

ARTICLE

PROTECTING OLDER NEIGHBORHOODS THROUGH CONSERVATION DISTRICT PROGRAMS

By Rebecca Lubens and Julia Miller*

Increasingly, local jurisdictions are turning to conservation districts in an effort to address neighborhood development concerns—whether mansionization, the proliferation of vacant parcels and parking lots, disinvestment, or commercial encroachment. Through the use of a preservation-based design review process and/or special planning and zoning controls tailored to address specific development concerns, conservation districts offer an alternative mechanism for protecting older, residential neighborhoods that may not qualify for historic district status. In this article, Rebecca Lubens and Julia Miller examine the use of conservation districts as a tool for neighborhood preservation. In the context of explaining what neighborhood conservation districts are and how they work, the co-authors identify numerous programs around the country that could serve as models for developing a conservation district within your own community.

—Ed.

A “Tudor Rebellion” has been raging in the Dallas M Streets neighborhood, known for its Tudor-style homes and convenient, central-city location. East Dallas residents want to protect their 1920s vintage architecture and Vickery Place residents don’t want to lose any more bungalows. By one newspaper account, “it is a nasty affair, pitting yuppie against yuppie over a subject yuppies care deeply about: aesthetics.”¹ That neighborhoods all over the country feature similar land-use battles is

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¹ Rose Farley, *Trouble in the House of Tudor*, DALLAS OBSERVER, July 25, 2002.

nothing new—the same phenomenon is described in New Jersey as an invasion of “Bigfoots,” in Boston as “mansionization” and in Los Gatos, California as an onslaught of “pink palaces.”² What has changed is the strategy of neighbors fighting to retain the character and integrity of their neighborhoods. Turning to “neighborhood conservation districts,”³ a relatively new zoning tool for preserving areas with a set of less restrictive or more narrowly-enforced regulations than historic district legislation, these groups are finding some success in addressing neighborhood preservation issues.

A. The Dallas, Texas Experience

Residents of Greenland Hills, a neighborhood located in the western portion of the city’s M Streets⁴ with a significant collection of 1920s Tudors, are making use of the Dallas’ Conservation District Ordinance⁵ to discourage demolition of its existing houses and limit new construction to certain architectural types. After a two-year planning process, the neighborhood obtained conservation district status on November 13, 2002.

Angela Hunt, a Greenland Hills resident, who served as the rallying force and major organizer for the M Streets Conservation District, says that the neighborhood is thrilled about the city’s action. Knowing that the conservation district is in place has provided residents with tremendous “peace of mind.” While the pace of new construction has not slowed down, she explained that homeowners are now assured that any new houses constructed in the area will be compatible with the neighborhood’s Tudor character.⁶

The consultation and consensus building that must take place in Dallas before the city will approve a neighborhood’s conceptual plan and design guidelines and ultimately designate an area such as Greenland Hills as a conservation district is significant. Before the process of drafting the plan is even considered, the city’s planning department must agree to conduct a feasibility study, which generally requires a strong showing of initial support by property owners in the neighborhood. A group of persons who collectively own more than 50 percent of the land and 50 percent of the buildings must initiate the process, according to the ordinance.⁷ In practice, a su-

²Adrian Scott Fine and Jim Lindberg, *Protecting America’s Historic Neighborhoods: Taming the Teardown Trend*, PRESERVATION BOOKS (National Trust for Historic Preservation 2002), p. 2.

³Neighborhood conservation districts are sometimes called “urban conservation districts” or “residential conservation districts.”

⁴The street names in this area begin with the letter “M.”

⁵Dallas, Tex., Dev. Code § 51A-4.505. Conservation districts are established “to provide a means of conserving an area’s distinctive atmosphere or character by protecting or enhancing its significant architectural or cultural attributes.” *Id.* § 51A-4.505(b).

⁶Telephone interview with Angela Hunt, community organizer (June 3, 2003).

⁷Dallas, Tex., Dev. Code § 51A-4.505(d)(1).

permajority has been required to persuade the planning department to make a commitment to the designation process, says Hunt.

In Dallas, once the planning department gives a neighborhood group the green light, the group may file a "CD feasibility study" application with the Director of the City Plan Commission.⁸ The purpose behind the CD feasibility study is to assess an area's eligibility for CD (Conservation District) classification. The director is required to make a determination of eligibility, based on several requirements that include the following:

- The area must contain at least one blockface (defined as "all of the lots on one side of the street");
- The area must be either "stable" or "stabilizing" (expected to become stable or remain substantially the same over the next 20 years with continued reinvestment, maintenance, or remodeling of the property and all changes are expected to be compatible with the surrounding environment);
- The area must contain significant architectural or cultural attributes (defined correspondingly as "those physical features of buildings and structures that are generally identified and described as being important products of human thought and action characteristic of a population or community," and "those physical features of an area that, either independently or by virtue of their interrelationship, are generally identified and described as being important products of human thought and action characteristic of a population or community").
- The area must have a distinctive atmosphere or character (defined as "all those physical features of an area that, either independently or by virtue of their interrelationship, are generally identified and described as being important products of human thought and action characteristic of a population or community"), which can be conserved by protecting or enhancing its architectural or cultural attributes.⁹

If the director finds that an area is eligible for designation as a conservation district, he or she will direct the planning office to prepare a conceptual plan.¹⁰ During the planning process, neighborhood property owners are given three opportunities to object to the designation—first, at a public meeting scheduled by the city plan commission for the purpose of informing prop-

⁸ *Id.* § 51A-4.505(d)(2).

⁹ *Id.* § 51A-4.505(e)(2)(a-d).

¹⁰ *Id.* § 51A-4.505(e)(6).

erty owners in the proposed district of the nature of the pending request;¹¹ next, at a public hearing before the commission to receive public comment on the conceptual plan;¹² and finally, at a public hearing held by the city council before it makes a decision regarding the plan.¹³

The actual designation ordinance is prepared only after the city council approves the conceptual plan. The ordinance must be based on the plan, as well as on staff recommendations and reports, and public input.¹⁴ The ordinance must also contain regulations that address a list of specific items. These include "permitted uses, heights of buildings and structures, lot size, floor area ratio, density, setbacks, off-street parking and loading, environmental performance, signs, landscaping, and nonconforming uses and structures."¹⁵ It may also contain, at the discretion of the city council, any regulations, special exceptions, or procedures that are "necessary to conserve the distinctive atmosphere or character of the area, or to minimize potential adverse impacts which could result from creation of the district."¹⁶

Final adoption of the ordinance is accomplished by an affirmative vote of a majority of the city council members present unless: either (a) the plan commission recommends against adoption; or (2) a written protest has been signed by the owners of 20 percent or more of either the land within the proposed district or within 200 feet of the proposed boundaries. Then, a favorable vote is required by three-fourths of the city council members.¹⁷

Planning department officials told Angela Hunt the whole process would take five years. However, Hunt decided to go in and get the job done, and was grateful that her neighborhood was up for the challenge. Armed with digital cameras, a brigade of neighborhood volunteers photographed nearly all of the 917 homes in the proposed conservation district and compiled an inventory of the architectural styles in the neighborhood. These were organized in a data base by Hunt's husband for a web site that the neighborhood maintains for their "Save-the-M-Streets" campaign.¹⁸ The commercial litigation law firm where Hunt works picked up the tab for the printing of 15 rounds of multi-page fliers distributed to the nearly 1,000 homes in the proposed district, and one resident underwrote the \$500 cost of

¹¹ *Id.* § 51A-4.505(f)(1).

¹² *Id.* § 51A-4.505(f)(2).

¹³ *Id.* § 51A-4.505(f)(4).

¹⁴ *Id.* § 51A-4.505(g)(2). Although the ordinance allows both the commission and the city council to hold hearings on the conceptual plan and the proposed ordinance on the same day, *id.* § 51AA-4.505(g)(3), it is unlikely that this would happen in practice because of the time commitment involved.

¹⁵ *Id.* § 51A-4.505(g)(2).

¹⁶ *Id.*

¹⁷ *Id.* § 51A-4.505(g)(6).

¹⁸ Telephone interview with Angela Hunt, community organizer (August 9, 2002). See <http://www.mstreetscd.org/index.html>.

signs, all to promote the conservation district to area property owners, who would cast the initial votes to determine whether the planning department would become involved in the first place. It was clearly an investment that paid off.

The M Streets Conservation District Ordinance¹⁹ is detailed in scope, requiring compliance with both development and architectural standards and the conservation of its tree-lined parkway. The development standards, among other things, place height limits at 30 feet, and require that the front façade of each main structure has the appearance of a one-and-a-half-story structure. The architectural standards address issues such as architectural style, building materials, form, and size. New houses must be constructed in the Tudor style, in a manner that is compatible with the area's existing Tudor homes. In addition, demolition of the neighborhood's 1920s houses designed in the High Tudor style is prohibited. While the Tudor style is most prevalent, the ordinance recognizes the existence of other styles and establishes architectural standards for remodelings and reconstruction under those styles.

B. What are Neighborhood Conservation Districts?

Neighborhood conservation districts are areas located in residential neighborhoods with a distinct physical character that have preservation or conservation as the primary goal. Although these neighborhoods tend not to merit designation as a historic district, they warrant special land use attention due to their distinctive character and importance as viable, contributing areas to the community at large. Accomplished through the adoption of a zoning overlay or independent zoning district, neighborhood conservation districts provide a means to protect character-defining streetscapes in older areas threatened by new development or governmental policies that undermine rather than encourage neighborhood preservation. Specific objectives often include protecting a viable neighborhood against outside development pressures, whether mansionization, as in Dallas, waterfront condominiums, as in Annapolis, or demand for parking lots and commercial encroachment, as in Boise. Conservation district programs have been established to stabilize existing neighborhoods, as in Nashville, to increase or preserve the supply of affordable housing, as in Phoenix, and to revitalize close-in neighborhoods, as in Davis, California.

While individual conservation district programs vary from jurisdiction to jurisdiction, and a number of programs, indeed, constitute a hybrid of these two approaches, conservation district programs generally can be placed into one of two categories: the "historic preservation model" or the "neighborhood planning model."²⁰ Both types of programs seek to preserve

¹⁹ The M Street Conservation District Ordinance is located on the "Save the M Streets" website. See n.16 above. It is also available from the city's website at http://www.dallas-cityhall.com/dallas/eng/html/conservation_ordinances.html.

²⁰ Deborah Marquis Kelly and Jennifer Goodman, "Conservation Districts as an Alternative

an area's special character. The difference lies in the methods and kinds of protection available and the level of neighborhood involvement.

The "historic preservation model" focuses on preserving the physical attributes of a neighborhood by addressing changes that could adversely affect its architectural character. Neighborhoods protected under this approach often include a high concentration of older structures that share a common architectural style or building form such as rowhouses, or date from a particular period of time. Sometimes a neighborhood, although historic, may not be eligible for designation as a historic district because of incompatible alterations. Other times, the houses may not be architecturally significant enough or be too new to merit historic designation. In yet other situations, conservation districting is favored over historic designation because residential support for stricter controls is lacking.

Physical changes to a neighborhood, such as the construction of additions, new houses, and demolition, are generally subject to review and approval by a historic preservation commission or a specially-appointed neighborhood commission, which may include members of a historic preservation commission. However, in contrast to historic preservation laws, alterations to existing structures tend to be subject to more lenient standards of review or, in some cases, excused from review altogether. New construction projects, including additions, are frequently evaluated under standards that emphasize compatible development in terms of size or massing rather than specific architectural features.²¹

The "neighborhood planning model" also focuses on preserving a neighborhood's unique character. However, conservation goals are accomplished by examining matters typically addressed through zoning and neighborhood planning laws, such as lot coverage, setback requirements, and permitted uses, as well as, or in lieu of, design. Through the development of individual plans, neighborhoods can develop and adopt restrictions that are consonant with the level of review and scope of protection desired by a majority of the residents. Neighborhood plans are typically adopted by consensus and proposed actions are reviewed by a planning or zoning commission or a specially-appointed neighborhood commission. In some cases, the impetus for neighborhood conservation may come from a community's comprehensive plan.

1. Historic Preservation Model

Often found in jurisdictions that have a historic district program already

to Historic Districts: Viable Planning Tools for Maintaining the Character of Older Neighborhoods," 7 FORUM JOURNAL 5 (NTHP Sept./Oct. 1993).

²¹ Davis, California's "Traditional Neighborhood Guidelines," for example, are applied in three residential neighborhoods located outside the city's core. The guidelines address issues such as how to locate a new house on a development site, how the proposed house or addition relates to the streetscape, and basic mass, form, and materials used. The guidelines are posted on the web at <http://www.city.davis.ca.us/pb/design/>.

in place, neighborhood conservation districts based on the historic preservation model are generally applied to areas that have architectural and/or historical merit but cannot qualify for historic district status or cannot garner sufficient support for historic preservation controls. For example, an area may not be old enough to qualify as historic; the houses in the area, although representative of a particular era of development, may not be sufficiently distinctive or noteworthy to merit full protection; or the area may have been compromised through incompatible development. Communities with conservation district programs falling under this category include a number of cities in Tennessee such as Memphis and Nashville, and areas in Massachusetts such as Boston and Cambridge.

In Nashville, residents of qualifying neighborhoods are able to choose whether to use conservation areas or historic districts. Although the criteria for designation as a historic or conservation district is the same, historic districts are subject to stricter standards of review. Officials from the Metropolitan Historical Zoning Commission ("MHZC") in Nashville found that conservation districts are "best suited for areas where buildings are fairly well-maintained, where little rehab work is needed but where demolition and incompatible new construction are threats."²² On the other hand, "[i]f an area's buildings need work, historic zoning is more apt to be effective. Remuddlings, horrendous remuddlings, can occur in CZ districts."²³

The impetus for Nashville's dual districting program arose in response to concerns raised by residents in the Lockeland Springs area of East Nashville, adjacent to established historic districts to the west and south that had slightly older and more high-end housing stock. The councilman who served Lockeland Springs came to the MHZC with the neighborhood's desire to respond to a spate of teardowns in the late 1980s, but felt there would not be support for the more restrictive historic zoning. Since the neighborhood's primary problems involved demolitions and new construction, the councilman sought a compromise solution that would take care of the big problems and be more likely to garner adequate support from homeowners. Although some questioned conservation zoning because it seemed to be a less "pure" treatment of historic architecture, the ordinance secured an easy local passage with the support of the Metropolitan Planning Commission.²⁴ According to Blythe Semmer, a member of the MHZC staff, the less restrictive nature of conservation zoning was considered a point in its favor as the measure made its way through council.²⁵

In contrast to Nashville, a distinction is made between the criteria for

²² Letter of January 1992 from Shane Dennison, former Executive Director of the Nashville Metropolitan Historic Zoning Comm'n to Constance Beaumont, National Trust for Historic Preservation.

²³ *Id.*

²⁴ Telephone interview with Blythe Semmer, Commission Staff, Metropolitan Nashville & Davidson County Historic Zoning Commission (August 8, 2002).

²⁵ *Id.*

designation as historic districts and conservation districts in Cambridge, Massachusetts. Historic districts are used to protect the best of the city's "significant historic and architectural resources,"²⁶ while neighborhood conservation districts are used to preserve places and structures that together "constitute a distinctive neighborhood or ... have a distinctive character in terms of ... exterior features."²⁷ In practice, however, the distinction between the two approaches may be without a difference. It is very difficult to draw the line between whether an area should be designated as a historic or conservation district and ultimately, even in Cambridge, the choice can depend upon what a neighborhood will support.

In Cambridge, construction, demolitions, and alterations to exterior architectural features require the issuance of a certificate of appropriateness in both historic districts and neighborhood conservation districts,²⁸ and proposed work under both types of designation is bound by the same general standard of "incongruity."²⁹ However, the focus of the restrictions may vary according to the concerns of the neighborhood being regulated. Guidelines for the Marsh Neighborhood Conservation District, for example, respond specifically to neighborhood desires to conserve the modest scale of its vernacular architecture while recognizing the need for change. They address concerns specific to the neighborhood such as high fences, the impact of alterations on neighboring properties that are in close proximity, and the need to preserve the area's existing streetscapes and views.³⁰

In all, Cambridge has established two historic districts and five neighborhood conservation districts under its preservation program. The historic districts include the Fort Washington Historic District, a small district that "protects the remains of a Revolutionary War earthwork fortifica-

²⁶ See Cambridge Historical Commission Review Guidelines at <http://www.ci.cambridge.ma.us/~Historic/hdguidelines.html>.

²⁷ Cambridge, Mass., Mun. Code § 2.78.180(A).

²⁸ Massachusetts Historic Districts Act, Mass. Gen. Code § 40C; Cambridge Mun. Code § 2.78.190.

²⁹ See Cambridge, Mass. Mun. Code § 2.78.220. This standard is derived from the Massachusetts Historic Districts Act, Mass. Gen. Code § 40C(7). The commission is authorized to take into consideration "the historic and architectural value and significance of the site or structure, the general design, arrangement, texture and material of the features involved, and the relation of such features to similar features of structures in the surrounding area." In reviewing applications for new construction or additions to existing structures, the commission must "consider the appropriateness of the size and shape of the structure both in relation to the land area upon which the structure is situated and to structures in the vicinity." The commission is also authorized to "impose dimensional and setback requirements in addition to those required" under the city's zoning ordinance. In conservation districts, the "commission" may be the Cambridge Historical Commission or a newly appointed Neighborhood Conservation District Commission. See Cambridge Mun. Code § 2.79.160.

³⁰ The Marsh Neighborhood Conservation District Guidelines are also posted on the Cambridge Historical Commission's website at <http://www.ci.cambridge.ma.us>.

tion erected by soldiers of the Continental Army under the direction of George Washington,"³¹ and the Old Cambridge Historic District, which includes properties dating before the Revolutionary War up through the 19th century. The conservation districts include the Avon Hill Neighborhood Conservation District, the Half Crown Neighborhood Conservation District, the Harvard Square Conservation District (comprised of mixed-use buildings), the Marsh Neighborhood Conservation District, and the Mid-Cambridge Neighborhood Conservation District.³²

2. Neighborhood Planning Model

Conservation district programs based on the neighborhood planning model have gained tremendous popularity in recent years. By regulating new construction or even serving as a catalyst for new construction, this approach provides a neighborhood-level, land-use tool that can preserve neighborhood character, retain affordable housing, and protect an area from the potentially harmful or expulsive effects of more intensive or inappropriate development. These programs rely heavily on planning and zoning criteria and insist on a high level of neighborhood involvement and support.

Boise, Idaho recently turned to conservation districts as a solution for protecting its Near North End, a residential neighborhood sandwiched between the city's central business district and a low-density, historic residential neighborhood to the north. Residents were concerned by the increasing number of conversions to non-residential uses in the area, stimulated by high office rents in the nearby downtown, and noisy street conditions in the district. Equally troubling were a number of demolitions by historic churches. Hal Simmons of the Boise Planning Department explained that churches had been steadily purchasing adjacent properties and then demolishing the residential structures to create new parking lots in order to meet the increased parking needs of growing memberships.³³ The effect of this pattern was to reduce the residential occupancy in the area and create unattractive parking lots where there used to be houses (or houses boarded up in anticipation of demolition).

The encroachment of downtown uses and the decreasing night-time presence in the neighborhood moved a small group of residents to action.³⁴ After a contentious beginning and a series of compromises, including reducing the size of the area protected by half and removing the preservation commission from the review process, the neighborhood obtained conservation district status in 2001. In Boise, conservation districts are established

³¹ See "Historic Districts and Neighborhood Conservation Districts," posted at <http://www.ci.cambridge.ma.us/~Historic/districts.html>.

³² *Id.*

³³ Telephone interview with Hal Simmons, Boise Planning and Development Services (August 6, 2002).

³⁴ *Id.*

as an overlay zone by the city council upon recommendation by the city's Planning and Zoning Commission, with input from the Historic Preservation Commission.³⁵

Boise's "Near North End Conservation District" ordinance encourages existing residential uses in the area while protecting historical and architectural character through adaptive reuse.³⁶ Specifically, the ordinance states—

The intent of the Near North End Conservation District (CD) shall be to encourage continued residential uses; protect the historical and architectural character of the neighborhood using adaptive reuse methods; encourage redevelopment and/or renovation of established historic institutional uses; allow for adaptive reuse of existing structures for multi-family residential and office uses; minimize demolition of structures for parking lots or new office developments; and to maintain the Near North End as a transitional area between the commercial intensity of downtown and the predominant single-family residential neighborhoods of the north end.³⁷

In addition to the specific uses prohibited by the area's underlying R-3 zoning designation, the conservation district ordinance expressly bans: new off-site parking lots; on-site surface parking lots larger than 2,500 square feet, unless incorporated as a part of a new residential use or as part of a renovation or redevelopment project involving a historic institutional use that is significant to the history, architecture, or culture of the district, such as a school or church; and new office construction on lots larger than 2,500 square feet, unless provided as part of an adaptive reuse project.³⁸ The new ordinance likewise prohibits new off-site surface parking lots in areas in the Near North End zoned L-O.

The Boise ordinance forbids the construction of additions to buildings that are adaptively reused beyond 50 percent of the square footage as of the date on which the ordinance was adopted.³⁹ "Adaptive reuse" is defined as "[t]he modification of an existing building (most typically a single family dwelling) for use as either an office or a multi-family dwelling unit or a historic institutional use, while maintaining the architectural integrity of the original structure; or the conservation of any such structure back to its original use as a single family dwelling."⁴⁰ The addition must also be "in keeping with the architecture of the existing building," and the site must be "large enough to accommodate the required number of off-street spaces" (also set forth in this ordinance), without a variance for setbacks and/or

³⁵ Boise, Id., Mun. Code § 11-19-03.

³⁶ *Id.* § 11-20.

³⁷ *Id.* § 11-20.01.

³⁸ *Id.* § 11-20-03.01.

³⁹ *Id.* § 11-20-05.

⁴⁰ *Id.* § 11-20-02.

landscape.⁴¹

Over time, the distinctions between preservation and planning-based conservation districts are becoming blurred as communities look for and develop solutions that respond to the specific needs of individual neighborhoods. Conservation district ordinances adopted in Dallas, discussed above, and other communities such as Boulder, Colorado, for example, have incorporated both development restrictions and design controls to remove underlying pressures for incompatible development and, at the same time, encourage contextually-appropriate projects. As in the neighborhood planning models, high emphasis is placed on neighborhood participation in both preservation-based and community-based programs. Conservation district programs generally must be initiated by residents within a neighborhood, and a majority of property owners must support the designation. With the assistance of either planning or preservation boards, neighborhoods develop their own design guidelines and establish a neighborhood review board comprised of, or with representation from, members of the community.

Indianapolis has embraced this hybrid approach. Although the city's neighborhood conservation districts are administered by the Indianapolis Historic Preservation Commission, established districts in the area rely on a full range of land use tools to achieve the city's preservation objectives. For example, the conservation plan for the Ransom Place Conservation District, which seeks to protect the vestiges of a once vibrant near-Westside African-American neighborhood, draws from both conservation and land use measures to ensure the area's preservation.⁴² In addition to the use of a design review process to preserve the area's existing historic resources, specific measures include modifications of existing zoning laws and policies governing use variances to support the continued use of single and double-family residences and supporting institutional uses, with a concentration of mixed-commercial and residential properties on a nearby commercial street; the encouragement of compatible infill development on vacant lots; public infrastructure improvements and the use of amenities such as signage to denote the district; and traffic and parking concerns.

C. The Neighborhood Conservation District Ordinance

The primary mechanism for establishing conservation districts is the "neighborhood conservation district ordinance." As with historic preservation ordinances, authority to enact conservation district laws comes from power delegated to local communities through state enabling law or home rule authority. In some cases, the authority to establish conservation district programs is derived from historic preservation enabling laws.⁴³ In other

⁴¹ *Id.* § 11-20-05.

⁴² A copy of the Ransom Street plan is posted on the internet at <http://www.indygov.org/histpres/districts/ransom.htm>.

⁴³ See, e.g., Nashville, Tennessee, which establishes conservation districts under its historic preservation authority, T.C.A. § 13-7-401 to 407. In Texas, the authority to establish con-

situations, authority may come from an express delegation of authority to enact conservation districts,⁴⁴ home rule authority⁴⁵ or implied through a broad grant of zoning authority.⁴⁶

Depending upon the particular circumstances within a community, a conservation district may be established as an overlay or a stand-alone zoning district. An overlay places restrictions and/or conditions on development in a specific geographic area in addition to those already in place by the underlying zoning classification. Stand-alone zoning districts combine the underlying zoning restrictions with the specific goals of an overlay into a single district. Both types of districts can address elements such as height, bulk, design, historic preservation, traffic and transportation needs, tree protection, and other factors necessary to meet the concerns and desires of a particular neighborhood.

Authority to adopt neighborhood conservation districts is generally accomplished through the adoption of a local enabling ordinance. Individual conservation districts are subsequently established in accordance with the procedures and standards contained in the enabling ordinance.

Boulder County Land Use Code

Section 4-118 Neighborhood Conservation Overlay District

(B) General Provisions

(1) Each Neighborhood Conservation Overlay District must be established by a separate resolution that shall include a map defining the overlay boundaries, and the Neighborhood Conservation Plan (as specified in this Article 4-118(F)), and shall become a part of the Boulder County Land Use Code.

servation districts is derived from the state legislation granting authority "to regulate and restrict the construction, alteration, reconstruction, or razing of buildings and other structures in designated places and areas of historic, cultural, or architectural importance and significance." See Tex. Local Gov't Code § 211.003(b). In Indianapolis, authority to establish a conservation district program is derived from the state's enabling authority for Marion County, which, among other things, authorizes the city to exempt categories of work. See Ind. Code § 36-7-11.1-7.

⁴⁴ See, e.g., Connecticut Villages Act, Conn. Gen. Stat. § 8-2J (providing authority to establish village districts "in areas of distinctive character, landscape or historic value that are specifically identified in the plan of conservation and development of the municipality"). For further information, see Robert J. Sitowski, "The Village Districts Act: What Does It Mean for Connecticut's Historic Districts?" 18 PLR 1169 (1999).

⁴⁵ Cambridge, Mass. relied on its home rule authority to establish a neighborhood conservation district program. See Cambridge, Mass., Mun. Code § 2.78.140.

⁴⁶ See, e.g., N.C. Gen. Stat. § 160A-400, which provides general authority to establish zoning overlay districts, and R.I. Gen. Laws § 45-24-30, which authorizes the use of zoning to protect "the natural, historic, cultural, and scenic character of the city or town or areas in the municipality" and provides for "the use of innovative development regulations and techniques."

(2) An approved Neighborhood Conservation Overlay District does not replace the underlying zoning of the area, which remains as the source of minimum, applicable restrictions on structures, uses, and development. Any approved Neighborhood Conservation Overlay District may further appropriately limit, but may not expand, the uses and development allowed in the zoning districts in which the subject parcels are mapped.⁴⁷

Set forth below is a detailed discussion of the individual components of the local enabling ordinance for neighborhood conservation districts. An ordinance may include provisions governing: (1) the underlying purpose of the ordinance; (2) the administrative review body; (3) designation of conservation districts; (4) actions subject to review; (5) conservation standards; (6) the review process; (7) enforcement; and (8) the appeals process.

1. Purpose Statement

This provision, located at the beginning of a conservation district ordinance, identifies the public purposes being served. For example, it may indicate that an ordinance was enacted to protect neighborhood character, guide future development, stabilize property values, or encourage neighborhood rehabilitation. Often expressed in list form, the purpose statement can be useful for understanding the underlying objectives of the conservation district ordinance. It can also provide guidance on the interpretation of individual provisions when the language in the ordinance is ambiguous or its meaning disputed.

The Davis, California zoning ordinance provides a typical list of purposes for enacting conservation district laws:

40.13A.010 Purpose

The purposes of the Downtown and Traditional Residential Neighborhood Overlay District and Design Guidelines are as follow:

Conserve the traditional neighborhood character, fabric and setting while guiding future development, reuse, and reinvestment;

Discourage the demolition of structures consistent with the district's historic character by providing incentives for reuse of non-designated contributing structures;

Plan for new commercial and residential infill construction that is compatible and complementary to the character of existing neighborhood areas within the district;

Foster reinvestment and economic development in the core that is consistent with historic conservation; and

⁴⁷ Boulder County, Colo., Land Use Code § 4-118(B).

Provide guidelines to clarify the community's expectations for the type and quality of development within the district.⁴⁸

Boulder, Colorado's Neighborhood Conservation District program places particular emphasis on retaining and fostering community character in individual neighborhoods. The city's overlay ordinance⁴⁹ states that the ordinance was enacted:

- (1) To preserve and protect the character or valued features of established neighborhoods.
- (2) To recognize the diversity of issues and character in individual neighborhoods in the unincorporated parts of Boulder County.
- (3) To reduce conflicts between new construction and existing development in established neighborhoods.
- (4) To provide knowledge and reliance about the parameters of neighborhood character.
- (5) To allow neighborhoods to work together with the County to formulate a plan that defines their community of common interest and that fosters a defined community character consistent with County zoning, the Land Use Code, and the Comprehensive Plan.
- (6) To complement the County's Site Plan Review process in neighborhoods that have defined their community character pursuant to these regulations.⁵⁰

As explained by James Burrus in the Boulder County Newsletter, Boulder's Neighborhood Conservation Overlay District Ordinance was adopted in response to requests for legislation that would help preserve the character of an area or important view corridors.

The purpose of such an overlay district would be to guide future development in the area and preserve and protect the character and valued features by spelling out what those are and how they should be protected. For example, the overlay district could protect identified view corridors or specifically limit the height of future homes built in the neighborhood or additions to existing homes.⁵¹

In other communities, particularly those that follow the "neighborhood

⁴⁸ Davis, Cal., Mun. Code § 40.13A.010.

⁴⁹ Boulder County, Colo., Land Use Code § 4-118 *et seq.*

⁵⁰ *Id.* § 4-118(A).

⁵¹ James Burrus, *Boulder County Newsletter* (May 6, 2002).

planning model," ordinances have been adopted to revitalize existing neighborhoods. In Phoenix, for example, the city's "special planning district" ordinance enables neighborhoods to tailor the zoning ordinance to fit particular needs through the initiation and implementation of case-specific programs for the conservation and revitalization of neighborhoods. The purpose statement in the enabling legislation for this program reflects this intent:

A. Purpose

The Special Planning District is intended as a means for property owners to initiate and implement programs for the conservation or revitalization of neighborhoods. The district takes effect through the adoption of a precise plan and set of regulations, called the special district plan, specifically intended, in each case, to facilitate maintenance and upgrading of the neighborhood, to encourage development of vacant or under-used lots, to ameliorate the adverse effects of incompatible mixtures of uses, and to encourage neighborhood residents and owners to take positive steps for the improvement and orderly development of the neighborhood.⁵²

2. Administrative Review Body

Conservation districts may be administered by a historic preservation commission, a zoning or planning commission, or a specially-designated neighborhood commission. Often the decision of what entity should be charged with oversight of a neighborhood conservation district depends upon the underlying purpose of the law and the legal authority upon which the conservation district program is based.⁵³ In Nashville, for example, where conservation districts are offered as an alternative to the more stringent historic district controls, authority over conservation districts remains in the hands of the Metropolitan Historic Zoning Commission (MHZC). Knoxville similarly requires that building permit applicants in Neighborhood Conservation Overlay Districts get permission from the MHZC before changes can be made to the property.⁵⁴

In Cambridge, Massachusetts, the city may appoint a neighborhood conservation district commission to exercise authority over a conservation district. Under the city's ordinance, the City Manager is directed to "appoint a neighborhood conservation district commission to consist of five members and three alternates."⁵⁵ The members must include:

⁵² Phoenix, Ariz., Zoning Ordinance § 402(A)(1).

⁵³ An additional consideration should be the specific expertise of the administrative body and its relevance to the concerns identified by the neighborhood community seeking protection.

⁵⁴ Knoxville, Tenn., Zoning Ordinance, § 22.F(2)(a)).

⁵⁵ Cambridge, Mass., Mun. Ordinance § 2.278.160(A). The ordinance specifically provides that commission members must reflect "the diverse viewpoints expressed in the creation of the district." *Id.* § 2.78.160(B).

three residents of the neighborhood, not less than two of whom shall be homeowners; one neighborhood property owner (who may or may not be a neighborhood homeowner); and one member or alternate of the Cambridge Historical Commission. The three alternates shall all be neighborhood property owners. The neighborhood conservation district commission shall act solely in the exercise of those functions described in this article which are applicable to the district under its administration.⁵⁶

In Phoenix, by comparison, its special planning district program is administered by the planning department.⁵⁷

Designation as a conservation district in Boise is accomplished in coordination with the city's Planning & Zoning Commission. However, upon designation, proposals for new development or redevelopment on properties or structures within a district "may be reviewed by the Planning & Zoning Commission, the Historic Preservation Commission, Design Review Committee, or other board or commission as may be appropriate and will be designated within the specific Conservation District Ordinance."⁵⁸

3. The Designation Process

Neighborhood conservation districts are generally established with the adoption of a designation ordinance that sets forth the qualifications and objectives of the district, the official boundaries, any application development or design restrictions, and other pertinent information. Relevant considerations include the criteria for designation, the application process, and development of the neighborhood plan. Each of these items is discussed below.

a. Criteria for Designation

As with historic preservation ordinances, conservation district ordinances set forth the criteria for determining whether a particular neighborhood should be designated. Not all neighborhoods are eligible for conservation district status. Rather, the criteria for designation generally insist that the neighborhood under consideration have a unique or special character. The neighborhood must be recognizable as a distinct area with shared attributes, yet distinguishable from other parts of the city or town. Factors such as architectural and historic integrity, although not essential to designation, often become important in defining neighborhood character. For example, the Phelps Grove Neighborhood Urban Conservation District in Springfield, Missouri contains one of the city's largest collections of turn-of-

⁵⁶ *Id.* § 2.78.160(A).

⁵⁷ Phoenix, Ariz., Zoning Ordinance § 402.

⁵⁸ Boise, Id., Mun. Code § 11-19-03(c).

the-century bungalow houses.⁵⁹ The Aberdeen Architectural Conservation District in Boston, Massachusetts, a late nineteenth-and early twentieth-century "romantic" streetcar suburb of single-family-homes and apartment buildings, is distinguished by its winding streets, hilly topography, and varied architecture.⁶⁰

The criteria for designation in Boise emphasize the importance of having a "distinctive" or "unique" historical or physical character.

Conservation districts shall be designated by ordinance and in accordance with the following requirements:

A. Neighborhoods or areas selected for consideration for a Conservation District designation shall meet one of the following criteria:

1. Has a distinctive character with identifiable attributes, embodied in architecture, use, urban design or history that make it a unique and integral part of the city's identity.
2. Has a recognized neighborhood identity and a definable physical character that may have a high artistic value or may have a relationship to urban centers or historic districts which makes the area's conservation essential to the city's history or function.⁶¹

Dallas requires a distinct architectural character and insists that the area be "stable" or "stabilizing."

(2) The director's determination of eligibility must be based on a consideration of the standards in this subsection. An area is not eligible for CD classification unless it satisfies all of the following criteria:

- (A) The area must contain at least one blockface.
- (B) The area must be either "stable" or "stabilizing" as those terms are defined in this section.
- (C) The area must contain significant architectural or cultural attributes as those terms are defined in this section.
- (D) The area must have a distinctive atmosphere or character which can be conserved by protecting or enhancing its architectural or cultural attrib-

⁵⁹ The neighborhood, located near Southwest Missouri State University, was established as an urban conservation district in 1997 as a means to address recurring problems such as the proliferation of student rental housing, increased traffic and noise, and parking shortages. The Phelps Neighborhood Plan is posted on the internet at: <http://www.phelpsneighborhood.org/PGPLAN.pdf>.

⁶⁰ The Aberdeen Architectural Conservation District was established in February 2002. The City of Boston's study report is posted on the internet at http://www.cityofboston.gov/Environment/pdfs/study_report.pdf.

⁶¹ Boise, Id., Mun. Code § 11-19-02(A).

utes.⁶²

Chapel Hill emphasizes the need for a distinctive area with a cohesive setting, character or associations:

- (4) The area must possess one or more of the following distinctive features that create a cohesive identifiable setting, character or association;
 - A. scale, size, type of construction, or distinctive building materials;
 - B. lot layouts, setbacks, street layouts, alleys or sidewalks;
 - C. special natural or streetscape characteristics, such as creek beds, parks, gardens or street landscaping;
 - D. land use patterns, including mixed or unique uses or activities; or
 - E. abuts or links designated historic landmarks and/or districts.⁶³

b. The Application Process

The process for obtaining neighborhood conservation district status varies by jurisdiction, depending, in part, on the underlying objectives of the program and the governmental/administrative structure already in place. In some communities, where a conservation district program operates as an offshoot of a preservation program, the application process tends to mimic or be substantially similar to that used for historic districting. Typically, the application process is administered by the preservation commission, which in turn, will nominate or recommend a neighborhood for designation to the city or town council. In other communities, especially those with planning or zoning-based conservation district programs, the application process may be administered by the planning commission. Indeed, the development of neighborhood conservation district programs sometimes stem from specific requirements in a comprehensive plan.⁶⁴ The actual designation is accomplished through the adoption of an ordinance. Set forth below is discussion on some of the key components of the application process.

Initiating the Designation Process. Step-by-step procedures for initiating designation as a neighborhood conservation district are generally set forth in the conservation district ordinance. In Cambridge, Massachusetts, which operates a historic preservation-based conservation district program, designation may be initiated by the Cambridge Historical Commission⁶⁵ or

⁶² Dallas, Tex., Dev. Code § 51A-4.505(e)(2).

⁶³ Chapel Hill, N.C., Land Use Management Ordinance art. 3.6.5(a)(4).

⁶⁴ See, e.g., Raleigh's Comprehensive Plan, which emphasizes the conservation of sound, older neighborhoods. See <http://www.raleigh-nc.org/planning/CP/Neighborhoods.htm>.

⁶⁵ Cambridge, Mass., Mun. Code § 2.78.180(A).

by a petition to the commission signed by ten registered voters.⁶⁶ However, the report accompanying the commission's recommendation to the city council to designate a neighborhood conservation district must be prepared by—

a study committee consisting of three members or alternates of the Historical Commission and four persons appointed by the City Manager, including at least one person who resides in the district under consideration, at least one person who owns property in the district under consideration, and one person who owns property or resides elsewhere in the City and has demonstrated knowledge and concern for conservation and enhancement of those exterior features of the City which are important to its distinctive character.⁶⁷

The designation report must explain the significance of the area and include a recommendation on the proposed boundaries for the district as well as general or specific standards and guidelines that would apply, in event of designation.⁶⁸

Neighborhood Participation. In contrast to historic preservation programs, most communities require that the process for initiating conservation district status include a significant level of neighborhood involvement. As an official from the Dallas planning department pointed out, neighborhood-initiated designation is in practice the only politically feasible route in residential areas, since ordinances like Dallas's are meant to be "tailor-made to the neighborhood and what it collectively wants to conserve."⁶⁹

Indeed, in Dallas, the designation process must be initiated by a group of persons who collectively own—

(A) more than 50 percent of the land, excluding streets and alleys, within the area of request; and

(B) more than 50 percent of the building sites within the area of request.⁷⁰

Similarly, the Boulder County Zoning Ordinance provides that—

The establishment of a Neighborhood Conservation Overlay District may be initiated by a group of 50% of the property owners within the proposed boundaries demonstrating interest in the Neighborhood Conservation Over-

⁶⁶ *Id.* § 2.78.180(D).

⁶⁷ *Id.* § 2.78.180(C).

⁶⁸ *Id.* § 2.78.180(A).

⁶⁹ Telephone interview with Jim Anderson, Historic Preservation Planner, Dallas Department of Planning and Development, Historic Preservation Section (August 7, 2002).

⁷⁰ Dallas, Tex., Dev. Code § 51A-4.505(d)(1).

lay District.”⁷¹

Taking consensus even further, Boulder requires that the petition be—

(i) affirmatively signed by at least 50% of the property owners of parcels within the proposed district, indicating those owners' support for the County to proceed with processing of the application, and (ii) signed by all of the other owners of parcels in the proposed district indicating whether the property owner is AGAINST, UNDECIDED, or HAS NO COMMENT on the application, except that if the signature of such an owner cannot be obtained, the applicant may substitute a signed affidavit stating that the applicant has attempted in good faith to obtain the signature of such owner but has been unable to do so.⁷²

Boulder also insists on the consent of at least 60 percent of the owners of record before a conservation district may be designated.⁷³

Research. The process for initiating designation as a conservation district involves some level of research. As noted in the introduction to this article, neighborhood groups interested in obtaining conservation district status in Dallas must submit a feasibility study. The study must include a statement of justification that identifies the basis for eligibility and explains why and how classification would be in the best interest of the city as a whole.⁷⁴

Property owners seeking designation in Boulder must include a statement of purpose that addresses what the proposed district wants to accomplish and why; a description of the neighborhood character and valued features to be protected in the neighborhood; and why the proposed boundaries make sense as a defined “neighborhood” (considering things like utility and service providers in the area, school attendance, transportation links). The application also must include a map that indicates the boundaries of the proposed district and identifies parcels, a description of the neighborhood (detailing land use, development and distinguishing characteristics of neighborhood), and a description of the history and evolution of the neighborhood.⁷⁵

c. Development of the Neighborhood Plan

⁷¹ Boulder County, Colo., Land Use Code § 4-118(E)(5). Indeed the ordinance expressly prohibits the Board of County Commissioners and the Planning Commission from initiating an application. *Id.*

⁷² *Id.* The ability to obtain the signature of every property owner is a daunting task that could, in effect, thwart the underlying objectives of the conservation district program.

⁷³ *Id.* § 4-118(H)(3).

⁷⁴ Dallas, Tex., Dev. Code § 51A-4.505(d).

⁷⁵ Boulder County, Colo., Land Use Code § 4-118(E).

The neighborhood plan often becomes the central component of the designation process, especially in conservation districts patterned after the neighborhood planning model. Tailored to respond to the specific concerns of the neighborhood, the plan sets forth the conservation standards that will be used to govern new projects in the area.

Because the neighborhood plan is generally adopted as part of the designation ordinance, it must be developed prior to designation. In Phoenix, for example, the city's planning board develops the plan, which in turn, is adopted, modified, or rejected by the city council.

Preparation of the special district plan

When so instructed by the City Council, the Planning Department shall prepare a special district plan in accord with direction from the citizens' committee which shall consist of a detailed plan of land uses and related regulations in substantial conformity with the Phoenix General Plan. The special district plan may:

- (1) Indicate proposed changes, if any, to permitted land uses within the Special Planning District. The plan may contain recommendations for which other administrative procedures are established, including but not limited to street closures or abandonments, improvement districts, rezoning, or special assessment districts. Implementation of such actions shall be through the normal procedures established for each.
- (2) Contain a schedule of proposed changes, if any, to density, coverage, height, and other requirements applicable to buildings or structures.
- (3) Contain specific regulations for the remodeling of existing buildings and structures, application of performance standards and application of site plan review procedures.
- (4) Contain proposals for social services to be furnished in the area and plans for capital improvements by all public agencies and utilities in the area.⁷⁶

The actual preparation of the plan or report is usually accomplished by the administrative body charged with overseeing the designation process. For example, as noted above, Phoenix places responsibility for developing the plan with its planning department, with oversight by the planning commission.⁷⁷ In Iowa City, the "conservation district report" is prepared by the historic preservation commission in consultation with district property owners and residents. A report must define the boundaries of the proposed Overlay Conservation District (OCD) Zone and include a study of the characteristics of the proposed zone, including architectural characteristics, elements of the streetscape, physical conditions of buildings, age and history

⁷⁶ Phoenix, Ariz., Zoning Ordinance § 402(A)(2)(c).

⁷⁷ *Id.*

of the buildings, and property ownership patterns.⁷⁸ In Austin, Texas, the sponsoring neighborhood organization, with assistance of the Director of the Neighborhood Planning and Zoning Department, prepares the neighborhood plan.⁷⁹

Staff members of the Boulder County Land Use Department Boulder draft the conservation plan, based on input from at least two neighborhood meetings.⁸⁰ Similarly, in Phoenix, the planning department prepares a special district plan in accordance with direction from the citizens' committee, "which shall consist of a detailed plan of land uses and related regulations in substantial conformity with the Phoenix General Plan."⁸¹

d. Public Participation

As noted above, a key aspect of neighborhood conservation district programs is mandatory public participation. The neighborhood plan is usually developed as part of the conservation district overlay designation process with direct input from the community through the establishment of an advisory board.

The process for establishing "special planning districts" in Phoenix is typical of many communities. The Phoenix ordinance "requires that a citizens' committee, open to all property owners and residents within the proposed district, be formed for the purpose of circulating petitions, designating the name of the proposed Special Planning District, working with city staff during preparation of the plan and conducting informational meetings within the area during preparation of the plan."⁸² Once a plan has been produced by the planning department and distributed to all the property owners and residents in the proposed district with the help of the citizens' committee, 70 percent of those responding must indicate support for the plan before the planning commission will schedule a public hearing.⁸³ If the planning commission recommends adoption of the special district plan to the city council after the hearing, the council will then hold a hearing, following which the council approves, denies or modifies the special district plan.

In Dallas, citizen participation is considered essential. Indeed, Angela Hunt, resident of the Greenland Hills neighborhood in Dallas, says that she wouldn't want to implement something in her neighborhood that does not

⁷⁸ Iowa City, Iowa, Code § 14-6J-4.

⁷⁹ Austin, Tex., Code of Ordinances § 25-2-373. The plan must include "an architectural survey of structures . . . that identifies the predominate architectural and urban design characteristics in the area and the characteristics that distinguish the area from other parts of the city." *Id.*

⁸⁰ Boulder County, Colo., Land Use Code § 4-118(F).

⁸¹ Phoenix, Ariz., Zoning Ordinance § 402(A)(2)(c).

⁸² *Id.* § 402(A)(2)(a)(2).

⁸³ *Id.* § 402(A)(2)(d)(2).

have community consensus. Esther Polito, Cultural Services Manager for the City of Davis, California, similarly attributes the city's success in pushing through the recently-enacted Davis ordinance with "no significant opposition" to planning department efforts to involve the community.⁸⁴ She said that urban design workshops are still being held to engage the community in writing design guidelines for the central city conservation district.

Ann Bennett, Historic Preservation Officer for Knoxville's Metropolitan Planning Commission, also considers neighborhood involvement to be critical to the designation of conservation districts. She explained that "there was no opposition among property owners" in the designation of the Tazewell Pike Conservation District⁸⁵ because the property owners had initiated the process and influenced the content of the ordinance. Indeed, Bennett attributes the overall success of the Tazewell Pike district to the role the community played in developing the guidelines:

If I convince them, I do that two ways - first of all, if a substantial majority of the property owners is not interested in designation, it doesn't happen. That has an interesting psychological effect of making them interested, even if they didn't think they were to begin with. We also have property owners put together most of the designation materials. They have to write a neighborhood history, participate in writing the design guidelines, and we hold many meetings prior to designation. Those things usually combine to give them a sense of ownership and a successful, virtually unopposed, designation process. It also makes later administration much easier, which is good, because there's only me.⁸⁶

The required resident input is often a time-consuming affair and could mean that neighborhoods will face long waiting periods before they are designated. Angela Hunt estimates, for example, that the Dallas planning department can handle the work load for about two conservation districts a year.⁸⁷ Despite having a code compliance officer focused on architectural regulations who spends much of his time on conservation districts, there are several applicants waiting, according to Lief Sandberg, Chief Zoning Planner for the Dallas Department of Planning and Development.⁸⁸ In nearby Plano,

⁸⁴ E-mail correspondence from Esther Polito, City of Davis Cultural Services Manager, to Rebecca Lubens (August 5, 2002).

⁸⁵ The Tazewell Pike Conservation District is a residential strip along Tazewell Pike, one of the major roads in northeast Knoxville, with houses dating primarily from the 1920s. Installation of sewer lines had spurred the construction of subdivision projects that threatened to compromise the area's development pattern of houses on large lots, set well back from the Pike.

⁸⁶ Telephone interview with Ann Bennett, Historic Preservation Officer for Knoxville's Metropolitan Planning Commission (August 7, 2002).

⁸⁷ Telephone interview with Angela Hunt, community organizer (August 9, 2002).

⁸⁸ Telephone interview with Lief Sandberg, Chief Zoning Planner for the Dallas Dep't of Planning & Development (August 9, 2002).

where the city's oldest Black community was threatened by encroaching development that residents and civic leaders feared would undermine its residential character, city officials began working with the Douglass neighborhood to gather the needed signatures for designation of a conservation district and, with the help of a nonprofit organization formed to promote preservation in Plano, obtained the signatures on their petition of more than 65 percent of the property owners in downtown Plano. However, realizing that the process would take too long for the urgent situation, city officials enacted a series of zoning amendments instead.⁸⁹

In some situations, the requirements for neighborhood consensus can also make the adoption of a conservation overlay zone virtually impossible. In Boise, for example, the diverse point of views made it very difficult to gain consensus about what needed to be done.⁹⁰ Owners and occupants of the proposed district were deeply divided on what should be the future of the area. Some property owners felt the area was no longer suitable for residential use and they considered their property as an investment for future office development. The churches continued to need new parking lots. A smaller group of residents was committed to preserving the residential feel of the neighborhood. The adjacent neighborhood also wanted to preserve the historic character of the area. The city was concerned that opportunities were being lost for people to live within walking distance of downtown and were also diluting the demand for office development within the central business district.⁹¹

4. Actions Subject to Review

The types of actions subject to review vary depending upon the underlying objective of the conservation ordinance, the specific requirements put forth in the conservation ordinance, as well as actual controls incorporated into the neighborhood plan. Conservation district programs premised on the preservation of the physical character of existing neighborhood often establish procedures that require approval of proposed alterations, additions to existing structures, and new construction based on specific design standards and may prohibit or restrict demolitions and removals. Conservation districts based on neighborhood planning models also tend to regulate new construction. However, they generally draw on planning and zoning tools to respond to compatibility concerns through the imposition of neighborhood-specific restrictions on lot coverage, height, and setback requirements. They may also address related issues such as permissible uses, traffic concerns, infrastructure needs, and, in some cases, open space and tree preservation. Because conservation districts are, in effect, tailored to respond to the needs

⁸⁹ *Id.*

⁹⁰ Telephone interview with Hal Simmons, Boise Dep't of Planning & Development, Planning & Zoning Division (August 5, 2002).

⁹¹ *Id.*

and concerns of a given community, the range of tools that might be utilized to protect a particular neighborhood will vary from place to place and may easily include both architectural design and planning tools.

In Knoxville, Tennessee a certificate of appropriateness is required for:⁹²

- (1) demolition;
- (2) construction of a primary or accessory building, structure or other additions to real estate; and
- (3) the addition of space to an existing primary or accessory building.

Similarly, in Napa, California, a certificate of appropriateness is required for any "proposed project on a neighborhood conservation property or in a neighborhood conservation area" involving, but not limited to:⁹³

- (1) Any substantial construction visible from a public way;
- (2) Any substantial alteration or addition visible from a public way; and
- (3) Demolition of a building or structure.⁹⁴

Napa's neighborhood conservation district program is administered by the city's Cultural Heritage Commission, which in turn, is housed in the city's planning department. Thus, although the program is operated in conjunction with the city's historic preservation process, it implements specific neighborhood preservation policies contained in the city's general plan. The distinction between the city's historic preservation and neighborhood conservation programs is highlighted less by procedure and more by the standards of review.

D. Findings for a Certificate of Appropriateness on a Neighborhood Conservation Property or in a Neighborhood Conservation Area.
No certificate of appropriateness shall be issued unless the following findings are made:

1. Mass and Scale - The traditional mass and scale of the area shall be maintained.
2. Building Form - A building shall have basic roof and building forms that are similar to those seen traditionally in the neighborhood.
3. Construction Materials - Building materials shall contribute to the

⁹² Knoxville, Tenn., Zoning Ordinance, Art. 4 § 22(F)(2)(b).

⁹³ Napa, Calif., Mun. Ordinance § 15.52.050(A)(2).

⁹⁴ Chapel Hill, N.C., Land Use Management Ordinance art. 3.6.5(a)(4).

visual continuity of the neighborhood.

4. Building Orientation - The traditional patterns of building orientation shall be maintained.

5. Building Alignment - The distance from the street or property line to the front of the building shall be similar to that seen traditionally in the neighborhood.

6. Project Context - The project shall be compatible with those neighborhood characteristics that result from common ways of building. This sense of setting shall be preserved.

7. Character-Defining Features - Major character-defining features of the property under review shall not be destroyed.⁹⁵

In Raleigh, North Carolina, where several planning-based conservation districts have been established, the actual controls on development are set forth in the neighborhood plan. Raleigh's enabling legislation states:

(4) Neighborhood Plan.

No building, structure, street, right-of-way, or greenway shall be constructed, moved, altered, changed, or increased in size within a Neighborhood Conservation Overlay District except in conformity with the adopted Neighborhood Plan. The Plan may contain standards which are more stringent or less stringent than the underlying district; in the event of any conflict, the Plan shall control. Nothing contained in the Neighborhood Plan shall be construed to affect the Planning and Development Regulations, Part 10 of this Code, except as it involves greenways, street rights-of-way, street design, and built environmental characteristics.⁹⁶

Each neighborhood plan, however, must include nine particular elements—

- a. Neighborhood history and evolution
- b. Land use inventory
- c. Description of housing; existing, new development and maintenance
- d. Inventory of built environmental characteristics
- e. Lot size and configuration
- f. Open space and recreation

⁹⁵ Napa, Calif., Mun. Ordinance § 15.52.050(D).

⁹⁶ Raleigh, N.C., Code of Ordinances, Neighborhood Conservation District Overlay, § 10-2054(e).

- g. Commercial development revitalization
- h. Circulation/transportation
- i. Capital improvement needs⁹⁷

In other words, specific guidelines governing setbacks, building height, lot sizes, lot frontage and orientation of houses to the street must be addressed in the district's neighborhood plan. Although architectural design and appearance are not required elements, they are nonetheless encouraged in neighborhoods that have a "historic scale and character."⁹⁸

In effect, individual neighborhoods in Raleigh enjoy considerable latitude in the development of their plans, which are intended as an instrument for guiding change, particularly in neighborhoods facing teardowns and infill development in the form of large, single family homes or, in some cases, apartment buildings and townhouses.⁹⁹ Through its neighborhood planning approach, for example, Raleigh was able to tailor zoning controls to meet the historical development patterns in two distinct areas of Brookhaven area—one area with lots larger than a quarter acre, and another area with small setbacks on small lots. In the southern part of Brookhaven, an area historically developed with 20,000 square foot lots even though the underlying zoning is set for quarter-acre lots, the neighborhood plan set the minimum lot size at 20,000 square feet, the minimum lot width at the setback line as 100 feet, the minimum front setback line as 50 feet, and the maximum building height as 2½ stories. In the newer, northern part of Brookhaven, an area more in line with the underlying zoning designation, a separate neighborhood conservation overlay district was created with a plan setting the minimum lot size at 14,000 square feet.¹⁰⁰

An increasing number of ordinances combine preservation and planning tools to provide comprehensive protection for some of our cities' older neighborhoods. The Dallas Conservation District Ordinance, for example, specifically requires that a designation ordinance—

contain regulations governing permitted uses, heights of buildings and structures, lot size, floor area ratio, density, setbacks, off-street parking and loading, environmental performance, signs, landscaping, and nonconforming uses and structures, and may further contain any additional regulations,

⁹⁷ Raleigh, N.C., Code of Ordinances, Neighborhood Conservation District Overlay, § 10-2054(f)(2).

⁹⁸ See "Neighborhood Planning," Raleigh Planning Department (2003). Individual plans are located at http://www.raleigh-nc.org/planning/CP/Neighborhood_plans.htm.

⁹⁹ See "Neighborhood Planning," Raleigh Planning Department (2003) at <http://www.raleigh-nc.org/planning/CP/Neighborhoods2.htm>.

¹⁰⁰ <http://www.raleigh-nc.org/planning/CP/pdf/brookhavennp.pdf>.

special exceptions, or procedures that the city council considers necessary to conserve the distinctive atmosphere or character of the area, or to minimize potential adverse impacts which could result from creation of the district.¹⁰¹

While architectural review is not an essential component of conservation district regulation in Dallas, some communities have opted for design controls to ensure that new construction is compatible with the neighborhood's existing architecture. Development and architectural standards have been adopted in Dallas, for example, in the King's Highway Conservation District, the Lakewood Conservation District, the Hollywood Heights/Santa Monica Conservation District, the Bishop/8th Street Conservation District, the M Streets Conservation District, and the Greenway Parks Conservation District.¹⁰²

By addressing land use, a community can limit activities within the district that may be incompatible with its conservation objectives. For example, some jurisdictions may expressly prohibit surface parking lots or office buildings on large lots.¹⁰³ In other situations, jurisdictions may want to actively promote the retention of existing types of land uses that have become part of a community's historical character. In Annapolis, Maryland, one of the specific objectives of its residential conservation district program is to encourage "existing types of land uses that reflect the mixture and diversity of uses that have historically existed in the community."

Chapter 21.69 RESIDENTIAL CONSERVATION OVERLAY DISTRICT

Section 21.69.010 Purpose.

The purpose of the RC residential conservation overlay district is to preserve patterns of design and development in residential neighborhoods characterized by a diversity of styles and to ensure the preservation of a diversity of land uses, together with the protection of buildings, structures or areas the destruction or alteration of which would disrupt the existing scale and architectural character of the neighborhood. The general purpose includes:

A. Protection of the architectural massing, composition and styles as well as neighborhood scale and character;

¹⁰¹ Dallas, Tex., Dev. Code § 51A-4.505(g). In an effort to make the city's neighborhood conservation district program more attractive to property owners, however, "there is no administrative review of proposed work in a conservation district other than the customary review for compliance with all applicable city codes, ordinances, rules, and regulations which occurs at the time a person makes application for a building permit," unless a special administrative review procedure is established in the designating ordinance. Rather, all reviews of work are completed by Planning and Development Department staff in partnership with the applicant. Id. § 51A-4.505(c)(2).

¹⁰² Conservation district ordinances adopted in Dallas are posted on the city's website at: http://www.dallascityhall.com/dallas/eng/html/conservation_ordinances.html.

¹⁰³ Boise, Id., Municipal Code § 11-20-03.01.

- B. Compatibility of new construction and structural alterations with the existing scale and character of surrounding properties;
- C. Encouragement of existing types of land uses that reflect the mixture and diversity of uses that have historically existed in the community; and
- D. Preservation of streetscapes. (Ord. O-50-90 § 1 (part))¹⁰⁴

In 2002, Annapolis established the Eastport Gateway Conservation Overlay District in an effort to retain Eastgate's 19th-century historic maritime character.¹⁰⁵ Through a combination of downzoning and design review measures, the Eastport community was able to protect its maritime trade from displacement by waterfront residential development, preserve the area's view of the city's downtown historic waterfront, and ensure that new development and future redevelopment is in keeping with the scale and vernacular style of existing houses in the area. In implementing these objectives, the overlay district emphasizes the importance of pedestrian access and scale and expressly encourages residential units above the first floor in three-story commercial buildings.

5. Conservation Standards

Neighborhood conservation districts seeking to preserve the historic or unique character of a particular area may find it necessary to establish an administrative process that reviews proposed construction on a case-by case basis. Through the application of conservation standards, local jurisdictions can ensure that individual changes within a neighborhood are compatible in terms of size, scale, massing, and, in some cases, architectural style. Case-by-case review may be necessary to ensure, for example, that a new house or building complements rather than overwhelms neighboring structures. It can also be used to soften the impact of larger structures by shifting mass to mitigate the impact of potentially dominant features, such as a garage.

Communities seeking to regulate the size, massing, or design of structures must adopt conservation guidelines or standards for practical as well as legal reasons. The articulation of specific guidelines provides property owners with notice of the kinds of actions that most likely will be approved and gives decision makers standards on which to base their decisions.¹⁰⁶

¹⁰⁴ Annapolis, Md., Municipal Code § 21.69.010(C).

¹⁰⁵ As part of an effort to overhaul its zoning ordinance, the City of Annapolis recently proposed converting the Eastport overlay district into a base zoning district.

¹⁰⁶ The Due Process Clause of the U.S. Constitution insists that properties owners have notice of the types of actions that may affect their property interests and the standards by which they will be judged. This does not mean, however, that the guidelines must be specific and detailed. Rather, they must be sufficient to apprise property owners of what is legal and what is not. For further discussion on due process and vagueness in the context of historic preservation, see George Abney, "Florida's Local Historic Preservation Ordinances:

While many communities are more comfortable with staffing a design review board entirely with neighborhood residents, it is important to keep in mind that the decision makers must be qualified to do the work they are being asked to perform. Good decisions are not simply a matter of good taste. Rather, they require an ability to understand the projects subject to review and the standards by which they are to be judged.¹⁰⁷

As with historic districts, some conservation programs incorporate two levels of standards, general and specific. The general legislation, which authorizes the establishment of conservation districts, sets forth broad standards of review that serve as a threshold for reviewing all actions within neighborhood conservation districts. Detailed guidelines, usually adopted as part of the neighborhood plan, govern the review of specific actions within a specific neighborhood and are developed once an area is under consideration for designation as a neighborhood conservation district.¹⁰⁸ These guidelines can be tailored to the character and needs of a specific community, and usually become part of the designation ordinance. They may or may not be "architectural design guidelines."

Cambridge, Massachusetts, for example, establishes both general and specific standards for reviewing applications for certificates of appropriateness for alterations, additions, and new construction.¹⁰⁹ The city's general conservation standards state:

Section 2.78.220 Factors considered by Commissions.

A. In passing upon matters before it, the Historical Commission or neighborhood conservation district commission shall consider, among other things, the historic and architectural value and significance of the site or structure, the general design, arrangement, texture and material of the features involved, and the relation of such features to similar features of structures in the surrounding area. In the case of new construction or additions to existing structures a commission shall consider the appropriateness of the size and shape of the structure both in relation to the land area upon which the structure is situated and to structures in the vicinity, and a Commission may in appropriate cases impose dimensional and setback requirements in addition to those required by applicable provision of the zoning ordinance. A Commission shall not consider interior arrangements or architectural features not subject to public view.

Maintaining Flexibility While Avoiding Vagueness Claims," 18 PLR 1001 (1999).

¹⁰⁷ Indeed, many preservation ordinances insist that preservation commission members have backgrounds in architecture, architectural history, real estate, and so forth to ensure that the decisions made are not overturned on the grounds of arbitrary and capricious decision making. See Julia Miller "A Layperson's Guide to Historic Preservation Law" (NTHP 2001), p. 25. The right to be heard under the due process clause also includes the right to an impartial proceeding.

¹⁰⁸ Enlisting the help of residents in developing the design guidelines can be helpful in developing an understanding and acceptance of the historic and/or architectural character of a community.

¹⁰⁹ Cambridge, Mass., Mun. Code § 2.78.220.

More detailed guidelines are then included in the city's order designating an area as a conservation district. For example, the Avon Hill Neighborhood Conservation Order, adopted on June 15, 1998, states—

Statement of Principles, Standards, and Guidelines for Review

(excerpted from Avon Hill Neighborhood Conservation District Order, 6/15/98)

The Commission shall apply certain principles, standards, and guidelines for review in addition to those contained in Article 2.78.220 A. and B. [Cambridge City Code] in considering applications for certificates of appropriateness, non-applicability or hardship.

A. Principles of Review

The Commission recognizes the capacity of certain properties in the District for additional development under applicable provision of the zoning code and affirms its consideration of proposed additions and alteration to such properties consistent with the terms of this order. The Commission seeks to achieve consensus determinations based on the available historical record, recommendations from members, alternates and staff, and comments from applicants and abutters and consistent with the terms of this order. The Commission affirms its role as a technical advisor to applicants on issues of conservation and preservation.

B. General Conservation Standards

All applications shall be considered in terms of the impact of the proposed new construction or alteration, relocation or demolition of an existing building on the District as a whole, and in addition with regard to the potential adverse effects of the proposed construction, alteration, relocation or demolition on the surrounding properties and on the immediate streetscape. General conservation standards shall be to:

1. Conserve the historic development patterns of the neighborhood, including its green space, open vistas, generous setbacks, and predominately low density lot coverage;
2. Enhance the pedestrian's visual enjoyment of the neighborhood's buildings, landscapes and structures;
3. Protect structures listed on or determined eligible for listing on the National Register of Historic Places;
4. Encourage the preservation of the neighborhood's buildings, landscapes, and structures;
5. Maintain the diversity of the neighborhood's architectural styles.

C. Conservation Guidelines for Avon Hill

The following guidelines establish the conservation principles to be encouraged within any given application.

1. Infill Construction and Additions: In the A-2 zone, infill construction (including accessory buildings) and additions shall not cause total lot coverage to exceed 30%; in the B and C-1 zones, infill construction and additions should not cause total lot coverage to exceed 40%. In addition to considering streetscape impacts of infill construction and additions, vistas into and through the site from surrounding public ways should be conserved. Impacts on significant landscape features and mature plantings

should be minimized. Additions should be compatible with the architectural character of the principal building and its surroundings, should be sited away from principal elevations, and should respect the cornice height of the original building.

2. Parking: Where parking between the principal front wall plane of a building and the street is proposed, curb cuts and square footage of paved area devoted to parking should be minimized. Paving in permeable materials is encouraged. Low fencing, low walls, and plant material to screen parking areas are encouraged.

3. Fences: Fences should be low and transparent to conserve vistas into and through properties and to enable the pedestrian's visual access to the character of the district. The desire for enclosing private spaces should be balanced against the historically-open character of vistas in the district. Fences needed for privacy should enclose the minimum area necessary to achieve their intent and should leave a portion of the premises open to view from the public way. Where safe and appropriate, privacy fences should be set back behind a planting bed to avoid creating a vertical plane directly on the public way.¹¹⁰

Although standards of review in conservation districts are far less restrictive than those for historic districts, they have become quite detailed in some communities. In Dallas, Chief Zoning Planner, Leif Sandberg, says the trend is to draft fairly complex guidelines. "In some of our districts they are beginning to rival historic districts in their complexity, getting into window configurations and building materials," he says. "The interest now is in addressing more rather than fewer things. As people are getting involved in the discussion they want the whole nine yards."

In the Hollywood/Santa Monica Neighborhood Conservation District, one of the six areas that has already been approved for designation as a conservation district in Dallas, architectural provisions cover accessory structures, street façade width, roofs, glass, enclosures, façade openings, screen and storm doors and windows, and even color (a building façade may not be painted with more than one body color and three trim colors). Likewise, in the city's Greenland Hills neighborhood, the M Streets Conservation District Ordinance requires that all future homes be built in the High Tudor style with no renovations visible from the front.¹¹¹ It also calls for modular or standard bricks (as opposed to the king-sized ones used on the newer homes), forbids metal roofs or window air conditioner units, requires porch enclosures to be done with transparent glass and insists that at least two 2-inch caliper large canopy trees must be located in the parkway area.¹¹²

After a series of urban design workshops, Davis, California adopted special design guidelines for three designated neighborhoods, Old East, Old North, and University Avenue/Rice Lane neighborhoods, all of which border

¹¹⁰ The order is reproduced on the Cambridge Historical Commission's website at <http://www.ci.cambridge.ma.us/~Historic/avonhillguidelines.html>.

¹¹¹ Dallas, Tex., M Streets Conservation Districts Ordinance No. 25116, Exhibit A § (e)(2).

¹¹² *Id.* §§ (d)-(e).

the city's downtown area.¹¹³ The "Traditional Residential Neighborhood" guidelines address issues such as streetscape, open space, primary and accessory building location, driveways and parking, landscaping, mass and scale, building forms and materials, as well as character-defining features such as use of materials, roof forms, and windows and doors. The guidelines also include specific directions for applying the guidelines in individual neighborhoods. For example, the design objectives for the Old East neighborhood include "maintain[ing] the traditional scale and character" of the area that "reflect[s] its traditional 'farmhouse' heritage, while accommodating new, compatible, infill development." In comparison, the design objectives for the Near North neighborhood emphasize the importance of retaining "the scale and character of a single-family neighborhood," which include a large number of small one-story bungalows and cottages, and preserving elements such as the neighborhood's streetscape with character-defining, uniformly-spaced trees and the "small scale, rustic image" of its alleys.

In some neighborhood planning models, guidelines extend beyond design review. In Phoenix, the special district plan, prepared by the planning department in accord with direction from the citizens' committee, may indicate changes to permitted land uses and to requirements for buildings, such as density, coverage and height, in addition to remodeling of existing buildings and structures. Special district plans may also contain proposals for social services to be furnished in the area and plans for capital improvements by all public agencies and utilities. If the planning department ultimately recommends adoption of the plan developed after consultation with residents and property owners, then a special planning district zoning overlay coterminous with the boundaries of the plan is included as well as any special zoning criteria applying within the district.

In the Greenland Hills neighborhood in Dallas, the conservation district ordinance includes both architectural and development standards.¹¹⁴ The architectural standards focus on the particular design and style of newly-constructed houses in the district. The development standards govern matters that are typically covered by a zoning ordinance such as permissible uses, lot specifications, and principal and accessory building restrictions.

(d) **Development Standards.** Except as otherwise provided, the development standards of the R-7.5(A) Single Family District apply.

(1) Use. The only use allowed is single-family.

¹¹³ Here, the concept of creating a conservation district grew out of recognition that existing tools were inadequate to confront new commercial and multi-family growth pressures in its downtown and immediate outlying areas. According to Esther Polito, Cultural Services Manager for the City of Davis, all but a handful of designated historical resources were subject to any kind of demolition or design review process. The guidelines may be viewed on-line at <http://www.city.davis.ca.us/pb/design/>.

¹¹⁴ Dallas, Tex., M Streets Conservation District Ordinance No. 25116. See <http://www.mstreetscd.org/ordinance.html>.

- (2) Conversions or additions. The number of dwelling units on a lot may not be increased.
- (3) Lot size. Lots must have a minimum area of 7,500 square feet.
- (4) Lot width. Lots must have a minimum width of 50 feet. Lots may not exceed 60 feet in width.
- (5) Lot coverage. The maximum lot coverage is 45 percent.
- (6) Height. The maximum height for all structures is 30 feet, except that no part of the main structure may exceed the line-of-sight. Height must be calculated by a licensed architect or engineer. (See Exhibit B.)
- (7) Front yard setback for main structures. The minimum front yard setback for main structures is the average of the front yard setback of the two adjacent houses. The maximum front yard setback for main structures is the greater setback of the two adjacent houses. Setback calculations must be prepared by a licensed architect or engineer.
- (8) Side yard setbacks for the main structures. Except for houses located on Homer Street, the minimum side yard setback for main structures is 5 feet on the west side and 10 feet on the east side. For houses on Homer Street, the minimum side yard setback for main structures is 5 feet on the north side and 10 feet on the south side.
- (9) Rear yard setback for the main structures. The minimum rear yard setback for main structures is 20 feet.
- (10) Stories. The front facade of main structures must have the appearance of a one-and-one-half story structure as shown in Exhibit B.
- (11) Accessory structures, garages and carports.
- (A) Location. Garages and carports must be located in the rear 30 percent of the lot. On corner lots, accessory structures may not be located closer to the cornerside lot line than the main structure.
 - (B) Access. Garages must have at least one vehicle entrance from the street.
 - (C) Style and materials. The color, style, design, and materials of garages that are visible from the street must be compatible with the main structure.
 - (D) Roof slope. If a garage is visible from the street, the slope of the roof must match either the roof slope of the main structure or the roof slope of original garages.
 - (E) Side yard setback. There is no required side yard setback for garages, except that no part of the garage may overhang adjacent property.
 - (F) Rear yard setback for garages.
 - (i) Garages over 15 feet in height must have a minimum five-foot rear yard setback.
 - (ii) Garages 15 feet or less in height must have a three-foot rear yard setback unless the property owner can document the original footprint, in which case the garage may be built on the original footprint.

- (iii) The minimum rear yard setback for all rear entry garages is 20 feet.
 - (G) Existing garages. Existing garages that are not located to the rear of the main structure may be repaired or maintained, but may not be enlarged or replaced.
- (12) Roofing materials. No corrugated plastic, standing-seam metal, rolled, or tar-and-gravel roofing is allowed on the front facade, the wrap-around, or any part of a garage that is visible from a street. Copper roofing accents are allowed on dormers and eyebrows.
- (13) Fences and walls.
- (A) Fences are not allowed in the front yard.
 - (B) Fences and walls that can be seen from a street must be constructed of brick that matches the main structure, wood, wrought iron, or stone.
 - (C) Fences in cornerside yards must be located behind the mid-point of the main structure.
 - (D) Fences in non-cornerside yards must be located at least five feet behind the front corner of the house.
- (14) Driveways and curbing.
- (A) All houses must have a straight driveway located along the east side (south side for Homer lots) of the main structure. The driveway entry must be from the front street, except that cornerside lots may have a driveway entry from the side street.
 - (B) Circular driveways are prohibited. Lots may only have one driveway entry, except that additional access is allowed from the alley.
 - (C) All driveways and curbing located in a front yard or cornerside yard must be constructed of brushed concrete.
 - (D) The driveway entry must be between eight and ten feet wide. On corner lots, a driveway on the side street may be 24 feet wide if it is located behind the rearmost corner of the main structure or provides access to a garage.
 - (E) Existing driveways on cornerside lots may be removed if the entire driveway is removed, the curb and parkway is restored, and the driveway is relocated.
- (15) Front yards and parkways.
- (A) No more than 30 percent of the front yard may be paved or hardscaped. The parkway may not be paved or hardscaped except for curb cuts and sidewalk extensions.
 - (B) Mailboxes, pylons, satellite dishes, and other accessory structures are not allowed in the front yard or parkway.
- (16) Retaining walls.
- (A) Existing retaining walls may be repaired and maintained.
 - (B) New retaining walls must be made of stone and may not exceed 30 inches in height as measured from the sidewalk or four inches above the yard it is retaining, whichever is less; and must match the materials and color of the main structure.
- (17) Parkway trees. Prior to final inspection on any new construction or additions over 100 square feet, at least two, two-caliper-inch large canopy trees must be planted in the parkway. This requirement does not apply if

there are already two or more large canopy trees located in or adjacent to the parkway. Large canopy trees are considered adjacent to the parkway when they provide a 10-foot-wide shaded area over the parkway and a portion of the street at midday.

(18) Windows and doors. The following applies to windows and doors on the front facade and the wrap-around:

- (A) Only transparent, stained, or leaded glass is allowed in windows and doors.
- (B) Window height must be greater than the window width.
- (C) All windows must fit the wall opening. Infill surrounding the window is not allowed.
- (D) Metal window frames must have a finish that is indistinguishable from the finish on original wood windows.
- (E) Window air conditioner units are not allowed.
- (F) Window muntins and mullions must be expressed by a minimum of one-fourth inch. Window assemblies must have a profile depth of at least three inches.¹¹⁵

6. The Review Process

As with historic preservation ordinances, conservation district laws with design review typically require an application for a "certificate of appropriateness." The certificate, upon issuance, is then submitted to the building permit office for purposes of obtaining the requisite building or demolition permit. Where proposed work involves minor work or would not affect the integrity of protected resources, then the review body may issue of "certificate of non-applicability" or a "certificate for minor work." In the rare event that substantial hardship would result from the denial of an application for a certificate of appropriateness then a certificate of hardship may be issued.¹¹⁶

The permitting process utilized in Cambridge provides a typical example of this type of program. In Cambridge, three types of certificates are issued—the Certificate of Non-Applicability, the Certificate of Appropriateness, and the Certificate of Hardship.¹¹⁷ The certificates expire after six months following the date of issuance unless an extension (up to 90 days) is granted by the chairman of the Historical Commission. A building permit

¹¹⁵ *Id.* § d.

¹¹⁶ Substantial hardship is generally defined as the equivalent of a regulatory taking, meaning that the owner would be denied all reasonable and beneficial use of his or her property. For further discussion on the use of hardship provisions in historic preservation ordinances, see "Providing for Economic Hardship Relief in the Regulation of Historic Properties," 15 PLR 1129 (1996), and "Assessing Economic Hardship Claims Under Historic Preservation Ordinances, 18 PLR 1069 (1999).

¹¹⁷ See "Step by Step Guide to Obtaining Historical Commission Certificates and Neighborhood Conservation District Commission Certificates," City of Cambridge, Spring 2002. For further information, see [http://www.ci.cambridge.ma.us/~CDD/econdev/ climate/historical.pdf](http://www.ci.cambridge.ma.us/~CDD/econdev/climate/historical.pdf).

for work performed in a conservation district cannot be issued unless the applicant has received one of these three certificates.

The Certificate of Non-Applicability is issued for work that falls outside the scope of the city's conservation district program. The certificate must be submitted to the building permit official as proof that the commission has reviewed the proposed work and determined that a Certificate of Appropriateness is not required. The Certificate of Non-Applicability may be issued for work done "in kind" (work which matches existing conditions exactly), interior alterations (which are not subject to review under the ordinance), alterations not visible from any public way (which are also not subject to regulation), and any other work which does not require review by the Neighborhood Conservation District Commission. This type of certificate is generally issued by the Historical Commission staff at the time the application is filed.

A Certificate of Appropriateness is granted for alterations that the Neighborhood Conservation District Commission finds are "not incongruous" to the character of the property in question. This certificate is generally issued after review by staff and a hearing by the Commission on the proposed work.

On rare occasions, a Certificate of Hardship¹¹⁸ may be issued for work that has been determined "incongruous," but failure to approve an application would result in substantial hardship to the applicant, financial or otherwise, and the Commission has determined that the work would not be a significant detriment to the district. For example, a Certificate of Hardship may be issued for the installation of a temporary ramp for persons with disabilities.

7. Enforcement

The ability to enforce conservation district ordinances can be critical to these preservation efforts. Without the inclusion of penalties, which may range from fines to reconstruction requirements, properties may be altered or demolished without consequence.

Knoxville's experience is illustrative. Because the city failed to include adequate penalties in its preservation ordinance (which also governs conservation districts), historic properties located on increasingly valuable land were at a high risk for demolition. In June 2001, one landowner was accused of illegally razing six historic homes on his Fort Sanders property, due to an office error in the Knoxville Department of Development that allowed him to obtain demolition permits. The owner faced a maximum fine of only

¹¹⁸In contrast to hardship certificates utilized in other jurisdictions, Cambridge's "Certificate of Hardship" does not require a showing that denial of the certificate of appropriateness will result in an unlawful taking. Rather, hardship is recognized for personal yet substantial hardship in situations where approval will not be detrimental to the conservation district and the certificate lasts only for the life of the hardship. In other words, the certificate is personal to the applicant and does not "run with the land." *Cf.* Napa Municipal Code § 15.52.070, which requires that the economic use of the property would be lost.

\$100 per home, even though each property was worth at least \$370,000. According to Knoxville development director Leslie Henderson, the fines were so small in this case because the building department had to handle them "like the normal code violations."

The highly-publicized razing prompted the mayor to ask for and receive city council approval to ask the state Legislature to draft legislation raising the fine for future illegal demolitions to \$10,000 per house.¹¹⁹ The bill, however, was shelved by its sponsor after an amendment was proposed that would allow owners to demolish a building for 180 days after being notified of its historic status.¹²⁰

To avoid potential enforcement problems, the conservation district ordinance for the M Streets Conservation District in Dallas includes a penalty provision.¹²¹

SECTION 5. Penalty clause. That a person who violates a provision of this ordinance is guilty of a separate offense for each day or portion of a day during which the violation is committed, continued, or permitted, and each offense is punishable by a fine not to exceed \$2,000.

The proposed ordinance also encourages neighborhood monitoring by including a requirement that building permit applicants must post signs on their sites, which include "an accurate, scaled, color sketch of the front façade of the completed house and the two adjacent houses, indicating the dimensions of all structures" and "an accurate, scaled sketch of the footprint of the structure, the front yard and driveway, and the two adjacent structures, indicating the front yard setbacks of all structures."¹²² For further protection, the proposed ordinance requires that the neighborhood association be notified of any new construction.¹²³

"The ordinances I've seen often use language which is not restrictive, but simply suggestive," says Dallas resident, Angela Hunt. "For example, one Dallas ordinance has some terrific exhibits which show the proper roof form, arches, and windows for Tudors, but doesn't codify any of these as requirements. Conservation ordinances should not be confused with educational material. It's either a law or it's not. Suggestions are meaningless—builders trying to get away with doing the bare minimum will ignore such 'suggestions,' and that's exactly who we're writing these ordinances for."¹²⁴

8. Appeals

¹¹⁹ Knoxville News-Sentinel, Cammie Tutwiler, B1, August 15, 2001.

¹²⁰ Knoxville News-Sentinel, May 6 2002, B4.

¹²¹ Dallas, Tex., M Streets Conservation Districts Ordinance No. 25116 § 5.

¹²² *Id.* § o(2).

¹²³ *Id.*

¹²⁴ Telephone interview with Angela Hunt, community organizer (Aug. 9, 2002).

Appeals from the decisions of neighborhood conservation district commissions, preservation commissions, planning commissions, or other administrative review bodies is generally made to another administrative body such as a board of appeals, to the governing legislative body, such as a city council or board of supervisors, or directly to court. Issues to consider include the relative expertise of the entity conducting the appeal, the standard of review, and the level of deference to accord a neighborhood conservation district commission or other review body.

The procedure followed depends, in part, on what appellate systems are already in place within a given jurisdiction and the level of political support for conservation district programs overall. After what one official in the Memphis Landmarks Commission described as a "political witch hunt," with the Landmarks Commission "hung out to dry," the Memphis ordinance was changed to allow appeals to the city council instead of the courts. Section 26-720 of the Memphis Code of Ordinances now provides that "appeals from any decision of the landmarks commission ... may be directed to and resolved by the council of the City of Memphis." Cambridge, Massachusetts, in contrast, provides for direct appeal to the superior court. Its ordinance states that "any person aggrieved by a designation of a landmark or district may appeal to the superior court."¹²⁵

Napa, California, provides a relatively detailed appeals process that specifies the manner of appeal and the time limits for filing an appeal. Appeals of decisions of administrative officials are made to the planning commission and planning commission decisions are appealed to the city council.

Appeal procedure.

In accord with the following provisions, any applicant or other interested person dissatisfied with any action taken under this chapter may appeal such action and decision:

A. Unless otherwise indicated, appeals from the decision of the planning director or any other administrative official, in taking any of the actions authorized by this chapter, shall be made to the commission through the planning director. Appeals from the decision of the commission in taking any of the actions authorized by this chapter shall be made to the council through the city clerk.

B. Unless otherwise indicated, all appeals shall be made in writing and be accompanied by the appropriate fee. Appeals must be received by the planning director or city clerk not later than ten (10) calendar days following the date of action from which such appeal is being taken. If the tenth calendar day is a weekend or a city holiday, the deadline is extended to the next working day of the city.

C. The letter of appeal must state: (1) the specific action objected to; (2) the action appellant requests the council to take; (3) the reason for the appeal;

¹²⁵ Cambridge, Mass., Mun. Code § 2.78.240.

and (4) the name, address and telephone number of the appellant or contact person if there are multiple appellants.

D. Within three working days of receipt of the appeal, the city clerk shall examine the appeal, and if it is found to be incomplete, return it by certified mail to the appellant for revision. Appellant shall have five (5) working days to file an amended appeal. Upon failure to file an amended appeal within said five days, the appeal shall be deemed withdrawn.

E. The receipt of a written appeal shall stay all actions, or put in abeyance all permits or other discretionary approvals which may have been granted, pending the effective date of the decision of the body hearing the appeal.

F. Appeals shall be scheduled for the earliest regular meeting of the hearing body, not less than fifteen (15) days or more than forty-five (45) days after the date of filing an appeal, consistent with the agenda preparation procedures and schedule of the hearing body.

G. All decision-making bodies hearing appeals shall consider the project in its entirety, or de novo. (Ord. No. O99-31, Added, 11/02/1999)¹²⁶

D. Conclusion

Conservation districts are becoming an increasingly popular mechanism for protecting the character of older neighborhoods across the country. New laws have recently been enacted in cities such as Boulder, Colorado, Chapel Hill, North Carolina, and San Antonio, Texas. They are presently in use in cities across the country, including neighborhoods in Annapolis, Maryland, Bloomington, Indiana, Boston, Massachusetts, New Orleans, Louisiana, and Portland, Oregon, to name a few. In Dallas, where the historic district program has essentially hit a plateau with no new city historic districts likely to emerge, there are more than ten areas awaiting conservation district status and at least a dozen more neighborhoods looking into the program.¹²⁷

While meaningful studies on the effectiveness of conservation districts as a neighborhood conservation tool have yet to come, initial reports are promising. In Phoenix, conservation districts are said to have stemmed the tide of incompatible development, particularly in neighborhoods adjacent to high-rise commercial development. Those in the Iowa City planning department say that they preserve neighborhood pride, local character, and property values. Residents in Dallas feel they retain greater control over their properties.

Some communities believe conservation districts have accomplished even more than their original goals. In Nashville, for instance, it has helped address commercial encroachment, says Blythe Semmer of the Metropolitan Historic Zoning Commission (MHZC). On two occasions, conservation zon-

¹²⁶ Napa, Cal., Mun. Code § 15.52.100.

¹²⁷ Telephone interview with Angela Hunt, June 3, 2003.

ing was used advantageously as a condition of rezoning to allow sensitive small business expansion in previously residential contexts. In the Lockeland Springs-East End area, results have included a decline in the number of absentee landlords at the same time as an increase in homeownership and property values. "In general, the MHZC staff believes that owners in the conservation zoning districts, through their enthusiasm for historic buildings, have delivered better rehabilitation and new construction projects than would be required by the letter of the law," Semmer says. Although staff experience frustration at the number of changes not reviewed under conservation zoning, "few owners have flaunted the flexibility of the guidelines by doing work that is blatantly inappropriate," she says. "Thus, the spirit of pride in the zoning overlay has been almost as important as its legal requirements."¹²⁸

Today six of Nashville's neighborhood conservation zoning districts are residential. These neighborhoods are reported as generally stable and middle class in character. "The large east Nashville district has seen its fortunes improve from being a neighborhood on the borderline of decay to a thriving area where most homes have already been rehabbed by young professionals and families who enjoy its proximity to downtown," Semmer says. "One west Nashville district, Richland-West End, has by force of real estate demand in the area developed into an upper middle-class area. There, the desire for large, inappropriate additions by more affluent homeowners was an incentive for conservation zoning to pass in 1996."¹²⁹

The apparent success of conservation districts can be attributed in part to the program's high emphasis on neighborhood planning and outreach. Through the development of neighborhood plans, residents are required to think about the qualities of their neighborhood that makes it special. They must also think about what is wrong and how those wrongs can be corrected. By being in the driver's seat, residents have come to appreciate their own neighborhoods and, correspondingly, have chosen to accept necessary restrictions on their own properties for the benefit of the community overall.

Probably the most significant, and yet unresolved, issues from a historic preservation perspective are (1) how to distinguish conservation districts from historic preservation districts, and (2) whether it is appropriate to designate a residential neighborhood as a conservation district when it meets the criteria for designation as a historic district. While there are numerous instances in which conservation district designation provides a viable tool for protecting the special character of older neighborhoods, conservation district laws generally do not provide the same level of scrutiny or protection for historic resources as do many historic preservation laws.

Thus far, it appears that most conservation district programs have been specifically designed to complement rather than replace historic preservation programs. Communities have worked hard to develop standards to en-

¹²⁸ Telephone interview with Blythe Semmer, MHPZ staff, August 8, 2000.

¹²⁹ *Id.*

sure that historic areas qualifying for protection under historic preservation ordinances are designated as historic districts rather than conservation districts. In practice, however, it cannot be ignored that there are neighborhoods designated as conservation districts that are similar to other neighborhoods protected under historic preservation laws. In some cases this distinction in treatment can be attributed to differing standards for designation under local laws. In most cases, however, the differing approaches stem less from varying laws and more from the level of grassroots support. Whether this is good or bad is a matter of debate.

Further Reading . . .

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