
- d) Plant materials are an important part of downtown visual quality, but they take a distinctive and different format (typology) than in the suburbs. Instead of landscaped barriers applied around the borders of sites, downtown landscaping properly takes the form of street trees, planter boxes, hanging baskets, window boxes, ornamental plantings, and small lawn areas around civic monuments or landmarks.



Downtown buildings are inherently attractive when developed according to traditional downtown architectural norms. Different uses such as residential and commercial do not need to be buffered from each other as with suburban development, especially when there are no on-site vehicle storage or movement areas.

BUFFERING, SCREENING, AND LANDSCAPING

The rules in Waxhaw do not go as far as some ordinances do in applying buffers to downtown. Section 9.8 applies buffers only to the boundaries of properties in C-4 if they are adjacent to properties outside of the C-4 district. The exemption for C-4 properties is good, as far as it goes.

Still, C-4 is just a portion of the downtown area; it covers mainly the parcels developed with traditional storefront downtown buildings. It is probably excessive to require buffering in a mixed-use pedestrian area in the center of town, outside of C-4 and for development in C-4 adjacent to non-C-4 sites.

For example, the regulations appear to require a 10-foot landscaped buffer between a small retail use in C-4 and an office in the OIS district right next door, or a 20-foot-wide landscaped buffer between a small clinic or retail use and a multi-family building.

In general, the following principles should be followed to manage compatibility downtown, instead of using suburban-style buffers:

- If it is feared that development will be unsightly, then the appropriate remedy is to adopt sufficient visual and architectural quality standards and site design standards so that it will not be unsightly, rather than to screen it from view with vegetation.
- In addition to visual quality, there are other side effects of development that may need to be controlled, such as cooking odors from commercial kitchens, unsightly waste collection and utility areas, the glare of lights as seen from adjacent sites, or noisy patrons coming and going from entertainment uses during evening hours.
 - To prevent such impacts on nearby sites, the appropriate remedy is to regulate the uses themselves, or the characteristics of the uses. Remedies include performance standards, compatibility controls, standards such as shielding requirements for lighting, or distance requirements between uses.



Compatibility of commercial activity adjacent to residences is highly dependent on appropriate design, as well as reducing or eliminating vehicle movement and storage (parking) on the commercial site. Here, the storefront layout is perfectly compatible with an established residence, and there is no parking lot or access driveway on the commercial site to cause noise, congestion, and visual impacts on the residence.

BUFFERING, SCREENING, AND LANDSCAPING

- A lot of the impact generated by commercial uses on nearby non-commercial sites is simply the volume, noise, odor, and hazard presented by motor vehicles.
 - For these vehicle impacts, the best solution is not to allow vehicle arrival, movement, and storage on individual sites, but rather to accommodate those vehicles off the site in common parking areas where their impacts will be less felt, and to create a downtown setting that is a “park once” environment. People arriving on foot rarely create intolerable side effects for the neighbors the way that cars do.

Section 9.8.2.C states “No structure other than a wall, fence, sidewalk, mailbox, sign, school bus shelter, or driveway cut shall be permitted within a required [buffer or screening] area.” This is a normal and helpful requirement in suburban development areas. However, in the downtown, it could result in buildings being placed excessively far back from the street or from property lines along Main Street or other primary streets, at least on properties that are zoned OIS (or other zones besides C-4, which is exempted) and therefore subject to the buffer requirements. On these sites, development should probably be allowed to come closer to the property line or all the way to the front lot line, in accordance with more typical patterns of development.

It was indicated by some stakeholders that there is political opposition in Waxhaw to adjacent commercial development by residents of downtown neighborhoods. These concerns are certainly understandable and in many cases well-founded. The key to commercial and residential compatibility (and to infill compatibility in general) is to identify *with precision* what the concerns about impacts are, ² and to address those particular issues through performance and design standards that really get at the heart of the problems identified.

Nevertheless, even with the best of ordinance provisions, it can be politically very difficult or impossible to gain the acceptance of wary residents of commercial and infill development. Such strong opposition is most common in localities that don’t have many already-existing examples of how uses can be successfully assimilated near residences. In such a setting, it is crucial to ensure that early infill projects do a very good job of integrating harmoniously with the existing setting. If they are done well, they serve as a good example, allaying fears; if poorly, they increase the opposition.

RECOMMENDATIONS

- Within the downtown area, consider using an overlay zone to exempt properties from buffering requirements.
- If side effects from certain commercial uses are a concern, apply performance standards or use-specific controls, but be sure to identify specifically which side effects are at issue and target the standards to control them specifically, as outlined above.
- Control the impacts of automobiles by screening parking lots and vehicular access areas specifically, rather than entire sites, and by managing and limiting excessive car storage lots and driveways (regulating these features from being placed on individual sites).
- If building visual quality is a concern, architectural standards in the downtown overlay should be applied, rather than general purpose screening with vegetated buffers.

² Typically, the key issues can include car storage areas, vehicle congestion, excessive lighting, noise, odors, time-of-day disturbances to residents, unsightly visuals such as parking lots and utility/waste areas at rear or sides of buildings, and new buildings being out of size or scale with their surroundings. While it is beyond the scope of this report to research and recommend a full set of potential standards for Waxhaw, exploration of these issues is recommended to determine how to address them with performance and quality standards.

Some particular concerns expressed in Waxhaw during the scope of this project were the potential side effects of outdoor activities, special events hosted by businesses, and craft/ artisan manufacturing activities in downtown buildings. Recommendations on these items are provided elsewhere in this report.

BUFFERING, SCREENING, AND LANDSCAPING



In general this is an excellent example of storefront design, showing the elements that should be carried forward in new downtown development and required by the zoning rules:

- *Display windows that extend from below hip level to nearly the full height of the first floor, along nearly the entire front of the building, and are not obscured inside*
- *Recessed front entry vestibule*
- *Projecting sign*
- *Wall sign in appropriate location (here, adjusted so as not to obscure the historic sign)*
- *Detailed ornamentation and proportionally wide trim around key elements*

SCREENING OF UTILITY AREAS

In the Waxhaw UDO, Section 9.8.2.B requires screening of dumpsters, service areas, and loading spaces from view from public streets. This is a helpful regulation for visual quality and should be retained. It appears that existing, unscreened dumpsters and service areas may not be required to be screened.



Utility areas and waste collection receptacles can be unsightly. Some towns have rear alleys where these objects can be obscured from direct street view. Where alleys are not present, screening requirements are recommended.

RECOMMENDATION

- Consider requiring unscreened waste receptacles to be screened from view from public streets, or at least in areas that are within view from nearby retail or residential uses.
 - As applied to existing waste containers, the trigger for requiring this screening should be set at some reasonable level, such as the need for a building permit or upon making building improvements above a certain value, but not merely on change of occupancy or use.
 - The Town or the downtown organization could also offer some kind of assistance program similar to façade rehabilitation programs.

BUFFERING, SCREENING, AND LANDSCAPING

LANDSCAPING

Section 9.8.1 requires landscape areas next to public streets for all development except single-family houses and the CBD (meaning C-4) district. These rules appear to require a 20-foot-wide landscaped strip between the building and the street for development in the downtown that is outside the C-4 zoning district.

Section 9.8.2.E requires the planting of street trees in the landscape strips adjacent to public rights-of-way.

Section 9.8.4, Side and Rear Yard Landscaping, requires a 10-foot-wide side and rear yard landscaping area that applies to the OIS district.

ANALYSIS

The landscaping requirements set out in the UDO are good quality assurance standards for new development. They specify a landscape typology that is highly appropriate for suburban areas outside of downtown, but needs adjustment to be suitable for downtown.

Landscaping and green space in downtown settings is mostly found in the form of public space rather than as large areas on private property. Downtown green space comes in the form of public squares, landscaped medians in the center of major streets, and sometimes pocket parks or a formal lawn in front of a library or other civic building. On private land, downtown landscaping is typically reduced in scale, more intensively managed, and more formalized than in suburban locations. It makes concentrated use of the small areas that are unoccupied by structures, for example as bedding plants or topiaries in planters or window boxes, or courtyard gardens tucked in spaces between buildings for dining or loafing.

While landscaping is certainly desirable and necessary in every downtown, it is important to specify a pattern suited to downtown's setting, rather than to impose a more suburban standard.

For street trees, the requirements in the UDO would locate trees in a suburban-style planting strip set back on the private-property side of the public sidewalk, whereas traditional downtown centers generally have street trees located in treewells or tree grates, usually integrated into the sidewalk on the side closest to the public street. This is functional as well as aesthetic, since grassy strips and unprotected trees (not in grates) are subject to wear and injury in commercial areas with high pedestrian usage and curbside parking.

For landscaping on private property, the 20-foot-wide and 10-foot-wide landscape strip requirements in the ordinance are applied to downtown sites outside of C-4 (other than single-family houses) and OIS respectively. It is likely that these suburban-style requirements could interfere with the use or re-development of small and medium size OIS lots in the downtown area. While the provision does allow for Zoning Administrator discretion to waive the requirements, it would be better for the sake of certainty if the provision were modified with specific standards for the downtown area, instead of applying suburban standards, then providing for an exemption.

RECOMMENDATIONS

- Adjust the planting standards to reflect a more downtown-appropriate typology and layout of landscaping.
 - Because multiple zoning districts are affected, and the downtown typology relates strongly to principal streets, it is recommended that the planting standards be applied through a corridor or frontage overlay covering the relevant portions of Main Street and other principal streets, and thus extending across the variety of zoning districts.
 - If a street tree requirement is included, it should be adjusted for the downtown setting to specify trees in grates on the public side of the sidewalk
 - A street tree requirement should be applied only to sites that may be newly developed or redeveloped, to avoid imposing it retroactively on existing buildings and possibly deterring their re-use. Usually a landscaping overhaul for downtown areas that are already fully developed takes place through a public streetscaping project, rather than retroactively imposing requirements.

STANDARDS FOR STREET IMPROVEMENTS AND THE PUBLIC REALM

SIDEWALK STANDARDS

The curb, gutter and sidewalk requirements of Section 9.13 provide for a minimum 5-foot sidewalk in all districts.

ANALYSIS

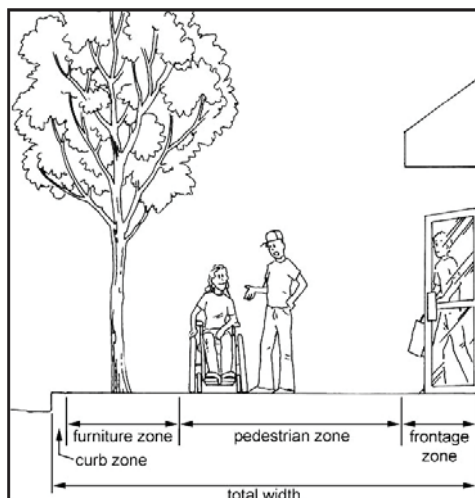
A five-foot sidewalk is not wide enough for a downtown setting, even in a small town, for the full range of functions that a downtown sidewalk serves. Sidewalks have to fulfill a remarkable variety of functions, not just pedestrian passage. A fully functioning sidewalk has three zones:

- The **storefront zone** (or *frontage zone*) allows for seating and tables, merchandise display, A-frame signs, wall-mounted hardware and utility fixtures, and planters. It also accommodates the entry and exit to and from storefronts, and those who pause for window-shopping, without conflicts with the linear passage of pedestrians.
- The **passage zone** (sometimes called the *pedestrian zone*) allows for easy passage by persons walking two abreast or passing each other, and it provides maneuvering room for equipment such as wheelchairs and strollers.
- The **amenity/utility zone** (or *curbside* or *furnishings zone*) accommodates street trees in grates, a pavement strip for persons exiting curb-parked cars, signage, lighting poles, utility boxes, public benches, trash receptacles, mail and package pickup boxes, hydrants, bollards, newspaper boxes, and bike racks. It provides a buffer between pedestrians and traffic, and accommodates people entering and exiting vehicles parked along the curb.

A reasonable minimum width standard for downtown sidewalks is a 3-foot storefront zone, a 6-foot passage zone, and a 5-foot amenity zone, for a total of at least 14 feet in width. This is the minimum necessary for a fully functional public realm.

With most sidewalks along the main portion of downtown Waxhaw's storefront row being 10 feet or even less in total width, there is not enough room for all functions, and some are sacrificed or compressed:

- Along Waxhaw's sidewalks, the storefront zone pulls double duty to accommodate some components of the utility/furnishings zone (such as waste receptacles, street benches, and news racks). Compressing these two zones into one leaves scarce room in front of stores for window-shopping, café seating, and table displays.
- Most of the remaining width of the sidewalk is given to the pedestrian passage zone as of necessity, and it is of minimally comfortable width.
- There is no room for street trees at all; however, the wide grassy and landscaped median surrounding the railroad does supply greenery to soften the downtown area visually, so the lack of street trees is not as critical here as in some other towns.



STANDARDS FOR STREET IMPROVEMENTS AND THE PUBLIC REALM

Waxhaw's existing sidewalks are quite narrow in most places and simply do not have the physical room to accommodate all these functions. This is not unusual in many small North Carolina downtowns, as in many cases the sidewalk either was never delineated wide enough to begin with, or (more commonly) for years the sidewalk realm ceded ever more ground to the supposed "need" for more and wider traffic lanes (and usually these widened roads only result in excessive traffic speeds on Main Street).



The sidewalk cross-section is not wide enough to accommodate all the functional zones (storefront, passage, and utility/furnishings/curbside zones)

The narrowness of the sidewalks has led to the perception that display of merchandise and signage on sidewalks is discouraged by Town staff, when there is no such prohibition. The real problem is that because sidewalks are so narrow, displays and signs easily can impede the passage zone. Displays and signage may simply need to be kept shallow to accommodate a free passage zone as required by ADA, and Town staff may want to emphasize that aspect to merchants.

What is unusual in Waxhaw is that the distance across the public realm is very wide from building front to facing building front, ranging from about 208 feet to about 220 feet depending on the block where it is measured. This distance includes four (sometimes five) travel lanes for cars; a CSX railroad right-of-way; two rows of parallel (curb) parking; two rows of diagonal parking; and two sidewalks.

The travel lanes along North Main are 12 feet wide, and those along South Main at least 13 feet wide. The overall travel way width (all vehicle lanes, but not curb parking) on South Main is about 32 feet and on North Main at least 32 feet. The central grass median that lines the railroad track is from edge to edge, inclusive of diagonal parking, about 125 feet wide. The railroad right-of-way itself is 100 feet (50 feet on each side of the center line) according to CSX officials.

Assuming a 208-foot-wide distance from building front to facing building front, there is 108 feet available outside the railroad right-of-way, and about 83 feet outside of the median with diagonal parking, for four lanes of travel, two rows of parallel curb parking, and sidewalks. With two 12-foot travel lanes, two 13-foot travel lanes, two 8-foot curb parking lanes, that leaves only about 17 feet of width for two sidewalks (about 8.5 feet each).



Recent improvements make walking in downtown Waxhaw safer and more pleasant. The width of the public right-of-way is still overwhelmingly devoted to car movement and the narrow part left for the sidewalk does not allow for the full range of sidewalk functions – display, lateral movement, and utilitarian components.

A better cross-section might reduce the travel lanes on the north side to 11 feet (since North Main is not a thoroughfare), reduce the travel lanes on South Main to 12 feet (which is likely adequate for an urban arterial of its service level, according to ITE guidances), and add the three feet gained on each side to each sidewalk. With this additional space, the sidewalks would be enlarged by about 30-40% and would measure much nearer the recommended 14-foot minimum width.

Further, the reduction in lane width would likely reduce traffic speeds and noise, as drivers respond to visual perception of roadway width. Main Street users and business would gain doubly: from both the additional sidewalk width and the comfort from reduced noise and speed of traffic passing close by. It is not always easy to get traffic engineers to prioritize the needs of local users and pedestrians over those of through-travelers, but the re-design would certainly be an economic development victory similar to those won by other North Carolina communities that have done street re-designs.

While such a project would be costly and is unlikely to be attempted soon, still the Town should consider adopting a “context-sensitive” cross-section, so that any state transportation projects in the area will have to take it into account in project design.

The recent pedestrian improvements implemented with the assistance and cooperation of NCDOT in downtown Waxhaw have made the street environment, particularly the central intersection, much safer and more appealing for pedestrians, as well as eliminating many ADA-inaccessible situations.

RECOMMENDATIONS

- Adopt in Town plans, and in public works policy documents, a required sidewalk and road cross-section that accommodates all the necessary functions of a multi-use, pedestrian town center. One design manual worth referring to may be found at <http://www.ite.org/css/online/DWUT06.html>.
- Make a statement in official plans and policy documents of the Town that NCDOT must apply appropriate urban street cross-sections with Complete Streets design, in accordance with Context-Sensitive Design considerations.
 - It would be highly recommended to have a Complete Streets urban main street cross-section represented in an official Town engineering guidance document, so that any NCDOT projects that might affect the downtown right-of-way would have to take that into account.

As additional properties are rezoned to the C-4 district and developed, reused, or redeveloped, it would be good if public improvements along the street frontage of each site were improved according to cross-sections for sidewalk and streets that are more suited to fulfilling all of the downtown functions. The Federal Highway Administration notes, "Sidewalk corridor width is determined during the planning stage of a project. To develop a successful pedestrian network, that includes wide sidewalk corridors, the needs of pedestrians should be institutionalized into the project planning process."

Thus, to ensure that future sidewalks can accommodate all of the functions they need to satisfy, it would be advisable to adopt sidewalk and street cross-sections in the UDO and to implement the construction or improvement of downtown-appropriate public facilities as new properties are rezoned to C-4 and reused or developed. Specifically, the cross-sections should ensure a sidewalk format that includes enough room for each of the proper sidewalk functional zones.

The Institute of Transportation Engineers recommends "prioritiz[ing] design elements that constitute an ideal cross-section and eliminat[ing] lower-priority elements when designing in constrained rights of way. Reducing lane width is one means of fitting the design into the available right of way." Following this advice, in this corridor a cross-section should be adopted that reduces lane width to the minimum (in accordance with an urban, slower-speed roadway segment passing through a heavily pedestrian area) and maximizes sidewalk width (recognizing pedestrian movement as the prioritized mode in a downtown setting, and the economic importance of a functional transportation facility, the sidewalk, that serves the storefronts). This approach would acknowledge the downtown context in transportation facility design.

DRIVEWAY STANDARDS

No driveway spacing standards were found in the Waxhaw UDO. The UDO does not appear to prohibit new driveway cuts on the primary downtown commercial street frontages.

The Architectural Standards adopted in 2009 provide in Section 20.4.A.1.m that alley-loaded house lots may not have parking or driveways within the front yard, which is appropriate. There is no provision limiting driveway cuts for narrow lots or in downtown neighborhoods per se. Single-family houses are required to have at least two spaces, and the ordinance states that driveways may be used to provide the required spaces, but does not give other options; this could be interpreted as requiring driveways, which would be inconsistent with the traditional typology of on-street parking in front of the house as one way of accommodating residents' vehicles in older residential areas.

ANALYSIS

Driveway cuts are inappropriate for downtown street frontages along primary retail stretches. Curb cuts to individual sites are a suburban feature of an auto-oriented landscape, but on Main Street, they would interrupt and threaten pedestrian movement. In addition, vehicular access cuts are simply unworkable on most downtown sites, which tend to be narrower than commercial development in the suburbs, and function best if developed along the entire frontage so that a more or less continuous streetwall is formed by buildings on adjacent sites.



This curb cut appears to be continuous along most of the street frontage of the site, making pedestrian travel uncomfortable as well as unsafe and detracting from the visual entry to downtown when coming from the north. In general, driveway cuts to individual sites are inappropriate in a downtown setting, and should be prohibited (or strongly restricted as to width and distance apart in cases where they are necessary, as with a gas station).

Vehicle access to individual commercial buildings and sites should use rear alleys, if they exist. If alleys do not exist, dedicated access ways to the rear of buildings may be used if practicable.

Ultimately in many towns where rear service access was not originally platted and cannot be retrofitted, vehicle access to existing downtown buildings will have to occur from curb parking zones at the front of the site. This forces the loading and service function to conflict with lateral pedestrian movement along the sidewalk, but most North Carolina small downtowns without rear access systems have managed for a long time according to this arrangement, even if it is sub-optimal.

For new buildings where possible, and for all large new projects taking up much or all of a block or multiple blocks, internal circulation systems should be mandatory. The systems would function in effect as private alleys and would allow delivery, utility, and waste collection functions to be removed from the street frontage of sites where they are both unsightly and in the way.

In downtown residential neighborhoods, driveway cuts on older and narrower lots are less common than found in newer residential areas where a separate driveway serves every house. Driveways should be allowed on residential lots less than 60 feet wide only if the prevailing historical pattern was built with them. No driveway cuts should be allowed where residential alleys exist; garages and vehicle access should be at the rear.

RECOMMENDATIONS

- Prohibit driveway cuts on key street frontages downtown. These would include North and South Main Streets where they pass through the main downtown business blocks, and any planned expansion areas for a downtown pattern of development.
- Prohibit driveway cuts on historic residential frontages where lots are narrow and were traditionally built without front driveways.
- Require rear access and an alley system to serve new downtown development and in expansion areas, particularly when proposed new development takes up much or all of a block. (The loading recommendations also provide some guidance on this topic.)



The railroad right-of-way has an expanse of grass and large trees that compensates for the lack of downtown street trees, which can't be accommodated within the narrow sidewalk zone along the storefronts.

PARKING AND LOADING

PARKING

In Section 12, Parking, the Waxhaw UDO provides off-street parking requirements and standards for every use, along with a table that gives a required maximum number of parking spaces for each use. The number required is more or less typical of suburban parking requirements; however, rather than specifying only a minimum number, as most ordinances do, the table gives a maximum number and a minimum, with the minimum required being 20% less than the maximum.

Section 12.2 applies the requirements to every use and establishment in the Town. It gives the Zoning Administrator the ability to waive the requirements for uses in the C-4 zoning district.

The provision in Section 12.3.3 requires that parking spaces be provided upon the conversion from one type of use or occupancy to another, which is typical of many communities' zoning ordinances.

Section 12.3.4.c. appears to prohibit existing on-street parking from being counted to fulfill off-street parking requirements, except that the Zoning Administrator may approve its use in C-4 as a means of fulfilling parking requirements. No guidance is given in the ordinance for the Zoning Administrator's decision.

Subsection d. of Section 12.3.4 allows a 20% reduction in parking requirements but again gives no guidance for the discretionary decision by the Zoning Administrator.

Section 12.5 gives situations in which the Zoning Administrator may authorize alternatives to required parking. Shared parking may be used to reduce the amount of required parking by 25% upon the submittal of a parking study by the applicant. Also, off-site parking on another lot from the use requiring parking may be used, if the land is in the same ownership, the land is used for no other purpose, and the land is within a zoning district that would allow the use for which the parking is supplied. Other options such as valet parking are provided.

BACKGROUND

Single-use parking lots are injurious to downtowns for a host of reasons:

- Downtowns have much less land available for parking, with smaller sites and a higher ratio of building to site area. In a constrained setting it is important to use space efficiently. But parking lots that serve a single use or site are very inefficient in the use of space, since the parking spaces are available only to one small fraction of the downtown visitor base.
- Parking spaces take up far more surface area than people and businesses – as much as four to eight times the building space they serve. If even a few merchants or businesses build their own lots, the single-use lots quickly overwhelm the land area. They dominate the downtown setting with expanses of asphalt or gravel that do nothing but hold stationary cars.
- Single-use dedicated lots discourage parked visitors from patronizing other stores and reduce foot traffic across the front of a downtown block. Downtown needs to be a “park once” destination to maximize cross-shopping opportunities.
- Single-use lots devote valuable downtown real estate not to economic transactions, but to car storage.
- The presence of multiple redundant parking lots, each serving a single site, ruins the pedestrian setting, interrupts the storefront critical mass that downtown relies on for trade, and corrupts the downtown brand identity that distinguishes it from suburban shopping centers dominated by cars and parking lots.

To avoid these problems, one fundamental principle is recommended: Off-street parking, when it occurs, should serve multiple uses whenever possible, and should be carefully limited in location and quantity to meet actual need.

PARKING AND LOADING

The very best type of parking for downtown is on-street parking. These spaces are the ultimate in shared and efficient parking allocation, since they can potentially be used by anyone, and as a public resource can be managed for the optimal allocation depending on time-of-day, turnover, and other demand considerations.

ANALYSIS

The authorization in Section 12.2 that gives the Zoning Administrator authority to waive the parking requirement for C-4 zoned properties is insufficient to protect the downtown district from inappropriate requirements for several policy reasons.

- It introduces an extra procedural step (a request to and decision by the Zoning Administrator) for an exemption that should apply as of right.
- It does not give any guidance to the Zoning Administrator, raising the possibility of arbitrary decisions, as well as making the Zoning Administrator go out on a discretionary limb with each decision.
- It does not prevent the proliferation of redundant parking lots, each dedicated to a single use.
- Lastly, the waiver is only made possible for part of the downtown commercial area – the parcels zoned C-4. Other downtown properties in the OIS, R-3, R-4, C-2 and I-1 districts are not eligible and therefore must comply with suburban-style parking standards.

Although a change-of-use trigger, as in Section 12.3.3, is common to many communities' ordinances, this requirement is inadvisable because it presents a hurdle to the re-use of buildings, and as such tends to inhibit the free movement of the real estate market from one type of tenant to another. For downtown buildings especially, this is problematic, because these sites are not spatially capable of adding off-street parking upon a change of occupancy.

To maintain a healthy demand for downtown building space, it is important to remove all unnecessary procedural as well as regulatory barriers to the adaptation and re-use of buildings by allowing uses to change as freely as possible (within reasonable policy considerations). This will help building owners market and lease or sell space, and will help tenants and businesses find suitable space without incurring unnecessary delays or barriers.

While the alternative parking arrangements allowed by Section 12.5 may be useful for large or new developments in conventional suburban locations, they are really not practicable for small buildings and businesses downtown:

- Rather than undertake a costly, time-consuming parking study, a small establishment seeking to lease space is likely to go look for space in a suburban shopping center – or in another town that does have a parking exemption for its downtown district.
- As to the possibility of providing off-site parking on another lot, very few building owners are likely to have another site downtown in their ownership or control where they could construct an off-site parking lot. Even if they did, it would simply result in valuable downtown land being used for nothing more than car storage, which would take away from the critical mass and vitality of the downtown district.

RECOMMENDATIONS

- Downtown development should be exempt from off-street dedicated parking requirements provided by and for single uses and buildings. Apply an overlay district covering all of the appropriate portion of the downtown to exempt it from parking by right, not just in the C-4 district.
- Prohibit new off-street lots serving just one or a few individual establishments.
 - Rather, any stand-alone parking lots should be subject to a zoning condition that they be owned and operated by the municipality or a common downtown entity (such as a downtown association) so that they can benefit all buildings and tenants, without covering downtown land with multiple, redundant lots each serving a single use or building.

PARKING AND LOADING

- Move forward with better wayfinding and signage to existing lots, as suggested by Town staff and stakeholders.
- Have a professional parking study done, and apply best parking management principles to the existing supply of on-street parking and publicly-owned lots.
 - It would be good to have the area of the parking study cover the same area that would be covered by the parking exemption and the prohibition on off-street lots.
 - The scope for the parking study should specify that the Market Place Report and this Downtown Zoning Repair Report should be used as a guide in performing the study. Any consultant selected should be familiar with the National Main Street standards for parking and best practices for downtown parking policy.

LOADING

Section 12.8 provides requirements for loading spaces, and paragraph C. of the section allows the Zoning Administrator to waive the requirements or modify them.

ANALYSIS

Constraints of existing buildings and sites probably make it impractical to place on-site loading spaces on most sites downtown. Depending on the configuration of buildings on their lots downtown, loading spaces may not be necessary. Although generally alleys make the ideal location for loading areas, in Waxhaw there are no dedicated alleys serving downtown buildings.

Currently, delivery vehicles often use an unmarked parking space at the curb or in an ordinary parking lot if there is one on the site. Where there is no room for a loading space, the Zoning Administrator has typically waived the requirement altogether. The waive-or-modify allowance in the ordinance is good as far as it goes, but would be better replaced with specific rules that don't require administrative discretion or an extra procedural step.

RECOMMENDATIONS

- Allow on-street loading for existing buildings in C-4.
- It would also probably be appropriate to make a general waiver in the ordinance of the off-street loading requirement for existing buildings within the downtown boundary (certainly for at least the properties along Main Street, and perhaps for the area as a whole, including properties within the C-4 and OIS districts).
- For new development in and around downtown, such as major infill proposals involving multiple parcels, it would be good to require alleys (or an internal arrangement similar to alleys), either as part of subdivision standards or site plan review.
 - With or without an alley-like arrangement, loading sites for new development should be sited internally to get delivery vehicles out of travel lanes and so as not to interfere with pedestrian passage along sidewalks.
- Try to stay away from designating loading spaces along the curb, which takes away from curb parking space.

SIGNAGE

Signs are regulated by Section 13 of the UDO. The following material summarizes the particular signage regulations that apply downtown.

Table 13.1.17.4 governs allowed signs in the C-4 District. These regulations allow nearly the full range of appropriate types of signage for a downtown setting, including wall-mounted signs, window lettering, shingle/projecting signs, and A-frame signboards on sidewalks. Pole signs are not allowed, which is an appropriate restriction. However, neither are canopy and awning signs permitted, but these should be allowed in downtown settings.

(For business districts where canopy and awning signs are allowed, Section 13.13.A.3 allows canopy/awning signs on “historic buildings” only where documentation exists that such a sign was used on the building when originally constructed and occupied. The section also requires that the design and coloration of the sign be compatible with the character of the building.)

The table of permitted signs for the C-4 district (Table 13.1.17.4) indicates that one wall sign per level is allowed, measuring 32 square feet for the ground floor and 9 square feet for a second level.

Projecting and suspended signs (Section 13.15) are only allowed to include the address and name of the building occupant.

Although A-frame (sidewalk) signs are allowed, Waxhaw downtown merchants have indicated that there is not quite enough room on the sidewalk to place these. The sidewalk cross-section as developed is narrow, and in some places its width cannot accommodate all the functions that a downtown sidewalk needs to provide for, including the placement of A-frame signs.

Section 13.4 of the UDO requires a sign permit to change out sign copy, and treats the change in a sign face as the construction of a new sign.

The language of Section 13.7, which governs sign permits, if fully administered requires applicants to submit extensive information including a site plan and a master signage plan for multi-tenant development. A sign permit is required even for a temporary A-frame signboard.

Section 13.9.G may be problematic in that it requires that signs be architecturally compatible with the building or “immediate environs.” This objective is all right as a goal, but the ordinance gives no guidance to the Zoning Administrator, a vagueness which is not supportable from a legal perspective and also could cause practical problems with administration.

As noted above, the signage regulations allow in C-4 nearly all of the kinds of signs that are important in a downtown setting. However, the area covered by the C-4 district is limited to just the historical storefront blocks. For those properties in OIS, R-3, R-4, C-2 and I-1 (within the downtown STMS boundary, but outside the core historic business blocks), the signage regulations vary; for example, projecting signs are not allowed in C-2 or in OIS. If some expansion of a downtown pedestrian typology is planned for these blocks (especially to the immediate north and west), the signage regulations should be consistent with the downtown (C-4) signage allowances.

RECOMMENDATIONS

- Signage regulations should be consistent in applying the same standards to cover all of the properties that are intended to reflect a downtown typology in building form and site layout.
 - This could be accomplished with an overlay district (as discussed in other sections of this report) or possibly by rezoning to include more sites in C-4, the downtown commercial zoning district.
- Because the sign permit provisions can result in a burdensome process for downtown businesses for a simple copy change on an existing sign, a streamlined permit should be created for a simple change of copy.

SIGNAGE

- In the alternative, a change of copy should not require a permit at all, particularly if the material to be replaced is the same; another possibility is not to require a sign permit for change-outs of a designated list of types, such as repainting or replacement of lettering or signfaces.
- For buildings housing more than one use, the master signage plan requirement is excessive and should be removed. The number of signs and the maximum total area allowed should be based on the linear street frontage (including any corner frontage) and the number of stories, up to a stated reasonable maximum per sign.
 - For example, the maximum area for wall signs might be stated as, “One square foot is allowed per linear foot of building frontage, up to a maximum of 32 square feet or 5% of the wall façade area, whichever is greater. In cases of buildings over one story, an additional 30% of total area shall be allowed.” “Building frontage” can be defined to mean facades facing the street, including those facing the side street on a corner lot.
- Canopy and awning signs should be allowed, but copy should be limited to the free-hanging valance portion of the awning.
- The documentation requirement for canopy signs on historic buildings is excessive.
 - Canopies or awnings are easily removed features rather than permanent changes to historic buildings. It could be very difficult in most if not all cases to establish documentation of an original sign, even when a canopy sign is perfectly appropriate for the type of building.
- The compatibility requirement for design and coloration also seems excessive and is legally unsupportable because of its vagueness. It would be better to allow flexibility in design and coloration, as businesses need to be able to market their image in the manner most successful.
 - However, for design standards for signage that are truly necessary, make sure they are clear and supportable, and apply them through the most abbreviated process, administratively if possible. Only the most complex and major signs should be reviewed through a historic overlay or design review board process, if necessary at all.
- More flexibility in copy for projecting signs should be allowed.
 - These signs are essential for storefronts in pedestrian areas because they are oriented to face pedestrians moving along the sidewalk as well as passing vehicle traffic.
 - More flexibility in copy should be allowed, not just the name and address of the occupant, so that businesses are able to create whatever message or design elements best suit their market. Moreover, the limitation on copy is probably legally insupportable under First Amendment case law.
 - A less burdensome regulation (such as a limit on maximum copy area) would suffice to address the legitimate governmental concerns of sign proliferation and visual distraction, without unlawfully restricting the content of speech.

ALLOWED USES

The Zoning Table of Uses in the UDO specifies the uses that are allowed in the various zoning districts. There are over 320 separately specified uses in the Use Table.

The Table narrowly differentiates and lists many separate sub-types within a use type. For example, rather than listing a general use type such as “agency,” the Use Table lists different types separately, as for example “employment agency,” “insurance agency,” and “detective agency.”

The approach is not entirely consistent. “Offices” is a listing that could be broken down into much finer detail as with retail uses, yet it is not. This more general approach to office uses is helpful, since it eliminates the need to list “law office,” “accounting office,” “newspaper office,” “business office,” etc.

In spite of the approach to listing every single type of retail store, some now-obvious types are left out. Mobile phone store is an example. Town staff, in administering the ordinance, have to choose between trying to shoehorn a proposed use not listed in the ordinance into one of the listed uses by creative interpretation, or disallow the use.

ANALYSIS

The Table of Uses tries to divide uses too finely and call out each possible type of use. Although the list of uses is extensive, no listing can be comprehensive. Changes in both culture and the economy will always generate new variations on familiar uses, and make others obsolete. In the mid-20th century, milliners, cab stands, telegraph offices, and tourist homes were common uses which are all but obsolete now. For a brief period in the 1990s, it looked as though “internet café” would be quite the thing. And few could have foreseen the recent rise of the mobile phone store or the Apple store.

The impossibility of predicting every retail use means that some now-obvious types are unnamed and uncategorized in the ordinance. As retail trade continues to evolve, there will arise additional product types that are not listed. The current Table of Uses, with its exhaustive but narrowly categorized approach, will present an obstacle when someone wants to open a new kind of store or add a product line to an existing enterprise. It’s easy to imagine the next “cupcake shop” trend not being accommodated downtown; no listing can predict every conceivable product line of the future.

Especially for retail uses, the exhaustive-listing approach makes it hard to adapt real estate space to changes in the market and creates barriers that interfere with businesses’ ability to respond quickly to market demand. With the multiple categories of different retail stores, each defined so narrowly, it is even possible that a store owner would unknowingly trigger a change-in-use by adding new product types to his or her inventory.



“In retail, you gotta be able to adapt or die.” As visitors came in seeking particular kinds of equipment, Gayle and Van Eyre expanded the product line of their bead shop to include metal detectors and then gold panning supplies.

ALLOWED USES

With the current situation, some shopkeepers and business owners feel they can't easily add supplementary activities and naturally grow their businesses and add functions, either because doing so actually runs afoul of the zoning table or for fear of doing so. Either way, it has an inhibitory effect on natural business growth and productivity. Adding new lines of business that naturally grow from existing functions is the key way that economic productivity occurs and businesses expand.³ Anything in the zoning code that inhibits this natural growth will have, to some degree, a limiting effect on business income. Where, as in Waxhaw, market research has already revealed that the rent-to-sales ratio is already high, it is especially important not to suppress business income without a good reason. The table of allowed uses should only disallow or discourage uses for a good reason – if, for example, they are truly a poor fit for downtown, such as by their bad effects on nearby uses, or their anti-contributory nature in relation to the overall business mix. This would include gambling parlors and pawnshops, for example, but not uses that have no or minor deleterious effects.

Another problem presented by an excessively long list of uses is that users of the ordinance, such as real estate agents and potential tenants and landlords, have to page through hundreds of listings to locate one that represents the proposed use of space they have in mind. This seems to be off-putting for potential tenants. “Make downtown the easy choice,” one stakeholder urged when interviewed for this project.

The attempt to isolate every conceivable use also results in the Table being clogged with duplicative references to similar uses, making it harder to use and read. Examples of such duplications are “Stamp Shop (See Coin and Stamp Shop)”, “Toy Shop (See Hobby, Toy, and Craft Shop)”, “Craft Shop (See Hobby, Toy, and Craft Shop)”, and “Craft Shop.” Each of these takes up a separate line (which does not itself include any information about whether the use is allowed), and requires the user to flip pages unnecessarily. The duplications make the table excessively long and frustrating to use, as well as requiring very small print.

A better approach is to define a general use type and include an extensive list of examples in the definition of that use type, instead of attempting to name each one separately in an exhaustive list. For example, ordinary retail stores and retail service establishments can be defined as follows:

Retail store: An indoor establishment for the retail sales of goods to consumers, including art, art/craft supplies; clothing and clothing accessories; home furnishings and accessories, new or antique; groceries; hardware; leather goods; medical supplies and equipment; office supply; paint, wallpaper, and interior decorating items; pet supply. Retail store does not include pawn, thrift, or secondhand stores or flea markets. A consignment shop meeting the definition in this ordinance is a retail store. A convenience store is a particular type of retail use which is separately defined and treated under this ordinance.

Retail service establishment: An indoor establishment for the provision of retail services to consumers, including shoe repair, dry cleaning, dressmaking & alterations, drapery services, appliance repair, furniture repair, video rentals, consumer printing/copying, photographic studios, key and locksmith, upholstery, tanning salons, barber shops, beauty and hair salons, travel agencies, and optical shops. Nail salons, fortune tellers, tattoo parlors, and electronic sweepstakes or gambling parlors are particular types of retail service uses which are separately defined and treated under this ordinance.

The existing retail listings such as “art supply store,” “bait and tackle shop,” “beauty supply,” “camera shop,” “candy and nut store,” “china and tableware shop”, etc., could be re-categorized as one use type, “retail store, less than 5,000 square feet” (or whatever size is deemed appropriate for the downtown scale).

This would eliminate the impossible task of listing every type of retail store and every type of personal service establishment and also shorten the Table of Allowed uses considerably. It would also reduce the interpretive burden on the Zoning Administrator, who would be able to permit a proposed retail store of any type as a “retail store.”

³ See Jane Jacobs, *The Economy of Cities* (1969).

ALLOWED USES

Issues of scale and intensity are usually capable of being addressed through square footage limitations. Although large consumer durables, such as appliances, are usually sold through larger stores, nevertheless large items when sold through smaller retail shops can be perfectly appropriate downtown. Bicycles and home furnishings are two examples.

Categorizing uses more generally reduces the market friction and allows businesses more freedom to adjust their line of goods and services according to their best information, without having to worry whether zoning might interfere. Whether a food service use takes the form of a doughnut shop, dessertery, tearoom, or burger house is irrelevant for purposes of zoning and the impact on the public, but essential to the business' bottom line and its position in relation to the mix of other goods and services along the street. Moreover, specialty shopping districts – an arts district, or one catering to the carriage trade – are not created by specialty zoning; rather, the market creates them when zoning is hands-off enough to allow a natural mix or focus to arise.

Dealing With Noxious Uses

When the idea of simplifying and consolidating the Table of Uses was suggested earlier in the course of this project, some stakeholders expressed concern about how to deal with inappropriate uses that might be proposed downtown. The fear was that if a general category is applied, an applicant might come in with an unforeseen and harmful type of establishment that would have to be allowed because it had not been prohibited. Perhaps downtown Waxhaw might end up with uses that would not fit with its family-friendly vision: What if someone wanted to open an Adam & Eve store, or something even more unexpected?

Indeed there are types of retail and retail service businesses that can be very noxious to their surroundings. But the members of this sub-set are well known in zoning practice and enumerable, and they can be dealt with. The particular sub-categories of retail stores or retail service establishments that are inappropriate for downtown can be called out separately in the Table of Allowed Uses, and regulated specifically by the UDO (as, in fact, some already are).

For example, an adult-novelty shop is classifiable as a Sexually Oriented Business and would be regulated accordingly. A thrift or secondhand store can be disallowed in C-4 by specifically providing for this retail type and allowing it only in some other, appropriate district. Similarly, internet gambling (sometimes called “sweepstakes”) operations are an example of a particular sub-type of retail-service establishment that can be designated to an industrial zoning district or other appropriate district, and conditioned appropriately.

As noted above, the UDO is already, in part, following this approach; it regulates adult establishments and electronic gambling operations.

Of course it is possible for an unforeseen and noxious new type of use to arise rather suddenly, as happened with the infamous “Internet Sweepstakes” boutiques that are plaguing many communities in North Carolina. But towns large enough to be equipped with professional zoning staff, as Waxhaw is, have had little problem learning of these types of threats and responding with the timely adoption of appropriate regulations.

But for the most part, the list of potentially harmful uses is quite well known to zoning practice. It is discussed in more detail a few subsections down into this report under “Uses That Could Hurt Downtown’s Quality Brand.”

RECOMMENDATIONS

- Flatten and combine the listed uses into like categories, using the approach described above, instead of naming every use.
 - List examples of uses in the definition for each use type, to give the ordinance reader a clear understanding of what is intended.
 - Take alternative wordings for use types out of the Use Table to reduce its overall length, and place them instead, if necessary, in the definitions of use types.

ALLOWED USES

- If it isn't possible right away to undertake such an extensive revision of the table and definitions, consider making at least the changes to the Allowed Uses that are recommended in the following material.

ALLOWING A FULL RANGE OF APPROPRIATE RETAIL USES

Some benign types of downtown retail are currently disallowed in C-4. Hardware stores (defined as “building and home materials center”), garden supply, and bait-and-tackle stores are not permitted, for example – regardless of size. A food store is permissible as a conditional use, but based on the mini-mart definition, if it were less than 3000 square feet it would probably be prohibited, meaning that a specialty food retailer might be disallowed downtown.

While there may not be much demand for a tackle shop in particular, it would be good to eliminate the prohibitions on specific uses that are not in themselves harmful. All of these uses are perfectly acceptable in downtown settings (even though market conditions would determine whether they actually take place) and should be allowed.

The extreme specificity of the listed uses in the current ordinance, along with the variety of specific uses that are not allowed, creates some barriers to the use of downtown available space. Removing the combination of uncertainty and over-restrictiveness would lubricate the adaptive functioning of the real estate market, and thus maximize the value of downtown retail space.

Economically, it is important to look at Waxhaw's market niche and how that should inform the list of allowable uses. The April 2010 Downtown Marketplace Study defined some characteristics of Waxhaw's economic position:

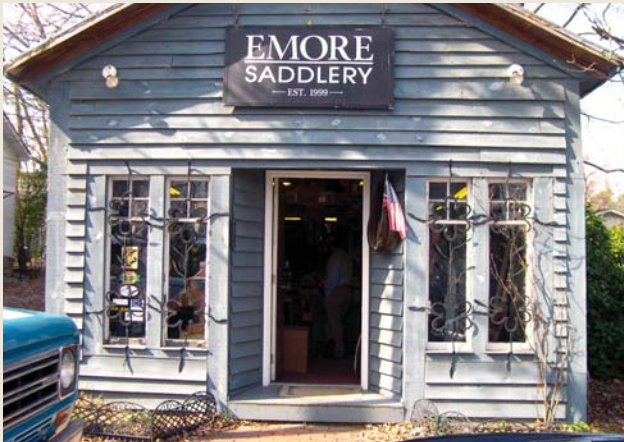
- ▶ It is an upscale suburb.
- ▶ It has difficulty attracting suburban dollars into downtown; downtown competes with multiple suburban commercial areas.
- ▶ Equestrian trade and custom manufacturing are significant elements of its downtown economy.
- ▶ Nightlife and entertainment are also opportunities to attract visitation and spending.
- ▶ The downtown functions less as a community or neighborhood retail center, and more as a boutique destination/specialty business market, with niche retail – bead store, mining and detecting equipment, equestrian, specialty foods, leisure shopping and leisure dining; knit shop; bicycle shop; specialty/custom manufacturing of historical accessories and leather goods – dominating its storefront trade.
- ▶ There is proximity to a large metro-regional population and good highway access to interstates.
- ▶ It is also a leisure, recreational, and cycling destination.



Niche, artisanal, and hobby-focused businesses make up a core part of Waxhaw's downtown trade

ALLOWED USES

Because of the complexity of this downtown market niche, it would be good to allow the market freer movement than is possible with the somewhat constrained list of allowed and conditional uses in C-4. To take one example, specialty food retailing was a \$70 billion business nationally in 2009-2010; although Waxhaw is in an excellent market position to attract a small specialty food retailer, the downtown zoning constraints as they now exist would discourage that adaptation from occurring in retail space downtown.



The Emore Saddlery (since relocated to a different building) is an unusual and highly specialized business reminiscent of Waxhaw's early concentration of "suppliers to the trade." Custom and limited-run manufacturing is ideally suited to a small trade building on a side street, like this one. There are several such structures remaining in downtown Waxhaw.

These historic trade structures, along with new artisanal and craft-production businesses, distinguish Waxhaw from other downtowns, making it not just another place with "antiques-'n'-boutiques." Any time a downtown is fortunate to have such idiosyncrasies that give it a unique branding advantage, the community's zoning ordinance should be tailored to account for them and allow them to persist and grow.

Allowing the maximum range of suitable, non-noxious and appropriate uses, as long as they take place in the right locations and with reasonable standards, is generally a good idea for downtown settings and no less so in Waxhaw.

RECOMMENDATION

- Allow a full range of retail uses by right in C-4 as in the other commercial zoning districts.
 - Food, hardware, garden supply, and bait-and-tackle stores would all be included as allowed uses if the Table of Uses is updated as recommended above to allow the use "retail store" up to a certain size limitation.

RETAIL SERVICE USES

The ordinance allows a wide variety of retail service establishments downtown. In C-4, personal service establishments are allowed, such as barber/beauty shops, watch and jewelry repair, tailor and alterations shops, and tax preparation service, and travel agencies. However, nail and tanning salons are allowed only as a conditional use, and fortune tellers are not allowed. Furniture repair, pharmacy, and key and locksmith are allowed only as conditional uses.

Among retail food service establishments, retail bakeries are allowed, restaurants are allowed, except drive-in or drive-through establishments, and dairy, ice cream, and coffee shops are allowed.

RECOMMENDATION

- Continue to allow a wide variety of retail service establishments and to prohibit drive-in/through restaurants, but use the streamlined approach described above to define "retail service establishment" more generally and allow all types of these establishments below a certain size. Call out any unwanted principal uses separately (nail salon, etc.)
 - Include furniture repair, locksmith, pharmacy as allowed uses by right rather than as conditional uses.

AUTOMOTIVE AND AUTO-ORIENTED USES

Some automotive uses are permissible in C-4 by right or with conditions or as a conditional use. These include automobile detailing, service station, and car storage ("automobile parking lot and structures, principal use").

ALLOWED USES

Drive-in and drive-through restaurants are not allowed in C-4 or OIS. “Drive-in service window” is defined in the ordinance, but it is not apparent how drive-in windows are regulated since the term does not appear elsewhere in the ordinance (other than for drive-in or drive-through restaurants). It is therefore possible that drive-through window service would be allowed in C-4 other than for restaurants.

Car storage lots and structures as a principal use are allowed downtown both in C-4 and OIS.

ANALYSIS

In general, downtown settings, as high-quality pedestrian environments, derive little benefit and much harm from automobile orientation. Auto-oriented uses and site features should be restricted or prohibited in most downtown settings.

Allowing commercial parking lots encourages the destruction of downtown buildings, especially older ones. When combined with the restrictions on free adaptation of buildings for new uses, it raises the risk that structures will be demolished to make way for more pavement that stores cars.

Parking lots and parking structures as stand-alone uses should be allowed only as public lots operated by an entity of the municipality or the downtown organization and with conditions that ensure their demonstrated harms are reduced – appropriate locational requirements, a demonstration of need with a professional parking study, operational requirements, and visual quality standards.

In Waxhaw, the continued construction of single-use dedicated parking belonging to particular businesses or particular sites is pushing parking utilization down and increasing pressure on remaining downtown sites.

Parking will be the primary challenge associated with infill, either commercial or residential type. The Town must turn away from expectations that vehicles will be accommodated on-site in exclusive dedicated spaces, and toward better utilization of shared spaces and curb parking.

RECOMMENDATION

- Remove automotive uses from the allowable uses in the downtown area, particularly in C-4 and along principal streets. Specific uses that should be prohibited include drive-in or drive-through uses, stand-alone private parking lots (principal use), private off-street parking lots dedicated to a single site or sites (accessory use), and motor vehicle detailing and repair. Service stations and gas pumps should also be removed from the allowed uses in C-4. The ordinance should be amended to clarify that drive-in service is prohibited as a feature of uses in C-4.

OFFICE USES

In the downtown C-4 district, stock and securities brokerage firms are allowed by right, as are employment agencies, contractors’ offices without outside storage, and “offices” (not further defined). Real estate agency is also allowed by right.

ANALYSIS

The April 2010 Downtown Marketplace Study performed for Waxhaw by the Western STMS office showed an estimate of 29 office uses and 32 retail businesses downtown, which shows a strong presence of offices within a .2 mile radius of downtown’s center.

Offices are an important part of downtown tenancy and its customer base, but allowing offices outright can create problems in a downtown retail setting under certain economic conditions. Retail businesses require traditional storefronts, whereas offices can go in a greater variety of settings since they do not require the walk-in visibility that most downtown retail trade needs. Because of this overlap in locational needs, offices (along with some other uses, for the same reason) have the potential to out-compete retail businesses for viable locations; in other words offices can, if unrestricted, push retail out of the limited viable locations for retail. This is especially true of higher-grossing office types, particularly real estate agencies, which can easily out-compete retail in the rental rates they pay.

ALLOWED USES

As a result, some downtowns – particularly successful ones in geographic areas with high average incomes – have experienced over-colonization by real estate showrooms and agencies. The agencies crave the window display area and the foot traffic of a desirable “destination” downtown, but unfortunately they serve only a tiny percentage of the visitors to downtown. When these agencies proliferate in one area, multiple storefronts could end up occupied by a business type that interests a very limited number of patrons, detracting from the critical mass that is needed to ensure the overall success of the downtown as a retail-focused district. If uncontrolled, it can result in the loss of a true retail district in the more extreme cases.

Merely legislating offices away from retail storefronts, though, is not sufficient. Since the amount of second-floor space downtown is small, the restriction will tightly constrain office space availability if demand for office space is strong.

The key is to loosen the supply of suitable office space in and around downtown so that office demand has somewhere else to go besides prime retail spots – taking pressure off retail spaces. This is done by increasing the inventory of available office space. The Town should ensure by its zoning regulations and board-reviewed development approvals that it is possible to develop additional office space near and around the downtown – as long as it is developed in locations that are sub-prime for retail.

A good supply of additional space for offices will not only take market pressure off prime storefront retail locations, it could soften the rather high downtown rents ⁴ slightly and make more retail opportunities possible. New office space would also contribute additional customers and foot traffic to downtown in the form of office employees.



The area just north of downtown Waxhaw presents potential expansion opportunity for housing, offices, and related uses that could help support a vibrant downtown. Some of the keys to getting the setting right in new development are

- *limiting and sharing parking across uses;*
- *emphasizing on-street (curb) parking;*
- *using appropriate street cross-sections, with no or few curb cuts, wide sidewalks, and relatively narrow lane widths;*
- *and fronting the street with active, highly permeable building fronts, rather than garage entries, standpipes and utility areas, or long expanses without entry doors.*

Uses and buildings should face outward and primary entrances should be along the sidewalk fronting every street. Internal access and loading systems for loading and utility functions should be internal to blocks; but access by the public, building occupants, and residents should be primarily from streetside entries.

⁴ As described in the April 2010 Downtown Marketplace Study performed by the Western STMS office.

ALLOWED USES

RECOMMENDATION

- Restrict offices (including real estate agencies) from space in traditional storefronts on the ground floor of downtown buildings. Allow offices only as a special or nonconforming use in these locations, but allow them by right in upper floors and the rear half of ground floors, or in buildings that were not built with a traditional storefront orientation.
- Since the supply of upper-floor locations for office in downtown Waxhaw is constrained (because there is not much second-floor space), town policymakers should keep alert to market conditions to allow a reasonable supply of additional space to be developed in and around downtown for non-retail uses.
 - To take the pressure off of retail space and keep rents manageable, ensure that a reasonable amount of suitable office space can be developed as part of infill and expansion projects near and in downtown, within the overall policy goals of the Town's land use plans.
 - Any new dedicated parking for new office space and new multi-unit residential development must be shared to prevent "automotive overwhelm." The match between time-of-day parking demand between these two uses is almost perfectly complementary.

USES THAT COULD HURT DOWNTOWN'S QUALITY BRAND

Some uses can present a challenge to the downtown brand as a fit setting for quality goods and services. Pawn, flea, thrift, and adult uses, gambling parlors, and check cashing / payday loan establishments are among the uses that can be a concern in downtown settings, depending on the community's goals for downtown and local economics.

Currently the ordinance in Waxhaw handles some of these uses as follows:

- Pawn, adult, and gambling uses are prohibited in the downtown zoning districts.
- Boarding houses are allowed in C-4 as a conditional use.
- "Second-Hand and Consignment Shop" is prohibited in the downtown.
- Indoor flea market (a temporary use not more than 30 days) is allowed as a conditional use in C-4.
- Laundromat is allowed as a conditional use.
- "Finance company" is defined as "A commercial establishment primarily involved in the lending of money to individuals on a short-term basis," and is allowed by right in C-4. This could allow a payday loan / check cashing establishment to locate in the downtown area.

ANALYSIS

For the most part, uses that present the greatest challenge to downtown's quality brand are prohibited downtown already, which is good. However, another look to consider allowing consignment shops might be in order. Given Waxhaw's strong market for independent boutiques that appeal to women shoppers, particularly in the area of leisure/creative/ arts pursuits, it could be desirable to allow specialty consignment boutiques downtown. The definition in the UDO does not distinguish between specialty consignment shops and other thrift / secondhand uses, so they are currently both prohibited. "Consignment shop" can be distinguished from thrift and secondhand stores by applying the following definition:

A retail establishment which accepts, on consignment, individual items from their owners, for re-sale on the premises. Consignment means that items are accepted by the shop on provision that payment for the item by the shop to the consigner is expected only on completion of sale of the item to a retail customer of the shop, and that unsold items are returned to the one consigning. Records are kept of each individual item, its owner, and its sale, and the proceeds are conveyed to the owner after the sale;

ALLOWED USES

if unsold, the item is retrievable by the owner. The transactions at a consignment shop occur entirely indoors. A consignment shop is not a place where donations of used goods are made to the establishment, or where used goods are sold without the proceeds being individually accounted for to the donor of the goods. A pawn shop meeting the definition of North Carolina state law is not a consignment shop.

RECOMMENDATIONS

- Consider amending the definitions to allow consignment boutiques, but not thrift/secondhand stores, in the downtown district.
- Prohibit check cashing / payday loan establishments and laundromats.

RENTAL INTRUSION AND SINGLE-FAMILY DOWNTOWN NEIGHBORHOODS

For any residential neighborhood, an excessive amount of lower-end or rental housing depresses homebuyer interest and can thereby result in a spiral of lower property values and increasing rental domination. It is rare to see a suburban neighborhood used as a dumping ground for multi-family dwellings, rental housing, and apartments, but unfortunately not uncommon for towns to treat their downtown neighborhoods this way – even if the neighborhoods were originally built as single-family areas with detached houses.

In Waxhaw, the R-3 and R-4 districts are not unique to downtown, so they are at least treated equally whether downtown or suburban in location. The ordinance does allow boarding and rooming houses are allowed as a conditional use in C-4 and in residential districts R-3 and R-4. Two-family dwellings are allowed in R-3 and R-4, if on a corner lot and each dwelling entry faces a different street.

ANALYSIS

Boarding and rooming houses, as a residential use, are outdated; moreover, they have potential unhelpful side effects for older residential neighborhoods or indeed for any quality living area. Their presence deters potential homebuyers from the neighborhood and pushes demand (and therefore property values) down for those neighborhoods.

As for duplexes, in theory, the idea behind allowing them in single-family districts is that owners can live in one half and rent the other. But in practice, this rarely happens. Instead, both sides are typically rented out. In many zoning ordinances, there is no safeguard to ensure that this occupancy will be compatible with nearby owner-occupied dwellings.⁵ However, in Waxhaw the corner-lot and orientation requirements apply.

If allowed by right, duplexes can proliferate and dominate a neighborhood with too many rental dwellings in one area, and large, older single-family houses may get converted to undesirable double rental units. Again, this pushes demand and home values down in the neighborhoods where they occur, and makes downtown neighborhoods less competitive in the homebuyers' market – resulting in a downward spiral of disinvestment and decline in owner-occupancy.

However, in Waxhaw the potential for proliferation of too many duplexes is limited because of the condition that they may only be located on corner lots. This rule is a good one, allowing a healthy mix including some more affordable dwelling units, without imposing too much rental housing or too many low-value units in any one area.

RECOMMENDATION:

- Remove boarding and rooming houses as allowed uses in the residential districts around downtown. Duplexes can remain as an allowed use, with the corner-lot requirement that is already in the UDO.

⁵ The optimal approach to allowing dual dwellings would be to require owner occupancy of one of the units. However, this safeguard is not available to towns and cities. Under current North Carolina law it is unlawful to distinguish rental from owner occupancy in zoning. Also, owner-occupancy requirements for allowing accessory dwelling units on a site have been struck down by a recent Court of Appeals decision. Given these constraints, the remaining choice is to limit multi-occupancy dwellings.

ALLOWED USES

ALLOWING A CRITICAL MASS OF COMPLEMENTARY USES

In the most successful downtowns, every use – whether retail, residential, civic, office, or other type – contributes to the overall whole. Each activity contributes dollars, customers, publicity, vibe, and other factors whether measurable or intangible. The goal of zoning should be to allow the maximum mix of uses that can potentially enhance the downtown brand. This means a light touch so as not to unduly interfere with the market, beyond what is necessary to keep out clearly unhelpful uses and to shape the district according to the defined public vision.

A review of the Waxhaw UDO shows that it regulates certain uses as follows.

- Non-retail uses are allowed to locate in prime retail storefront locations. Real estate office, doctors' and dentists' offices, and other examples are allowed by right in C-4 and are not regulated as to whether they locate in prime ground-floor storefront space.
- Single-family detached dwellings are allowed as a conditional use in C-4.
- Multi-family dwellings are allowed as a conditional use with supplemental standards.
- Light industrial / craft manufacturing / artisan production: The manufacture of goods is allowed in I-2 and I-2 districts. However, in C-4, some trade/craft activities (such as upholstery shops and tailors) are allowed by right and others as a conditional use (locksmith, furniture repair).

ANALYSIS

Retail uses in prime storefront locations are boosted by complementary non-retail uses in other spaces, so non-retail uses should be allowed in fitting locations, but limited to stay largely away from prime ground-floor storefront space. This recommendation is discussed in more detail elsewhere in this report.

Single-family detached units (freestanding houses) should not normally be allowed in C-4, at least along primary streets; existing historic houses are accommodated in other zoning districts and new freestanding houses would not contribute to the downtown critical mass or suit its context. But in any case, the market is unlikely to result in development of new freestanding houses in the downtown district. One single large historic house does remain and would be made a non-conforming use if freestanding houses were removed from the list of allowed uses, so it is just as well to leave this use in the list for C-4.

RECOMMENDATION

- If office and other non-retail or non-retail service uses are crowding retail out of prime locations and competing for rents, it may be good to apply standards to ensure that they occupy locations other than prime retail storefronts along the primary street or streets.
- Remove single-family detached housing units from the allowed uses in C-4 or at least along primary downtown street frontages.

UPPER-FLOOR AND MULTI-FAMILY RESIDENTIAL USES

Stakeholders during the initial site visit said that there is a great deal of concern in Waxhaw about the potential impacts of new, denser residential uses (upper-floor residential condos and multiple-unit buildings) in proximity to single-family homes. In an effort to manage these uses, the ordinance applies a density cap of 12 units per acre, and upper-floor/multiple-unit housing ("multi-family dwellings" and "multi-family conversions" in the ordinance) is allowed only as a conditional use with permission of the Town Board in C-4. The maximum of 12 units per acre can only be exceeded if the Board approves an increase for creative design that warrants additional density.

Only 10% of respondents in the 2010 Market Survey were downtown residents closer than 1 mile to downtown, indicating a substantial opportunity to increase downtown residency. The Marketplace Report indicated the reinvigoration value as

ALLOWED USES

“high” to encourage use of upper floors for housing. Since there are only a handful of multi-story downtown buildings, some new construction would be necessary if substantial housing were to be developed in the downtown.

ANALYSIS

Upper-floor housing should be embraced by small towns seeking downtown revitalization. Where there is housing downtown, there is more usage of downtown shops and restaurants. Demographic change is resulting in high demand for well-designed dwellings in upper floors, particularly among older singles and couples, as well as retirees and empty nesters. Younger professionals are also seeking alternatives to suburban apartments and houses.

Downtown housing adds foot traffic and human presence, enhancing downtown safety, while reducing vehicle congestion relative to other development patterns. Waxhaw should embrace upper-floor dwellings downtown.

The current maximum of 12 units per acre for upper-floor housing is much too low to accommodate upper-floor conversions or appropriate downtown housing. The footprint of downtown buildings is small, as are downtown commercial lot sizes, so this density cap would be exceeded by most any version of appropriate downtown housing types.

For example, a 1200-square-foot living unit occupies only 1/36 of an acre; placing just two such units in a building on a 40' x 125' lot (5000 square feet, a generously sized lot in most downtowns) results in about 17 dwellings per acre and thus would trigger a need for an exception by the Board of Commissioners. Effectively, any upper-floor housing requires a Conditional Use permit. This extra step, along with the vague basis given in the ordinance for granting exceptions, discourages upper-floor housing from being developed.

Based on interviews with downtown stakeholders, it does appear this limitation on density is an obstacle to creating upper-floor housing in downtown buildings. In addition, future development would also be affected; the Town's Comprehensive Plan calls for C-4 zoning all along Broome Street north of downtown, and the density limitation would prevent creation of downtown housing in that area.

A better approach would be to allow upper-floor housing by right (instead of with a Conditional Use Permit) and without a density cap, as long as the units are located in an existing building. This will both promote re-use of historic buildings and allay concerns about the bulk and density of new construction (since existing buildings are presumably acceptable in these respects).

If there is concern about the total number of units, a cap of 5 or 6 units in a single existing building (with allowance for board review to exceed this number) would be a better approach than a density cap. Nevertheless, with only five buildings in downtown that have an upper floor, removal of the density cap just for existing buildings would hardly swamp downtown with housing units.

For new development, a density cap would be advisable, but should be definitely be higher than 12 units per acre, which is only a townhouse level of density. About 48 units per acre can very comfortably be provided in three-story buildings, even with significant green space, as long as parking is very limited in quantity and primarily accommodated through shared parking with daytime uses. Buildings at this scale are highly compatible with neighborhoods and don't look “dense.”



The key to infill development is good design compatible with its surroundings. Here, a three-story apartment building, at about 50 units per acre density, is harmonious with stand-alone houses. There is no parking lot or driveway cuts; the building faces the street; it has abundant windows, details, and breaks in massing that make it less overwhelming. It is softened by appropriate landscape plantings (not “vegetated buffers,” but real landscaping). Parking for the building is accommodated on the street. Curbside parking is shareable and so it harmonizes perfectly with daytime uses such as office buildings. Thus, the neighborhood is protected from being paved with extra, unsightly parking lots. It's easy for residents of this building to walk to their daily errands for shopping, eating, recreation.

ALLOWED USES

One should bear in mind that the main side effect of dense residential development is the trip generation (traffic congestion) and parking needs of multi-unit buildings. If downtown housing units are built without parking, with shared parking, or with a very limited number of dedicated spaces per unit, these effects largely disappear.

The amount of dedicated parking that goes with a residential development is a fair indicator of its traffic impacts, so developers should be allowed without too many limitations to build units that have no additional dedicated parking, but rather, share spaces with commercial uses. Apartments and office space are practically an ideal time-of-day complement when it comes to parking usage patterns, so any new development that includes both of these uses should be required (not just allowed) to combine and share the parking at or near 100 percent.

The other potential side effects of downtown multi-unit housing – design, height, context, and infrastructure impacts, for example – do need to be addressed, but routing the permission through the Town Board and basing it solely on “creative design” does not do much to guarantee adequate controls on side effects. It would be much better to identify the specific impacts to be guarded against and then to craft development standards that target those problems:

- ▶ For example, if there is concern that downtown condos or apartments would encompass too much cheap housing for mostly transient populations (students, for example), the Town could apply a standard of review that floor plans be designed for residents seeking a relatively permanent tenure.
 - Formal dining rooms and substantial kitchens are typical of residential buildings designed to attract well-heeled empty-nesters, for instance.
 - Another approach is to require a variety of unit types in each development over a certain size, to accommodate a variety of life phases and target markets rather than one demographic.
- ▶ To take another common concern, if there is doubt about how multiple-unit buildings will interface with nearby existing single-family houses, the review standards could require transitional zones designed to modulate building mass and to step intensity down at the edges of the development site.
 - Gracious outdoor entertaining spaces and strategically placed courtyards can make condos much more compatible with freestanding houses, both in the visual and physical layout, and in marketability to more stable occupants looking for a real neighborhood.
 - A transitional zone of townhouse units can also soften the interface between multiple-unit buildings and nearby houses on individual lots.

In Waxhaw, like many small towns facing rapid growth, considerations like these have rarely been faced before, and so the nervousness of officials and residents is not surprising – leading to an over-reliance on conditioned review and negotiated political processes for managing the situation. But zoning practice does have proven methods and standards that provide a better, more targeted, and more predictable approach for handling infill development. It takes time (and often, outside expertise from a good zoning consultant) for a town to bring its zoning standards up to speed to handle these projects, but proven methods do exist.

RECOMMENDATION

- Eliminate the density cap on downtown housing.
 - For housing developed in upper floors of existing buildings, replace the density cap with a reasonable maximum number that can be developed on one site before an exception requirement is triggered.
 - For new development, eliminate the housing density cap and replace it with a three-story limit on building height, along with a requirement that parking for housing units be shared with daytime uses on or off the site.

ALLOWED USES

- Place some quality development standards on downtown housing instead of relying on the discretion of the Board of Commissioners to accomplish quality review, or put the matter in the hands of the Planning Board, which in most jurisdictions is the board better suited to review development plans.
- Allow home occupation by right in C-4.

ARTISAN / CUSTOM PRODUCTION AND LIGHT MANUFACTURING USES

BACKGROUND

Production processes seem to have a peculiar and enduring attraction for retail customers when combined with a sales operation, a familiar example being the Krispy Kreme doughnut production line. Franchises such as Build-a-Bear Workshop and Coldstone Creamery have made the customer's experience of the production process a central feature of their retail merchandising.

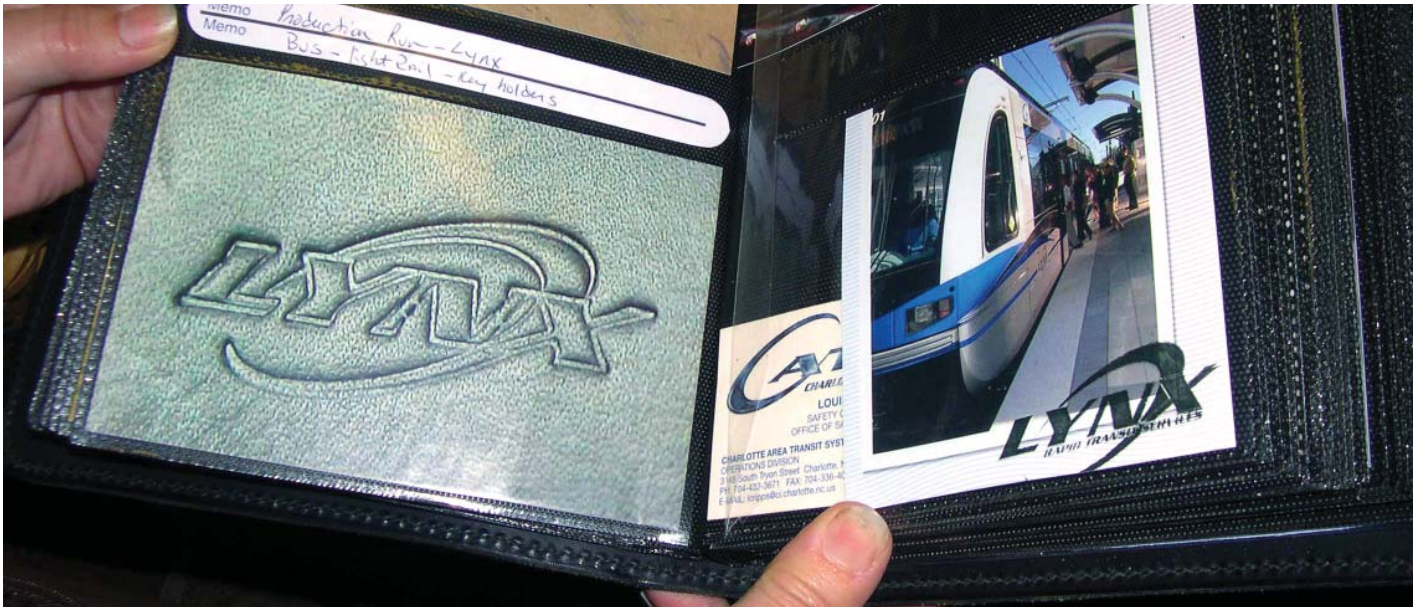
Custom manufacturing and artisan / craft production uses have proved successful not only for national chains, but for local businesses in downtown settings as well. Unique custom clothing and custom accessory shops, such as Stitch in Raleigh and Mack & Mack in Greensboro, have exploited the fascination with visible production processes to boost their retail trade.



Craft and manufacturing processes can hold a unique fascination to draw in retail shoppers, and businesses know this.

ALLOWED USES

Making the most of a process or experience is a survival strategy by retail firms in the face of internet and mail-order competitions. Adding process-and-production businesses can also help fill space in a nationally and regionally overbuilt market for retail real estate. Moreover, these small businesses can have big institutional customers outside the community, resulting in a strong export effect that brings dollars into the local economy.



Small businesses may have big institutional customers. The value of these export sales by local businesses is not as obvious to the casual observer as with retail shops, but can be a sizeable support for downtown rents and real estate values, as well as local income and job creation.

Straight retail uses can have a hard time succeeding in downtown space that is located in off-prime spots (at the end of a street, or in a known retail “dead zone”) or in a building front that is poorly suited to retail (lacking display windows, or having garage doors or other atypical features). One example of such a building in downtown Waxhaw is at the eastern end of North Main, a large building with multiple garage doors and an atypical street presentation compared to traditional downtown storefront structures. Filling this building with a use that contributes to the downtown setting has been a challenge. It is unlikely that a straight retail use would prosper, given the features of the building and its location at one far end of the retail core.



A utilitarian building, not constructed as a retail storefront and located in a sub-optimal location for retail (here, at one far end of the downtown extent) is typically difficult to fill with a profitable retail or retail service business. To prevent a perennial vacancy in such a location, it may be necessary to adjust the allowed uses for these situations. Here, the garage bay doors suggest that a craft production or manufacturing operation might be suitable, if potential side effects are managed.

ALLOWED USES

Often, a production or service operation can utilize a site of this description and succeed where retail cannot. It is important to avoid semi-permanent vacancies in any one downtown building or block, so these retail “Death Valleys” need alternative strategies to fill the space.

A zoning ordinance can do its part by accommodating other uses (than retail or retail service) in non-prime storefront locations or buildings downtown; one way is to allow craft production or light / custom manufacturing. Standards need to accompany this allowance in order to control potential side effects, if any. The ordinance should also state that light manufacturing is allowed to occupy buildings that were not constructed as retail, office, or storefront buildings, which could be difficult to fill with traditional retail businesses.

RECOMMENDATION

- Allow artisan and craft manufacturing in appropriate locations and with standards to ensure compatibility. Standards should be placed in Section 11.3, Supplemental Use Regulations, to specify that:
 - vibration and noise shall not be perceptible beyond the boundaries of the site occupied by the use;
 - in storefront buildings on the primary retail street, manufacturing may take place only alongside or as a component or incidental part of a retail use; and
 - production uses, if they occur alone, must be located so that they do not occupy the front portion of the ground floor of any building that was constructed with a conventional customer-oriented storefront (that is, with the large display windows and other customer-oriented elements of traditional downtown buildings).

ACCESSORY ACTIVITIES

In addition to regulating principal uses, zoning ordinances regulate the uses that are incidental and subordinate to them, called accessory uses. In downtowns, accessory activities can help businesses succeed and also enliven the downtown environment, including public space. But zoning often restricts some accessory uses unnecessarily, or is silent or ambiguous on some important accessory activities.

In Waxhaw, town zoning staff and some stakeholders have queried in some cases what makes an activity an accessory use as opposed to a principal use – the percentage of time they are operated, and the extent/physical scale in relation to the main use, among other considerations. One approach to dealing with this question is to amend the ordinance to specifically state certain activities as being accessory uses to certain principal uses if they are likely to come up again and again, such as sidewalk merchandise display for a retail use or live music at a restaurant. If time and scale considerations are key, it might be good to include ordinance provisions delineating these so that staff does not have to go out on an interpretive limb.

The Waxhaw UDO has the following provisions on a range of selected accessory uses.

Outdoor dining and sidewalk cafés – Neither outdoor dining on private property, nor outdoor dining on public property (sidewalks), is specifically addressed in the UDO.

RECOMMENDATION

- By administrative interpretation, or by amending the text of the ordinance, ensure that outdoor dining is an allowed accessory use to a restaurant whenever reasonable standards for sidewalk width and usage can be met. Place standards in Section 11.3, Supplemental Regulations for Uses, to ensure that furnishing and other characteristics meet minimum quality standards.

Sidewalk displays – Downtown sidewalk sales and displays are not specifically mentioned in the UDO, but the supplemental regulations governing “Seasonal Outdoor Sales” state in paragraph 3 that a temporary zoning use permit is required for the temporary display and/or sale of products.

ALLOWED USES

Although the “Seasonal Outdoor Sales” standards may be intended to regulate such events as pumpkin and Christmas tree sales, rather than accessory sidewalk displays, there is no definition in the UDO for the term. Therefore it is possible that the plain language of the sentence beginning paragraph 3 concerning “temporary display and/or sale of products” could be interpreted to apply to sidewalk displays by downtown businesses. This would be unnecessary and counter-productive, since sidewalk display is a normal and acceptable part of a lively downtown streetscape as long as reasonable and appropriate standards are set forth.

RECOMMENDATION

- Clarify that sidewalk display of merchandise is allowed as an accessory use to storefront businesses in C-4 and apply reasonable standards (minimum ADA clear zone for passage; items must be brought in when business is closed; display tables must be skirted; no cardboard boxes or pallets used as supports or display surfaces).⁶

Private special events at retail and service businesses – These are not specifically treated by the UDO. Musical events and evening receptions or concerts by downtown businesses have been a point of some conflict in Waxhaw, with these events having been deemed out of compliance with the UDO if admission is charged. Dealing with special events must strike a balance. Private special events can bring additional customers and interest to downtown, especially during the low-visitation “after hours” that so many downtowns struggle to enliven.

Respondents to the consumer survey conducted in 2010 indicated that cultural events and entertainment are primary (34%) or secondary (66%) activities they visit downtown for.

The downtown committee recognizes private special events as economically important to success. The Waxhaw Small Town Main Street (STMS) Plan of Work for 2009-2010 stated that one of the Promotion Subcommittee’s strategies would be to establish a night each month where retailers are open late and collectively market/advertise they are open and have special events going on within their store or restaurant such as author readings and local musicians playing.

Special events, while highly favorable to downtown visitation and sales, potentially could generate excessive traffic or noise and commotion if not properly managed. Rather than regulate these on the basis of whether admission is charged, it would be good to allow them as accessory uses to a retail or other business, so long as they fall below a stated maximum number of occurrences (to ensure that they really are accessory), and comply with quality standards. Suggested standards to apply include limitations on the number of events per site in a calendar month; limiting events to off-peak hours (say, after 5 p.m.) to ensure parking availability; limiting late-night hours (with a later variation for weekend nights); and limits on amplified sound or noise outside of buildings. For musical events, the danger that a de facto nightclub will be established is slim, if sales and service of alcohol is not allowed and events are limited to perhaps 6 or so events per month.

Also, from a legal perspective, the zoning treatment of uses involving assembly raises the need to ensure compliance with First Amendment protections. It is in violation of federal protections of the free exercise of religion to use zoning to regulate religious assembly uses in a more restrictive manner than otherwise similar, but non-religious, assembly uses. To comply with the law, when allowing occasional assemblies and gatherings, a land-use regulation should delineate the gatherings with time and frequency restrictions in such a manner as to ensure that they are truly accessory and do not constitute a principal public assembly use in themselves.

RECOMMENDATION

- Allow special events such as musical performances, children’s parties, gallery openings, business open houses, and receptions as an accessory use to an allowed retail or retail service business, so long as certain limitations and guidelines are met as described above. Live music during meal seating hours should be allowed without limitation for restaurants.

⁶ As stated in an earlier section of this report, the chief obstacle to implementing sidewalk accessory uses is the physical space limitations of existing sidewalks in Waxhaw, rather than the sidewalk activities being objectionable in themselves. With that in mind, it would be good to pursue any opportunities to expand the very limited sidewalk space where possible (such as if an overhaul of the Main Street corridor should be proposed in the future as a Town or NCDOT sponsored project).

ALLOWED USES

Farmers' markets and community gardens – Farmers' markets are allowed as a conditional use in C-4, while community gardens are not specifically mentioned in the ordinance.

In Waxhaw, a farmers' market convenes on a regular basis at an existing, well-suited location close to downtown. Also, a produce market used to exist on the bookstore site, as a conditional use.



Waxhaw makes good use of vacant land with a seasonal farmers' market. The recommended practice is that zoning allow local farmers' markets and community gardens by right, with appropriate standards, in the Table of Allowed Uses.

Open-air markets and community gardens are an excellent way to add vibrancy while also utilizing vacant lots. Setting up attractive (and profitable) community uses is an inexpensive strategy to activate vacant lots in an economic downturn when new construction has slowed.

Indoor produce markets should be allowed by right as a normal retail use. If a produce stand includes an outdoor merchandise component, that would be an accessory to a retail use (as a sidewalk merchandise display) and should be permitted by right, with the same standards that apply to other merchandise displays in front of retail stores (see elsewhere in this report for details on these standards).

RECOMMENDATION

- Remove farmers' market from the conditional use listing and allow it by right, writing into the ordinance any standards needed to ensure harmony with surroundings.
- Allow community gardens by right on vacant lots in the downtown area.

ALLOWED USES

PROHIBITION ON MIXING USES

Section 9.11 provides that only one use, and one principal building in most situations, are allowed on a lot. It gives exceptions allowed for “planned shopping center, office building, or similar planned multi-tenant development” and these exceptions have been stretched in practice to apply to some downtown situations to allow more than one non-residential use.

Subparagraph 3 of the section provides that no lot shall contain a principal residential and non-residential use, except as part of a PRD (Planned Residential Development).

ANALYSIS

These restrictions are contrary to the purpose of traditional downtowns as mixed-use areas, and stand in the way of the use of downtown buildings for more than one use. Two examples of common downtown combinations that the current ordinance prohibits are upper-story housing and upper-floor offices with a first-floor retail use.

The flexibility to mix principal uses on and within a site was also cited by Town staff and stakeholders as a key to re-use of the 1898 Rodman-Heath cotton mill building at the east end of downtown, including a potential mix of retail and industrial components, such as retail shops along with restaurant uses and a coffee roasting or brewery operation. While Town staff and stakeholders agree that industrial zoning may not be the best zoning for the future uses of this property, it would help at least to be able to combine principal uses under existing zoning.



ALLOWED USES

Allowing a mix of uses is particularly important as applied to downtown, but in fact there is no reason for the restriction in any part of town. It is hard to conceive of any situation where having two or more principal uses on a site would present a problem, as long as the uses are among those allowed in the district and all applicable standards and regulations are applied. The fear of having uses mingle is a holdover from zoning principles of the middle of the last century, when separating uses was seen as a modern and newly desirable idea, and was simply taken to an unhelpful extreme.

RECOMMENDATION

- Amend the provision to specifically allow more than one principal use on a lot or site.
 - This will make the line in the Table of Uses (allowing “Mixed Use” as CS in C-4) obsolete and it can be removed.



Welded and enameled metal sculptures throughout town recall early trades in Waxhaw's economic history, creating a distinctive sense of place. Things aren't just bought and sold here, they're produced, crafted, customized.



The Emore Saddlery is among the businesses that make up a unique economic cluster of artisanal production and custom manufacturing. Downtowns can benefit from including compatible production uses alongside or integrated with retail space.

ZONING PROCEDURES AND PERMITTING

In general the Waxhaw UDO provides for similar review and approval procedures for downtown as for other areas. The zoning districts (other than C-4) are also applied in other parts of town, and the same procedures and standards are used.

One exception to this general observation is the C-4 provisions in Section 4 which state, “No building shall be erected, structurally altered, or have design changes to the façade without first having been issued a conditional use permit by the Board of Commissioners as prescribed in section 14 of the UDO or approval from the Board of Commissioners for conditional zoning as prescribed in Section 16.2 of the UDO.” Changes to certain minor elements (awnings and paint color) are exempt. The review process for the conditional use permit (CUP) can be lengthy; stakeholders described it as taking four months or sometimes longer.

The CUP process requires an applicant to submit an application at least 45 days in advance of a Planning Board hearing. The Planning Board reviews the application and has 45 days to make a recommendation to the Board of Commissioners, which has final review authority.

A historic overlay district that would have shortened and in most cases simplified the permit review process downtown was proposed earlier this year but failed to pass adoption.

ANALYSIS

In the view of stakeholders, in some cases the current UDO requires excessive review and permits for relatively minor changes and activities. It was related that one business needed to place a small accessory storage shed on a commercial property, and had to go through the full CUP process for it. A professional office business had to pull a sign permit to allow a sign advertising a temporary annual special, since the ordinance evidently requires a new permit for a change of copy.

Another complaint was the requirement of a lengthy process to approve a use that might better be allowed by right or as long as it meets administratively approved standards. “A property owner has to move fast when someone comes to look at your space,” said one stakeholder. “You must be able to tell a prospective tenant for sure if a use is allowed. Tenants walk away when they find out it may be a 3 to 4 month wait.” They also do not like the prospect of losing a \$400 application fee.

Best Practices for Citizen Board Discretionary Review of Development

Most development requiring discretionary review should be routed through an appointed citizen board, such as the Planning Board or Board of Adjustment process. The elected board’s involvement in discretionary review should be reserved for rezonings (as required by statute) and for major proposals of a scale and impact genuinely requiring the attention and intervention of the governing board. **The great majority of discretionary review processes -- lesser or more run-of-the-mill proposals -- should be handled through permits granted by the Planning Board or Board of Adjustment.** That board’s review should be guided by a defined list of criteria stated in the development ordinance, such as “The proposed use and development will not interfere with the use and enjoyment of adjacent properties,” “The location, size, design, and operating characteristics of the proposed use are compatible with the general area in which the use will be located,” etc.

The break point for determining which development proposals are major enough to require full-blown elected board review (which is termed CUP review in Waxhaw), and lesser proposals requiring Special Use review by the Planning Board or Board of Adjustment, will depend on the circumstances of the particular town. In general, **elected board review should be reserved for those uses and proposals that are so potentially impactful or large in scale as to require the full attention of the community.** Landfills, stadiums, large institutional uses (such as hospitals), and major mixed-use development proposals of many acres certainly merit this level of review. In contrast, proposals that are less complex, less impactful, and smaller scale -- such as uses that simply require some vetting to ensure that they are compatible within a certain zoning district -- should be handled by a citizen board in a much more compressed review process and shorter time frame.

On a related note, placing architectural review in the elected board is a practice generally to be discouraged. In most communities, a planning board or design review board is better accustomed and trained to judge development proposals, particularly on architectural quality and urban design matters. Using an appointed board for development review also protects the development review process from direct pressures of electoral politics.

ZONING PROCEDURES AND PERMITTING

The CUP process does appear to be excessive for all but major development activities. It would be better to have a lesser process, perhaps a special use permit, that would route most development applications through the Planning Board or the Board of Adjustment. Many communities review development using this process and reserve the Town Board review process for only the most impactful and major development proposals. (Please see the feature box on the previous page.)

In fact as the process stands now in Waxhaw, the Planning Board is doing the heavy lifting already before the permit even gets to the Town Board, as the Planning Board is charged with making recommendations for conditions concerning all the types of site elements and impacts as outlined in Section 14.5.

Requiring only one board to hold a hearing could result in cutting up to 45 days off the process. Also, for these lesser proposals, the procedure should allow the permit to be submitted less than 45 days prior to the public hearing, further compressing the time frame. The permit fee could be set at a lower rate for minor improvements.

As discussed under the section on Allowed Uses, some ordinary retail types are only allowed by conditional use permit. The Waxhaw Fresh Market is an example of a use that seems highly desirable in a downtown setting but was required to go through the CUP process. Allowing additional, benign retail uses (such as an indoor fresh market) as general retail uses allowed by right will eliminate some unnecessary CUP cases. Most retail and retail service uses should be allowed by right downtown, unless there is a compelling reason they are unsuitable.⁷

It would also be advisable to allow some conditional uses by-right (“X”) uses so long as they take place in existing buildings (which will include many contributing historic buildings), but as conditional uses (“C”) in new construction. The rationale is that new development expects to go through an approval process, and is better prepared to deal with permits and the length of the process. And old buildings are inherently compatible the way that new buildings less often are. Finally, higher occupancy rates with a broader list of by-right uses could help keep old structures profitable, which is the best way to ensure that they are kept up.

Lastly, it would be good to firm up the approval standards considerably for the board-reviewed permit process. The standards should be more clearly targeted to address the most important downtown impacts and considerations, and to reduce subjectivity in permit decisions.

Some review time and delays are inevitable, but removing procedural wait time to the extent possible could assist property owners and tenants, reduce costs, and facilitate economic activity.

RECOMMENDATION

- Select out the benign and desirable uses that now require a CUP and designate them as allowed by-right. (See the “Allowed Uses” section of this report for more detailed guidelines on uses that should or should not be allowed downtown.)
- Create a lesser permit type, such as a Special Use permit, that is reviewed and decided by the Planning Board. Reserve only major proposal types for the full Conditional Use process. Try to designate most types of downtown development for the Special Use process instead.
- If there are some uses for which a board review process is still desired, consider allowing them by-right (“X”) in existing buildings, but as conditional uses (“C”) or special uses in new construction.
- Consider removing the more minimal types of changes from the board review process entirely, as with awnings and paint color now.
 - Some candidates for summary review might be accessory structures and site improvements (such as fences) not located in view of the primary street frontage or within perhaps 20 feet of a public street.

⁷ See the discussion under “Allowed Uses” for examples of less suitable uses in the downtown setting.

ZONING PROCEDURES AND PERMITTING

- Review the records over the last couple of years for recent, typical permit approvals in the downtown to discover which types of development that could be candidates for routing through an administrative review or through a lesser (special use) review process.
- Reduce the advance time required for submittal of a permit application to the minimum needed to advertise the hearing.
 - Designating a mid-level review (such as a Special Use, reviewable by the Planning Board) will enable the Town to reduce permit review time as compared to the full-blown CUP process, which is also used for major development proposals (of dozens or hundreds of acres) that need lots of time to be adequately reviewed.
 - If the 45-day lead time was adopted because applications are not always complete at submittal, a “completeness review” checkpoint (just to make sure all the required items are submitted) before the actual application deadline might help applicants submit all the needed information in time.
- Add specificity and objectivity to the permit review standards, firming up item 14.6.C in particular.
- Allow change-outs to sign copy of existing signboards or frames without a new sign permit (as long as the sign structure and other aspects of the sign are in conformance with the requirements, and not nonconforming).

INTERPRETATION OF ALLOWABLE USES

The notations on the Use Table state that no designation in the Use Table means the use is not permitted. However, this note is in conflict with Section 9.6, Interpreting Permitted Uses, which states, “If a use is not specifically listed in any of the districts listed in this Ordinance, then the Administrator shall have the authority to interpret in which district the use should be permitted.”

Section 11.1 states: “The list of uses allowed in each zoning district is indicated in Table 1. For any use listed in Table 1, the Administrator shall be able to determine if the use is (i) permitted, (ii) permitted subject to the adherence of certain identified specifications, (iii) permitted subject to the issuance of a conditional use permit, or (iv) not permitted.”

Subsection 8.1.K provides “In the event of a conflict between the text of these regulations and any caption, figure, illustration, or table, the text of these regulations shall control,” which should indicate that the note in the table is overridden by the textual provision in 9.6. At the same time, however, 8.1.L provides that the more stringent provision applying to a use shall control.

All of this leaves substantial doubt as to whether a use not listed may be permitted subject to the Zoning Administrator’s interpretation. Taking the case of a proposed cupcake shop, it might justifiably be considered similar to “dairy, ice cream, and coffee shops” or to “bakery, retail,” which are allowed uses. However, a staff member wishing to err on the safe side of his or her authority could reasonably refrain from stepping out on that limb. On the other hand, a recent N.C. Court of Appeals case, *Land v. Wesley Chapel*, appears to frown on interpreting an ordinance to prohibit a use that is not clearly disallowed (albeit not in the part of the case that is controlling law).

Leaving legal considerations aside, even though the ordinance may be, in fact, interpreted in a reasonable fashion, still the uncertainty puts tenants and property owners in doubt. If a potential tenant comes to a property owner wishing to establish a business, and the business type is not a listed use, the tenant and the property owner have nothing in the ordinance to rely on, other than the administrative call of a zoning official.

This is not a situation that makes for optimal business conditions in the real estate market, the mental health of zoning staff, or the encouragement of would-be downtown entrepreneurs.

RECOMMENDATION

- As detailed under the “Allowed Uses” section earlier in this report, compress the retail and retail service uses in Table of Uses to cover more general use types, while regulating separately the few types which have the potential for negative impacts. This will reduce the number of interpretive judgment calls that need to be made.

ZONING PROCEDURES AND PERMITTING

JUDGING INFILL DEVELOPMENT

The issue of infill development has been ticklish in Waxhaw. There are several key locations that would make excellent sites for positive infill development (most notably, a large empty lot right in the middle of North Main Street at its intersection with Broome).



Available vacant land in the C-4 zoning district, at the corner of North Main and North Broome Streets. To ensure that infill sites like this are developed appropriately for downtown, one recommended approach is to put likely lands in an overlay district or zoning district that includes standards for appropriate downtown typology (design and physical layout of the site that carries out the best and typical features of downtown development that make it appealing and fitting with existing development).

However, there is a good deal of anxiety that infill development must not be overwhelming, and also over whether the scale and side effects of infill construction might change the pleasant atmosphere in the central part of town – which is currently low-key, family-oriented, somewhat upscale but also “real,” and distinctly still carries the feel of a modest rural crossroads and railroad town.

Indeed, downtown Waxhaw has a very special atmosphere. With its turn-of-the-century houses, storefronts, old trade sheds built for equine and other local specialties, back streets edged by grassy swales instead of curbs, and green spaces with old-fashioned trees and shrubs, it has an eclectic and artsy charm. It’s easy to understand why local people are somewhat wary of any dense new development proposals that might undercut the sense of leisure and low-key lifestyle that now predominates in the center of town.

This wariness has resulted in the town wanting to judge development proposals very carefully and retain a high degree of approval control over anything new. Any new proposal is therefore routed through a rather lengthy discretionary review process, mainly through the conditional use permit review.

Although development is subjected to close scrutiny through this process, there is no guarantee inherent in the standards of review (as they now exist) to ensure that infill development is compatible, beneficial, and carries out the town’s vision for its downtown area.

Clear objective standards are needed to address the key issues that townspeople care about. These may include how to manage the interface between new residences and commercial space to existing residential areas (transitions and context); addressing and reducing the potential for harmful side effects (traffic, noise, lighting, hours of operation); and visual compatibility (architectural harmony and good site design).

ZONING PROCEDURES AND PERMITTING



Example of early storefront or trade building. Buildings on side streets were often used as combination production shops and retail businesses, with sales and ordering occurring in the front, manufacture in the rear.



Commercial stable with hay loft.



The ghost sign on one side reads: "Dealers in horses, mules, and cattle"



Large shade trees and sidewalks on a side street in downtown Waxhaw.



A quiet street in a downtown residential neighborhood.



An ornate turn-of-the-century house.

It is not enough to hand the review process to the governing board and hope that negotiating over the details will produce a good result. Unpredictability and lack of clear standards in the negotiated process will only make neighboring property owners more fearful and anxious, developers more uncertain and hesitant to propose anything, and elected board members more strained as they navigate what will certainly be a political process more than anything else.

Instead, the town should determine what the common vision for downtown infill development is (if it has not done so already), then enact standards for the reviewing body to apply which are tailored to carry out that vision and to address identified unwanted effects.

All development proposals that go through a conditional use or similar process can then be judged by a known, agreed-upon yardstick that reflects just where the town wants to go – wherever that may be. This rational approach is in contrast to what many towns do: waiting to see what developers have to offer and responding to hit-or-miss proposals through a politicized battle, without a clear set of standards in place.

ZONING PROCEDURES AND PERMITTING

RECOMMENDATION

- Adopt clear, objective standards for board review of new development proposals, including standards for infill development, that address key issues of identified concern: transitions and context; traffic, noise, lighting, and hours of operation; and visual and functional compatibility, among other elements.

THE DISCRETIONARY REVIEW PROCESS

There is another aspect of the existing review process that should be considered for modification. In general, putting a town governing board in charge of reviewing development permissions is not a recommended practice. Rather, if board review is truly necessary, applications are best reviewed by a planning board, for several reasons.

First, a governing board is exposed to electoral pressure and turnover. Changes in the makeup of the board due to elections mean that the board's decisions may be quite inconsistent from term to term, so that neither developers nor citizens can know what to expect as to outcomes. Planning board composition, in contrast, is slower to turn over and members are not subject to each election.

Also, exposing zoning decisions to electoral politics quickly turns the review process into a pitched political battle. Zoning decisions should be made on the objective merits of the case, and it is harder for directly elected officials to resist campaign pressures than for citizen members of a planning board, who are appointed. Typically in other cities, developers and their agents and attorneys may find it easier to influence elected officials than do citizens and neighbors who have less time and money at their disposal. If the process is left to an elected board, developers may even eventually find it is to their advantage to recruit and run candidates who will favor development proposals.

Finally, planning board members are appointed to focus specially on land use issues, have an interest in that subject matter, and become trained and experienced in it over time, whereas elected board members may not be particularly fascinated by the subject and, with the other decisions that call for their attention, can't always devote their focus to this one topic among many.

Currently, the Planning Board in Waxhaw does not have final review over any type of development permit, although it does review and make recommendations on text and map amendments (rezonings) and in the conditional use process. This is quite unusual, as is the Town's practice of vesting all discretionary board review decisions about development in the governing board. The choice to route nearly all decisions through this one lengthy and highly discretionary process accounts for much of the perceived uncertainty and burden of pursuing development permissions in the town.

RECOMMENDATION

- Place responsibility for most board-reviewed development decisions (other than text and map amendments) in the Planning Board.
 - Create a lesser permit type, such as a special use permit, that would be reviewed and decided by the Planning Board. Reserve only the most major proposal types for the full Conditional Use process.

