

CITY OF SALISBURY
ANALYSIS OF LAND DEVELOPMENT ORDINANCE

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I. Abstract

The City Council tasked the Planning and Zoning Commission to evaluate the City's development requirements contained in its *Land Development Ordinance* (LDO) to determine if City standards were discouraging investment and development activity. Community Planning Services staff retained a planning consultant in July 2019 to evaluate the City's LDO and to compare it with the development requirements of five other jurisdictions in the region. The study entailed a stand-alone analysis of the Salisbury LDO in terms of the development potential of certain key zoning districts, an assessment of the usability of the LDO from the practitioner's point of view, and an evaluation based on recent State legislation and court decisions. The second part of the study, the comparison to other jurisdictions, researched the ordinances of Charlotte, Concord, Lexington, Mooresville, and Statesville, as well as the Salisbury LDO. The study concludes that the City's LDO provides workable standards that allow for flexibility in design and supports a variety of development types (including affordable housing) but that the standards may hinder the type of design of buildings in certain situations; the ordinance itself is not particularly user-friendly for the professional land designer; there are out-of-date provisions due to changes in State legislation and court cases; and there are no significant differences in development requirements when comparing Salisbury with other jurisdictions. Recommendations for several possible text amendments and areas of study are included to address issues identified.

II. Executive Summary

In response to a lack of investment and development activity within the City of Salisbury, the City Council tasked the Planning and Zoning Commission to 1) evaluate the City's development requirements contained in its *Land Development Ordinance* (LDO) to determine if its standards discouraged investment and development in the City and 2) compare City standards and procedures with those of other jurisdictions in the region to see whether Salisbury requirements were more or less restrictive (and investment possibly being siphoned off to other jurisdictions).

N-Focus, Inc. was retained by the Community Planning Services Department in July 2019 to prepare the analysis on behalf of the Planning and Zoning Commission.

Methodology

The study entailed an examination of the following four areas:

1. **“Testing” of certain zoning districts of the current Salisbury LDO.** Utilizing the dimensional requirements of the districts, a development analysis was performed to produce a potential yield on a typical piece of property. The purpose of this test was to determine to what extent the stated density or intensity of the zoning district was a true statement of its development potential.
2. **Analysis of the usability of the current Salisbury LDO.** Approaching the LDO from the perspective of a professional land designer, critical information was searched for the document as the basis of a site plan. The purpose of this analysis was to determine if the ordinance itself (its organization, accessibility of information) facilitated or hindered research and might affect attitudes of the development community toward Salisbury.
3. **Evaluation of the LDO per recent North Carolina statutory changes and court cases.** The LDO was reviewed in light of several recent legislative and judicial changes. The purpose of the review was to determine to what extent updates to the text of the LDO were necessary to ensure currency and accuracy in development requirements.
4. **Comparison with development requirements of other jurisdictions.** The Salisbury LDO requirements were compared with those of five other jurisdictions; the information was compiled in a series of spreadsheets, then summarized in text and graphic formats. The purpose was to determine if Salisbury's development requirements were different and/or more stringent than other jurisdictions' ordinances. This in turn would indicate whether Salisbury's standards might put Salisbury at a “competitive disadvantage”, and investment and development directed away from Salisbury in favor of these other municipalities.

In addition to the primary areas of research (1–4 above), non-LDO planning issues which could affect investment and development activity in any community were briefly explored.

Finally, a series of recommendations, primarily possible text amendments to the LDO, were generated.

Conclusions and Recommendations

The “big picture” takeaway from the research is that the development requirements of the LDO provide the “right” combination of standards and procedures in terms of 1) supporting a variety of housing and development options and 2) accommodating affordability in projects. This conclusion is confirmed by both the stand-alone analysis as well as the comparison of development ordinances from five jurisdictions in the region. Despite the general positive structure of the dimensional standards, the tests of zoning districts did note some constraints or limitations in housing unit design due to the nature of required setback dimensions.

However, the LDO is not a user-friendly document in some ways and can be challenging for professionals to glean the information necessary to prepare drawings. In addition, the LDO needs a number of updates to bring the document into compliance with current legislation and court rulings.

Specific study findings include:

1. The LDO “testing” indicated that the zoning district standards provide thresholds and flexibility to keep development costs low to support housing at a variety of price points, including more affordable housing options. **(Section IVA Test of Zoning Districts)**
2. Side yard setbacks based on a percentage of lot width in certain residential districts reduces the size and usability of the building envelope and inadvertently limits single family design layouts. **(Section IV.A.1 Test of Zoning Districts-General Residential (GR6 District))**
3. The organization of the LDO is not clear in some instances; its user-friendliness, particularly for members of the development community, could be improved. **(Section IVA Usability of Current Salisbury Land Development Code)**
4. Updates to the LDO to ensure compliance with recent legislation and court rulings are needed. **(Section IVA Statutory and Case Law)**
5. Based upon the comparison with development ordinances of other jurisdictions, the City’s LDO is largely in line with the other development requirements. No major “outlier” standards were discovered which might give a “competitive advantage” to other jurisdictions. **(Section IVB)**

Conclusions and recommendations (primarily for text amendments to the LDO) are presented in **Section V**.

Supporting documentation and graphic representation of the comparison of Salisbury’s LDO with the development ordinances of the other five jurisdictions are presented as **Appendices A, B, and C**.

III. Problem Statement

Few conventional residential subdivisions have been built within the City of Salisbury in recent years despite job announcements in the area and continuing work on I-85 (providing greater regional access to the City). The lack of investment and development are of concern to local leadership and members of the business community, particularly those involved in real estate and development.

Public Comments

As the community tries to understand the causes and develop solutions for the problem, concerns have been raised over the past several months regarding the City's Land Development Code (LDO). While a majority of the public comments were collected from a relatively small group, comments received by the City's Community Planning Services staff and Planning and Zoning Commissions are:¹

1. Realtors argue that the City needs to build more homes to expand tax base to avoid raising taxes; however, the LDO was written to limit growth, as experienced by Charlotte.
2. Developers won't build anything in Salisbury because of the UDO.
3. New restrictions hurt affordability; developers complain that requirements for sidewalks on both sides of the streets, rules on landscaping, mandating surveys for lights, trees, and traffic are costly. Providing streets, access to water and sewer make projects not worthwhile economically.
4. The ordinance is a major hindrance: the 50' minimum landscaped buffer strip is costly to provide, while smaller lots (if available) would give developers more opportunities to build lower cost homes.
5. Hidden Creek and Wellington are examples of neighborhoods that could not be built today.
6. Mooresville, Huntersville, Concord can still build affordable developments.
7. When considering updates to the ordinance, the planning staff and the board should think like a developer and calculate the costs.
8. Required "elements" or improvements are expensive; can't afford to do "by right" subdivision (try the conditional use path). As an example, a recent subdivision (first one built in years) was rezoned with conditional overlay to "bypass" parts of ordinance (instead of being built as a regular subdivision).
9. Conditional District (CD) was intended for rare situations when creativity needed; now it's the go-to because standards are expensive (CD process used to get around the standards).
10. CU process is unfair – decisions are made based on opinions and baseless assertions rather than facts; the process is disadvantageous to developer.

¹ *Developers say Salisbury's Land Development Ordinance limits growth*, Liz Moomey, www.salisburypost.com, April 21, 2019

My turn, Rodney Queen: Ordinance must change to draw new residents, Post Opinion, www.salisburypost.com, June 27, 2019

Other sources provided by City staff

11. Can LDO be a proactive document encouraging development?

Despite these comments, not all are ready to place the blame for the lack of development activity on the City's land use policies. Other comments reflect the position that although some revisions to the LDO may be needed, the City's land use policies do not themselves discourage development.

Nevertheless, such comments reflect frustration over local policies and fear about the future well-being of the City. These concerns may be summarized as follows:

- a. The costs associated with development requirements (e.g., sidewalks, landscaping, traffic studies, etc.) contained in the *Land Development Ordinance* drive up the cost of development and reduce affordability.
- b. These standards in turn not only deter investment and development in the City of Salisbury but also direct such investment and development toward other communities (presumably with less demanding land development requirements).
- c. Because the standard subdivision development requirements contained in the LDO are so costly (expensive), residential subdivisions (and other developments as well) must take advantage of an alternative to the conventional subdivision process; namely, conditional zoning. Under this alternative procedure, key regulations may be waived under a development plan utilizing differing standards; this plan must in turn be approved by a more complex, less certain approval process. The "by right" procedures of a major subdivision are replaced by a legislative approval process.

Question to be Addressed

The purpose of this report is to support the City in addressing the following question:

Do the development requirements contained in the City's Land Development Ordinance inhibit or prevent capital investment and development activity in the City of Salisbury?

There are many factors which may be affecting investment and development activity; and it is beyond the scope of this report to 1) verify and measure the extent to which there is a lack of investment and development activity within the City of Salisbury and 2) fully explore all factors affecting investment and development in the City. However, this report will support the City's efforts to address the concerns expressed above by evaluating this one aspect – local development standards and procedures - that can have an effect on investment and development. This report will include the following:

1. Analysis of current City of Salisbury LDO;
2. Comparison of City of Salisbury development requirements with those of five other jurisdictions;
3. Brief discussion of other issues potentially affecting investment and development within the City.

IV. Approach and Analysis of Issues Related to City of Salisbury Land Development Ordinance (LDO)

The following expands upon the steps outlined in **Section III Problem Statement** above.

A. Stand-alone Analysis of LDO

Test of Zoning Districts

With an understanding and appreciation of the concerns that have been expressed by members of the development and real estate business community, a “test” of the City of Salisbury Land Development Ordinance (LDO) standards affecting development has been run. Standards such as zoning district dimensional requirements, subdivision block length and street construction standards, and other provisions contained in the LDO have been used to determine a “real world” potential yield on property (both residential and nonresidential properties). Pertinent development cost estimates have been provided where feasible and accurate.

The testing has been run on the following zoning districts: GR6, UR8, HB, CMX, RMX, and TND. The evaluation of select zoning district standards and specifications determined the extent to which the selected districts yielded their respective results when applied in test case scenarios. The authors of this report utilize terms familiar to professionals practicing land planning such as surveyors, contractors, engineers & architects. In this narrative the term “**minimum building envelope**” refers to an area within a lot available for development of a principal structure as established by the applicable setback dimensions. **Development costs** are also utilized in this report to reflect an average cost per linear foot of streets and street infrastructure to include developer costs for water, sewer, grading, paving, sidewalks, curbing/gutter, storm drainage conveyances, street trees, engineering and other associated direct costs borne by the developer to create lots for builders. Off-site extensions of utilities to serve a development site are not included, being unique to the specific development location.

- 1. General Residential (GR6) District:** The purpose of this district is to serve both the City’s existing residential neighborhoods as well as new development in a suburban pattern. The stated density limit for this district is 6 units per acre. Test results indicate in a simulated exercise a maximum yield of approximately 5.70 units per acre. This exercise assumed both geometry and topography of the site was ideal. A hypothetical greenfield tract of 100 acres in size was applied with 6% open space deducted and no environmentally sensitive areas for exaction purposes.

The Positive. Our test indicated development cost per lot (excluding land cost) is very good (low) and will benefit affordability in housing. The analysis indicated a total estimated development cost of approximately \$11,270 per lot (excluding land cost). If

raw land cost is \$35,000 per acre, the development scenario indicated our scenario produces homes at wholesale as low as \$92,250 excluding soft costs & profits. This ratio will support detached housing products in the \$170k and above market.

The Negative. Our test indicated the most significant problem arises in the type of house that will fit the minimum lot requirement for the district. A building envelope produced by the combination of GR6 district setback requirements translates into a 33' width. While this building envelope is ideal for the "fours & eights"² of building efficiency, it may limit the housing product to approximately 22' in width at the garage and only 10' in the conditioned living space at the front building line. The minimum building envelope in the GR6 district is approximately 2145 square feet or 1/20th +/- acre in size. The separation between houses is a minimum of 22' at the minimum setbacks and higher if the lot width increases for any reason. Driveway separation is approximately 35' for 20' driveways. These are also discussed and illustrated in item 8 under Usability of Current Salisbury Land Development Code.

- 2. Urban Residential (UR8) District:** The purpose of this district is to serve the "in-town neighborhoods" and offer some mix of uses. The stated density limit for this district is 8 units per acre. Test results indicate in a simulated exercise a maximum yield of approximately 10.2 units per acre; however, the cap is 8 units per acre. This exercise assumed both geometry and topography of the site was ideal. A hypothetical infill tract of 10 acres in size was applied with 8% open space deducted and no environmentally sensitive areas for exaction purposes.

The Positive. The flexibility afforded to this district is very beneficial to producing good results and accommodating site challenges often found in residual infill sites. Our test indicated development cost per lot (excluding land cost) is very good (low) and will benefit affordability in housing. The analysis indicated a total estimated development cost of approximately \$8,348 per lot (excluding land cost). If raw land cost is \$50,000 per acre, the development scenario indicated our scenario produces homes at wholesale as low as \$73,000 excluding soft costs & profits. This ratio will support detached housing products in the \$160k and above market. This district will accommodate redevelopment of existing small lots and additions to existing structures to a large extent. This district also reduces dimensional nonconformities to avoid under-writing issues for lenders and insurance companies; this, in turn, benefits homebuyers and homeowners.

The Negative. Our test indicated the most significant problem arises in the type of house that will fit the minimum lot requirement for the district. A building envelope produced by the combination of UR8 district setback requirements translates into an 18' width. While this building envelope is also ideal for the "fours & eights" of building efficiency, it

² The term "fours & eights" refers to the dimensions of conventional residential building (lumber and sheathing) materials. The term is important in building efficiency affecting both affordability & profits. When dimensions vary, then waste occurs (e.g. a 6'-0" dimension can only be constructed by cutting 8'-0" lengths of lumber and/or plywood down to 6'-0", the remaining 2'-0" is wasted material.)

is conducive to limiting the housing product to approximately 16'-18' in overall width. This dimension will necessitate alternatives to parking such as an alley access which may or may not be feasible. The minimum building envelope in the UR8 district is approximately 1170 square feet or 1/40th +/- acre in size. The separation between houses is a minimum of 12' at the minimum setbacks and higher if the lot width increases for any reason. The setbacks can still be challenging and create existing dimensional non-conforming conditions, given patterns in older areas developed before more recent land development standards & specifications.

- 3. Highway Business (HB) District:** The purpose of this district is to serve business location needs along high traffic thoroughfares. The HB district is used generously in Salisbury and represents the predominant supply of commercial properties outside the downtown area. The applicability of the HB district should support corridors and catalyst areas of commerce.

The Positive. Every community needs specific land area for highway-oriented intense commercial development to provide locations for automotive sales, shopping malls, etc. This district appears to fit the needs when applied to largely existing development due to conditions existing on such property. Sites with significant impervious areas need a district where the properties can thrive; otherwise, these sites may become underutilized and lose value in the local market.

The Negative. Our test indicated the HB district includes multi-family housing (apartments) which can compete for investment with the catalyst areas, including the downtown area, and diminish the feasibility of strengthening the various core catalyst areas of Salisbury. Locating apartments along major thoroughfares will increase conflicts between pedestrians and motorists. Large HB areas hosting residential uses can lessen the ability to clearly identify activity centers and "hot spots" for new development. The HB district does not require recreational open space, affecting the quality of the built environment. Parking in the HB is unrestricted in its design. These attributes make the HB district the cheapest district in which to develop. In addition, many communities inadvertently created low value commercial areas by oversupplying the market with this type of zoning district. City efforts to plan for and identify specific areas for public investment to support redevelopment for mixed use should be a long-term goal; CMX zoning is a more appropriate tool than HB to achieve the goal.

- 4. Corridor Mixed-use (CMX):** The purpose of this district is to enhance highway corridors through design. This district is essentially the same as the HB district described above; however, the standards and specifications are much higher and result in better appearances and experiences for persons active in the district.

The Positive. The CMX district will enhance the corridors of the City and attract occupancy within projects developed in the district. Used effectively, this district can fulfill the functions of the HB district while setting the higher standards for appearance

and sensitivity to quality design. The CMX district standards & specifications include significant open space adding to the quality of intense mixed-use areas.

The Negative. When added together with other similar mixed-use districts the CMX will contribute to the over-supply of existing commercial development within the HB district. Carefully reviewing the placement of HB zoning to the existing corridors may suggest opportunities to change strategic locations with existing HB to CMX designation.

- 5. Residential Mixed-use (RMX):** The purpose is to serve as the transitional district between intense commercial nodes (e.g., CMX & HB districts) and nearby established lower density residential neighborhoods. The district includes lighter non-residential uses including institutional, civic, office, and personal services. The district also includes multi-family residential opportunities.

The Positive. The RMX district can be an ideal solution to transition issues when used sparingly in any one location. The standards & specifications are appropriate for this type of district.

The Negative. The densities afforded by this district are a potential concern to those nearby established lower density neighborhoods. Some of the non-residential uses may trigger concerns related to incompatibility at the border with the residential areas.

- 6. Traditional Neighborhood Development (TND) District:** The purpose of this district is to provide for the mixture of uses and densities in a close-knit walkable pattern reminiscent of the historical cities. The LDO creates this opportunity as one of the “base district” options. These districts should require higher quality standards in exchange for higher density to attract developers seeking the options this form of neighborhood development may offer. While this exercise did not specifically test the yield analysis, it did identify the TND as an opportunity missed. The opportunity to maximize benefits of this form of development should be using an overlay district to increase densities and mix of uses.

Usability of Current Salisbury Land Development Code

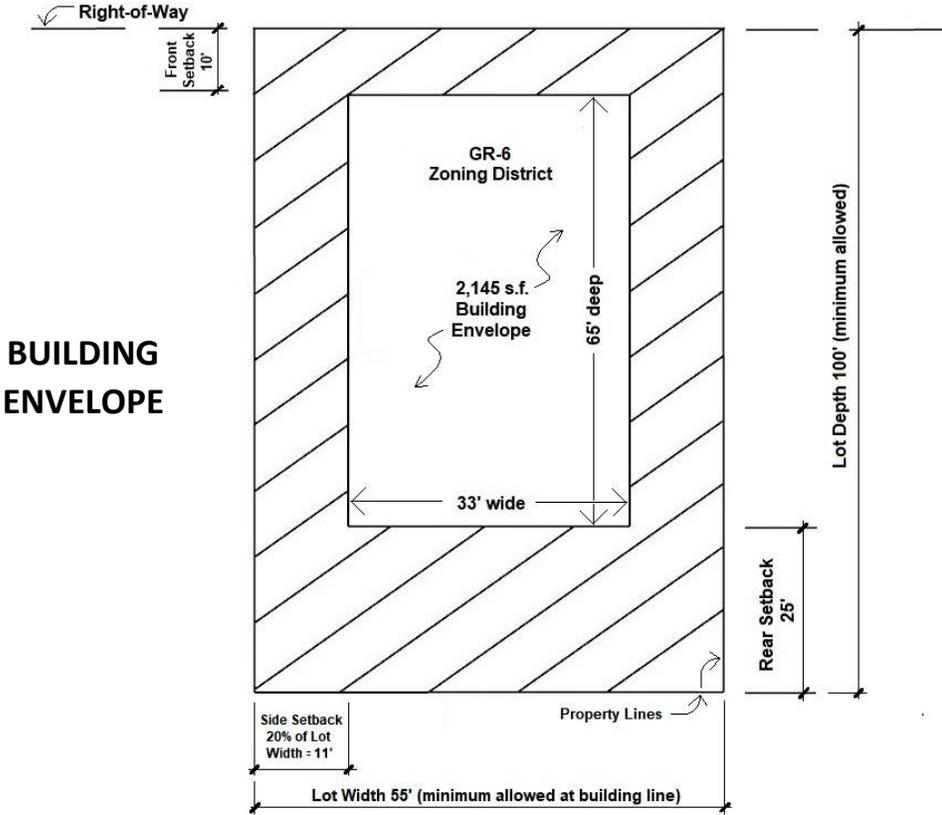
In addition to the testing of quantitative standards for development potential, an evaluation of the usability of the LDO document itself has been provided. The ordinance’s ordinance text features, including user-friendliness (logical construction, ease of finding materials, internal references, etc.) and clarity of standards and procedural requirements will be commented on from the perspective of both a developer or land designer preparing a project based upon the City’s LDO and a professional plans review official.

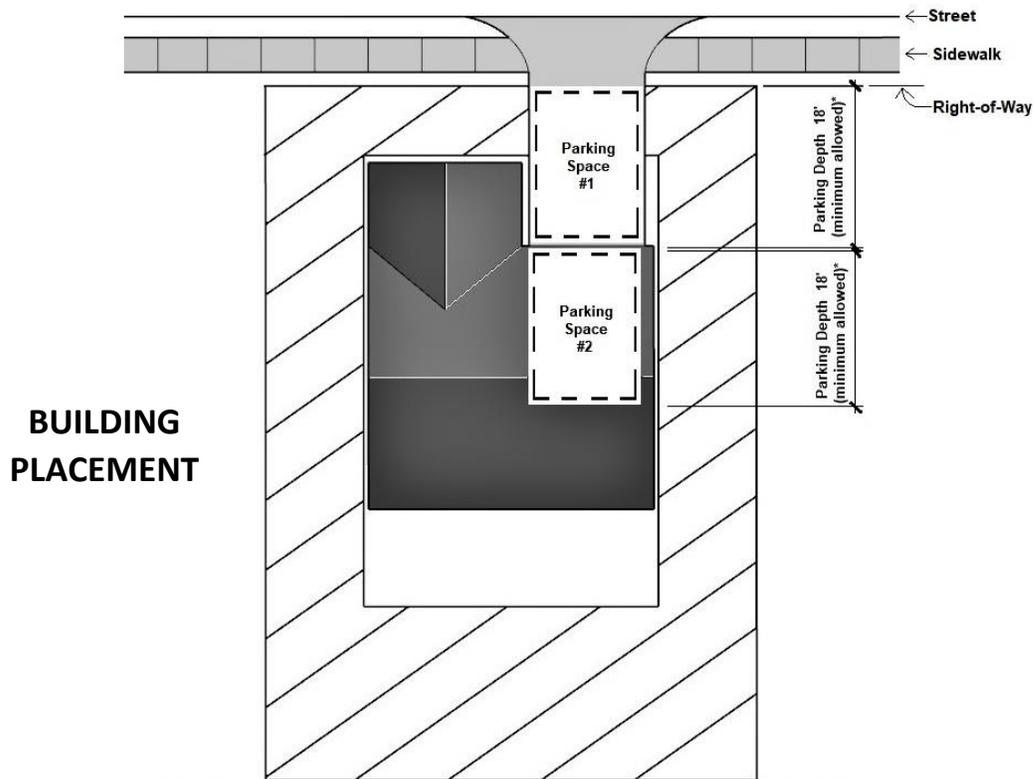
- 1.** Supportive or explanatory information appears in scattered locations throughout the ordinance; such content may help to explain the theory behind a provision but may also reduce the ability to locate specific information and often increases the potential for inconsistent interpretations among users (staff, applicants, etc.). While such “textbook”

style narratives may provide helpful background for some readers, it may detract from the primary role of the ordinance (e.g., clearly identify a district's relevant information, such as "purpose", "gross density", "lot sizes", etc.) and be a distraction to professional designers referring to the ordinance for specific standards.

2. Some commonly referenced standards & specifications appear in non-logical locations (e.g., lot width, area & setbacks appear in "Chapter 5 – Building Types & Standards", rather than either "Chapter 2 – Districts" or "Chapter 6 – Lot, Infill and Accessory Provisions").
3. Some headings are misleading, making it difficult to locate by the various professionals referencing the LDO. For instance, Section "4.2 General Subdivision Platting Provisions" includes design criteria, and provisions dealing with ordinance amendments are located in Chapter 15 "Development Process", as if a rezoning or text change is a type of permitting procedure. Amendment procedures should be in a stand-alone section regarding the adoption of LDO amendments.
4. In addition, appeals are also located in Chapter 15 "Development Process", as if an appeal is a part of the permitting process. Such provisions should be in a stand-alone section regarding the appeal of an administrative decision. In addition, the LDO appeal provision is non-compliant with current statutory language.
5. Certain districts are not logically structured (e.g., RR is lower density w/lower side-yard setback requirements than higher density districts such as the GR6).
6. "Developable" portions of property/sites should produce efficient yields (e.g., blocks and lots should fit like puzzle pieces) when applied to a subject property. When setbacks create building envelopes that are not realistically useable with contemporary housing products, then lot sizes must be increased to accommodate shortcomings. GR3/6 or UR8 lot widths with large side-yard setbacks do not "fit" the housing products. When this occurs, expectations of the developer are no longer feasible, and resulting frustrations are typically aimed at the City staff. Ensuring developable portions of property/sites within any given district have a workable building envelope will allow expectations to be met after purchase decisions have been made. We must remember the information staff shares with persons making very important financial decisions about property and development should be taken very seriously. When complex ordinance provisions cannot be determined easily nor explained concisely, persons obtaining this information can be taking unknown risk.
7. GR Districts (GR3 & GR6) represent a 100% increase in density yet have the same lot size and setback criteria. This negates the added opportunity of the higher density.
8. Building envelopes at minimum lot width yield unusual street-scape dimensions that present design problems (e.g., 55' lot width in GR (3 & 6) districts combined with an 11'

side setback per side yields a 33' building envelope width; this results in 1) front loading garages protruding in front of the conditioned living area and 2) 35' separation between driveways [w/20' widths]]. These standards create a 36% "Automobile Façade" ratio on the streetscape with 22' separation between homes.





*Section 10.4(E) Encroachment: Off-street parking areas shall be designed so that parked vehicles do not encroach upon or extend onto public rights-of-way, sidewalks or strike against or damage any wall, vegetation, utility, or other structure.

9. Districts can be better crafted to support broader City planning policies when identifiable with parts of the City (e.g. Main Street (MS), Main Street Periphery (MSP), Residential Main Street Transitional (RMST), US Highway 29 Commercial (C-29), US Highway 601 Commercial (C-601), US Highway 70 Commercial (C-70), etc.); so as to tailor districts to places. Additional “Mixed Use” districts can then be used to transition land uses while a “Civic” district can be used to treat all civic and institutional uses equally rather than in each individual district with varying standards and specifications.
10. The parking location matrix in Section 10.4.A appears to create potential enforcement issues due to standards linked to behavior (rather than physical standards). For instance, while the table may be useful in initial design, it may be difficult and time-consuming to enforce after the fact if someone parks in the wrong area of a district. Zoning standards & specifications should not create complexity that is tied to ongoing behavioral actions. It may be helpful to clarify that the rules apply at the time of new development. In addition, the specificity of this table could be discouraging to plans for a mix of uses, infill sites, and creative design.
11. The Conditional District approval process should include a Development Agreement component to alleviate the need for a 2-year rescission timeframe (per NCGS 15.23.G).

- 12.** “Development Agreement” provisions per NCGS 160A-400.20, which are useful tools to support and facilitate subdivision and development processes in addition to more traditional subdivision and development project review, should be included as an option in the LDO. The development community often understands agreements more than ordinances and quasi-judicial proceedings, and such Development Agreements also reduce the fear of impact on future phases through future ordinance changes.
- 13.** Property markers should be consistent with laws governing land surveyors in North Carolina. The LDO has extra items that will only confuse property owners rather than denote boundaries (see Section 4.6.C of the LDO). The LDO requires surveyors to set corner pins at all points of curvature & tangency which is inconsistent with State requirements. The LDO also requires pins to be set at all points of intersection, which will typically be located in street intersections rather than property boundaries.
- 14.** Section 4.5.D dealing with thoroughfares, sewer interceptor lines and water mains implies that all improvements identified by the City are developer expense. Establishing a clear policy outside LDO for major transportation improvements, water/sewer allocation, extensions & annexation to cover participation with claw-back provisions on unused allocations will pro-rate the cost to the developer and the City and reduce avoidance of projects in locations where capital improvement projects have been officially identified.

Statutory and Case Law

North Carolina General Statutes and judicial rulings provide the framework for local development ordinances. Because changes can frequently occur in both State law and court rulings, it's important for local development requirements to be evaluated periodically for any such changes to ensure that the rules applied to private sector activity are in conformance with the larger legislative and legal framework.

While the issues identified below should not be considered exhaustive, the following specific issues should be addressed.

North Carolina General Statute Amendments

1. Board of Adjustment voting standards for **“appeals to administrative decisions”** (administrative appeals) appearing in Chapter 15 (Section 15.15.D of the LDO) were amended by this statutory amendment in 2013. The **“supermajority”** (four-fifths) requirement is no longer authorized in North Carolina as are several other details regarding **“constructive notice”**, etc. The supermajority only applies to **“variances”**. (Session Law 2013-126)
2. The LDO contains numerous residential **“design elements”** (standards & specifications) with notations appearing in red fonts and explanatory statements regarding intent and/or applicability. These provisions are no longer authorized except in certain circumstances and should be clearly stated as such in the LDO. (Session Law 2015-86)
3. The LDO shows the former language on **“protest petitions”** to be stricken; the stricken language should be removed completely. (Session Law 2015-160)
4. The LDO contains language regarding **“performance guarantees”** for infrastructure installation in conflict with this statutory amendment enacted in 2015. There is some language to delete and some to add. (Session Law 2015-187)
5. The LDO does not appear to exempt **“fence wraps”** from signage regulation in accordance with applicable statute. While fence wraps are often used as advertising, the statute now exempts these wraps from sign controls if the message content appearing on the wrap relates to the project upon which the fence wrap is applied. This NC statute appears to be in conflict with the ruling appearing in the *Reed v. Gilbert* case mentioned below; this in turn creates a municipal **“Catch 22”** situation for cities and towns. (Session Law 2015-246)
6. The LDO does not appear to contain language, mandated by this statutory amendment, to address **“density credits”** detailing the transfer of certain rights when impacted by NCDOT roadway projects. (Session Law 2015-246)
7. The LDO contains language in section 9.6.D.5 that appears to violate the provisions of this statutory amendment by exceeding the allowable limits on **“riparian buffers”**. (Session Law 2015-246)
8. While the LDO appears to be generally compliant with both North Carolina General Statute and Federal Communications Commission rules, the policies regarding **“telecommunication towers”** are antiquated and may not help the City meet wireless broadband needs for the future. Updating locations (districts) and specific tower

standards should be reviewed to expand opportunities where service demands for wireless broadband capacity should be increased. Furthermore, the procedures contain conditions outlined in section 3.3.DD.5.c(1) that should be incorporated into the standards appearing in the previous subsections so as not to confuse the requirements for making findings in the quasi-judicial hearing process appearing in section 15.14 of the LDO. (Session Law 2017-159)

Judicial Actions

1. Supreme Court of the United States - Reed v. Gilbert – Content Neutrality

The LDO contains two definitions of types of signs that violate the intent of the ruling. Chapter 12 should be amended to eliminate the conflict by recategorizing signs to avoid references to the sign copy as a means of determining the type of sign and the standards & specifications that apply and clarified to reflect current statutory conflict in political signs exempted by the State of North Carolina (per NCGS 136-32(b)) with this court ruling.

2. Policy Toward Religious Institutions – Religious Land Use & Institutionalized Persons Act (RLUIPA)

RLUIPA, co-sponsored by Senators Hatch and Kennedy, was unanimously enacted by Congress and signed into law by President Clinton in 2000 as a response to the Supreme Court's decision in *City of Boerne v. Flores*, 521 U.S. 507 (1997), where the Court invalidated the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. §§ 2000bb, et seq. Federal policy toward religious institutions can be confusing in instances where these uses are distributed among various districts in local zoning ordinances. The simplest solution is to create a district to establish identical standards and specifications for institutional uses.

3. North Carolina Court of Appeals (*Consistency & Reasonableness*)

North Carolina Court of Appeals has held that local governments exercising the authority to regulate land use must not only find consistency with an adopted plan, but also state how an amendment or ordinance is reasonable. The solution is to amend the LDO to include language informing this process and how it is to be handled at both the Planning and Zoning Commission and City Council levels. LDO sections 15.20, 15.21, & 15.22 address legislative processes for text and map amendments affected by the *Wayne v. City of Kannapolis* ruling.

B. Comparison with Development Ordinances of Other Jurisdictions

Methodology

As noted above, the development and real estate community expressed concern regarding potential loss of investment and development to other communities with less restrictive development requirements. To respond to this concern, the development ordinances of five other jurisdictions in the region were evaluated and compared with City of Salisbury provisions as contained in its *Land Development Ordinance* (LDO).

The municipalities used in the comparison were selected on the basis of regional geographic proximity, similar community profile, similar location relative to the interstate and employment centers, quality of development, and/or regional economic importance. The jurisdictions used in the comparison include:

- **City of Charlotte** – Major growth hub of metro area; employment and growth affecting other jurisdictions in region;
- **City of Concord** – Ring community in Charlotte metro area; quality development; positive reputation; growing community;
- **City of Lexington** – Geographically close, though smaller; similarly located per employment centers and I-85;
- **Town of Mooresville** – Comparable size community; quality development; Lake Norman a strong regional attraction giving Town an identity;
- **City of Statesville** – Similar size and demographics; similarly located per employment centers and interstate.

Table 1 below summarizes recent population and household income figures for each jurisdiction.

City of Salisbury LDO Analysis - Demographics	Population 2010	Population 2016/2018	Median HH Income All	Median HH Income Family	NOTES
City of Charlotte	731,424	872,498 (2018)	\$48,670	\$59,542	2018 HH Income Figures
City of Concord	79,066	94,546 (2018)	\$46,094	\$53,571	2000 HH Income Figures
City of Lexington	18,931	19,105 (2016)	\$26,226	\$32,339	2000 HH Income Figures
Town of Mooresville	32,711	38,431 (2018)	\$42,943	\$51,011	2000 HH Income Figures
City of Statesville	24,532	26,506 (2016)	\$31,925	\$41,694	2010 HH Income Figures
City of Salisbury	33,662	34,001 (2016)	\$32,923	\$41,008	2010 HH Income Figures

The factors used as the basis of comparison of the ordinances include 1) development standards (dimensional requirements, subdivision road and infrastructure requirements, other required improvements); procedural and review requirements (affecting timing, complexity, and predictability); and other factors that may affect the cost of development.

Appendices A and B contain spreadsheets displaying comparable development requirements of Salisbury and the five other jurisdictions. Appendix C contains graphic comparisons of the six jurisdictions regarding a number of development standards.

The purpose of this portion of the research is to determine whether and to what extent the City of Salisbury LDO restricts or discourages development when compared to other jurisdictions' development ordinances. The different standards and procedures governing development in each jurisdiction were compared and evaluated as to whether such requirements might encourage or discourage investment and development.

This analysis has been based on the assumptions that development can be obstructed by 1) extremely high (and costly) standards that are peculiar to a jurisdiction; 2) review and approval procedures that are unclear (not spelled out in ordinances or procedural manuals), lengthy, and unpredictable (greater reliance on legislative or other formal board hearings rather than administrative actions, where appropriate); and 3) ordinances and/or development manuals that do not have clear standards and are difficult to maneuver (for both government staff administration and private developer/designer use). Conversely, ordinances with fewer requirements, faster and simpler review procedures, and clear, well written standards may be considered more welcoming of development for purposes of this analysis.

Having stated this rationale, it's important to note the following disclaimers:

- Reducing standards may lower immediate costs associated with development and the price of housing; however, lower standards may lower the quality of the end product and the long-term value.
- Lowering or removing requirements for certain infrastructure or public amenities may reduce the overall quality and long-term value of the neighborhood or commercial site being developed.
- Lowering or removing requirements for infrastructure may result in a shift of the expense away from the developer and future home buyer to the general public (through funding an amenity or public infrastructure by means of the general property tax base).

Summary Results of Comparison

The information from the spreadsheets in the Appendices is broken down into categories below to 1) identify both shared and differing development requirements and 2) support the determination of the relative support or obstruction presented by the respective ordinances.

A. Features of the Salisbury LDO that may tend to encourage/promote development or do not divert investment and development

1. The Salisbury LDO has many optional zoning districts for residential development (e.g., RMX, NMX, TND); that's also a feature of the Concord, Lexington, Mooresville, and Charlotte ordinances.
2. The dimensional requirements in the LDO are generally less restrictive than those in the other jurisdictions, providing in most cases more flexibility to site designers and developers.
3. Conditional zoning option provides flexibility in certain development standards in exchange for a more complex review process; this is also a feature of ordinances for Concord and Mooresville.
4. A secondary dwelling is allowed in the RR District by right, providing an opportunity for affordable housing.
5. The residential use "House" as defined allows up to 4 units in the GR and UR districts; townhouses are also permitted in these districts. In addition, under Lexington standards, townhouses and small commercial uses may be allowed in the Suburban Residential District; and apartments, townhouses, and commercial uses are allowed in the Traditional Neighborhood District. The various uses may be considered under a Major Zoning Permit process (with approval by the Lexington City Council) authorized in the City's ordinance. Finally, Charlotte is considering permitting up to 4-unit buildings in all SFU residential districts.
6. Chapter 22 of the Salisbury LDO (providing an overview of district provisions) and the *Uniform Construction Manual* are well done (user-friendly) for designers and other users. In addition, the Charlotte and Mooresville ordinances and technical manuals are also well done with standards clearly presented and easy to find.
7. The landscaping, buffering, tree protection, and open space provisions in the Salisbury LDO are similar to standards found in the other jurisdictions. Although such required improvements represent additional development costs, Salisbury is not at a "competitive disadvantage" with respect to these types of improvements.
8. Standards for street improvements required with major subdivisions – ROW width, pavement width, curb and gutter requirements, sidewalks (both sides) – are similar in most all jurisdictions. Again, Salisbury is not at a "competitive disadvantage" with respect to the similar requirements for other jurisdictions.
9. Clustering is permitted in the Watershed Protection Overlay District (to maintain an overall density of 2 du/AC).
10. The LDO contains Alternative Method of Compliance (AMC) provisions to encourage innovative design; such designs are reviewed by an AMC Commission. Similar AMC

optional review provisions are present in the Charlotte, Concord, and Mooresville ordinances.

11. The Zoning Administrator has discretion to approve administratively deviations in setbacks within 10% of the standards in the ordinance.
12. Community Planning Services staff and TRC (Technical Review Committee) staff have final approval authority for Preliminary and Final Plats rather than elected body approval (Section 15-13); in Concord, the Planning and Zoning Commission has approval authority; in Mooresville and Statesville, the elected body approves a concept plan, then staff and TRC approve the preliminary and final plats.
13. For purposes of calculating density for housing developments, additional required ROW, open space, and required public facilities are included in the calculation to not “penalize” the property owner and developer for lands devoted to public purposes. Similar provisions are included in the ordinances for Charlotte and Lexington.

B. Features of the Salisbury LDO that may tend to discourage development.

1. As indicated in Appendix A (and as noted above in Section III A.2. above), because of the structure and location of certain standards in Salisbury’s LDO, the ordinance can be difficult to navigate.
2. Although most of the dimensional requirements in the Salisbury LDO provide a large degree of flexibility to site designers and maximize building envelope/potential use of a lot, the side yard setback requirement in UR and GR of 20% (rather than a specific [fairly small] number) consumes a large amount of a lot, limits the designer’s ability to locate a structure on a site, and can create unnecessarily large spaces in streetscapes, particularly in more urban, smaller lot situations. For instance, with a minimum lot width of 55’ in GR, the side yards are 11’ on either side, leaving a remaining building envelope width of 33’.
3. Conditional zoning provisions give flexibility and offer an incentive to creative site design; however, based upon comments by the real estate and development community this process is perceived to be a necessary alternative to the traditional subdivision submittal due to awkward and confusing development standards in the LDO. Therefore, the resulting conditional use process is viewed as an un-welcome alternative with complex, lengthy, unfair, and unpredictable processes. The extent to which this perception is shared by investors and developers would constitute a deterrence to development activity in the City of Salisbury.
4. A Transportation Impact Analysis (TIA) is required if potential traffic generation from a project exceeds a certain threshold (i.e., 3000 VT/day). Although similar requirements are found in the ordinances for Mooresville and Statesville as well as other ordinances in North Carolina (to identify and mitigate project-related transportation impacts), the requirement represents a development cost to be absorbed.
5. Architectural design standards for single family residential development contained in the LDO (also found in the Lexington ordinance) are in conflict with State statutes.

- C. Ordinance provisions from other jurisdictions that encourage development but are missing from the Salisbury LDO.**
1. Clustering provisions (exempting lot dimensional requirements) are allowed in all single-family residential districts in Charlotte (with 10% open space reserved) and Concord (clustering is allowed under specific watershed protection rules in Salisbury's LDO). The clustering provision allows flexibility in layout of subdivision.
 2. Voluntary inclusionary zoning provisions encourage and incentivize policy objectives for Mooresville (bonus density for workforce housing) and Charlotte (affordable housing for population earning 80% average median income [AMI]).
 3. The Mooresville ordinance also provides incentives for tree protection.
 4. Various flexible administrative practices are permitted under the Charlotte ordinance, including 1) recognizing shared parking (nonresidential) for up to 50% of the off-street parking requirement; 2) granting a reduction of up to 25% of off-street parking by joint approval of the Zoning Administrator and Traffic Engineer; 3) reducing or waiving bufferyard requirements in some circumstances; 4) allowing a 10% reduction in minimum lot size in a subdivision if overall density is maintained.
 5. In Concord, major subdivision approval (Preliminary Plat) falls within the purview of the Planning and Zoning Commission.
 6. Many standards - such as sidewalks on both sides of the street, curb and gutter, block length - can be waived administratively or through legislative process (as part of Council approval, not ZBOA) under the Lexington ordinance.
 7. Performance guarantees can be submitted in lieu of preparing as-built drawings under the Lexington ordinance.
 8. The Mooresville ordinance and engineering standards manual are particularly well written, with standards and procedures easily found and clearly presented.
 9. Statesville requires projects outside the city limits but requesting connection to City wastewater and utilities to annex into the City. This provision formalizes and guarantees reliable provision of key utilities services to the private development while insuring the long-term financial capability of the jurisdiction to continue and expand utilities services.
 10. *Development Agreements* are available under the provisions of the Statesville ordinance.
 11. Certain standards (e.g., off-street parking requirements, pavement width) are not explicitly stated in the Lexington Ordinance; the lack of an objective standard may represent an opportunity to provide alternative, less costly design.

D. Features of other ordinances that may tend to discourage development – (not in Salisbury LDO)

1. Many of the SFU residential districts available in the Charlotte and Statesville ordinances are very similar in terms of key dimensional standards; such districts may be redundant, confusing, and unnecessary because they provide little, if any, distinction from each other.
2. Bicycle parking is required for nonresidential uses in Charlotte.
3. A total of 8 – 12% of major subdivisions (based on density) must be set aside for open space in Concord.
4. The ordinances for Concord, Lexington, and Statesville require streets and infrastructure to be constructed to the edge of the property as part of subdivision requirements (this is common practice in jurisdictions across the state; however, it is not stated explicitly in the Salisbury LDO).
5. One canopy tree per lot is required for subdivisions in Concord.
6. In the Lexington ordinance, no table or matrix of “Permitted Uses” indicating where various land uses are permitted within the City zoning districts shown on the Official Zoning Map, is provided. The uses are listed in the text of the ordinance for each zoning district.
7. Certain standards (e.g., off-street parking requirements, pavement width) are not explicitly stated in the Lexington Ordinance. Although the lack of an objective standard gives flexibility, it also requires more time, judgment, and negotiation with City staff.
8. Staff notifies the local school district and the Parks and Recreation Department of potential sites for facilities as part of the review process for major subdivisions under the Charlotte ordinance; Mooresville notifies the school district only under its ordinance. Although this feature may serve an important public purpose, any site thus located would represent an expense and a delay for a developer.
9. The Lexington Zoning Ordinance is somewhat difficult to navigate, particularly to identify procedures and standards.
10. Final Plat approval in Lexington requires approval by City Council; this represents an extended time for review and approval.

In addition to the specific comparisons listed above, a few other general observations can be made.

- Salisbury and all other jurisdictions have zoning and subdivision/infrastructure standards regarding landscaping, buffering, tree protection, open space, streets, sidewalks, etc. As noted above, Salisbury is not an “outlier” with respect to these standards; these standards should not in and of themselves divert development to other jurisdictions.
- As noted in item 1) above, lot dimensional standards (minimum lot size, setbacks, etc.) are present in all ordinances with similar values, and Salisbury’s appear to be least restrictive in most regards; however, Salisbury is more restrictive in factors defining residential building envelopes. A more detailed presentation of these requirements for Salisbury and the other jurisdictions is provided in Appendices B and C.

- Some provisions identified in the ordinances are just different and may or may not be considered as encouraging or obstructing investment and development, depending on the specific proposal (e.g., Lexington “encourages” sustainability measures; Charlotte’s voluntary inclusionary zoning to encourage workforce housing).

C. Other Issues

Other Factors Affecting Development

In addition to the impact of regulations, there are a number of factors affecting the development climate of a jurisdiction. To provide some perspective on the current discussion with Salisbury, the following may be pertinent to the level of investment and development in the City:

1. Regional growth trends: Where are people and jobs locating?
2. National economic trends affecting the housing and real estate markets: In what direction are interest rates trending; what is the current level of consumer confidence?
3. Demographic changes: With the changing nature of households - getting married and starting families are delayed or deferred altogether - how does that affect the size and type of housing product in demand?
4. Changing consumer preferences: Are the preferences of young, first time home buyers being addressed in Salisbury (e.g., a more urban lifestyle and housing type may be preferred over the traditional suburban model)?
5. Proximity to workplace: Do young home buyers' purchase decisions place greater value on living near employment centers and avoiding a long commute?
6. Nontraditional factors affecting growth: Cities and towns in competition with each other to attract the "best and the brightest" of the next generation of well- educated workers (and well-paying taxpayers). "Attractive" communities combine a high level of public services; quality and beauty in the natural and built environment; private sector social and entertainment amenities; and active citizen engagement. How does Salisbury present its "quality of life" credentials (as a desirable place to live) to potential new residents and businesses – to attract growth and create demand for new development (both housing and nonresidential)?

Additional Areas of Research

Other areas of research (beyond the scope of this study) that may shed light on concerns expressed by the real estate and development community regarding concerns about the vitality of local development (see Section III above) might include:

1. Is there a housing shortage in Salisbury currently? Is there one projected for the expected future workforce?
2. Could older subdivisions such as Hidden Creek, Wellington, Woodfield, etc. be developed under today's regulations? What are the specific points of conflict?
3. Would the ordinances in Mooresville, Huntersville, and Concord allow such older developments in Salisbury cited above be built currently? Would it be beneficial to run "tests" on these ordinances, similar to the exercise in Section IV above?
4. For the *True Homes at Drummond Village* project, was the Conditional Development process selected in order to avoid certain (costly) requirements of the LDO? If so, which costs triggered the alternative process?

V. Conclusions and Recommendations

Conclusions/Takeaways from Research

1. The “tests” run on the zoning district in the Salisbury LDO revealed positive results related to actual lot yield (for stated densities contained in residential districts), affordability (in terms of per lot costs for residential development), and flexibility (for site design layout).
2. The zoning district tests did note, though, some negatives related to constraints or limitations in the types of housing unit or lot design layout due to the nature of setbacks and dimensional requirements (building envelope).
3. In assessing the usability of the LDO, issues related to the document’s structure and user-friendliness were noted (particularly from the perspective of site designers’ ability to access information). Some key information appears to be scattered throughout the document in non-logical, unexpected locations.
4. Changes to the text of the LDO need to be made in certain areas to ensure compliance with new statutory changes and court rulings.
5. When compared with other municipalities, the development requirements contained in the Salisbury LDO are not substantially different and do not appear to generate relatively higher development costs for developers. In particular, the dimensional standards of the LDO appear to give more flexibility and opportunity to site designers than standards of other jurisdictions (corroborating the Salisbury LDO zoning district tests run [per #1 above]).
6. Having said that, the Salisbury LDO (along with the other jurisdictions’ requirements) contain provisions that represent substantial costs to developers if minimizing cost is the objective. However, if building a desirable city for future residents and businesses is the objective, then many of these costs are better viewed as investments that benefit both short and long term.
7. The Salisbury LDO (along with the other jurisdictions’ requirements) also contains provisions that facilitate procedures and provide alternatives to developers that can be seen as encouraging investment and development.

Recommendations and text amendments to address issues

Given the reason for and focus of this study, stating an overarching goal related to the City’s development requirements may help to identify appropriate amendments to the City LDO at this point in time:

To codify and implement a development review process with 1) reasonable standards and 2) a process, in most cases, with a presumption of approval if standards are met.

To understand some key terms, “reasonable” might be defined as standards that are 1) not unusual and/or not found in any other jurisdictions in the region; 2) not prohibitively expensive so as to significantly increase development costs (for housing or nonresidential development) and the ultimate price of the product; 3) consistent with the City’s comprehensive plan; and 4) supportive of high quality growth.

“Presumption of approval” means that the procedures and certainty of administrative, subdivision, or other non-discretionary review are sufficient to obtain project approval if

standards are met (with the exception of complex and/or controversial projects). The emphasis is on providing certainty of outcome in the great majority of situations. The Conditional Use process, or other board-required approval, remains an important alternative, however.

The stand-alone analysis of the Salisbury LDO as well as the comparison with other jurisdictions' ordinances have generated ideas for possible text amendments to the Salisbury LDO and other policy changes.

LDO Recommendations – Short Term

1. **Property markers** should be consistent with laws governing land surveyors in North Carolina.
2. **Board of Adjustment voting standards** for appeals to administrative decisions (administrative appeals) appearing in Chapter 15 should comply with the 2013 statutory amendment (regarding “supermajority” and “constructive notice”, etc.).
3. **Residential design elements** (standards & specifications) should be evaluated and removed and/or revised to comply with the circumstances authorized in State law.
4. The former language on **protest petitions** should be stricken (removed completely from the text).
5. The language regarding **performance guarantees** for infrastructure installation needs to be updated to be compliant with 2015 statutory changes.
6. Provisions for “**fence wraps**” in the signage regulation should be updated in accordance with applicable statute.
7. Language to address “**density credits**”, detailing the transfer of certain rights when impacted by NCDOT roadway projects (now mandated by statutory amendment), should be added to the LDO.
8. Section 9.6.D.5 appears to violate the provisions of State statute by exceeding allowable limits on **riparian buffers**; wording is needed to bring the LDO into compliance.
9. The **telecommunication tower** requirements should be updated. Updating locations (districts) and specific tower standards should be reviewed to expand opportunities where service demands for wireless broadband capacity should be increased.
10. Chapter 12 of the LDO should be amended to eliminate the conflict with the US Supreme Court decision in Reed v. Gilbert by recategorizing **temporary signs** to avoid references to the sign copy as a means of determining the type of sign and the standards & specifications that apply; the Chapter should also be revised to clarify and reflect current statutory conflict in political signs exempted by the State of North Carolina.
11. The LDO should include language requiring Board statements regarding both **consistency and reasonableness** with plan adoption.
12. Various **flexible administrative practices** permitted under the Charlotte ordinance, regarding credit for shared parking, reducing off-street parking requirements, reducing or waiving bufferyards, and allowing a reduction in minimum lot size, should be considered.
13. Wording should be added to require **neighborhood connectivity** of streets and infrastructure to be constructed to the edge of the project site as part of subdivision or project approval. The purpose of this change is to position each development for connectivity in an equitable balanced approach, so developers are not facing increased cost to extend “off-site” infrastructure when interconnections are made.

14. A pre-application conference for preliminary plats and other major development proposals should be mandatory.

LDO Recommendations - Long Term

1. For the GR6, UR8, and possibly other residential zoning districts, evaluate the relationship between **dimensional requirements**, the resulting building envelope, and the type or dimensions of the house required to meet the dimensional requirements for the district (e.g., side yard requirement of 20% lot width).
2. Remove **multifamily housing** (apartments) from the HB District.
3. Evaluate the placement of HB **zoning along corridors**, including possible strategic locations for CMX as part of City efforts to coordinate planning and public investment to stimulate catalyst activity areas.
4. Evaluate the **types and intensities of uses permitted by the RMX district** as well as possible design considerations to minimize potential impacts on adjacent established neighborhoods.
5. Evaluate the **TND District** (require higher quality standards in exchange for higher density) to create a district more attractive to developers.
6. Consider creation of a single zoning district to establish identical standards and specifications for **religious and other institutional** uses.
7. Consider removing or relocating **supportive or explanatory information** from the text of the LDO.
8. **Reorganize the LDO** to assure commonly referenced standards & specifications appear in logical locations (chapter and section headings clearly indicate content so as to make it easy to locate pertinent information). Also, eliminate footnotes and incorporate any standards & specifications affected into the text of the LDO.
9. Revise and differentiate the lot size and setback **criteria for the two GR Districts** (GR3 & GR6).
10. Consider adding or revising zoning **districts that are identifiable** with parts of the City.
11. Add wording to the **parking location matrix** in Section 10.4.A that specifies its purpose for design and a physical standard, so as to avoid potential enforcement issues due to application of the standards to behavior after the fact.
12. **“Development Agreement”** provisions per NCGS 160A-400.20 should be included as an option in the LDO. The Conditional District approval process should also include a Development Agreement component to alleviate the need for a 2-year rescission timeframe.

Other

1. Language should be adopted (either within or outside the LDO) to require projects outside City limits but requesting connection to City wastewater and utilities to **voluntarily annex** into the City.
2. A **developer participation & capacity policy** outside LDO should be established for major transportation improvements, water/sewer allocation, extensions, and annexations to cover participation with claw-back provisions on unused allocations which will pro-rate the cost to the developer and the City.