

Reshaping Suburban Spaces

Lessons from North Carolina Cities



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Framework



Research Triangle Park was the model of the twentieth century research office park—a very successful model. Wide streets and avenues roll through wooded estates with sprawling corporate campuses. For decades that was the preference for many employers and employees. But things are changing. According to the park’s new master plan:

In today’s world, however, many of the qualities that made the Park so successful in earlier decades run counter to trends in innovation industries and land stewardship. Whereas earlier generations of American workers fled urban areas for newly built, suburban and car-accessible employment centers, today’s innovation workers seek the greater connectivity, convenient amenities and vitality that comes from a denser mix of uses, as well as a firmer commitment to sustainability.¹

While there may be a need for and value in the suburban style of development, leaders in the park have recognized changing needs and market preferences. The Research Triangle Foundation has begun redevelopment of strategic areas to include denser, mixed-use development with retail businesses, restaurants, hotels, and public gathering spaces.²

1. Research Triangle Foundation of North Carolina, The Research Triangle Park Master Plan, 3 (Nov. 2011), <http://aws-master.s3.amazonaws.com/wp-content/uploads/2014/08/CONCISE-MASTER-PLAN.pdf>.

2. Research Triangle Foundation of North Carolina, The Research Triangle Park Master Plan (Nov. 2011), <http://aws-master.s3.amazonaws.com/wp-content/uploads/2014/08/CONCISE-MASTER-PLAN.pdf>.



The Park Center redevelopment in Research Triangle Park will transition a low density, auto-oriented place (top) into a mixed-use walkable community. Reprinted with permission from Research Triangle Foundation of North Carolina, copyright 2015.



The ongoing effort to redevelop Research Triangle Park reflects a broader trend across the state—indeed, across the country. Many communities enjoyed growth through the second half of the twentieth century. But now, communities are grappling with questions about how to reshape these suburban spaces. What is the local government’s role in this transition? How does a city or county support the redevelopment of suburban spaces? And what are the practical and political implications?

Many communities enjoyed growth through the second half of the twentieth century. But now, communities are grappling with questions about how to reshape these suburban spaces.

Some local governments are facilitating suburban redevelopment through public finance tools and zoning adjustments. Research Triangle Park is a case in point. In September 2015, the Research Triangle Foundation went before the Durham County Commission to obtain rezoning and public financial support for the future Park Center.³

Of course, the local government’s role in redevelopment varies, depending on the place and politics. In some cases, strong market demand is driving redevelopment. Charlotte’s

SouthPark area has seen a long line of redevelopments of low density sites into mixed-use, higher density projects.⁴ The reshaping of SouthPark marches on despite some neighbor opposition.⁵

In other cases, the real estate market has shifted away from suburban areas. The mall is empty, the garden apartment complex is aging, or the strip commercial corridor is passed over for the newer shops further down the road. In Charlotte, the once thriving Eastland Mall slowly lost shoppers

and tenants to other commercial centers. The mall shuttered, and finally, in 2012, the City of Charlotte acquired the property with intent to sell it for redevelopment.⁶ Several years later the city was still working on a solution for developing the site.⁷

Sometimes the local government approach is project by project, parcel by parcel. Other times, communities opt for a broader solution. Chapel Hill adopted a form-based code (a specific zoning tool described in the zoning discussion below) that applies to an area of town characterized by low density shopping centers, hotels, and apartments.⁸ The town also approved new public financing and a municipal service district to assist with necessary stormwater improvements and transportation improvements across the district. A seven-story mixed-use building is already rising out of the ground where a parking lot and movie theater once stood.⁹ But, with the cranes came political debate. The new zoning district was a significant issue for the recent town election.¹⁰

A shift is happening. North Carolina grew significantly through the twentieth century, but it grew with low density. Now communities must confront and consider how to accommodate the evolution from low density suburbia to more compact mixed-use development. Zoning and public finance are essential tools in that discussion, but they are accompanied by a host of practical and political questions.

6. City of Charlotte Neighborhood & Business Services Department, “Eastland Area” Business Corridor Revitalization website, <http://charmeck.org/city/charlotte/nbs/ed/revitalization/Pages/Eastland.aspx> (last visited Dec. 21, 2015).

7. Steve Harrison, *12 Acres of Eastland Site Could Be Sold to CMS Next Month*, CHARLOTTE OBSERVER, Oct. 26, 2015, www.charlotteobserver.com/news/local/article41496210.html.

8. Town of Chapel Hill, N.C., The Ephesus Fordham District webpage, www.townofchapelhill.org/town-hall/departments-services/chapel-hill-2020/future-focus-areas/the-ephesus-fordham-district (last visited Dec. 21, 2015).

9. Town of Chapel Hill, N.C., Village Plaza Apartments webpage, www.townofchapelhill.org/town-hall/departments-services/planning-and-sustainability/development/development-activity-report/village-plaza-apartments (last visited Dec. 21, 2015).

10. Tammy Grubb, *Chapel Hill’s Mayor Elect: I’m Not Planning a U-Turn*, NEWS & OBSERVER, Nov. 3, 2015, www.newsobserver.com/news/local/community/chapel-hill-news/article43014912.html.

3. Virginia Bridges, *Durham County Commissioners Approved \$20 Million to Help Fund RTP Modernization*, NEWS & OBSERVER, Sept. 28, 2015, www.newsobserver.com/news/local/community/durham-news/article36886038.html.

4. Ely Portillo, *SouthPark’s Growth Spurt Shows No Signs of Stopping as Congestion Looms*, CHARLOTTE OBSERVER, June 6, 2015, www.charlotteobserver.com/news/business/biz-columns-blogs/development/article23244093.html.

5. Ely Portillo, *Colony Plans Withdrawn, Resubmitted Following Protest Petition*, CHARLOTTE OBSERVER, Sept. 28, 2015, www.charlotteobserver.com/news/business/biz-columns-blogs/development/article36845622.html.

A Collaborative Approach

Reshaping suburban spaces is a complex issue, raising questions of zoning, finance, utilities, transportation, and more. And communities are experimenting with how to address these complex challenges. In the spring of 2016, representatives from communities large and small across North Carolina gathered at two separate forums to work collaboratively toward solutions for reshaping suburban spaces. These Solutions Forums were hosted by the UNC-Chapel Hill School of Government with the support of the Local Government Federal Credit Union. Organizers selected the participating jurisdictions through an open application process with the expressed intent of gathering a group of knowledgeable, experienced local government professionals to engage in collaborative problem solving. Participating jurisdictions (listed in Table 1) varied in size and geography, but they also shared common traits. They were growing communities with experience addressing the challenges of reshaping suburban spaces. The eighteen participating communities are home to nearly one-third of the state’s population.

In advance of the forums, participants completed a survey on their jurisdiction’s experience with suburban redevelopment efforts. Participants also had an opportunity to review and critique an earlier version of this publication.

Jurisdictions sent city staff members from multiple departments to the forums. At each forum, participants were grouped into teams composed of individuals representing different jurisdictions and different departments. For example, one team had a city attorney, a planning director, a planning commissioner, a city engineer, a sustainability manager, and an economic development director. Each team member was from a different city. Participants in these collaborative groups heard presentations

Table 1. Growth Trends of Municipalities That Participated in the Solutions Forums

	Jurisdiction	Population		Increase	
		Apr-10	Jul-15	Amount	Percent
<i>Charlotte Forum</i>	Charlotte	731,424	827,097	95,673	13%
	Greensboro	269,666	285,342	15,676	6%
	Asheville	83,393	88,512	5,119	6%
	Concord	79,066	87,696	8,630	11%
	Huntersville	46,773	52,704	5,931	13%
	Matthews	27,198	30,678	3,480	13%
	Clemmons	18,627	19,844	1,217	7%
	Harrisburg	11,526	14,539	3,013	26%
	Belmont	10,076	10,533	457	5%
<i>Raleigh Forum</i>	Raleigh	403,892	451,066	47,174	12%
	Durham	228,330	257,636	29,306	13%
	Winston-Salem	229,617	241,218	11,601	5%
	Fayetteville	200,564	201,963	1,399	1%
	Cary	135,234	159,769	24,535	18%
	Wilmington	106,476	115,933	9,457	9%
	Chapel Hill	57,233	59,568	2,335	4%
	Garner	25,745	28,053	2,308	9%
	Morrisville	18,576	23,820	5,244	28%
Total	2,723,685	2,998,157	272,555	10%	

Source: U.S. Census Bureau, Annual Estimates of the Resident Population: April 1, 2010, to July 1, 2015

from developers and peer jurisdictions, engaged in discussions about best practices, and evaluated a set of suburban redevelopment case studies.

The collaborative problem solving did not end at the table. The knowledge and experiences of the participants and their jurisdictions were collected through survey responses, report comments, and thoughtful discussions during the forums, and that information is reflected in this publication.

Scope of This Report

What is *suburban*? What is *redevelopment*? And, what are *local government tools*? These are critical questions to answer in order to clarify the scope of this work.

This report is focused on places with a suburban form, regardless of the jurisdiction. These suburban spaces are low density, automobile-focused, built landscapes where land uses are clearly separated. This report describes suburban spaces in the context of the built environment, not the nature of the jurisdiction. Suburban spaces commonly are found in suburban jurisdictions (bedroom communities that grew in relation to some central city). But, suburban spaces occur in central cities, too. In a place like North Carolina that boomed in the late-twentieth century, central cities such as Charlotte and Raleigh have large swaths of suburban spaces. The emphasis of this publication is larger-scale suburban sites such as former malls, garden apartment complexes, and retail centers. This report does not directly address the challenges of redevelopment of suburban single-family residential neighborhoods, which is a broad topic unto itself.

Moreover, the terms *urban* and *suburban* are about the shape of a place, not about race or class. The social stereotypes of these terms are outdated. Today, many urban places are increasingly home to affluent and white residents. A report comparing U.S. Census data from 2000 to 2013 found gentrification in nearly 16 percent of eligible tracts in Charlotte. For Raleigh, it was 13 percent.¹¹ Meanwhile, suburban places are experiencing sharp increases in diversity and poverty. A Brookings Institution study investigating the increase in suburban poverty from 2000 to 2012 found that North Carolina had three of the top ten metropolitan areas with the greatest increases in the share of poverty in the suburbs.¹² In the discussion of suburban redevelopment, recognition of changing demographics is critical. Improved housing, transit,

infrastructure, and opportunity are essential for the success of our suburban communities.

As used in this report, redevelopment is the process of reshaping a place from suburban to more urban—creating connectivity, adding density, mixing uses, and sometimes diminishing the role of the automobile. There are plenty of examples of a developer demolishing an old suburban place and building a new suburban place (i.e., scrap the mall and build the big box shopping center). This report is not focused on that process; the existing policies and practices already support that kind of growth. Rather, this report investigates the tools available to North Carolina local governments for reshaping a suburban space into something new.

Finally, what are those local government tools? This report focuses on municipal authority to implement policies through tools such as capital improvements, zoning, public finance, and public redevelopment. Planning is a critical part of setting local policy, and there are many good examples of planning for reshaping suburban places.¹³ Such planning efforts, though, are place-specific, and good resources on the planning side of suburban redevelopment are available.¹⁴ This report looks at the tools North Carolina municipalities have for implementing those plans. This inquiry, in a way, is an inquiry into old tools. Cities have been using these zoning and public finance tools in downtowns for

Cities have been using these zoning and public finance tools in downtowns for decades. The question is now: Do those old tools work in suburban places?

11. Mike Maciag, *Gentrification in America Report*, Governing, Feb. 2015, www.governing.com/gov-data/gentrification-in-cities-governing-report.html.

12. Elizabeth Kneebone, *The Growth and Spread of Concentrated Poverty*, 2000 to 2008-2012, Brookings, July 31, 2014, www.brookings.edu/research/interactives/2014/concentrated-poverty#/M39580. Winston-Salem, Greensboro-High Point, and Charlotte are listed in the top ten; Raleigh also saw significant increases.

13. See, for example, Town of Chapel Hill, *Ephesus Church Road/Fordham Boulevard Small Area Planning/Traffic Analysis*, Feb. 18, 2011; City of Raleigh, N.C., *Blue Ridge Road District Study*, Aug. 2012, www.raleighnc.gov/business/content/PlanDev/Articles/UrbanDesign/BlueRidgeRoadDistrictStudy.html.

14. ELLEN DUNHAM-JONES & JUNE WILLIAMSON, *RETROFITTING SUBURBIA: URBAN DESIGN SOLUTIONS FOR REDESIGNING SUBURBS* (updated ed. 2011); JONATHAN BARNETT, *REDESIGNING CITIES: PRINCIPLES, PRACTICE, IMPLEMENTATION* (2003); GEOFFREY BOOTH, *TRANSFORMING SUBURBAN BUSINESS DISTRICTS*, URBAN LAND INSTITUTE (2001); MICHAEL D. BEYARD & MICHAEL PAWLUKIEWICZ, *TEN PRINCIPLES FOR REINVENTING AMERICA'S SUBURBAN STRIPS* (2001).



The suburban form is characterized by low density, a focus on the automobile, and separation of land uses.

decades. The question is now: Do those old tools work in suburban places?

Suburban redevelopment, like any real estate development, is a complex topic. This report focuses on local government tools to facilitate good redevelopment, but there are other important topics that are beyond local government control and beyond the scope of this report. The real estate market is one determinative factor. Without *some* demand for redevelopment, even the best efforts by a local government will fall short. In some markets, the best option for redevelopment is to return the site to green space.

There are significant interventions that may affect a particular market. Strict growth boundaries can drive development back to redevelopment sites. And major investment in rail transit can lure development to those redevelopment sites. Such interventions demand coordination across multiple governments. While this report touches on those topics, it does not delve into the details.

This report is rooted in North Carolina law. North Carolina cities have limited powers, and so this discussion focuses on the authorities that exist. This report does not delve into alternate authorities enjoyed by local governments in other states. Nor does it propose changes to existing state law. Even so, the lessons outlined below are not limited to North Carolina cities. Many of the topics discussed—including many of the design considerations, zoning approaches, and financing options—are not unique to North Carolina cities.

Justification for Redeveloping Suburban Spaces

There are myriad reasons to encourage reshaping of suburban spaces. Public health research finds that automobile-dependent suburban development is related to many negative health outcomes. Environmental researchers are critical of various ecological impacts of suburban sprawl. And, academics have



Walkable urbanism, by contrast, features greater densities, a mix of transportation options, and mixed uses.

tracked the economic decline of many suburban areas.¹⁵ North Carolina local governments are facing additional reasons for redevelopment: strong growth projections, shifting market preferences, and limited jurisdictional authority.

North Carolina is growing. In 2015, the state surpassed 10 million residents (nearly doubling the population in 1980).¹⁶ In terms of growth rate for large counties between 2010 and 2014, Wake and Mecklenburg counties are among the top five fastest growing counties in the nation.¹⁷ And the growth is projected to continue, particularly in the metropolitan regions.¹⁸

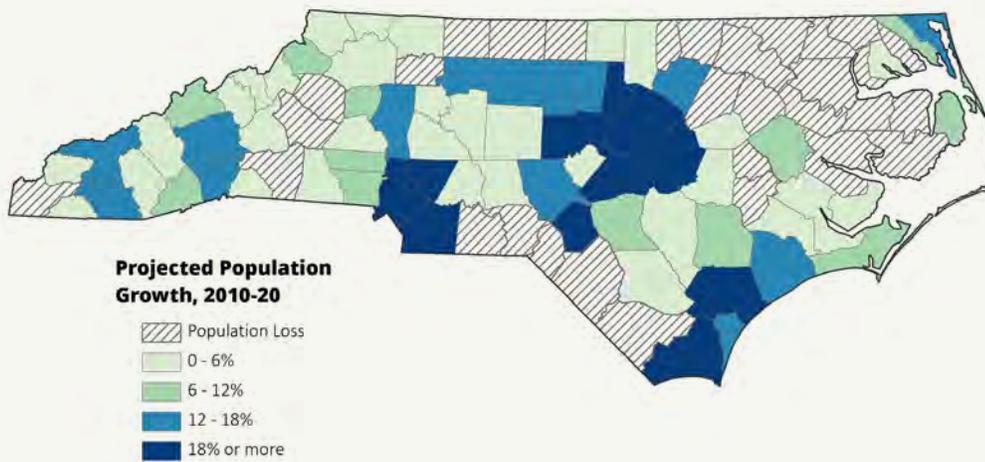
Even though they are fast growing, North Carolina metropolitan regions have plenty of room to add more density as compared to other cities in the United States. According to a Washington Post report, “Among metro areas with populations of at least two million people, Charlotte, N.C., has the lowest density, followed by Atlanta. Among those with one to two million people, Birmingham,

15. See generally HOWARD FRUMKIN, LAWRENCE FRANK, & RICHARD JACKSON, *URBAN SPRAWL AND PUBLIC HEALTH: DESIGNING, PLANNING, AND BUILDING FOR HEALTHY COMMUNITIES* (2004); ADAM ROME, *THE BULLDOZER IN THE COUNTRYSIDE: SUBURBAN SPRAWL AND THE RISE OF AMERICAN ENVIRONMENTALISM* (2001); WILLIAM H. LUCY & DAVID L. PHILLIPS, *TOMORROW'S CITIES, TOMORROW'S SUBURBS* (2006); *URBAN SPRAWL: CAUSES, CONSEQUENCES & POLICY RESPONSE* (Gregory D. Squires, ed., 2002).

16. Rebecca Tippet, *North Carolina's Population Surpasses 10 Million*, CAROLINA DEMOGRAPHY BLOG (Dec. 23, 2015), <http://demography.cpc.unc.edu/2015/12/23/north-carolinas-population-surpasses-10-million/>.

17. Rebecca Tippet, *Comparing Mecklenburg & Wake to Peer Counties, 2010–2014 Growth Trends*, CAROLINA DEMOGRAPHY BLOG (Oct. 5, 2015), <http://demography.cpc.unc.edu/2015/10/05/comparing-mecklenburg-wake-to-peer-counties-2010-2014-growth-trends/>.

18. Rebecca Tippet, *Population Growth in the Carolinas: Projected vs. Observed Trends*, CAROLINA DEMOGRAPHY BLOG (Dec. 8, 2015), <http://demography.cpc.unc.edu/2015/12/08/population-growth-in-the-carolinas-projected-vs-observed-trends/>.



The Carolinas have seen significant growth, and more is projected. That growth, though, is concentrated in a few metropolitan counties. Photo courtesy of Carolina Demography; based on underlying data from the North Carolina Office of State Budget and Management county population projections (2010–2020).

Ala., is the least dense, followed by Nashville and Raleigh, N.C.”¹⁹

Meanwhile, real estate market trends have shown a notable increase in the demand for walkable urban places.²⁰ To be sure, there is and will continue to be demand for conventional suburban development, but the market seems to prefer a greater mix of development styles than is currently available, especially in North Carolina’s relatively low density regions.

Finally, North Carolina cities large and small are thinking about redevelopment because of the practical and legal limitations of outward expansion. When the City of Charlotte considered investing in redevelopment of an old suburban mall, then Mayor Anthony Foxx considered the city’s past and future growth strategy:

[O]ver the last 25 years, our City has been able to grow by annexation. We’ve just been able to grow out as far as we want to grow. And the reality is that over the next 25 years, there is so much less growth to gain through annexation and there is so much more tax base that we could grow if we could make parts of our City that are

currently thought of as “throw-away” areas or what one former Mayor called “Corridors of Crap”, into something that people want to invest in and believe in again. And so in my opinion, that is the question for this City for the next 25 years. Do we want to take the trip, to grow this community in a way that says there’s no neighborhood that has to be left to the side?²¹

Many—perhaps most—of the state’s growing municipalities face the same reality. For years North Carolina communities grew and prospered with ever-expanding boundaries. Now, they are butting up against neighbors and have reduced statutory annexation authority. To continue to grow and prosper, these communities must embrace reinvestment and redevelopment.

An Ongoing Discussion

This report follows a rich conversation about redeveloping suburban spaces. The ongoing discussion includes books such as Jonathan Barnett’s *Redesigning Cities* (2003), with its strategies for suburban as well as urban spaces. Ellen Dunham-Jones and June Williamson turned the focus directly to suburban spaces with their *Retrofitting Suburbia* (2008, updated 2011), illustrating the many types of suburban redevelopment through an array of

19. Jed Kolko, *Where in America There’s the Most Room to Grow*, WASHINGTON POST, WONKBLOG (Oct. 30, 2015), www.washingtonpost.com/news/wonk/wp/2015/10/30/where-in-america-theres-the-most-room-to-grow/.

20. Press Release, National Association of Realtors, Millennials Favor Walkable Communities, Says New NAR Poll (July, 28, 2015), www.realtor.org/sites/default/files/reports/2015/nar-psu-2015-poll-press-release.pdf.

21. Comments of Honorable Mayor Anthony Foxx, City Council Business Meeting, Minute Book 133, p. 888, July 23, 2012 (speaking on whether the city should purchase the Eastland Mall site).

case studies. Christopher Leinberger identified the systemic rise of suburban development through the twentieth century and the more recent market shift toward walkable urbanism in his book *The Option of Urbanism* (2008). Leinberger's contributions continued with analysis of current and rising walkable urban places in *Foot Traffic Ahead* (2014 and 2016). Designers and commentators also have offered design strategies for rethinking suburban spaces: Galena Tachieva's *Sprawl Repair Manual* (2010) and June Williamson's *Designing Suburban Futures* (2013), for example. *Retrofitting Sprawl* (2015), edited by Emily Talen, brings together perspectives from academics and practitioners to describe the current challenges, dig into case studies, and explore future possibilities. And multiple authors outline strategies for transforming suburban subdivisions in *Reimagining Your Neighborhood* (2015), edited by Bolton Anthony.

Planning and real estate organizations have taken an interest in the topic of redeveloping suburban spaces. The Urban Land Institute has published at least three reports on redeveloping suburban spaces: *Principles for Reinventing America's Suburban Strips* (2001), *Transforming Suburban Business Districts* (2001), and *Shifting Suburbs* (2012). The Congress for the New Urbanism (CNU) has for several years had a Sprawl Retrofit project. In 2015, CNU incorporated Build a Better Burb, a website of redevelopment tools and strategies, as an in-house program.

Through the lens of North Carolina cities, this report brings a focus on local government tools to support suburban redevelopment.

Outline

This report is organized into three parts:

“Designing Change” explores the infrastructure and urban design elements that shift a place from suburban to urban. These design considerations apply to private redevelopment through zoning standards, as well as to public improvements required through exactions or provided through public investment.

“Zoning Change” considers the different approaches to zoning—site-specific conditional zoning, development agreements, and form-based codes—that North Carolina municipalities have used to accommodate suburban redevelopment.

“Financing Change” outlines the tools and approaches for public and private participation in financing redevelopment.

Designing Change



For a stretch of Six Forks Road just north of the I-440 Beltline in Raleigh, everything was separate. The bank and motel and restaurant each had separate driveways and separate surface parking lots. There was little or no connection between each parcel, and they all turned their backs on the neighboring apartment complex. Renters in those low density apartments could not access their homes from Six Forks Road. They had to drive around the corner to a separate access road—a road without sidewalks. The apartment buildings were scattered across the property with parking lots and lawns filling in between them. That was a familiar shape of development, repeated along countless roads all across North Carolina.

When it was first developed, this stretch of Six Forks Road in Raleigh was quintessential suburbia—separated uses, focus on cars and parking, and low density. The redevelopment as North Hills East transitioned the place to a more walkable urban form.

In 2005, however, Kane Realty Corporation sought to reshape dramatically that stretch of suburban Raleigh. The developer requested to rezone the property to a Planned Development District and proposed a very different model of development. Distinct elements of the project would be stitched together with a street grid and central open spaces. Residential, office, and commercial space would be mixed in buildings. Parking, while still necessary, would be hidden from view. And density would increase, in line with the strong growth projections for the region.

The evolution in North Hills reflects significant design considerations for reshaping a place from suburban to urban. Suburban places share common characteristics. And reshaping those places requires changing standards and changing expectations.

Many experts have written about the character of a suburban space.²²

Table 2 presents some overarching themes of suburban space and, in turn, the essential elements for reshaping those spaces.

This part of the report explores how those characteristics change in reshaped spaces, focusing first on transportation options and street connectivity and then turning to development standards, such as mixed use and parking. The next two parts discuss regulatory and financial tools for implementing these design changes.

Stitching a Place Together

In order to reshape a suburban space, developments must be stitched together into a community. But, communities face tough questions about that transition. For example: How will the site

22. See, for example, STEPHEN M. WHEELER, *PLANNING FOR SUSTAINABILITY: CREATING LIVABLE, EQUITABLE, AND ECOLOGICAL COMMUNITIES* (2d ed. 2013); ELLEN DUNHAM-JONES & JUNE WILLIAMSON, *RETROFITTING SUBURBIA: URBAN DESIGN SOLUTIONS FOR REDESIGNING SUBURBS* (updated ed. 2011); GALENA TACHIEVA, *SPRAWL REPAIR MANUAL* (2010); see also Smart Growth America, *Measuring Sprawl 2014*, Apr. 2014, www.smartgrowthamerica.org/documents/measuring-sprawl-2014.pdf.

Table 2. Characteristics of Suburban Spaces and Reshaped Spaces

Suburban Space

Automobile-centric. Development standards and infrastructure emphasize automobile transportation, so developments front large arterials roads, provide excessive surface parking, and include substantial investment in street infrastructure.

Designed for separation. Land uses (residential, commercial, office) are separated and mixed-use development is prohibited. Additionally, developments turn their back on one another. Street connection between two separate projects is rare. The built landscape is defined by private buildings, private yards, and private parking lots.

Low density. Land uses are developed for relatively low density, with low heights and substantial setbacks.

Reshaped

Transportation options. In addition to automobile travel, development standards call for facilities for pedestrians, cyclists, and transit. Parking standards are reduced and pushed back from the primary frontage.

Designed for integration. Compatible land uses are permitted in the same building and close proximity. Development standards call for connectivity and rational relationships within and between developments. Streets and open space are public or accessible by the public.

Increased density. Number of units or square footage is increased, with relatively taller heights and reduced setbacks.

transition from automobile-centric to supporting a full range of transportation options? How will the large, single-use block be divided into smaller, walkable development blocks? And how will the site transition from isolation to integration, adding connections to neighboring properties where once there were none?

Transportation Options

Cities across North Carolina are experimenting with the many tools for providing transportation options, including adopting new street standards, retrofitting existing streets, and investing in transportation alternatives. Of the jurisdictions participating in the Solutions Forum, about half reported having completed a road diet (reconfiguring travel lanes to increase pedestrian, bicycle, and transit access) and assisting with funding of increased transit service.

Corridor planning and investment is one way to overhaul a suburban thoroughfare. Raleigh has planned for—and is now implementing—a complete overhaul of the Capital Boulevard corridor, a six-lane highway that serves as a gateway from I-440 to downtown. The corridor is lined by aging



Raleigh's Capital Boulevard Plan calls for a significant retrofit: new street connections, greenways and trails, new development, and green infrastructure. Reprinted with permission from the City of Raleigh, copyright 2012.

low density commercial buildings, many in the 100-year floodplain. Pedestrian, bicycle, and transit facilities are substandard or nonexistent. The plan and ongoing public investments call for improved street grid, improved transit service, addition of greenways, green infrastructure, and development of new commercial and residential uses.²³

City street standards provide another important tool for reshaping suburban spaces. These standards may be implemented through public capital improvement plans as well as through street construction in new developments.

In 2007, the City of Charlotte adopted its *Urban Street Design Guidelines* as a way to shift from automobile-focused street standards to so-called complete street standards. As noted in the guidelines:

23. City of Raleigh, N.C., Capital Boulevard Corridor Study Report, June 2012 (amended Aug. 7, 2012), www.raleighnc.gov/business/content/PlanDev/Articles/UrbanDesign/CapitalBlvdCorridorStudy.html.

Through the years, we have become very good at designing auto-oriented streets, which has had unintended consequences. We are now getting better at providing design elements such as sidewalks, planting strips, and bike lanes on thoroughfares, but we do not have a consistent, clear method to decide which types of streets to build where. The Urban Street Design Guidelines will help us to get better at designing complete streets for all users.²⁴

In order for street standards to have effect, a city must put its money where its mouth is. Existing streets can be reconfigured to align with those new standards. The East Boulevard Road Diet in Charlotte took a four-lane, undivided road and converted it to accommodate motor vehicles and bicycles and to provide mid-block pedestrian crossings.²⁵ Durham, too, has reconfigured a conventional suburban thoroughfare to accommodate multiple modes more safely.²⁶ The success of a road diet will greatly benefit from the right context:

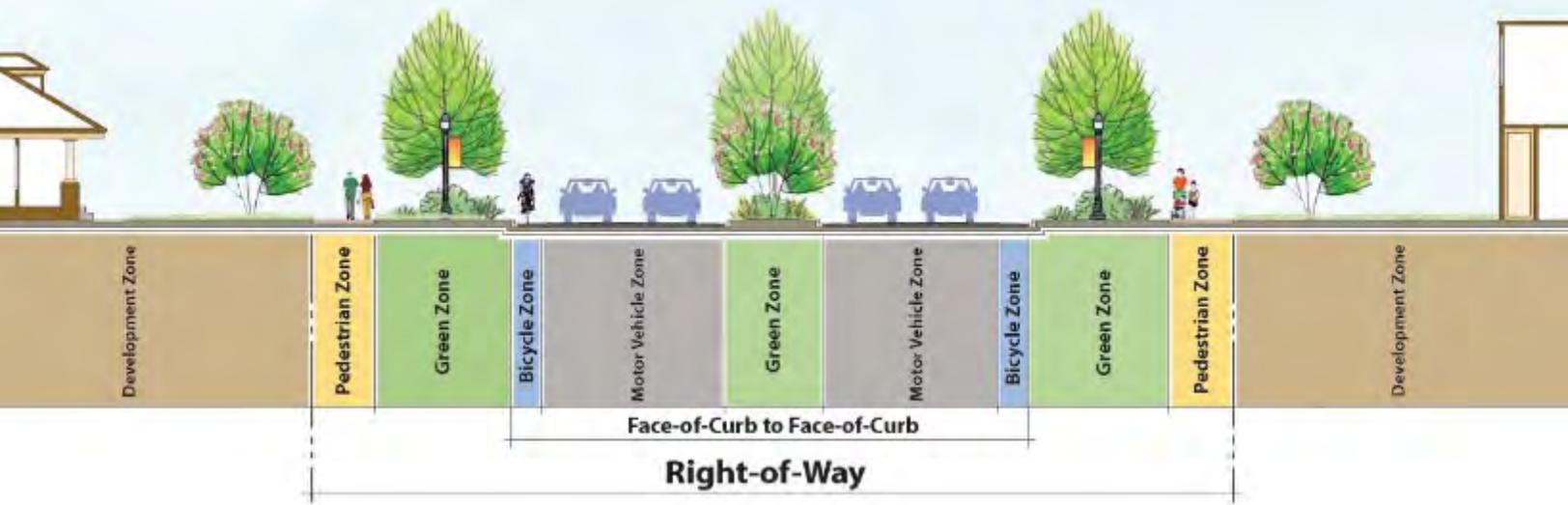


Even large arterial highways can be retrofitted to protect all users.

24. City of Charlotte, N.C., Urban Street Design Guidelines, 6 (adopted Oct. 22, 2007), <http://charmec.org/city/charlotte/Transportation/PlansProjects/pages/urban%20street%20design%20guidelines.aspx>.

25. North Carolina Department of Transportation, East Boulevard Road Diet, North Carolina DOT Complete Streets, <http://completestreetsnc.org/project-examples/ex-eastblvdroaddiet/>.

26. Rachel Eberhard, *Durham, North Carolina Adopts New Road Diet for Busy Business Corridor*, THE GLOBAL GRID,



a corridor with relatively low traffic counts (and space for reconfiguration), community buy-in for the change, and some community demand for additional bike and pedestrian facilities.

Street standards also guide private development and exactions. In Chapel Hill, for example, the Glen Lennox development agreement calls for transit stops, sidewalks, bike facilities, wayfinding, and greenways.²⁷ The developer of North Hills East in Raleigh was required to provide either at-grade pedestrian crossings or a pedestrian bridge at two locations on the adjacent major road (Six Forks Road).²⁸ Pedestrian access from the adjacent residential neighborhood was required.²⁹

Bike lanes and pedestrian facilities are important, but if an area is to truly transition from automobile-focused suburbia to a dense urban neighborhood, transit service is essential. In North Carolina, public transit typically is bus service, but there are light rail and trolley lines operating in Charlotte, and light rail and commuter rail

Jan. 19, 2016, <http://theglobalgrid.org/durham-north-carolina-adopts-new-road-diet-for-busy-business-corridor/>.

27. Development Agreement by and between FCP Glen Lennox, LLC, Glen Lennox Shopping Center, LLC, and the Town of Chapel Hill, N.C., Article 6 (approved June 23, 2014).

28. North Hills East Planned Development District Conditional Rezoning, City of Raleigh Case Z-22-09/MP-4-08 (approved June 2, 2009).

29. *Id.*

are being planned for the Triangle region. Transit service can be a strong driver for redevelopment. Charlotte has already seen significant growth along its existing light rail line, and Chapel Hill and Durham are preparing for the new development that will surely accompany the proposed light rail line. In most cases, local funding is merely a portion of the overall funding for major transit infrastructure such as light rail. But, local governments have the primary role in establishing the framework for the transit-oriented development. This report is focused on that framework.

Charlotte's complete streets policies recognize a diversity of transportation options—including walking, biking, and transit—in addition to automobile transportation. Reprinted with permission from the City of Charlotte, copyright 2007.



Light rail and commuter rail can spur significant opportunities for reshaping suburban spaces.

Establishing Street Networks

Through the latter half of the twentieth century, development patterns shunned street connections. Neighborhoods were built upon an ascending street hierarchy, from cul-de-sac to neighborhood street to collector to arterial to highway. Connection from neighborhood to neighborhood was rare, and connection from neighborhood to commercial development was unheard of. Moreover, conventional suburban shopping centers and apartments sit on large parcels; the street network of the site typically is little more than driving lanes in the parking lot. This lack of street network—within and across sites—is one of the “great failings” in the design of North Carolina cities.³⁰ As communities reshape those places, there is opportunity and challenge in establishing connected street networks—internal street networks for new developments and connections across properties to existing development.

Internal street networks. When a suburban apartment or commercial site is redeveloped, there is an opportunity to establish a street network. Many communities call for street networks through general ordinance standards and through individualized zoning approvals. In practice, the character and quality of those internal streets varies widely—from parking lots to public streets.

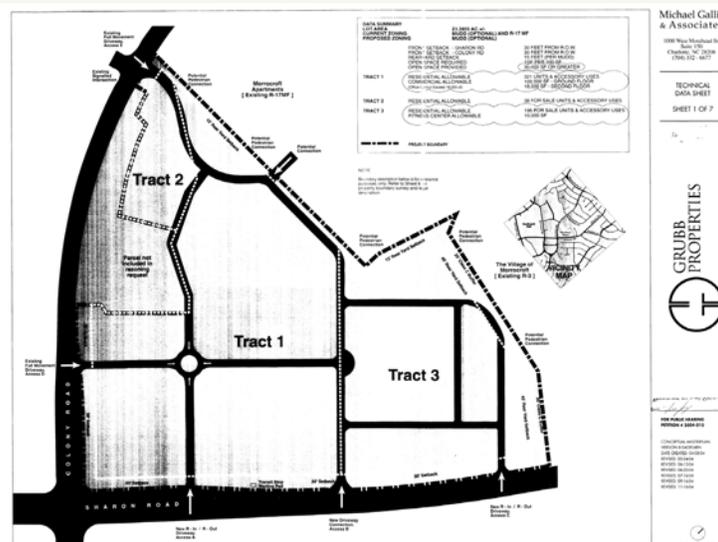
Local development codes and street standards can elevate the character and quality of internal street networks. Raleigh’s unified development ordinance sets maximum block perimeter standards that force a developer to divide large parcels into multiple blocks for development.³¹ Similarly, Charlotte’s subdivision ordinance addresses block structure—standards for blocks scale down for more intensity of development, so mixed-use activity centers have small blocks.³²

For many built projects, though, the details were addressed in site-specific zoning conditions. East 54 in Chapel Hill has good connectivity to neighboring streets and properties; internally the streets

30. Telephone interview with Ken Bowers, Director of Planning, Raleigh, N.C. (Mar. 12, 2015).

31. *Id.*

32. Interview with Ed McKinney, Interim Planning Director, Charlotte, N.C. (Mar. 20, 2015).



Zoning approval for Morrison Place called for the creation of an internal street network for the site. Reprinted with permission from Grubb Properties, copyright 2004.

are essentially parking lot lanes.³³ The developer of North Hills East in Raleigh was required to provide a circulation plan to outline the new street network as part of the project master plan.³⁴

In Charlotte, the development standards applicable to the Morrison Place redevelopment called for new internal streets and driveways in conformance with the related site plan. That site plan showed a grid of internal streets serving the several phases of the development. There was no requirement, however, for those streets to be dedicated to the public. (The approval did require dedication of right-of-way for public road improvements along the perimeter of the development.)³⁵

The conditions for rezoning Charlotte’s Sharon Square redevelopment allow for public or private streets but require that the streets “shall remain open and accessible to the public.”³⁶

Connections across property lines. Establishing connections across property lines—as compared

33. East 54 Mixed-Use Development Special Use Permit Modification, 5 (approved Feb. 26, 2007).

34. North Hills East Planned Development District Conditional Rezoning, City of Raleigh Case Z-22-09/MP-4-08 (approved June 2, 2009).

35. Morrison Place Technical Data Sheet, City of Charlotte Rezoning Petition 2004-015 (approved Dec. 20, 2004).

36. Pappas-Tate Property Rezoning Technical Data Sheet, City of Charlotte Rezoning Petition 2006-42 (approved July 17, 2006).

to internal street networks—raises a separate set of issues and options. Context matters all the more. Consider a fading suburban shopping center that is ripe for redevelopment. The design considerations for redevelopment depend, to an extent, on the neighboring properties. If the shopping center is surrounded by other aging, large-parcel developments (retail, office, or multifamily), then the entire area may be ripe for redevelopment and a stub-out or cross connection may be appropriate. If, however, the shopping center is surrounded by stable neighborhoods with single-family homes, the potential for connections may be impractical or politically impossible. Cities take a variety of approaches to

connections across properties.

Sometimes, a connection to the neighboring property is merely suggested. For CityPark in Charlotte, there is a possibility for future roadway connection to one particular neighbor. The CityPark developer is not required to extend a connection to the neighboring property (the extension was optional). But, the developer is effectively required to reserve the connection alignment for future dedication. If the neighboring owner extends a connection to the CityPark

property, then the CityPark developer must dedicate any right-of-way needed for the connection.³⁷ The conditional approval for Morrison Place in Charlotte shows a potential connection to neighboring property. There is no requirement for the connection, though.³⁸

If a place is truly going to evolve from isolated pods of development to an integrated community, connections must be expected and potentially incentivized. In the same way that new residential subdivisions may be required to provide stub-out streets for future connections, a suburban redevelopment may be required to provide a stub-out

37. CityPark Technical Data Sheet, City of Charlotte Rezoning Petition 2007-082, Condition 10 (approved Jan. 22, 2008).

38. Morrison Place Technical Data Sheet, City of Charlotte Rezoning Petition 2004-015 (approved Dec. 20, 2004).



Without stub street requirements, opportunities for connections are missed.

street. Charlotte's Sharon Square redevelopment was required to provide a stub-out street to the south and east of the development to accommodate expected future redevelopment.³⁹ Similarly, the conditional rezoning for Circle at Piedmont in Charlotte calls for the construction (or fees-in-lieu of construction) for a new public road allowing future connection to adjacent property to the south.⁴⁰

Alternatively, connections among neighbors may be required through private easement. For East 54 in Chapel Hill, the developer was required to record a cross-access easement for ingress and egress to and through the development from adjacent properties to the east.⁴¹

Whether the connection is a temporary stub or current cross-access, certain elements are critical for successfully stitching the community back together. There must be assurance of current and future maintenance of access. Depending on the nature of the connection, it may be a recorded easement, a city code requirement for connection, a maintenance agreement, a dedication to the public, or a combination of these and other promises.

Regulatory powers can achieve some connectivity, but it is piecemeal—project by project. A city

39. Live Oaks Property Rezoning Technical Data Sheet, City of Charlotte Rezoning Petition 2006-22 (approved Apr. 17, 2006); Pappas-Tate Property Rezoning Technical Data Sheet, City of Charlotte Rezoning Petition 2006-42 (approved July 17, 2006).

40. City of Charlotte, N.C., Circle at Piedmont Rezoning Plan, Petition 2011-009 (approved Apr. 25, 2011; as amended by Administrative Amendment Aug. 3, 2011).

41. East 54 Mixed-Use Development Special Use Permit Modification, 5, Town of Chapel Hill, N.C. (approved Feb. 26, 2007).

If a place is truly going to evolve from isolated pods of development to an integrated community, connections must be expected and potentially incentivized.



The Village of Clemmons is working with private property owners to improve connectivity and transportation options along a suburban corridor. Reprinted with permission from the Village of Clemmons, copyright 2015.

can take a more active role in connectivity by identifying new street connections and funding construction of the public improvements. Chapel Hill's Ephesus/Fordham Form District uses a mix of exactions and public investment. The small-area plan and form district identified new road connections through what have been suburban super blocks. The town, in cooperation with NCDOT, is funding several of those street construction projects. Additionally, as sites are redeveloped, other connections will be established. The Village Plaza Apartments development includes two new streets. Along the northeast boundary of the property (adjacent to a greenway) the developer will dedicate a public right-of-way and utility easement. Along the northwest boundary, in contrast, the developer will construct a street and grant a public access easement, but the property is to remain private and the street will be privately maintained.⁴²

The Village of Clemmons, a suburban place from its incorporation in 1986, is taking steps to create a town center from the suburban corridor of Lewisville-Clemmons Road. After voters rejected a bond referendum to pay for road improvements in 2011, the village appointed a committee of business owners to craft a plan for connectivity along the corridor. The resulting plan, adopted in 2015, outlined a new road network to connect across existing commercial properties, established an overlay zoning district, and identified three phases for redevelopment. Certain property owners agreed to dedicate right-of-way for the improved street grid, and the village has begun funding initial road improvements.⁴³

42. Village Plaza, Lot 2, Ephesus/Fordham Form District Permit Site Plan, Project Number EWP-13010 (Sept. 2, 2014, last revised Dec. 10, 2014), www.townofchapelhill.org/town-hall/departments-services/planning-and-sustainability/development/development-activity-report/village-plaza-apartments.

43. Lisa O'Donnell, *Panel Completes Overlay Plan for Lewisville-Clemmons Road*, WINSTON-SALEM JOURNAL, Apr. 1, 2015, www.journalnow.com/journal_west/news/panel-completes-overlay-plan-for-lewisville-clemmons-road/article_71b4566c-d7c2-11e4-841b-fb09953740f6.html; Lisa

Adjusting Standards

The suburban commercial landscape is predictable: deep setbacks, prominent surface parking lots, and low slung single-use buildings. Suburban redevelopment involves flipping those elements: buildings arranged closer to the road, parking reduced and concealed, and uses mixed. Because many zoning ordinances are tailored for suburban development, in order to allow true redevelopment, cities must adjust to existing ordinance standards.

A survey done in association with the Solutions Forums (discussed above under “Framework”) reflects that many North Carolina communities are already making these adjustments. Of the jurisdictions responding,

- 16 of 17 have allowed for mixed uses
- 15 of 17 have reduced or eliminated some setbacks
- 13 of 17 have reduced parking standards

Buildings

Whereas the old suburban standards push buildings back from the road with setbacks and great parking standards, newer standards pull buildings up to the road (and push parking back).

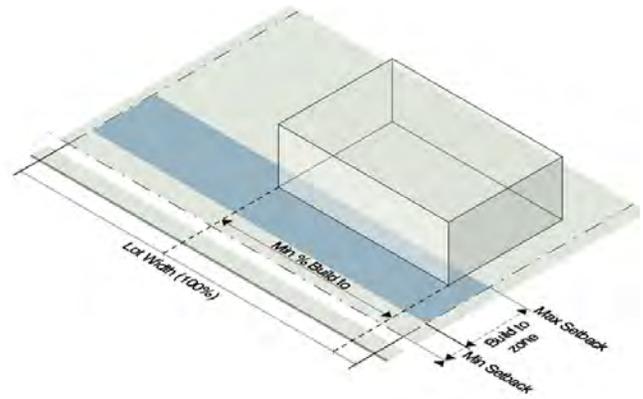
For the Ephesus/Fordham Form District in Chapel Hill, there are build-to lines (the inverse of a setback), and buildings must have a specified percentage of the building frontage along the build-to line (60 percent or 80 percent depending on the frontage type).⁴⁴ In Raleigh’s North Hills East, structures may be built adjacent to the public right-of-way; there is no setback requirement except as required for a sight distance triangle easement or for building code compliance.⁴⁵ In some cases, liner buildings may be used to meet such frontage requirements.

While buildings may be pulled up to the street, communities must still consider the context of redevelopment and address the potential impacts

O’Donnell, *Village Hopes Overlay District Represents Cure for Lewisville-Clemmons Road*, WINSTON-SALEM JOURNAL, May 11, 2016, www.journalnow.com/journal_west/village-hopes-overlay-district-represents-cure-for-lewisville-clemmons-road/article_a7ea8904-c1e0-5e10-957e-24b82120b5ea.html.

44. Ephesus/Fordham Form District, Chapel Hill, N.C., Land Use Management Ordinance Sec. 3.11.2.4 (adopted May 12, 2014).

45. North Hills East Planned Development District Conditional Rezoning, City of Raleigh Case Z-22-09/MP-4-08 (approved June 2, 2009).

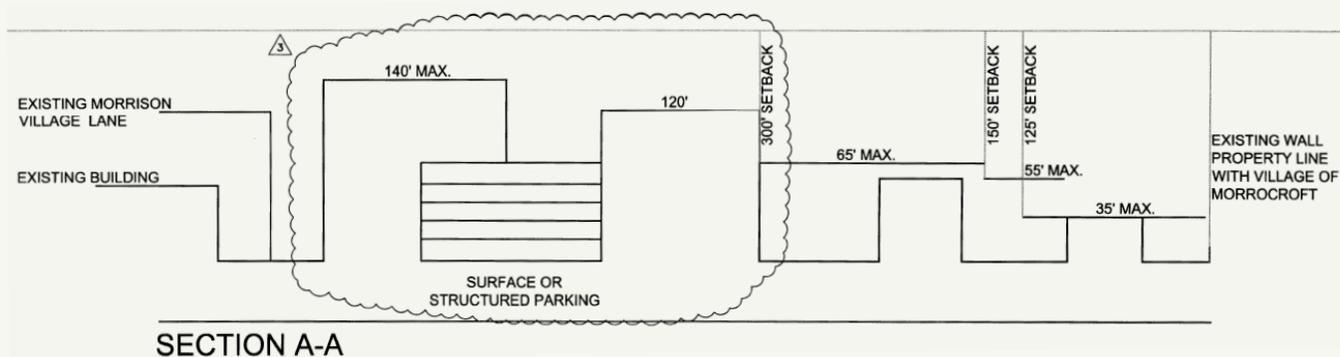


In contrast to suburban development, urban development brings buildings up to the right-of-way to frame the public realm. Here, a drawing from Chapel Hill’s Ephesus/Fordham Form District illustrates the build-to requirements for the district. Reprinted with permission from the Town of Chapel Hill, copyright 2015.

on neighboring properties. As with the stub-out street requirements, this issue depends on the context and expectations for redevelopment of the surrounding properties. If neighboring property is poised for redevelopment, then conditions for current development should relate to the expected redevelopment (greater height, reduced setbacks, transportation connections). But, if neighboring properties are expected to remain stable as single-family residential, the redevelopment must accommodate that preexisting context. Of course, these considerations—and the design elements used to address them—are the basics of zoning.

In order to mitigate the impacts of new dense development on neighboring single-family residences, cities may maintain conventional zoning standards such as setbacks and vegetative buffering to screen the view. For North Hills East in Raleigh, open space along the eastern boundary of the property was intended to provide a transition from the dense development to the adjacent residential neighborhood.⁴⁶ Height standards may be tailored to step down toward neighboring residential property. Tall, dense redevelopment may be allowed on one part of a site, but height limits step down toward the neighboring property. The site plan amendment for Morrison Place in Charlotte

46. *Id.*



The zoning approval for Morrison Place includes provision for a step-down as buildings approach the neighboring properties. Reprinted with permission from Grubb Properties, copyright 2004.

included such a step-down. At the center of the redevelopment property, buildings are permitted up to 140 feet in height. The height limit steps down to 120 feet, 65 feet, 55 feet, and finally to 35 feet closest to the homes in the neighboring Village of Morrocroft subdivision.⁴⁷

Building and use placement is another technique to mitigate impacts on adjoining residential property. Parking decks or large-format retailers can be wrapped with residential units. The Lowe's Home

Improvement store developed on South Boulevard in Charlotte abuts a preexisting residential neighborhood. As required in the conditioned site plan, the Lowe's development is wrapped on two sides by other uses, mostly residential buildings.⁴⁸ The residential buildings range from mixed-use at the prominent corner of South Boulevard to four-story residential flats and then to three-story residential townhomes closer to the neighboring residences.



Buildings may be used to screen less desirable uses. Here, residences serve as a buffer between an elevated parking lot and the neighboring residential district.

47. Morrison Place Tract 3 Rezoning/Site Plan Amendment, City of Charlotte Rezoning Petition 2009-022 (approved May 19, 2009).



What to do about blank walls? This is a critical consideration in urban design when creating an active, walkable place.

48. Lowe's-Central Charlotte, City of Charlotte Rezoning Petition 2005-89 (approved Oct. 19, 2005).

While height step-down provisions and vegetated buffers may be reasonable or politically necessary in some cases, there are times when the opposite is appropriate. When an area is slated for redevelopment, new buildings should relate to future buildings. This can result in an awkward juxtaposition for some time (see the picture of Chapel Hill's Ephesus/Fordham Form District at right), but development should be allowed to take place according to the community's vision for the future and should not be tied to existing aging buildings.

Mixed Uses

For years, local governments have been adjusting zoning codes to allow mixed use in certain districts. That adjustment is essential for a transitioning suburban space. This report does not attempt to explore every aspect of mixed-use standards, but it does highlight particular topics related to suburban redevelopment projects in North Carolina.

Uses allowed. For some projects, the zoning spells out extreme detail for the allocation and mix of uses. For Chapel Hill's East 54, the site plan approved as part of the special use permit specifies the precise square footage devoted to each use category by each floor or each building.⁴⁹

For North Hills East in Raleigh, the permitted land uses and intensities are spelled out in great detail in the project master plan approved as part of the conditional zoning, but flexibility was maintained so that density of approved uses could be adjusted as long as approved parking densities were maintained.⁵⁰

Other zoning approvals and standards allow for greater flexibility while still permitting and encouraging mixed use. Raleigh's approval of 401 Oberlin set a cap on retail space and required that either residential or office uses must be included.⁵¹ Chapel Hill's Ephesus/Fordham Form District

49. East 54 Mixed-Use Development Special Use Permit Modification, University Village Site Plan (dated Nov. 1, 2006), Town of Chapel Hill, N.C. (approved Feb. 26, 2007).

50. North Hills East Planned Development District Conditional Rezoning, City of Raleigh Case Z-22-09/MP-4-08 (approved June 2, 2009).

51. 401 Oberlin Road, Special Use Permit SP-72-11, Certified Action of the City of Raleigh Planning Commission (approved Apr. 10, 2012).



When a place is in transition, there may be awkward teenage years. The new development in Chapel Hill's Ephesus/Fordham district looks out of place now but could fit right in after neighboring properties redevelop.

applies to many properties and must be broad enough to accommodate a range of developments. The form district provides a list of permitted uses and that “any one or more uses permitted in a Form District may be established on any lot within the subdistrict,” subject to applicable standards.⁵²

It is common practice to exclude certain automobile-oriented uses—such as drive-thrus and gas stations—from suburban redevelopment projects.⁵³

Retail realities. In order to achieve true walkable communities, there must be retail and restaurants included in mixed-use developments. But, as developer Roger Perry of East West Partners noted, retailers “are by far the hardest sale.”⁵⁴ In order for retailers to lease space—and succeed—in

52. Ephesus/Fordham Form District, Chapel Hill, N.C., Land Use Management Ordinance Sec. 3.11.3 (adopted May 12, 2014).

53. CityPark Technical Data Sheet, City of Charlotte Rezoning Petition 2007-082, Condition 10 (approved Jan. 22, 2008); Live Oaks Property Rezoning Technical Data Sheet, City of Charlotte Rezoning Petition 2006-22 (approved Apr. 17, 2006); Pappas-Tate Property Rezoning Technical Data Sheet, City of Charlotte Rezoning Petition 2006-42 (approved July 17, 2006); 401 Oberlin Road, Special Use Permit SP-72-11, Certified Action of the City of Raleigh Planning Commission (approved Apr. 10, 2012).

54. Interview with Roger Perry, East West Partners, Chapel Hill, N.C. (Jan. 12, 2016).

a mixed-use development, the development needs to meet their requirements. Retailers generally need good visibility and accessibility, and they expect easy parking. The development may be an innovative design, developer John Kane of North Hills says, but “it’s got to work for the retailer.”⁵⁵

If the market is strong and the development is desirable, retailers will bend some. In North Hills, conventional big box stores have taken unconventional spaces: neither Target nor Harris Teeter is visible from Six Forks Road, and the entrances for both are from lower level parking decks. It is worth noting, though, that both Target and Harris Teeter had prior experience with urban store formats.⁵⁶

Street activation. When it comes to mixed-use projects, an important design issue is ground-floor uses. What is allowed? What is prohibited? And how is the ground floor oriented? In other words, is it active? If a community desires an active streetscape with retail shops, restaurants, and cafés, then setting regulatory requirements for certain use and activation may be desirable. In Charlotte, the conditional zoning approval of Morrison Place required nonresidential uses on the ground floor.⁵⁷

Market realities and project context matter. If the market cannot support retail and restaurants on the ground floor, then a regulatory requirement for ground-floor commercial will merely create empty storefronts. Some flexibility may be necessary. In Raleigh, the approval of 401 Oberlin called for retail to be oriented to the principal streetfront. The approval does allow for some residential uses on the ground floor (up to 40 percent), but half of those ground-floor dwellings must have a door to the sidewalk.

Similarly, if a project faces a high-speed, high-volume highway, it may be ill-advised to require café seating along the highway. As part of the approval, the East 54 development was required to build closer to Highway 54, a six-lane high volume road.⁵⁸ Despite having doors and awnings on the highway side, almost none of the ground floor retail uses that side of the buildings (opting



A perennial question: How should development relate to the main thoroughfare? Here, the shops at East 54 in Chapel Hill have doors facing the greenway and arterial highway, but most doors are locked. The primary entrance is in the back near the parking lot. But, with time and more pedestrian activity, those doors may become active.

instead to open to the parking lot on the interior of the development).⁵⁹ The Ephesus/Fordham Form District recognizes and respects the nature of Highway 15-501, which bisects the district; the zoning has no frontage requirement along the highway.⁶⁰

Building design is a topic closely related to mixed uses. Avoiding vast blank walls, orienting entrances, and ensuring appropriate fenestration are useful topics related to the mix of uses and the relation between the private development and the public street. More specific architectural details, such as materials and style, are a matter of local preference and beyond the scope of this report.

Parking Adjustments

Parking standards drive design for many suburban projects. The minimum parking required for a given use demands that a significant portion of the site be devoted to surface parking. If a suburban

55. Interview with John Kane, Kane Realty Corporation, Raleigh, N.C. (Jan. 12, 2016).

56. *Id.*

57. Morrison Place Technical Data Sheet, City of Charlotte Rezoning Petition 2004-015 (approved Dec. 20, 2004).

58. Interview with Roger Perry, East West Partners, Chapel Hill (Jan. 12, 2016).

59. East 54 Mixed-Use Development Special Use Permit Modification, University Village Site Plan (dated Nov. 1, 2006), Town of Chapel Hill, N.C. (approved Feb. 26, 2007).

60. Ephesus/Fordham Form District, Chapel Hill, N.C., Land Use Management Ordinance Sec. 3.11.2.2, Regulating Plan (adopted May 12, 2014).



Parking is a critical issue for regulation and site design.

space is to be reshaped, parking standards must be re-calibrated.

First, the pure numbers may need reduction. For North Hills East in Raleigh, standard parking requirements were reduced by 34 percent based on availability of public transportation and the mix of uses.⁶¹ In Chapel Hill's Ephesus/Fordham Form District, parking standards may be reduced (1) for projects serving the elderly or handicapped, (2) for provision of off-site parking, or (3) upon evidence supporting a reduction.⁶² Some communities drop the parking minimum altogether; they use a

61. North Hills East Planned Development District Conditional Rezoning, City of Raleigh Case Z-22-09/MP-4-08 (approved June 2, 2009).

62. Ephesus/Fordham Form District, Chapel Hill, N.C., Land Use Management Ordinance Sec. 3.11.2.2, Regulating Plan (adopted May 12, 2014).

parking maximum and let the developer (and the market) decide the minimum parking necessary.

The Ephesus/Fordham Form District recognizes the need for alternative parking. Minimum bike parking standards are provided, and scooter or motorcycle parking may count toward minimum automobile parking.⁶³ Moreover, the district sets parking maximums to prevent excessive parking.⁶⁴

Second, shared parking should be recognized and accounted for. In Glen Lennox, the development agreement allows for a shared parking model at each phase of the development.⁶⁵

Third, the standards must address the location and visibility of parking. In North Hills East, at least 51 percent of the required parking must be provided in structured parking.⁶⁶ In the Ephesus/Fordham Form District, for principal street-fronts there is no parking between the building and the street and structure

parking must be hidden behind a liner building.⁶⁷ Raleigh's approval of 401 Oberlin called for the parking deck to be clad in building materials—including either a pitched roof or parapet wall—if it is visible from neighboring properties.⁶⁸

The success of adjusted parking standards depends on a mix of factors. Developers need to show a clear plan for how they will address the existing and future parking needs of the

The minimum parking required for a given use demands that a significant portion of the site be devoted to surface parking. If a suburban space is to be reshaped, parking standards must be re-calibrated.

63. Ephesus/Fordham Form District, Chapel Hill, N.C., Land Use Management Ordinance Sec. 3.11.2.2, Regulating Plan (adopted May 12, 2014).

64. *Id.*

65. Development Agreement by and between FCP Glen Lennox, LLC, Glen Lennox Shopping Center, LLC, and the Town of Chapel Hill, N.C., Sec. 5.4 (approved June 23, 2014).

66. North Hills East Planned Development District Conditional Rezoning, City of Raleigh Case Z-22-09/MP-4-08 (approved June 2, 2009).

67. Ephesus/Fordham Form District, Chapel Hill, N.C., Land Use Management Ordinance Sec. 3.11.2.5 (adopted May 12, 2014).

68. 401 Oberlin Road, Special Use Permit SP-72-11, Certified Action of the City of Raleigh Planning Commission (approved Apr. 10, 2012).



Parking—either in decks or surface lots—may be wrapped with other uses to minimize the visual impact. Here, the surface parking lots for big box retailers are wrapped with liner buildings for smaller retailers.

development. Shared parking agreements among property owners may be beneficial (or necessary). The mix of uses (residential and commercial) can help support adjusted parking standards. Some factors are beyond the site plan. Proximity to good transit supports parking reductions.

Finally, surface parking lots—to the extent that they are allowed or included in a development—should be designed for future development. Parking lot lanes are the future public streets, and parking lots are the future building sites. This is especially true for areas around future transit stops. A development will need parking for the near term, but over time market demand and transit access likely will call for development of the surface parking.

Stormwater

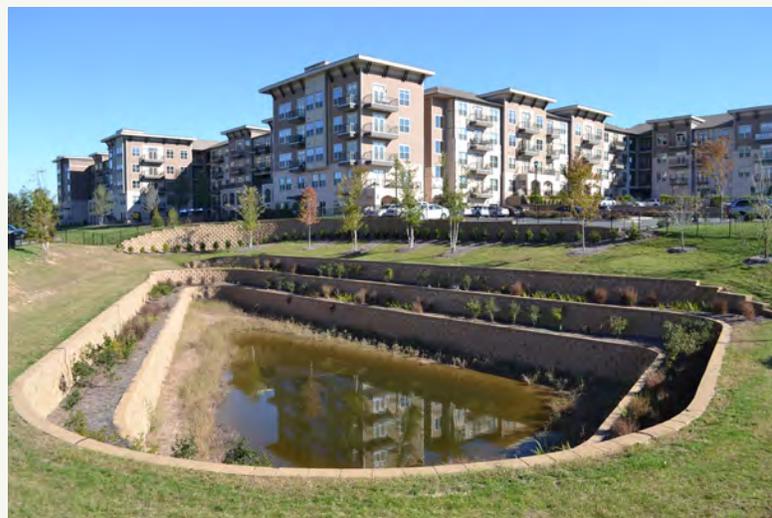
In the same way that parking standards drive design, stormwater standards can significantly limit the design options for development. New approaches are necessary. But, unlike the parking standards, cities cannot simply lower the stormwater standards.

In some cases, stormwater standards for suburban redevelopment may need to allow for different technologies and approaches. The approval for North Hills East, for example, allowed for underground sand filters and detention systems as part of the onsite stormwater management.⁶⁹

69. North Hills East Planned Development District Conditional Rezoning, City of Raleigh Case Z-22-09/MP-4-08 (approved June 2, 2009).

In other cases, the city may allow (or even provide) district scale stormwater facilities to minimize the need for onsite stormwater detention. In order to succeed these multi-property stormwater facilities need willing property owners, clear benefit from cost-sharing, and a strong maintenance agreement (potentially recorded).

Ownership and maintenance of a district stormwater facility may be public or private. The Ephesus/Fordham Form District in Chapel Hill imposes heightened stormwater treatment standards, but the city has established a municipal service district and installment finance to sup-



Stormwater infrastructure is a significant design constraint. In order to achieve greater density in new development, innovative solutions may be necessary.

port district-level stormwater improvements and maintenance.⁷⁰

Equity and Affordability

Many positives may result from redevelopment of suburban space: greater housing units, walkable neighborhoods, new or stronger commercial enterprises, and greater tax base. But communities must be clear-eyed about the costs, risks, and limits

70. Town of Chapel Hill, N.C., Ephesus Church–Fordham District Municipal Service District Report, Apr. 17, 2014.



Just because a suburban place is aging does not mean it is blighted. Many suburban shopping centers are thriving as commercial centers for a growing immigrant population.

of redevelopment. The aging suburban apartment complex may be a prime site for redevelopment, but it also may be an affordable home for many families. An aging shopping center may have lost some of the shine from its grand opening, but it also may be flexible and affordable space for entrepreneurs launching small businesses.

We have seen this story before, of course. Throughout the 1950s and 1960s, countless neighborhoods (often home to minority residents) were bulldozed by governments in the name of progress. Cities are still trying to undo the mistakes of that period of urban renewal. They should be wary of repeating past mistakes today though *suburban* renewal.⁷¹

Within the broader discussion of equity is the specific concern of affordable housing, and the issue of affordability can be especially poignant for suburban redevelopment projects. Suburban redevelopment commonly occurs in strong markets where land and housing prices are rising. And, a redevelopment project may involve tearing down older apartments—ones that served as market-rate affordable housing—and replacing those units with expensive apartments or condominium units. Many local governments seek ways to secure at least some affordable units as part of the reshaping of suburban spaces. The authority in North

71. Eric Jaffe, *Troubling Echoes of Urban Renewal in an Atlanta Suburb*, CityLab from THE ATLANTIC, July 15, 2015, www.citylab.com/housing/2015/07/troubling-echoes-of-urban-renewal-in-an-atlanta-suburb/398582/.

Carolina for a municipality to require affordable units as part of a regulatory approval is limited, but cities have pursued various alternatives.

In some cases, affordable housing is part of the zoning discussion. When developers sought zoning approval for redevelopment of the aging Colony Apartments in Charlotte's SouthPark area, the developer committed to including affordable apartments. Fifty-five apartments—out of nearly 1,000 residential units in the redevelopment—will be affordable for residents with incomes at or below 80 percent of area median income. Charlotte city council members expressed strong support for the affordable housing; the major rezoning request



In some cases, the site for suburban redevelopment is also the site for affordable apartment units. Jurisdictions must be wary of the tension between encouraging good new development and displacing current residents.

passed unanimously.⁷² The conditions for the special use permit authorizing East 54 in Chapel Hill include a provision that 30 percent of the units must be affordable to residents with incomes at or below 80 percent of area median income. The Glen Lennox development agreement with Chapel Hill calls for 15 percent of for-sale units to be affordable.

72. Ely Portillo, *Major SouthPark Redevelopment Plan Approved by City Council*, CHARLOTTE OBSERVER, Jan. 19, 2016, www.charlotteobserver.com/news/business/business-blogs/development/article55526325.html.

Density bonuses and other incentives are sometimes used to encourage private developers to include affordable housing in market-rate developments. Density bonuses, though, require careful tailoring, and they rarely produce affordable housing units. While density bonuses have long been available in Durham, few developers have taken advantage of the option. Recognizing the challenge and opportunity of housing affordability and redevelopment related to light rail development, the Durham City and County Planning Department has explored a range of tools to support affordable housing in conjunction with future transit. The Durham City Council and Durham County Commission adopted ordinance amendments to expand the incentives for affordable housing (i.e., removing parking requirements for affordable dwelling units and increasing the density bonus in the Compact Neighborhood Tier.)⁷³

In other cases, cities invest—through money or through land—to support affordable housing as part of suburban redevelopment. In the Ephesus/Fordham Form District, the Town of Chapel Hill has partnered with a nonprofit affordable housing developer, DHIC, Inc., to develop a tax credit affordable housing project on public land within the district.⁷⁴ As discussed in Part Three, providing financial incentives is another option.

73. Durham City-County Planning Department, Affordable Housing & Transit, May 6, 2015, <http://durhamnc.gov/362/Affordable-Housing-Transit>.

74. Town of Chapel Hill, N.C., Affordable Housing, The Ephesus/Fordham Form District, www.townofchapelhill.org/town-hall/departments-services/chapel-hill-2020/future-focus-areas/the-ephesus-fordham-district/updates/affordable-housing.

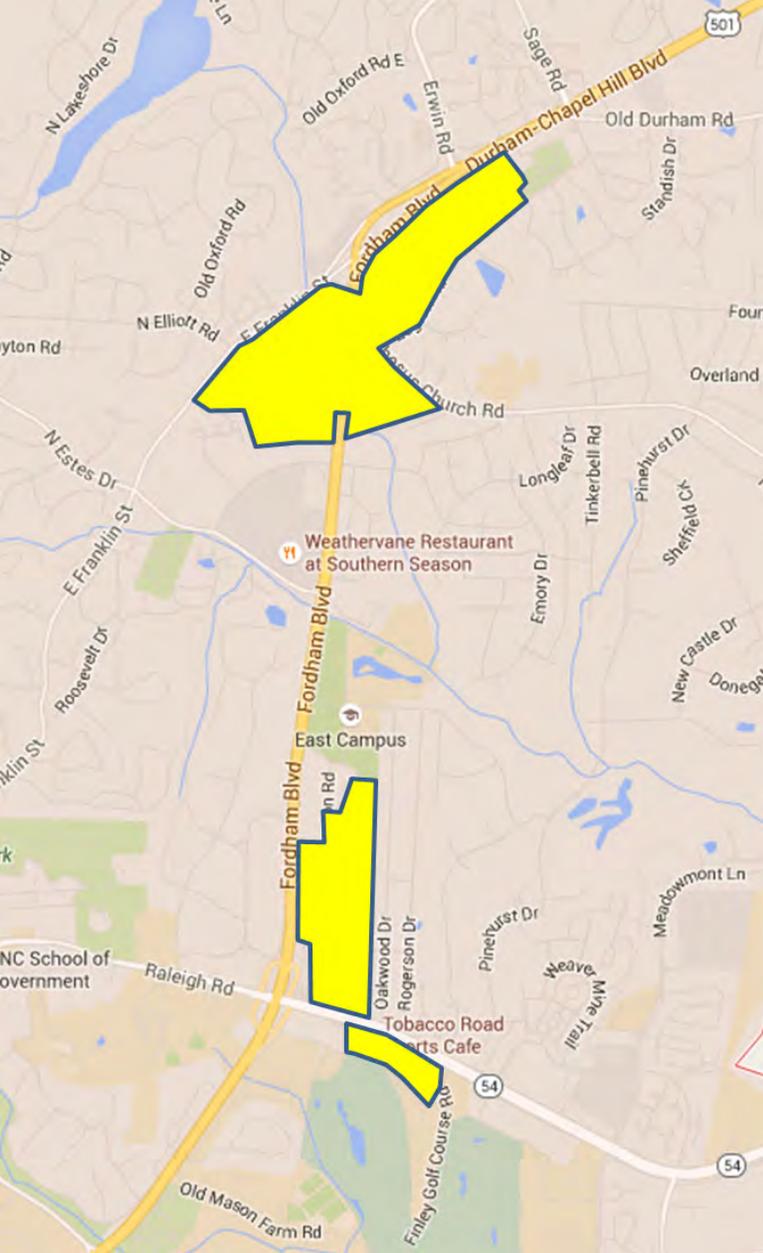
Zoning Change



Along the east side of Chapel Hill, there's a nondescript suburban bypass. Fordham Boulevard is a four-lane, divided highway. Motorists speed by parking lots and shopping centers, apartments and single-family neighborhoods.

But, a very different place is taking shape. Three separate zoning approvals along a two-mile stretch of the corridor allow for major multi-story, mixed-use redevelopments. And, notably, the process for each of those zoning approvals has been different. East 54, just off of the corridor, was approved by the conventional process for developments in the town: a rezoning with special use permit. Glen Lennox, a 1950s shopping center and garden apartment complex, is approved for significant redevelopment through a development agreement. Finally, a large area of strip shopping centers (the Ephesus/Fordham area) has been rezoned to a form-based district, allowing significant development by right.

The town is experimenting with three different approaches for three different projects. Other communities across the state are experimenting with new ways to adjust zoning, too. Cities are learning from conventional approaches, exploring new options, and finding what works for their particular jurisdiction.



The Town of Chapel Hill used three different zoning tools for three different redevelopment projects.

To be sure, there are some circumstances when a redevelopment does not require changes to the zoning. If a project is merely scrapping one conventional shopping center for another, the existing zoning likely permits the project. Even some ambitious redevelopments may fit within existing zoning. In Raleigh, in the early 2000s, the proposed redevelopment of the old North Hills mall was permissible under the then-existing shopping center zoning.⁷⁵ The redevelopment converted the

75. Interview with Ken Bowers, Director of Planning, Raleigh, N.C. (Mar. 12, 2015).

indoor mall into an outdoor main street style shopping center. The addition of a hotel and offices was permitted under the applicable zoning, too.

Most commonly, though, cities must alter standards and grant new approvals to allow true reshaping of suburban spaces. Surveying indicated that, similar to Chapel Hill, cities are adjusting zoning to allow suburban redevelopment. For the jurisdictions that participated in the Solutions Forums, zoning with project conditions remains the predominant method of zoning approval; 82 percent of responding jurisdictions indicated that they have used legislative conditional zoning to approve suburban redevelopment in the last five years (just 35 percent reported having used quasi-judicial special use permits). Five of seventeen responding jurisdictions indicated that they have used a form-based code for suburban redevelopment. Only three jurisdictions reported having used development agreements, a relatively new tool in North Carolina.

This part outlines alternatives for zoning processes, including conventional zoning with conditions, development agreements, and form-based codes.

Conventional Zoning with Project-Specific Conditions

City zoning has accommodated dense, mixed-use development for years, most commonly through zoning with project-specific conditions. In North Carolina, this may be achieved either through quasi-judicial special use permits or through legislative conditional zoning.⁷⁶ As communities seek to allow redevelopment in suburban spaces, conventional zoning with project-specific conditions is the most common way that cities approach zoning entitlement.

When granting special use permits, the decision-making board must follow quasi-judicial procedures and may “impose reasonable and appropriate conditions and safeguards upon these permits.”⁷⁷ Quasi-judicial procedures apply even when a city council is the decision-making board.

76. For more on conditional zoning approvals, see David Owens, *A Conditional What? Clarifying Some Confusing Zoning Terminology*, COATES’ CANONS: NC LOCAL GOV’T LAW BLOG (Nov. 13, 2012), <http://canons.sog.unc.edu/?p=6916>.

77. N.C. GEN. STAT. § 160A-381(c) (hereinafter G.S.).



East 54 in Chapel Hill features retail, office, and residential uses, all mixed into several multi-story buildings.

Rezoning to a conditional zoning district allows site-specific conditions to be applied to an approval through a legislative rezoning process (without the constraints of quasi-judicial procedures). Conditions must be mutually approved by the city and petitioner. Also, conditions are “limited to those that address the conformance of the development and use of the site to city ordinances and an officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.”⁷⁸

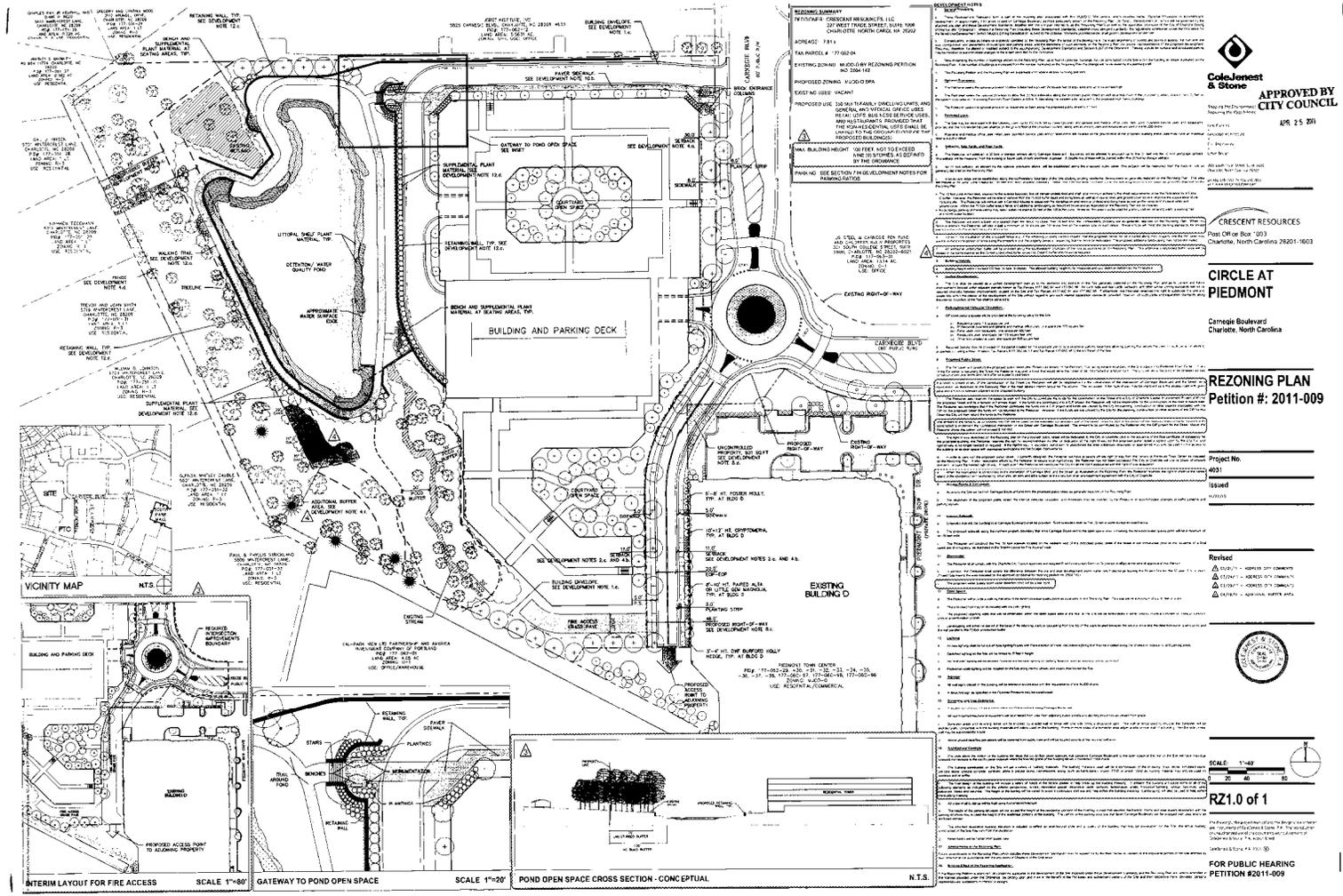
This discussion addresses special use permits and conditional zoning together. Certainly, there are important procedural differences between the two. But the resulting entitlement is very similar:

78. G.S. 160A-382(a)-(b).

development rights with site-specific conditions.

There are clear benefits to zoning with site-specific conditions. Because of the project-specific review and project-specific conditions, the zoning process can carefully review and address the impacts of the particular project. The process allows for a high level of community involvement; in some cases community meetings and discussions among the developer and neighbors may resolve potential points of conflict. Commonly, the process is familiar to the developer, the local government, and the community

However, zoning with site-specific conditions also has drawbacks. There is a lack of predictability for the community and the developer because of the high degree of discretion. The process can be costly and time-consuming for all parties. With



very detailed conditions and site plans, a developer may be forced to go back to the city council for even minor modifications to the project (unless there is some administrative flexibility built into the code or conditions). Moreover, site-specific approval means that each parcel gets its own standards—raising significant challenges for administration and enforcement.

When Chapel Hill's East 54 development was approved in 2007, it required rezoning to the Mixed-Use Village zoning district and special use permit approval.⁷⁹ The special use permit included extensive conditions governing the development, an approach common to most significant developments in Chapel Hill at that time.

79. Chapel Hill Zoning Atlas Amendment and East 54 Mixed Use Development Special Use Permit Modification (approved Feb. 26, 2007).

In Raleigh, North Hills East was rezoned to a conditional district (Planned Development District) in 2006, and then the conditional zoning was amended to include other properties and to refine certain conditions in 2009.⁸⁰

Charlotte's suburban redevelopment projects typically are project-specific conditional zoning approvals as well. For example, when the Sharon Square project was approved in 2006, it was as a conditional rezoning with a variety of regulatory development standards imposed upon the approved development plan.⁸¹

80. North Hills East Planned Development District Conditional Rezoning, City of Raleigh Case Z-22-09/MP-4-08 (approved June 2, 2009).

81. Charlotte Zoning Petition #22-2006 (approved Apr. 17, 2006); Charlotte Zoning Petition #2006-42 (approved July 17, 2006).

The zoning approval for the Circle at Piedmont includes a list of substantial conditions. Reprinted with permission from ColeJenest & Stone, P.A., copyright 2011.

Development Agreement

Large-scale suburban redevelopment isn't simple. It requires significant investment by the private sector, significant improvements to public infrastructure, and significant time for phased development. The General Assembly has provided authority for local governments to address those types of issues.

Development agreements have been popular in other fast growing states such as California and Florida for years. In 2005, modeling the new authority on South Carolina's existing legislation, the North Carolina General Assembly authorized local governments to enter into development agreements. Codified at Part 3D of Chapter 160A of the North Carolina General Statutes (hereinafter G.S.), the authority for development agreements allows a developer and a local government to negotiate and agree to long-term provisions for large-scale development. At a minimum, a development agreement includes the following terms:

1. Property subject to the agreement
2. Duration of the agreement
3. Permitted uses, densities and intensities, building types and placement, and design
4. Responsibility for necessary public facilities
5. Description of any reservation or dedication of land for public purposes
6. Local government permits required
7. Any additional conditions or restrictions necessary for public health, safety, or welfare
8. Any preservation of historic structures
9. Phasing schedule⁸²

The development agreement may include other performance standards and "any other matter not inconsistent" with the authority for development agreements.⁸³

A development agreement creates vested rights lasting for the duration of the agreement, and the development remains subject to the laws applicable to the property at the time of execution (unless the development agreement provides otherwise or a change to state or federal law precludes compliance with the development agreement).⁸⁴ The statutes outline standards for recording, periodic

82. G.S. 160A-400.25.

83. *Id.*

84. G.S. 160A-400.26.

review, breach, amendment, and other procedural matters.⁸⁵

Communities find strong reasons to use development agreements. The process allows for negotiated agreement between the developer and local government. Development agreements can go beyond basic zoning provisions and exactions to outline commitment for private and public investment in infrastructure. Additionally, substantial community input is possible through the development agreement process. The statutory authority allows considerable flexibility for the process of negotiating development agreements. In practice, the Town of Chapel Hill follows a structured, transparent process with significant community input. For some jurisdictions, the development agreement process is mostly staff negotiation with the developer.

Chapel Hill's Glen Lennox is an example of how a development agreement can be used for a suburban redevelopment. In spring 2013, after several years of neighborhood planning, the town council authorized town staff to explore and negotiate a development agreement between the town and the developer. The first phase, starting in spring of 2013, included appointment of a technical team to advise the town on pertinent development issues. For the second phase, starting in autumn of 2013, the town council authorized the town manager and town attorney to proceed with negotiations for the development. That phase included, among other things, multiple public information meetings, completion of a transportation impact study, and two public works sessions by the town council.⁸⁶

Development agreements can go beyond basic zoning provisions and exactions to outline commitment for private and public investment in infrastructure.

85. For more on the procedures and limits of development agreements, see David W. Owens, *Development Agreements*, UNC School of Government website: Legal Summaries (Apr. 2014), www.sog.unc.edu/resources/legal-summaries/development-agreements.

86. Development Agreement by and between FCP Glen Lennox, LLC, Glen Lennox Shopping Center, LLC, and the Town of Chapel Hill, N.C., Article 3 (approved June 23, 2014).

Exhibit A



The redevelopment of Glen Lennox was approved through a development agreement that incorporated the design restrictions of a neighborhood conservation district. Reprinted with permission from the Town of Chapel Hill, copyright 2014.

The development agreement is forty-two pages long and swells to nearly two hundred pages with the incorporated exhibits.⁸⁷

As outlined in the recitals of the agreement, the town expected an array of benefits, including implementation of the neighborhood conservation district, environmental protection, coordinated transportation improvements, integrated urban design elements, no negative fiscal impacts, and assurance of provision of public amenities. The developer expected benefits including certainty and timeliness of development review process, approval of mixed-use development, integrated standards for the overall development, flexibility

87. *Id.*

for certain town standards, and town participation in certain public improvements.⁸⁸

Article 6 of the development agreement provides the specific development standards and mitigation measures, including

- Scale of development and approved uses
- Affordable housing
- Stormwater management
- Parking
- Trip generation maximums and traffic improvements
- Fiscal impacts
- Design standards
- Open space, parks, recreation areas, and greenways
- Solid waste
- Stream buffers, trees, and landscaping
- Noise and lighting

Development agreements can also have drawbacks, however. The process is costly and time-consuming, and, for that reason, it generally is inappropriate for small-scale projects. Development agreements require agreement from all affected property owners, so they are ineffective for addressing district-scale change across multiple property owners. Finally, development agreements are relatively new in North Carolina, and many communities lack experience with them.

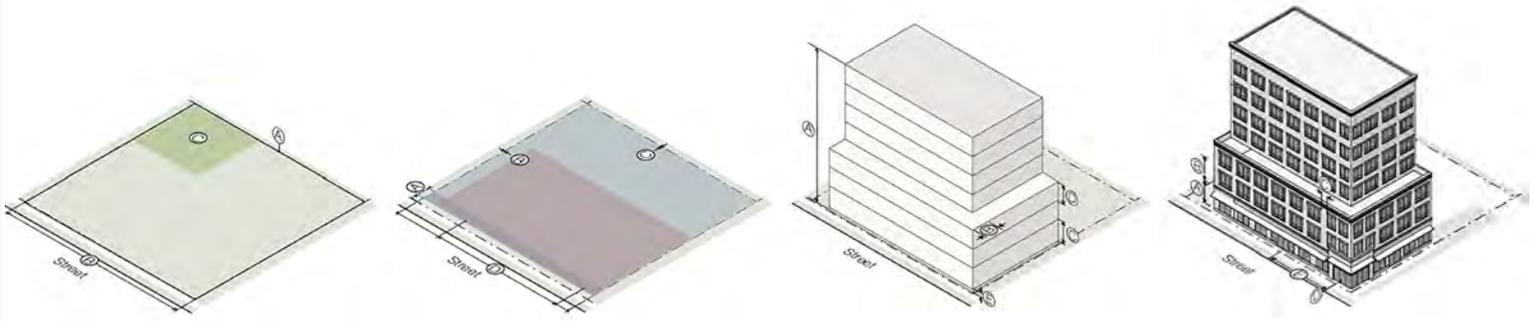
Form-Based Codes

Conditional zoning approvals allow a community to tailor standards for a single redevelopment. Development agreements allow similar project-specific conditions as well as vesting rights and outline public and private investment for a single development. But redevelopment does not happen in isolation; redeveloping suburban spaces almost always includes multiple properties and owners. More and more communities are turning to area-based rezonings—typically form-based codes—to reshape suburban spaces.

A form-based code is an approach to zoning and subdivision regulation that features certain elements, including

- Graphic depiction of building and street standards

88. *Id.*



Form-based codes address design elements common to any zoning—building placement, building height, open space, parking and access—but form-based codes commonly tailor those standards for a walkable, urban form. Reprinted with permission from the Town of Chapel Hill, copyright 2015.

- Emphasis on building types and building form
- Standards for how buildings relate to the street (frontage, build-to lines)
- Integrated street standards
- Allowance for mixed uses
- Focus on walkability and interconnected streets

Cities find many benefits to form-based codes. Because development approval commonly is administrative, form-based codes provide a streamlined approval process, reducing costs and increasing predictability. Form-based codes provide consistency across a district (or a whole jurisdiction). And, with graphics and clarified standards, form-based codes may be more user-friendly than conventional zoning codes.

However, challenges remain. The cost and time of initially drafting and adopting a form-based code can be substantial. Form-based codes require education: for elected officials, for developers, for the community, and for city staff. After the code is in place, the administrative approval of development means less public input at the time of project approval. Additionally, with administrative review and approval, there is a necessary rigidity of the standards (this can be addressed with provision for administrative modification).

Form-based codes typically include other common zoning topics, such as parking, landscaping, signage, and environmental aspects. Notably, though, these standards in form-based codes are calibrated for more compact and mixed-use development. Form-based codes sometimes include architectural design standards. The

various standards are applied to specific properties through a regulating plan that is comparable to a zoning district map.

Form-based codes may be applied to an entire locality or a specific district, or they may be available to landowners as a floating district. Several North Carolina cities have adopted elements of form-based coding for some (or all) of their jurisdictions. The Mecklenburg County towns of Davidson, Cornelius, and Huntersville adopted form-based codes in the 1990s. One common use for form-based codes is in historic downtowns and neighborhoods. The form-based standards are tailored to the historic context so that new development adheres to the existing character. Durham, for example, has a design district (form-based code) for downtown and historic Ninth Street.

Recently, local governments have begun experimenting with form-based codes as a tool to guide the transition from suburban to more urban character. Durham is considering applying the design district standards identified for future light rail stations to suburban areas.⁸⁹ Chapel Hill's Ephesus/

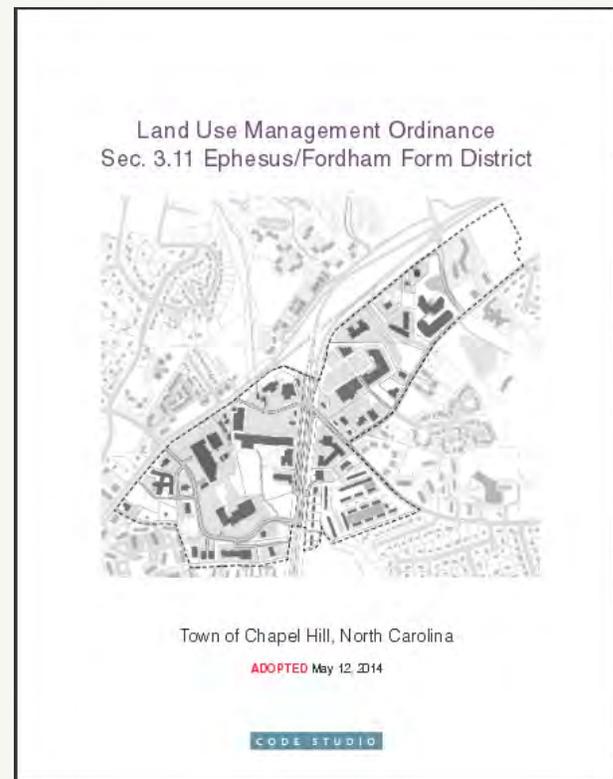
Recently, local governments have begun experimenting with form-based codes as a tool to guide the transition from suburban to more urban character.

89. Interview with Aaron Cain, Planning Supervisor, Durham City-County Planning Department (Mar. 12, 2015).

Fordham Form District applies to nearly 200 acres of suburban shopping centers, hotels, and apartments along a major highway corridor. Examples outside of North Carolina include the City of Austin, Texas, which has experimented with form-based districts for several suburban areas and corridors. Dunwoody, Georgia, a suburb of Atlanta, is considering a form-based code for its significant suburban commercial area, Perimeter Center.

The most notable aspect of form-based codes is the shift away from discretionary project-by-project review by the city council. A common element of form-based codes, though, is the re-introduction of timely and predictable administrative approval of mixed-use developments. Of course, there is a long planning process and discretionary council approval to establish the form-based code. But once the code or district is in place, most new development is approved administratively by staff.

Consider the following example. In Chapel Hill, discretionary approvals can take well over a year. According to the town's Office of Planning and Sustainability, "Complex Applications requiring Town Council Review such as a Special Use Permit, Major Subdivision, and Rezoning, can take between 12 and 18 months, but may take longer depending on application complexity."⁹⁰ By contrast, a complex development in the form-based district takes a few months. The Village Plaza Apartments, a seven-story mixed-use development and the first application under the new Ephesus/Fordham Form District, was approved by town staff in four months, even with submission of five revisions to the application.⁹¹



Chapel Hill opted for a form-based code to facilitate redevelopment of the Ephesus/Fordham area, an aging suburban commercial district.

90. Town of Chapel Hill, N.C., Office of Planning and Sustainability, Frequently Asked Questions, www.townofchapelhill.org/town-hall/departments-services/planning-and-sustainability/resources/frequently-asked-questions.

91. Town of Chapel Hill, N.C., Village Plaza Apartments, Form District Permit Application webpage, www.townofchapelhill.org/town-hall/departments-services/planning-and-sustainability/development/development-activity-report/village-plaza-apartments.

Financing Change



Even though it sat on the *urban* edge of Uptown Charlotte, the Charlottetown Mall was a *suburban* pioneer. Located beside a highway, with its parking lot covering a stream, it was an early model of the ubiquitous malls that would pop up all across the growing Southeast. Reports claim that Charlottetown Mall was the first enclosed shopping center in the Southeast when it opened in 1959.⁹² The location was not happenstance. The mall sat beside the new highway looping Uptown Charlotte, an urban renewal project that

92. David Aaron Moore, *Question the Queen City: Charlottetown Mall and Its Nearly Forgotten Time Capsule*, CREATIVE LOAFING CHARLOTTE, Apr. 26, 2013, <http://clclt.com/theclg/archives/2013/04/26/question-the-queen-city-charlottetown-mall-and-its-nearly-forgotten-time-capsule>. According to coverage by the *Charlotte Observer*, “Ceremonies this morning will herald the beginning of a new era in shopping for the Carolinas and the southeast [sic] as Charlottetown Mall opens to the public. To usher in the historic occasion will be a college band, fanfare, short speeches, high officials and some top businessmen.” CHARLOTTE OBSERVER, Oct. 28, 1959.



plowed a highway through the historic neighborhoods around uptown.

As years passed, the Charlottetown Mall remained a suburban pioneer, serving as an early indicator of mall decline. As newer malls arose (SouthPark and Eastland in the 1970s), the older Charlottetown faded. By 1984, the Charlottetown Mall was rebranded as Outlet Square. After several years, the mall was shuttered.

By the early 2000s, developers, major retailers, the city, and the county were looking for ways to redevelop the mall site and spur revitalization for the area. The parties determined that redevelopment would require coordinated contributions from each of them. In 2005, they formalized that into an agreement for public and private funding for the Midtown Square

Redevelopment, later rebranded the Metropolitan.⁹³

The developer agreed to finance and construct a large mixed-use development including up to 572,000 square feet of retail and restaurant space, 165,000 square feet of office space, and 206 residential units. Such a development, the city and county projected, would increase the property tax base; enhance the adjacent public greenway; bring shopping and dining opportunities to the neighborhood; and stimulate tourism, given the proximity to uptown. The development would include structured parking and private

93. City of Charlotte, N.C., Economic Development: Midtown Square Redevelopment (approved June 20, 2005).

With a mix of public and private funding, the old Charlottetown Mall site evolved into the Metropolitan.

streets open to the public, and it would open onto the adjacent greenway. The developer agreed that no less than 10 percent of the residential condominium units would be designated as affordable housing (affordable to families earning 80 percent of the average median income). The developer also provided certain street improvements within the development and reimbursed the city \$150,000 for street improvements performed by the city.

Little Sugar Creek runs along the western border of the redevelopment site. The parking lot of the former Charlottetown Mall covered a stretch of the creek. As part of the redevelopment agreement, the county agreed to uncap and improve the creek and to construct a greenway alongside it. Through the agreement, the parties recognized the greenway as an essential element of the successful redevelopment, and they agreed to coordinate greenway construction with development construction.

The city agreed to provide significant street improvements in and around the redevelopment site. These improvements included intersection improvements, road realignments, and construction of two new bridges. Additionally, the agreement included abandoning a right-of-way that would then become land available as part of the redevelopment. The developer's ability to complete the development plan depended on the road realignment, and the developer agreed to provide interim funding for the realignment if the city's funding timeline was too slow.

In addition to the mix of contributions from the public and private partners, the city and county agreed to pay an economic development grant up to \$12.3 million spread over ten years. Provisions of the grant agreement required certain development milestones, prohibited any grant payments until after property taxes were paid, and required that the large retailers contribute at least \$6 million toward a parking structure. The agreement included provisions for one major retailer to ensure best efforts to fill the space in the event that the retailer closed its store. As part of that provision, the retailer assured that sufficient ad valorem taxes would be paid even if the retailer vacated the space. The agreement also included clawback provisions in the event that the developer profits exceeded a certain percentage return or the developer sold the

Table 3. A Continuum of Public and Private Participation in Redevelopment

Private to Public	Infrastructure funded by a private party, dedicated (or open to) the public
Public and Private	Public investment related to (sometimes coordinated with) private investment
Public to Private	Public acquisition and financing for private development

property at a profit above a certain threshold.⁹⁴ It should be emphasized here that while North Carolina cities and counties do have limited statutory authority for economic development grants, such powers are restricted by state constitutional limits. Those limitations are discussed more below.

The redevelopment of the Charlottetown Mall reflects the need for investment—public and private—to transition a suburban place to a more urban place. In order to accomplish redevelopment as the Metropolitan, the project included a variety of public and private finance: private funding for development and infrastructure, private reimbursement to the public for public infrastructure, public investment for major transportation and open space improvements, and public funding to support private development. This part considers local government authority for financing suburban redevelopment across that continuum.

The discussion breaks down the continuum of public and private finance into three categories (see Table 3).

Each of these deserves some explanation. *Private to Public* refers to exactions, those requirements for a private developer to provide public improvements. Exactions are a common and legal tool for requiring developments to internalize public costs created by the new development. *Public and Private* refers to the partnership—either formal or informal—between the local government and the private developer. The local government invests in public infrastructure that benefits the private property owners of the area as well as the public in general, such as roads, stormwater facilities, or parks. Finally, *Public to Private* refers to deliberate efforts by the local government to encourage

94. *Id.*

and incentivize private development. These public development efforts may take a range of forms, including property acquisition and sale to private developers, site preparation and development by the public, and, in limited cases, financial incentives and grants for private development.

While these are distinct authorities, they commonly overlap. Local governments use a range of finance and redevelopment tools to encourage growth in their jurisdictions.

Considerations for Finance Choices

When and how should a local government use its tools to support private development? There is no simple answer. Rather, local governments must balance an array of considerations.

In the case of Park Center in Research Triangle Park, there are several layers of finance supporting redevelopment. Substantial private investment will contribute to the development of the site (and construction of certain exactions); the development is supported by two service districts, the long-standing Wake and Durham County Service District and the new Urban Research Service District that applies to targeted redevelopment areas in the park; and Durham County will contribute \$20 million through a public-private partnership for specified public infrastructure and amenities.⁹⁵

In contrast, local governments may decide that public finance is not necessary or appropriate for a particular area or project. The North Hills East rezoning was approved on September 19, 2006. The zoning included substantial flexibility (400 to 1,800 residences; 200,000 to 1.3 million square feet office space; up to 850 hotel rooms), and as reported, there was no neighborhood opposition.⁹⁶ Kane Realty, the developer of North Hills, asked the city and county for \$75 million in tax increment financing to support structured parking. Without such financing, the developer indicated, they could only construct a conventional suburban shopping center.⁹⁷ The city did not authorize public financing and adopted a new policy prohibiting

public-assisted financing except in areas that are economically blighted.⁹⁸ The developer moved forward with substantial development without the tax increment financing.

When should a local government use one of these tools? Here are some considerations:

- Real estate market conditions and demographic indicators
- Level of blight, deterioration, and underutilization
- Number of owners and willingness for district fees
- Types and needs of public infrastructure
- Ability to repay financing
- Public ownership of land (and opportunity for redevelopment)

Framing all of these considerations is a foundational question for local governments: What is the public interest?

The UNC School of Government's Development Finance Initiative (DFI) partners with local governments to analyze these and other factors. DFI's work includes evaluation of redevelopment opportunities and market conditions, consideration of public financing and redevelopment tools, and analysis of development proposals and financial feasibility.⁹⁹

95. Interview with Bob Geolas, Executive Director, Research Triangle Foundation, Research Triangle Park (Nov. 2, 2015).

96. Sarah Lindenfeld Hall, *North Hills Project Moves Forward*, NEWS & OBSERVER, Sept. 20, 2006.

97. *What's Up with That?* North Raleigh News, NEWS & OBSERVER, Nov. 3, 2006.

98. David Bracken, *North Hills East Beginning to Rise*, North Raleigh News, NEWS & OBSERVER, Mar. 14, 2008.

99. See generally Michael Lemanski, *Development Finance Initiative*, Community and Economic Development in North Carolina and Beyond, Mar. 13, 2012, <http://ced.sog.unc.edu/development-finance-initiative/>.

Private to Public

The area six miles south of uptown Charlotte was farmland until the 1970s and the opening of SouthPark Mall. The suburban shopping mall opened with three anchors and thousands of parking spaces. Through the years, the mall and the area saw considerable growth. The mall swelled with additional wings and anchors.¹⁰⁰ The surrounding fields gave way to residential subdivisions, garden apartment complexes, strip retail centers, office buildings, and parking—lots and lots of surface parking.

By the 2000s, while other malls in the area were struggling and shuttering, SouthPark was opening new luxury wings. And, with continued market

demand but little vacant land around SouthPark, developers began to develop more densely and to redevelop older suburban spaces. Structured parking, taller buildings, and mixed uses became the norm for new development.

This redevelopment has largely paid its own way. Through the zoning approval for each rede-

velopment, the development is required to provide certain public improvements. The conditional rezoning for Circle at Piedmont, an apartment development near SouthPark, requires acquisition of right-of-way from an adjoining property owner, construction of a new public street (or a bond or payment to the city in lieu of construction), and construction of a new traffic circle at a public intersection adjoining the development.¹⁰¹ The conditional rezoning for Morrison Place called for the

This redevelopment has largely paid its own way. Through the zoning approval for each redevelopment, the development is required to provide certain public improvements.

100. Bridget Herman, *The Evolution of SouthPark Mall*, CHARLOTTE MAGAZINE, Feb. 20, 2012, www.charlottemagazine.com/Charlotte-Magazine/February-2012/The-Evolution-of-SouthPark-Mall/.

101. City of Charlotte, N.C., Circle at Piedmont Rezoning Plan, Petition 2011-009 (approved Apr. 25, 2011; as amended by Administrative Amendment Aug. 3, 2011).



Through development regulations and approvals, a local government may require a developer to provide some infrastructure.

developer to dedicate right-of-way and construct new lanes along the perimeter of the property; provide streetscape improvements, traffic signal improvements, and a transit stop waiting pad; and pay fees for pedestrian safety improvements.¹⁰²

Certainly, the public has contributed to the development in this district. Extensive roadway improvements, infrastructure upgrades, and public service expansions are required to accommodate the growth and densification in the SouthPark area. But at the project level, developments typically are required to cover costs for the private development as well as some of the costs imposed on the public. As discussed in prior parts, exactions may be used to address some of the public improvements necessary to reshape a suburban space, such as creation of new street grids; improvements for pedestrians, cyclists, and transit riders; dedication of parks and open space; and necessary upgrades for public utility infrastructure.

102. Morrison Place Technical Data Sheet, City of Charlotte Rezoning Petition 2004-015 (approved Dec. 20, 2004); Morrison Place Tract 3 Rezoning/Site Plan Amendment, City of Charlotte Rezoning Petition 2009-022 (approved May 19, 2009).

Within certain limits, the city can require the private developer to build the improvements mentioned above for the public as a condition of the permit. These exactions must be authorized by statute and must be proportionally related to the impacts of the development.

As outlined by Richard Ducker:

Most exactions fall into one of four categories: (1) requirements that land be dedicated for street rights-of-way, parks, or utility easements and the like; (2) requirements that improvements be constructed or installed on land so dedicated; (3) requirements that fees be paid in lieu of compliance with dedication or improvement provisions; and (4) requirements that developers pay “impact” or “facility” fees reflecting their respective prorated shares of the cost of providing new roads, utility systems, parks, and similar facilities serving the entire area.¹⁰³

The statutes authorize certain exactions for zoning approvals, subdivision approvals, and driveway permits.

Under the zoning authority, conditional use permits and special use permits may include reasonable and appropriate conditions, including conditions for dedication of street and utility rights-of-way and provision of recreational space and facilities.¹⁰⁴ Special or conditional use districts and conditional zoning districts also may include conditions “that address the conformance of the development and use of the site to county ordinances and an officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.”¹⁰⁵

Subdivision exactions include

- Dedication or reservation of recreation areas within the subdivision
- Funds to be used to acquire recreation areas within the immediate area

103. *Franklin Rd. Props. v. City of Raleigh*, 94 N.C. App. 731, 736 (1989) (quoting Ducker, “*Taking*” *Found for Beach Access Dedication Requirement*, 30 LOCAL GOV’T L. BULL. 2 (Institute of Government 1987)).

104. G.S. 160A-381(c).

105. G.S. 160A-382(b).



Exactions may be used to improve existing infrastructure—for example, adding new pedestrian crossings to existing streets.

- Dedication or reservation of rights-of-way or easements for streets and utility purposes
- Funds for the acquisition, design, and construction of roads to serve the development
- Construction of community service facilities in accordance with local plans, policies, and standards

Statutory authority for driveway permits includes additional authority for dedication and construction or reimbursement for medians, turn lanes, and traffic lanes.¹⁰⁶

Additionally, cities and counties have authority to charge fees related to their public enterprise utilities, such as water, sewer, stormwater management, and even public transportation.¹⁰⁷ The full extent of that authority, though, is unclear.

Private landowners also may be interested in and willing to provide certain public improvements through good planning and cooperation. The Village of Clemmons appointed a committee of business owners to craft a plan for improvements and connectivity along a suburban thoroughfare. The resulting plan outlined a new road network to connect across existing commercial properties, and certain property owners agreed to dedicate right-of-way for the improvements.¹⁰⁸

106. G.S. 160A-307; 136-18(29).

107. G.S. 160A-314.

108. Lisa O’Donnell, *Panel Completes Overlay Plan for Lewisville-Clemmons Road*, WINSTON-SALEM JOURNAL, Apr. 1, 2015, www.journalnow.com/journal_west/news/panel-completes-overlay-plan-for-lewisville-clemmons-road/article_71b4566c-d7c2-11e4-841b-fb09953740f6.html; Lisa O’Donnell, *Village Hopes Overlay District Represents Cure for Lewisville-Clemmons Road*, WINSTON-SALEM JOURNAL, May 11, 2016, www.journalnow.com/journal_west/village-hopes-overlay-district-represents-cure-for-lewisville-clemmons-road/article_a7ea8904-c1e0-5e10-957e-24b82120b5ea.html.

Public and Private

Beginning with a small area planning process for the Ephesus Church and Fordham area, the Town of Chapel Hill pursued new zoning and public investment to spur redevelopment. The town estimated necessary stormwater and transportation improvements would cost \$10 million (\$1.2 million for stormwater and \$8.8 million for transportation).¹⁰⁹ The town used installment financing to fund capital improvements and a municipal service district to fund ongoing maintenance.

For installment finance, the town used an unconventional approach. For conventional installment financing, the physical asset being financed is used as collateral for the financing. The Ephesus/Fordham Form District did not have any such physical assets to secure the financing, so the town bundled the financing for the district with financing for renovations to town hall. Town hall served as the collateral for both projects.¹¹⁰ The town's intent is to repay the financing with increased property tax receipts from the district.

The town recognized the likely gap between debt issuance and generation of tax increment sufficient

to cover the debt service. The town planned to phase the debt to minimize the gap, and the town projected that its debt management fund was sufficient to serve as a backstop, if needed, to cover the gap.¹¹¹ (Original financing plans called for two-thirds bonds, also, but the town has moved away from that.)

The town established a municipal service district in May 2014.¹¹² The service district report emphasized that “public/private sector cooperation and coordination are essential to provide routine inspection and maintenance for the treatment facilities and to manage the professional services contracts for providing those services.” Moreover, the municipal service district provides a mechanism to fund capital improvements.¹¹³

The town used installment financing to fund capital improvements and a municipal service district to fund ongoing maintenance.

109. Town of Chapel Hill, N.C., Financing Ephesus Fordham Public Improvements (Feb. 2014).

110. *Id.*

111. *Id.*

112. Town of Chapel Hill, N.C., A Resolution Creating a Municipal Service District for the Ephesus Church–Fordham Boulevard Area, 2014-05-19/R-1 (May 19, 2014).

113. Town of Chapel Hill, N.C., Ephesus Church–Fordham District Municipal Service District Report, Apr. 17, 2014.

The Ephesus/Fordham Form District, discussed above, is just one example of many from around the state where local governments are coordinating with private development interests to reshape a suburban space. This marriage of public improvements and private development takes many forms. The improvements can include parks, stormwater facilities, parking structures, street construction, and public buildings. Improvements can be financed with a range of financing tools, including conventional revenues and bonds, installment financing, tax increment financing, special assessment districts, and municipal service districts. And, the partnerships can be formed in various ways: public–private partnerships, development

agreements, reimbursement agreements, or no agreement at all. This part outlines the basics of the menu of financing options, dividing them into conventional financing tools and targeted financing tools tied to growth in a particular area. It also discusses alternatives for structuring public and private cooperation.

A survey done in association with the Solutions Forums (discussed above under “Framework”) reflects that North Carolina communities are using some financing options for redeveloping suburban spaces, but the tools have been fairly limited. Most communities are using conventional financing, such as revenues and traditional bonds; 71 percent of responding jurisdictions indicated



using conventional financing in redeveloping suburban spaces. Several jurisdictions have used business improvement districts (municipal service districts) in downtown and urban areas but have not yet used such financing to support suburban redevelopment. Tax increment finance is essentially unused; only one responding jurisdiction indicated having used it.

It must be emphasized here that the public financing tools discussed below may support *public* infrastructure and improvements. The limited options for granting public funds to private development are discussed in the next section.

Conventional Finance

Redevelopment of suburban spaces does not require exotic financing. All of the conventional local government finance options

are available.¹¹⁴ For example, general fund revenues might support an improved public streetscape as part of the capital improvement plan. A general obligation bond might support creation of new public streets to establish a street grid. A revenue bond could support public utility improvements to address capacity challenges in a densifying suburban area.

The conventional financing tools include

- Current revenues (from general fund and enterprise fund)
- Savings (fund balance and capital reserve fund)
- Bonds (general obligation, special obligation, and revenue).

¹¹⁴. For more on the conventional tools for financing capital projects, see KARA A. MILLONZI, *Financing Capital Projects*, Chapter 7 in *INTRODUCTION TO LOCAL GOVERNMENT FINANCE* (Kara A. Millonzi ed., 2d ed. 2014).

Innovative redevelopment does not require exotic financing. Conventional financing remains the most common approach for North Carolina communities.

Targeted Finance

In addition to the conventional financing tools, local governments have authority for a set of targeted finance tools to fund public improvements. These targeted tools are tied to a particular area or district and commonly rely on expected growth in that district. Many communities have used these tools to support downtown redevelopment and revitalization. Now, jurisdictions, are using these tools to help reshape suburban settings. Both

North Carolina's municipal service district authority is available for a limited set of areas in a city, but redeveloping suburban spaces may be among those limited areas.

business improvement districts and installment finance have been used for suburban redevelopment projects. Other targeted finance tools are available but have not yet been used for reshaping suburban spaces in North Carolina. Those include critical infrastructure special assessments, conventional special assessments, and tax increment finance.

Business improvement district (municipal service district). A business improvement district (also called a municipal service district) is an area where property owners pay an additional property tax to support increased public infrastructure or services in the district.¹¹⁵ This can be a very useful tool for an area with multiple properties that needs new infrastructure and services—an area like an evolving suburban place.

North Carolina's municipal service district authority is available for a limited set of areas in a city, but redeveloping suburban spaces may be among those limited areas. *Urban area revitalization projects* are defined broadly to include areas that “consist[] primarily of existing or redeveloping concentrations of industrial, retail, wholesale, office, or significant employment-generating uses”

115. For more on the authority and procedures for business improvement districts, see KARA MILLONZI, *A Guide to Business Improvement Districts in North Carolina*, COMMUNITY AND ECONOMIC DEVELOPMENT IN NORTH CAROLINA (CED) BLOG (Mar. 30, 2010), www.sog.unc.edu/blogs/community-and-economic-development-ced/guide-business-improvement-districts-north-carolina.

and certain areas “along a major transportation corridor.”¹¹⁶ Moreover, certain transit-oriented development areas, drainage projects, and parking facilities qualify as municipal service districts.¹¹⁷

Under these definitions, many suburban places may qualify for municipal service districts. As discussed above, the Town of Chapel Hill established a municipal service district for stormwater facility and maintenance in the Ephesus/Fordham Form District.¹¹⁸ In Raleigh, the city and stakeholders along the suburban Blue Ridge Road corridor are exploring the possibility of a business improvement district to support the reshaping of that corridor.

A business improvement district in North Carolina is not a separate unit of government—it is merely a geographic area where an extra property tax is levied to support projects benefitting that district. The district is established by the city council; no petition is required. The city council sets the district tax rate (subject to certain limitations).

Municipal service districts may be used for the following public improvements and services, among other things:¹¹⁹

- Capital projects
 - Improvements to water, sewer, and stormwater systems
 - Streets and sidewalks
 - Bicycle and pedestrian paths
 - Parking facilities
 - Public buildings and visitor facilities
 - Improvements to relieve traffic congestion and improve access
 - Transit-oriented development projects
 - Stations of transit-oriented development
 - Retail, residential, or commercial facilities for transit-oriented development
- Services
 - City services
 - Business promotion (marketing, events)

Installment financing. Installment financing is fairly straightforward. The city borrows money to fund an improvement or property and uses that

116. G.S. 160A-536(c).

117. G.S. 160A-536.

118. Town of Chapel Hill, N.C., Ephesus Church–Fordham District Municipal Service District Report, Apr. 17, 2014.

119. G.S. 160A-536.

improvement or property as the security for the borrowed funds. The tool is available for a broad range of capital projects and is not limited to specific districts. Installment financing has proven to be a useful tool for reshaping suburban spaces. As outlined at G.S. 160A-20, local governments and authorities may borrow funds to acquire real property and construct improvements, and the loan for funds is secured with a security interest in the property to be acquired or improvement to be constructed.¹²⁰ Some

To call something a synthetic TIF does not change the nature of the underlying financing—nor does it change the legal rights and responsibilities attached to that financing.

installment financing must be approved by the N.C. Local Government Commission.

In some cases, local governments re-brand financing tools such as installment finance as “synthetic tax increment finance,” or synthetic TIF (traditional TIFs—or project development finance, as it is called in North Carolina law—are

discussed below). To call something a synthetic TIF does not change the nature of the underlying financing—nor does it change the legal rights and responsibilities attached to that financing. Rather, calling something a synthetic TIF is a signal that the unit of government intends to use the revenue generated by increased property values in the area to repay the financing.¹²¹

As mentioned above, the Town of Chapel Hill framed its installment financing for the Ephesus/Fordham Form District as a synthetic TIF. In that case, there was no property or improvement within the district to secure the loan. Rather, the town paired the district improvements with improvements to town hall. Town hall served as the security for the borrowed funds, but the town’s intent is

120. For more on the authority for installment financing and the procedural requirements, see Kara Millonzi, *Debt Financing Primer for Local Governments: Installment Finance Agreements*, COATES’ CANONS: NC LOCAL GOV’T LAW BLOG (June 2, 2011), <http://canons.sog.unc.edu/?p=4695>.

121. For more on Synthetic TIFs, see Kara Millonzi, *What is a Synthetic Project Development Financing (aka Synthetic TIF)?* COATES’ CANONS: NC LOCAL GOV’T LAW BLOG (Apr. 5, 2013), <http://canons.sog.unc.edu/?p=7067>.

to repay the funds from increased tax value in the redeveloping district.

Critical infrastructure assessment. The authority for critical infrastructure assessments is a relatively new tool for financing the infrastructure needed for new development. The basic concept of a critical infrastructure assessment is similar to a traditional special assessment—a fee is levied against properties to pay for public improvements that benefit those properties. Notably, though, critical infrastructure assessments are available for a broader range of capital projects, and financing may be secured with future assessments.

Under G.S. Chapter 160A, Article 10A, a city may make special assessments for critical infrastructure needs against benefitted property to finance a broad range of public improvements, including water, sewer, and stormwater systems; parking facilities; affordable housing; parks; redevelopment acquisition; and renewable energy and energy efficiency systems.¹²²

For critical infrastructure assessments, property owners must petition for the assessment, and the city council sets the assessment method.

Traditional special assessment. As with critical infrastructure assessments, traditional special assessments are a tool through which a city may charge fees against private properties to pay for public improvements that benefit those properties. In contrast, though, traditional special assessments are available only for limited infrastructure purposes, and the city must complete the improvement before levying the assessment.

Under G.S. Chapter 160A, Article 10, cities may make special assessments against benefitted property for streets, sidewalks, water systems, sewer systems, and stormwater systems. For street and sidewalk improvements, there must be a petition from a majority of the owners before the city may levy a special assessment. Given the procedural and practical limitations of the special assessment authority, it is rarely used.

122. For more on the authority and process for critical infrastructure assessments, see Kara Millonzi, *An Overview of Special Assessment Bond Authority in North Carolina*, LOCAL FIN. BULL. No. 40 (Nov. 2009), www.sog.unc.edu/publications/bulletins/overview-special-assessment-bond-authority-north-carolina.



Tax increment finance. North Carolina cities may finance a broad array of improvements through what is commonly called *tax increment finance*, authorized in North Carolina as *project development finance*.¹²³ But, because of procedural and financial aspects for project development finance, communities typically choose other financing options.

Here is the basic idea behind TIF: If the city invests in infrastructure for an area, it

123. For more on procedures and authorities for tax increment finance in North Carolina, visit the School of Government’s website on the topic, www.sog.unc.edu/resources/microsites/tax-increment-financing-north-carolina/.

will spur private development. New private development will increase property values and, thereby, property taxes. With TIF, the city obtains bond financing for needed improvements in the district and secures the bond with the projected increase in property taxes.

TIF funds may be used for an array of improvements, including streets and sidewalks; water, sewer, and stormwater systems; public transportation facilities; parking facilities; and parks and playgrounds.¹²⁴ The public facility financed by the tax increment must “enable,

124. G.S. 159-103 (referencing G.S. 159-48).

In order to coordinate a new road network, stormwater improvements, and stormwater maintenance in the Ephesus/Fordham district, the town of Chapel Hill combined installment financing with a municipal service district.



facilitate, or benefit private development within the development financing district.”¹²⁵

In order to establish such development financing, the city must create the district, develop a plan, seek review from the county and state, and adopt the plan. A development finance district created to support economic development must be an area identified as blighted or inappropriately developed, appropriate for rehabilitation or conservation, or appropriate for economic development.¹²⁶ Given these procedural hurdles, the relatively high interest rates on TIF bonds, and the availability of easier, less expensive financing options, North Carolina cities have used TIF bonds rarely.

125. *Id.*

126. *Id.*

Coordinating Public and Private

A city can invest in public infrastructure as needed. The city can build a new public road, upgrade public utilities, and acquire new public parkland without any special agreement with a private developer. In many cases, though, it is advantageous to coordinate efforts between public infrastructure and private development. This section explores some of the options for establishing formal relationships between the city and the developer. To be clear, though, even with this coordination, any public investment is in public infrastructure. The limited authority for public investment in or public incentives for private development are discussed in the next section.

Public-private partnership. Cities may establish public-private partnerships to build a “capital improvement project undertaken for the benefit of a governmental entity and a private developer

Durham County agreed to contribute up to \$20 million toward the redevelopment of Park Center in Research Triangle Park.

pursuant to a development contract that includes construction of a public facility or other improvements, including paving, grading, utilities, infrastructure, reconstruction, or repair, and may include both public and private facilities.”¹²⁷ The applicable statutes outline requirements for public hearing, contract terms, and other details.¹²⁸

Durham County entered into a public–private partnership in support of the Park Center redevelopment in Research Triangle Park.¹²⁹ It is worth noting that Durham had local legislation for public–private projects that pre-dated the general legislation discussed above.¹³⁰ Under the agreement, Durham County committed to contribute up to \$20 million toward sidewalks, trails, park areas, stormwater facilities, and a parking deck and other parking areas in the Park Center development. Public access easements will be granted so that those facilities are available to the public.

Development agreements. Development agreements create a relationship between the local government and the developer. This relationship can cover responsibility for capital improvements in addition to the zoning aspects discussed in Part Two.

The Glen Lennox Development Agreement in Chapel Hill outlines substantial capital improvements and mitigation measures, including affordable housing, stormwater management, construction of public streets, greenways, open space, and recreation areas. The private developer will provide all of the improvements in that particular development agreement, but a development agreement can also divide responsibilities between the public and the private developer.

Reimbursement agreements. North Carolina cities are authorized to enter into agreements to reimburse a developer for constructing public facilities.

Under the authority for public enterprise improvement contracts, a city or county can contract with a developer or owner (or the owner’s

contractor) for “public enterprise improvements that are adjacent or ancillary to a private land development project.”¹³¹ Public enterprises include water, wastewater, public transportation, parking, and stormwater management, among other things.¹³² Under a public enterprise contract, the local government is to reimburse the private party for the cost of designing and constructing such improvements. This reimbursement, though, cannot pay the costs of improvements required by land development regulations.

For roadway and intersection improvements, cities have contractual authority that is substantially similar to the authority to contract for public enterprise improvements.¹³³ The roadway improvement contract may be with the developer, the property owner, or the owner’s contractor. The contract must be “for public intersection or roadway improvements that are adjacent or ancillary to a private land development project.”¹³⁴

Finally, in addition to the authority for contracting for public enterprise improvements and roadway improvements, cities and counties are authorized to enter into reimbursement agreements for a developer or property owner to design and construct certain municipal infrastructure.¹³⁵ The reimbursement may be paid through any lawful source. The improvements may include, among other things, water mains, sanitary sewer lines, lift stations, stormwater lines, streets, curb and gutter, sidewalks, and traffic control devices.

127. G.S. 143-128.1C(a)(8).

128. For more on the procedural requirements for public–private partnership construction contracts, see Norma Houston, *New Construction Delivery Methods—Public–Private Partnerships (P3)*, COATES’ CANONS: NC LOCAL GOV’T LAW BLOG (Mar. 5, 2014), <http://canons.sog.unc.edu/?p=7553>.

129. Agreement for Park Center Phase I Public–Private Projects between Durham County, N.C., and Research Triangle Foundation of North Carolina (approved Sept. 28, 2016).

130. S.L. 2005-172 (S 435).

131. G.S. 153A-280(a); G.S. 160A-320(a).

132. G.S. 160A-311; G.S. 153A-274.

133. G.S. 160A-309.

134. *Id.*

135. G.S. 153A-451; G.S. 160A-499.

Public to Private

Even before the economic downturn started in 2008, the Eastland Mall in Charlotte was struggling. The recession merely hastened the inevitable. Belk closed in 2007; Dillard's in 2008; and Sears in 2009. The Charlotte City Council considered acquisition of the mall property in 2009 for \$22.24 million, but the city declined. The future of the mall was bleak, and by 2010, all remaining stores in the mall also closed.¹³⁶

The city had long been planning redevelopment strategies for the area, however. As early as 2003, the City of Charlotte advanced plans for redevelopment of the area.¹³⁷ In 2007, the corridor was identified as a priority corridor through the Business Corridor Revitalization Strategic Plan.¹³⁸

That Business Corridor Revitalization Strategic Plan, which was updated in 2012, outlined city priorities for redevelopment and the tools to support it. Eliminating blight was among the strategic plan's short list of goals. The plan built upon an array of financial tools already in place to support the corridors, including a revolving loan fund, a business equity loan program, a brownfield program, a façade improvement grant program, a business improvement program, synthetic tax increment financing, and a big box demolition program, among others.

By 2012, several factors were pushing the city toward acquisition. With site control, the city could remove blight and vacant retail space, advance broader revitalization objectives, and avoid the potential piecemeal disposition of the mall property. Moreover, from 2009 to 2012, the tax value of the property had fallen dramatically, from \$75 million to \$25 million.¹³⁹

136. City of Charlotte, Eastland Mall Update presentation, City Council Business Meeting, July 23, 2012, <http://charmeck.org/city/charlotte/nbs/ed/revitalization/Documents/Eastland%20Acquisition%20presentation%207%2023%201012.pdf>.

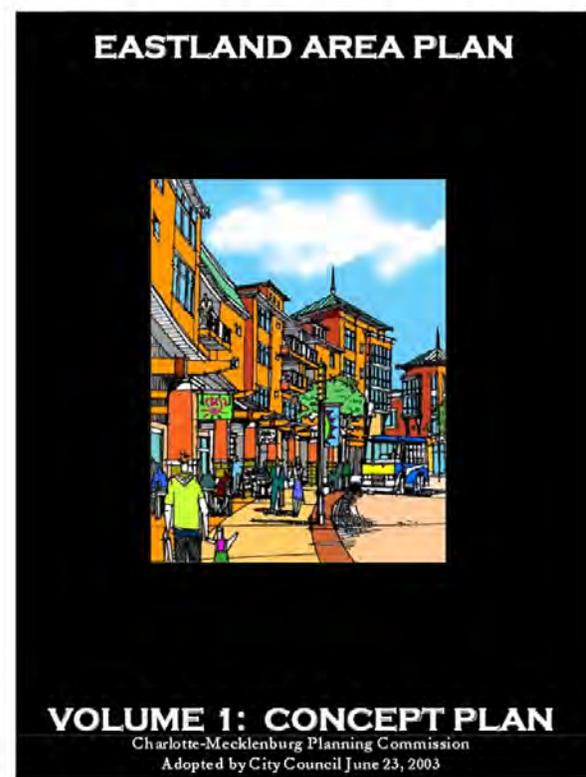
137. City of Charlotte, Eastland Area Plan (adopted June 23, 2003), <http://charmeck.org/Planning/Land%20Use%20Planning/EastlandAreaPlan.pdf>.

138. City of Charlotte Neighborhood & Business Services Department, The City of Charlotte Business Corridor Plan Update, 2012, <http://charmeck.org/city/charlotte/nbs/ed/revitalization/Documents/Business%20Corridor%20Plan%20March%2026,%202012%20Council%20Meeting%20Final.pdf>.

139. City of Charlotte, Eastland Mall Update presentation, City Council Business Meeting, July 23, 2012, <http://charmeck.org/city/charlotte/nbs/ed/revitalization/Documents/>

The purchase included seven sellers—four anchor tenants, two outparcel owners, and the owner of the remainder of the mall site.¹⁴⁰

In August 2012, the city council approved a purchase for \$13 million (nearly half of the 2009 proposed purchase price). The vote was unanimous, but the councilmembers were cautious, even pessimistic.¹⁴¹ Mayor Foxx called on the council to consider the negative scenarios—not just the best-case scenario. “I hope that in the next several months we get this figured out and we do exactly what our staff has suggested could happen. But I want the community to be prepared for the possibility that this



Substantial time and energy went into planning for the redevelopment of the Eastland Mall site, dating back to at least 2003. Reprinted with permission from the City of Charlotte, copyright 2003.

[Eastland%20Acquisition%20presentation%207%2023%201012.pdf](http://charmeck.org/city/charlotte/nbs/ed/revitalization/Documents/Eastland%20Acquisition%20presentation%207%2023%201012.pdf).

140. Charlotte, N.C., City Council Business Meeting, Minute Book 133, pp. 889–91, July 23, 2012.

141. *Id.*

thing could take longer to play out than what's been discussed so far," Foxx said. Even as he announced that he would vote in support of the acquisition, Councilmember Cooksey stated, "I'm approaching it pessimistically. I don't really see this happening. I think the amount of money, the parcel values and the contract values have been public for long enough now that you know if there were film studios interested they ought to be buying them directly and not waiting for us to purchase them."

For funding, the city drew upon general fund debt capacity authorized by a 2008 bond referendum. The 2008 General Obligation Bond Referendum included up to \$47 million in Neighborhood Improvement Bonds.¹⁴² Up to \$16 million was available for purchase of the Eastland Mall site.¹⁴³

In a further effort to prepare the site for private development, the city used some of that same debt capacity to fund the demolition of the old mall structure.¹⁴⁴

The city's clear intention was quick resale of the property for private development. At the time of acquisition, the city was already exploring a potential film studio development for the site.¹⁴⁵ The city issued a request for qualifications in January 2013, looking for a private party to develop the property in line with the city's policy objectives. It received seven RFQ responses and requested proposals from three groups.

After some negotiations, none of the proposals advanced. The city pursued discussions with one studio developer, but questions arose about the viability and financing of that developer's proposal. In spring 2014, the city ended an exclusive negotiation with that developer.¹⁴⁶

City planners have explored additional ideas for development, moving toward more public uses, such as park space and a school, along with mixed-use development.¹⁴⁷

Based on past negotiations and market realities, the city may act as master developer rather than trying to sell the property to a master developer. Such an approach will allow for more incremental development over time. Additionally, the city can invest in infrastructure to support the overall project and incentivize private development. The city has explored a district-scale stormwater system, for example, to serve development across the full site.

Such plans, though, call for participation by the school district and Mecklenburg County. Discussions with the school district have been productive. When the city approached the county in fall 2015, however, county commissioners were hesitant about funding a county park for the current plans for redevelopment.¹⁴⁸ The city is still exploring options for redevelopment.



The footprint of the old Eastland Mall remains as efforts for redevelopment continue.

142. Charlotte, N.C., City Council Business Meeting, Minute Book 127, p. 738, Aug. 25, 2008; Charlotte, N.C., City Council Meeting Agenda, Aug. 25, 2008, <http://charmeck.org/city/charlotte/CityClerk/Agendas/August%2025,%202008.pdf#search=2008%20neighborhood%20improvement%20bond%20referendum>.

143. Charlotte, N.C., City Council Business Meeting, Minute Book 133, p. 883, July 23, 2012.

144. Financial Tech Spotlight, Council Approves Plan to Demolish Eastland (May 29, 2013), <http://financial.tmcnet.com/mergers-acquisitions/news/2013/05/29/7167285.htm>.

145. Charlotte, N.C., City Council Business Meeting, Minute Book 133, pp. 889–91, July 23, 2012.

146. Susan Stabley, *City Council Votes Unanimously to Kill Studio Charlotte's Eastland Film-Hub Proposal*, CHARLOTTE BUSINESS JOURNAL, Mar. 24, 2014 (updated Mar. 25, 2014),

www.bizjournals.com/charlotte/blog/going_green/2014/03/city-council-unanimously-agrees-to-kill-studio.html.

147. Charlotte City Council, Economic Development & Global Competitiveness Committee, Eastland Redevelopment Strategy Update presentation, May 21, 2015, http://charmeck.org/city/charlotte/FocusAreas/EconomicDevelopment/Documents/5-21-15%20Eastland%20Update_Final.pdf; Jim Bradley, *New Plans Unveiled for Eastland Mall Site*, WSCOTV (May 21, 2015), www.wsocv.com/news/news/local/charlotte-leaders-could-take-step-forward-eastland/nmLP8/.

148. Jonathan McFadden, *Mecklenburg Commissioners to City of Charlotte: Think Bigger on Eastland Mall Redevelopment*, CHARLOTTE OBSERVER, Dec. 8, 2015, www.charlotteobserver.com/news/local/article48701660.html.

Charlotte's experience with Eastland, discussed above, is familiar for many downtowns across North Carolina—local governments in cities large and small have used their broad powers for redevelopment and revitalization in an attempt to spur private investment. Of course, the difference in Charlotte's case is the location. The Eastland Mall site is quintessentially suburban. The challenges, opportunities, and authorities, though, are very familiar for North Carolina cities.

In certain geographic areas and for certain public purposes, cities have broadened powers to encourage private development through

property acquisition, improvement, and disposition, as well as some limited authority for direct financial incentives such as grants.¹⁴⁹ These redevelopment powers go beyond the basic authorities for investing in public property and improvements discussed in the last section. This section explores those city redevelopment powers. First, it outlines the powers for acquiring and improving property for private development. Then it explores the more limited powers for incentives for private development.¹⁵⁰

A city should have a clear vision and intent for . . . property before acquisition so that the appropriate powers are available for disposition.

Acquiring and Selling Property for Private Development

The public development powers outlined below offer tools for a local government to acquire, improve, and sell property for private development. Although the listed powers are similar and sometimes overlap, there are important distinctions among them. Some powers allow private sale (direct to a preferred developer), but other powers require competitive bidding to sell the property. Moreover, the process of acquisition matters for the options of disposition. Property acquired under the urban redevelopment law, for example, may be disposed of only by competitive bidding.

149. These topics are covered in greater detail in C. TYLER MULLIGAN, *Financing and Public–Private Partnerships for Community Economic Development*, Chapter 13 in *INTRODUCTION TO LOCAL GOVERNMENT FINANCE* (Kara A. Millonzi ed., 2d ed. 2014).

150. *Id.*

A city should have a clear vision and intent for the property before acquisition so that the appropriate powers are available for disposition.

Economic Development

A city may make appropriations to encourage industrial or commercial businesses in the city.¹⁵¹ This authority for economic development activity includes, without limitation, acquiring and developing land for industrial, research and development, or office uses; acquiring and assembling land or buildings for industrial or commercial use; constructing, extending, or owning utility facilities for an industrial facility; and site preparation for industrial facilities.¹⁵² Authority and limitations for economic development grants are discussed in the next section.

Property held or acquired under the economic development authority may be conveyed by private sale.¹⁵³ The city may impose covenants, conditions, and restrictions to carry out the economic development purposes. Private sale must be approved by the city council after public notice and hearing, including notice of the property interest to be conveyed, the value, and the consideration offered for the property (which must not be less than fair market value). Notably, if the development will create a substantial number of jobs above the median wage for the area, then the city council may consider the next ten years of prospective tax revenues in determining fair consideration.¹⁵⁴ (The city must be careful, though. Reducing the sales price in consideration of jobs and future tax revenues amounts to an incentive and is subject to the additional constitutional and statutory questions outlined in the next section.)

Community Development

Cities enjoy certain authority for community development programs and activities. This authority arose in relation to federal community

151. G.S. 160A-158-7.1(a).

152. G.S. 160A-158-7.1(b).

153. G.S. 160A-158-7.1(d); see also Tyler Mulligan, *Conveyance of Local Government Property to Nonprofit EDC for Industrial Park*, Community and Economic Development in North Carolina and Beyond, Mar. 17, 2015, <http://ced.sog.unc.edu/conveyance-of-local-government-property-to-nonprofit-edc-for-industrial-park/>.

154. G.S. 160A-158-7.1(d2).

development programs focused on elimination of blight and programs to benefit low- and moderate-income individuals. While the statutory powers are not limited to federally funded programs, they are rooted in those community development purposes. To the extent that a city is serving those purposes (benefitting low- and moderate-income individuals and eliminating blight), it is authorized to use federal, state, and local funds for community development; to provide assistance and finance to support rehabilitation of private buildings for affordable housing; to provide grants, loans, subsidization, and loan guaranties for restoration or preservation of older neighborhoods and properties; and to support programs for employment, economic development, health, education, and more for persons of low and moderate income.

There is no statutory geographic limitation for community development activities, so these powers are available to support redevelopment efforts in suburban spaces that relate to blight elimination or benefit low- and moderate-income individuals.

Under this authority, a city may purchase real property for an array of purposes, including land that is blighted; land appropriate for rehabilitation or conservation; land that is appropriate for housing or economic development; and land that is appropriate for historic preservation, recreation, or the guidance of urban development.¹⁵⁵

Once real property is acquired, the city may clear or rehabilitate the buildings and structures on the site. The city also may retain the land for public purposes or dispose of it in accordance with competitive bidding requirements.¹⁵⁶

The community development authority also authorizes private sale of real property.¹⁵⁷ The sale must be in accordance with the applicable community development plan (benefitting low- or moderate-income individuals or eliminating blight). Covenants, conditions, and restrictions may be used to enforce the plan and public interest. Prior to a private sale, the city must provide notice and public hearing regarding the sale and disclose the terms of the sale and the appraised value of the property. The consideration must be for not less than the appraised value.

155. G.S. 160A-457(1).

156. G.S. 160A-457(2) & (3).

157. G.S. 160A-457(4).

Housing Authority

Housing authorities have broad authority for acquisition of real property, and they are exempt from competitive bidding requirements to dispose of property.¹⁵⁸ But, housing authority activities must adhere to the purposes of the authority (i.e., to provision of housing projects, as defined).¹⁵⁹ City councils enjoy this authority through G.S. 160A-456. Therefore, a city or housing authority can convey real property by private sale to a developer as long as the project includes requisite affordable housing elements.

Urban Redevelopment

Cities have broadened powers for areas designated as Urban Redevelopment Areas.¹⁶⁰ While the title of the law emphasizes “urban,” a suburban area could qualify if it has deteriorating buildings or otherwise unsafe conditions. In order to be designated as an Urban Redevelopment Area, the area must be classified as blighted or in danger of becoming blighted. In other words, the area’s growth must be impaired by the deterioration or obsolescence of buildings or other unsafe conditions.¹⁶¹

After following the statutory procedures (forming a commission, identifying an area, adopting a plan), a redevelopment commission has the power to acquire property (including by eminent domain for blighted parcels), clear and improve sites, and provide programs of assistance and financing, among other things.¹⁶² The commission may sell property (with approval by city council) for purposes that align with the applicable redevelopment plan. The commission may impose covenants and restrictions on such sales to ensure compliance with the redevelopment plan. Sales must still comply with the standard competitive bidding requirements.¹⁶³

158. G.S. 157-9.

159. G.S. 157-3(12).

160. For more on the Urban Redevelopment authority and procedures, see Tyler Mulligan, *Using a Redevelopment Area to Attract Private Investment*, Community and Economic Development in North Carolina and Beyond (Nov. 20, 2012), <http://ced.sog.unc.edu/using-a-redevelopment-area-to-attract-private-investment/>.

161. G.S. 160A-503(2).

162. G.S. 160A-512; G.S. 160A-515; G.S. 160A-503(19).

163. G.S. 160A-514.

Direct Incentives for Private Development

There is limited authority under which North Carolina local governments may go beyond the basic redevelopment powers discussed above and actually make grants or other direct incentives for private development. This section outlines the basics of those authorities.

Constitutional limits. Local governments in North Carolina have limited authority for development incentives for private entities, and these incentives must meet strict standards to pass constitutional muster. The North Carolina Constitution prohib-

its gifts to private entities, so an incentive must be tied to a public purpose beyond the private benefit. There is no simple rule for the constitutionality of incentives, but there are critical factors. First, while a private actor may also benefit, the incentive must result in a net public benefit. Such public benefit likely is related to job creation and increasing the tax base. Second, the procedures for granting the incentive likely need to track closely to a court-approved process.

Such a process would include several steps. The community should have a written policy for the maximum incentive amount that may be granted to the community. The community should adopt a necessity determination that the incentive is required for the project to proceed in the community. The incentive must be approved at a public meeting and governed by a written agreement. And, the incentive must be given as a reimbursement, not as an unrestricted cash payment.¹⁶⁴

164. For more on the procedures and limitations of incentives, see the following materials from C. TYLER MULLIGAN: *Economic Development Incentives and North Carolina Local Governments: A Framework for Analysis*, 91 N.C. L. REV. 2021 (2013); *Financing and Public-Private Partnerships for Community Economic Development*, Chapter 13 in *INTRODUCTION TO LOCAL GOVERNMENT FINANCE* (Kara A. Millonzi ed., 2d ed. 2014); *Local Government Economic Development Powers 'Clarified'*, Community and Economic Development in North Carolina and Beyond, Oct. 26, 2015, <http://ced.sog.unc.edu/local-government-economic-development-powers-clarified/>; *Cash Grants for Real Estate Developers without Competition for Jobs—A Constitutional Quandary*, Community and Economic Development in North Carolina and Beyond, Sept. 15, 2015, <http://ced.sog.unc.edu/>

Authorities. The *Community Development* authority includes using federal, state, and local funds for community development; providing assistance and finance to support rehabilitation of private buildings for affordable housing; grants, loans, subsidization, and loan guaranties for restoration or preservation of older neighborhoods and properties; and programs for employment, economic development, health, education, and more for persons of low and moderate income.¹⁶⁵ As discussed above, community development activities must be related to elimination of blight or to activities benefitting low- or moderate-income individuals.

In established *Urban Redevelopment Areas*, a city may, among other things, establish “programs of assistance and financing, including the making of loans, for rehabilitation, repair, construction, acquisition, or reconditioning of residential units and commercial and industrial facilities in a redevelopment area.”¹⁶⁶

Under the *Economic Development* authority, cities are “authorized to make appropriations for economic development purposes.” This is fairly broad language and arguably includes grants and loans to support economic development projects if they meet the constitutional requirement for public purpose.

Housing authority undertakings may include, among other things, “grants, loans, interest supplements and other programs of financial assistance to developers for affordable housing.” Housing project undertakings even include support for developments of market-rate housing if at least 20 percent of the units are for low-income individuals.¹⁶⁷ If a city provides financial assistance for affordable housing, there must be assurance from the developer that the housing will remain affordable for at least fifteen years.¹⁶⁸ City councils also have this authority through G.S. 160A-456.

[cash-grants-for-real-estate-developers-and-companies-without-competition-for-jobs-a-constitutional-quandary/when-may-nc-local-governments-pay-an-economic-development-incentive/](http://ced.sog.unc.edu/cash-grants-for-real-estate-developers-and-companies-without-competition-for-jobs-a-constitutional-quandary/when-may-nc-local-governments-pay-an-economic-development-incentive/); Community and Economic Development in North Carolina and Beyond, Dec. 17, 2013, <http://ced.sog.unc.edu/when-may-nc-local-governments-pay-an-economic-development-incentive/>.

165. G.S. Chapter 160A, Article 19, Part 8.

166. G.S. 160A-503(19).

167. G.S. 157-3(12).

168. G.S. 157-9.4.

The North Carolina Constitution prohibits gifts to private entities, so an incentive must be tied to a public purpose beyond the private benefit.

Conclusion

There is no constant in community. Population ebbs and flows; market preferences shift; the economy fluctuates. Each community evolves. In many suburban places across North Carolina—indeed, across the U.S.—that evolution includes a move away from the suburban-style development of the last fifty years and toward more density, more mixed uses, and more connected neighborhoods.

Local governments are responding to this evolution, finding ways to allow, encourage, or require better urban design through zoning and public finance. To be sure, these are complex topics, and there is no silver bullet. Cities are experimenting with different approaches and various tools.

Consider Chapel Hill's zoning experiment. On the east side of town, three separate suburban redevelopments followed three different zoning processes. East 54 was approved by the town's conventional process for major mixed-use development: a rezoning and special use permit. For Glen Lennox, a 1950s shopping center and garden apartment complex, the town negotiated a development agreement to address conventional zoning considerations in addition to significant infrastructure issues. And, for the Ephesus/Fordham area, a 1970s

strip mall shopping district, the town adopted a form-based code, allowing significant redevelopment by right.

Also consider Charlotte's experiment with local government finance. Just south and east of Uptown Charlotte are three separate mall sites with three separate tales of suburban redevelopment. Through a substantial public-private partnership, the city assisted with the successful redevelopment of the old Charlottetown Mall into what is now the Metropolitan. A little farther south, SouthPark Mall remains a thriving commercial center, and private sector investment is bringing significant redevelopment to the suburban area. And, to the east, the city used bond funds to purchase the old Eastland Mall site, with hopes for private redevelopment. After several years of planning and discussions, that story is still unfolding.

There is no right way. There is no simple formula for suburban redevelopment. Rather, there is a set of tools for communities to consider. With each new project—with each success and each failure—communities are learning how best to approach reshaping suburban spaces.