

Sign Control on Rural Corridors: Walnut Avenue Overlay District Ordinance



**Created by the
University of Georgia Land Use Clinic
School of Law and
College of Environment & Design**

*For the
Regional Advisory Council of State Service Delivery – Region Five
and the
University of Georgia Carl Vinson Institute of Government*

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INTRODUCTION

This document was commissioned by the Department of Community Affairs and the City of Dalton to assist Dalton in its on-going effort to create quality growth and smart development. Written by the attorneys and students of the University of Georgia Land Use Clinic, this overlay ordinance and accompanying “menu” of smart growth solutions follow upon the recommendations of the Dalton Quality Growth Resource Team. Specifically, the Team’s June 2001 report recommended improvement of Dalton’s major road corridors, including adoption of requirements to ensure reduction of “commercial clutter.” The suggested requirements included improved landscaping, maximum setbacks for buildings, and requirements that parking be to the side or rear of businesses. This Overlay District ordinance is designed to fulfill those recommendations along Walnut Avenue, which was determined to be ripe for redevelopment and better standards. The “menu” portion of this document explains the overlay ordinance in more detail, and also provides additional guidance about further steps Dalton might take to continue to improve the Walnut Avenue corridor and other strip corridors throughout the city.

The staff of the Land Use Clinic would like to thank James “Butch” Sanders and Gaile Jennings of the City of Dalton, and Barnett Chitwood and Larry VandenBosch of the Northeast Georgia Regional Development Center for their guidance and assistance. We would also like to thank planning consultants Bill Ross and Caleb Racicot for sharing their professional wisdom. We are grateful to DCA staff member Jim Frederick for making this project possible. Last but definitely not least, we thank Brad Calvert of The Georgia Conservancy for guiding us throughout the entire process.

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WALNUT AVENUE OVERLAY DISTRICT ORDINANCE

Purpose

The purpose of this Overlay District is to promote redevelopment and improvement of the Walnut Avenue corridor. This ordinance promotes the vision, goals and guidelines of the Dalton/Whitfield County joint Comprehensive Plan (2000-2020) that recognizes the importance of well-planned growth, and that poorly planned growth leads to sprawl, blight, and other problems. The Comprehensive Plan recognizes the work of the Quality Growth Resource Team (QGRT) and adopts many of their recommendations for higher quality development in Dalton. The Comprehensive Plan specifically adopts the QGRT's recommended requirements for major corridors, including Walnut Avenue, to ensure that development does not add to commercial "clutter" along those corridors. The Dalton Mayor and Council have chosen to first implement these requirements along Walnut Avenue between I-75 and the city limits.

Should any section or provision of this Overlay Ordinance require or impose more restrictive standards than are required under any other provision of the Dalton Zoning Ordinance or any other Dalton ordinance, the requirements of this ordinance shall govern. This is except in the areas governed as [Neighborhood Commercial District nodes], where those requirements should control.

Definitions

City Arborist – A person employed and designated by the City as an arborist.

Fenestration - The arrangement, proportion, and design of windows and doors on a building façade.

GLA (Gross Leasable Area) - The total building floor area in square feet that a developer may lease. GLA does not include elevator shafts and stair towers, public restrooms, permanently designed corridors, public lobbies, and common mall areas.

Impervious cover – Any surface that greatly impedes the natural infiltration of precipitation into soil, generating runoff. Typical examples include, but are not limited to, driveways, parking lots, rooftops, and sidewalks, except those composed of porous materials specifically designed to allow infiltration.

Large tree - Any tree attaining at least 40 (forty) feet at maturity.

Stand up curb – A type of curb with a horizontal and a vertical surface intersecting perpendicularly to form a square edge, as opposed to a rounded curb, or any other curb having no edge or an edge with an obtuse angle.

Wheel stop – An object made of concrete or rubber laid horizontally at the front of individual parking spaces. Wheel stops are designed to come in contact with the wheels of a vehicle to prevent its forward movement.

Applicability

The Walnut Avenue Overlay District shall apply to all properties zoned commercial and industrial by the Dalton Zoning Ordinance. The District is an area bounded by I-75 to the west, the lesser of the north property line of the parcels on Walnut Avenue or 150 feet to the north, the lesser of the south property line of the parcels on Walnut Avenue or 150 feet to the south, and the Dalton City Limits to the east.

Non-Conforming Uses

Existing lawful uses, buildings, and structures, within the applicable zones of the Overlay District are hereby declared non-conforming. These uses may be continued subject to the restrictions contained in this ordinance. However, the non-conforming use shall not be:

- (a) Changed to another non-conforming use.
- (b) Torn down and rebuilt as a non-conforming use.
- (c) Extended or enlarged except in conformity with this ordinance.
- (d) Re-established after a vacancy or discontinuance or use for one year.
- (e) Rebuilt, altered, or repaired, except in conformance with this ordinance, after damage exceeding 50% of the fair market value of the improvements as determined from the tax records of the City of Dalton.

Building Site Requirements

For all single-building sites with street frontage on Walnut Avenue the following is required:

- (a) Setbacks - there shall be a front yard maximum building setback of twenty (20) feet from the right-of-way of Walnut Avenue, which may include sidewalks and landscaping.¹
- (b) Building orientation - The building shall be parallel to the right-of-way line of Walnut Avenue.
- (c) Building design –

¹ It has been noted by Brad Calvert and Barnett Chitwood that this provision does not adequately address all potential lot configurations, particularly at corners. We recommend that additional thought be given to this issue, perhaps while the PUD ordinance is being developed.

Fenestration Requirements:

Buildings shall meet the following requirements along the front building facade:

- 1) The length of façade without intervening fenestration or entryway shall not exceed twenty (20) feet.
- 2) Fenestration shall be provided for a minimum of seventy-five (75%) percent of the length of all street frontages beginning at a point not more than three (3) feet above the sidewalk, to a height no less than ten (10) feet above the sidewalk.
- 3) Fenestration shall not contain painted glass, reflective glass or other similarly treated or opaque windows. Entrances may be counted towards fenestration requirements.

Entrances:

All first floor uses and business establishments with frontage on Walnut Avenue shall have an entrance for pedestrian access. These entrances shall:

- 1) face Walnut Avenue.
- 2) be directly accessible and visible from the sidewalk via a pedestrian walkway a minimum of five (5) feet wide.
- 3) remain unlocked during business hours for non-residential uses.²

For all sites where more than one structure will be erected, the developer shall be required to obtain the Planned Unit Development (PUD) designation of the City of Dalton before any building or land disturbance permits may be granted.

Redevelopment Triggers

All land disturbance and building permit applications for new construction on a previously undeveloped site, or for building replacement on a developed site, shall meet the standards contained in this Overlay District.

Applications for improvements to developed sites and/or existing structures shall meet the standards contained in this Overlay District for the installation of sidewalks, landscaping and landscaping/tree planting, and inter-parcel access when the proposed interior and/or exterior renovation of a building and/or site re-development improvements

² It is necessary to require that the entrance remain unlocked because some developers get around these requirements by making a “show” entrance which is always locked and therefore inaccessible.

have a declared value equal to or greater than forty percent (40%)³ of fair market value of the building or structure as determined from the tax records of the City of Dalton.

(a) Estimated costs, including but not limited to, demolition, construction, installation, and fabrication, including labor and materials, for both interior and exterior improvements, shall be submitted at the time a building and/or land disturbance permit application is filed. The declared value of improvements under multiple permits shall be cumulative and shall include the value of improvements under permits issued for the previous seven (7) years, from the date the most recent application is filed.

(b) Where two or more properties, lots or parcels are located within the same block or have frontage on the same side of the street between two intersecting streets, and are under common zoning or ownership and are being developed or re-developed as a single development operation or a series of coordinated development operations, these properties shall be considered as a single property for purposes of this Overlay District.

(c) When a portion of any parcel, lot, property, or development falls within the boundary of the Overlay District, the entire development shall meet these standards.

Landscaping/Tree Planting

General Requirements

(a) The species of trees to be planted shall be from an approved list supplied by the City Arborist.

(b) At the time of planting, minimum tree caliper measured six (6) inches aboveground on all trees shall be three (3) inches, and the minimum height shall be eight (8) feet.

(c) Trees planted within twenty (20) feet of an electrical transmission or distribution line shall be chosen from an approved list supplied by the City Arborist.

(d) Curbs. All planting areas shall be bordered by 6" stand up concrete or granite curb.

(e) Wheel stops. All parking spaces abutting a planting area must incorporate wheel stops to protect the planting area from contact with vehicles.

Planting areas

(a) A perimeter planting strip shall be required. This strip shall be exclusive of access driveways, run parallel to the public right-of-way, and be designed to provide continuity of vegetation along the right-of-way. The strip shall have a width of eight (8) feet. The planting strip shall include two (2) large trees in the first forty (40) feet and one (1) large tree per forty (40) feet thereafter or fraction thereof, if the remaining distance is twenty

³ As an alternative or addition, we suggest that at least the landscaping requirements kick in at 25% of FMV.

(20) feet or more. The alternative pavement cutout as described in § 3-3(a) of the Dalton Tree Ordinance is not available in the overlay zone.

(b) Whenever the impervious cover exceeds ten thousand (10,000) square feet, an area equal to at least five (5) percent of the total impervious surface must be provided for landscape purposes and tree planting. Parking lot planting areas shall be located within the parking lots and adjacent to parking spaces as planting areas between rows of parking spaces, inside medians, at the end of parking bays, or in tree islands. At least fifty (50) percent of planted trees shall be large trees.⁴ Minimum unpaved landscape area per tree shall be one hundred eighty (180) square feet with a minimum dimension of eight (8) feet. Internal tree planting is required at the rate of one (1) tree per 15 parking spaces. No parking space shall be more than ninety (90) feet from a tree, measured at the trunk two feet above grade.

(c) Ground cover and/or landscaping are required in all planting areas. Acceptable materials shall be chosen from an approved list provided by the City Arborist.

Sidewalks

The owner or developer of every parcel on either side of any portion of Walnut Avenue governed by this Overlay District shall provide a sidewalk generally parallel to the right-of-way line Walnut Avenue (unless a sidewalk already exists).

(a) The edge of the sidewalk facing the curb shall be located at the place where the Department of Transportation right-of-way ends.

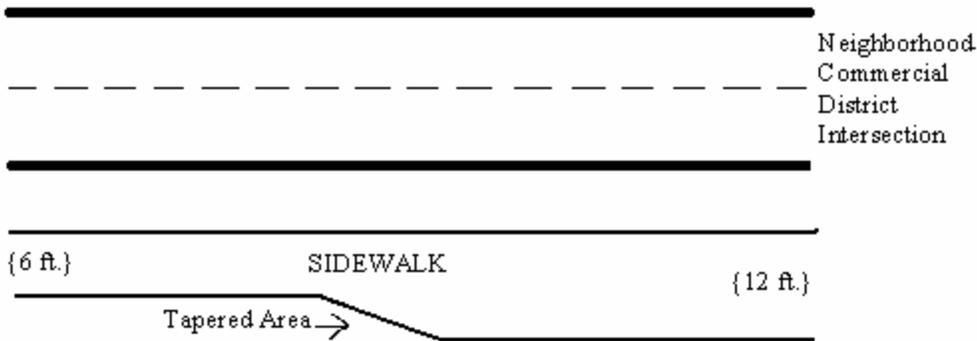
(b) The sidewalk shall be six (6) feet wide, except within 250 feet in either direction of a [Neighborhood Commercial District intersection]⁵ where it shall be twelve (12) feet wide. If a single parcel of property straddles the point 250 feet from the intersection, the sidewalk shall remain twelve feet wide past that point until it meets the property line.

(c) Where a district requiring a six-foot sidewalk abuts a district requiring a twelve-foot sidewalk without an intervening street, the sidewalk within twenty (20) feet of the point where the sidewalk must widen shall taper out to provide a smooth transition between sidewalks of different widths.

⁴ This provision was taken from the Tree Ordinance. Alternatives would be to require all large trees, or 50% large trees, 50% trees of a minimum size (e.g. 20'), or to allow smaller trees in the parking area (as opposed to the strip).

⁵ This language may need to be changed if these "nodes" are to have a different title.

Sidewalk Illustration:



Parking

Parking shall be allowed only in the side and rear yards of the building whose façade is parallel to the right-of-way line of Walnut Avenue. Automobile parking areas shall be designed consistent with the Landscaping/Tree Planting, Sidewalks, Setbacks, and Building Orientation requirements in this District.

In no case shall parking be allowed between this primary building and the right-of-way line.

Off-street automobile parking shall be equal in number to either (1) 4.5 spaces per one thousand (1,000) square feet GLA or (2) the minimum requirements for the specific uses listed in Article VI, Section 6-3, whichever results in the fewest number of parking spaces for the lot.

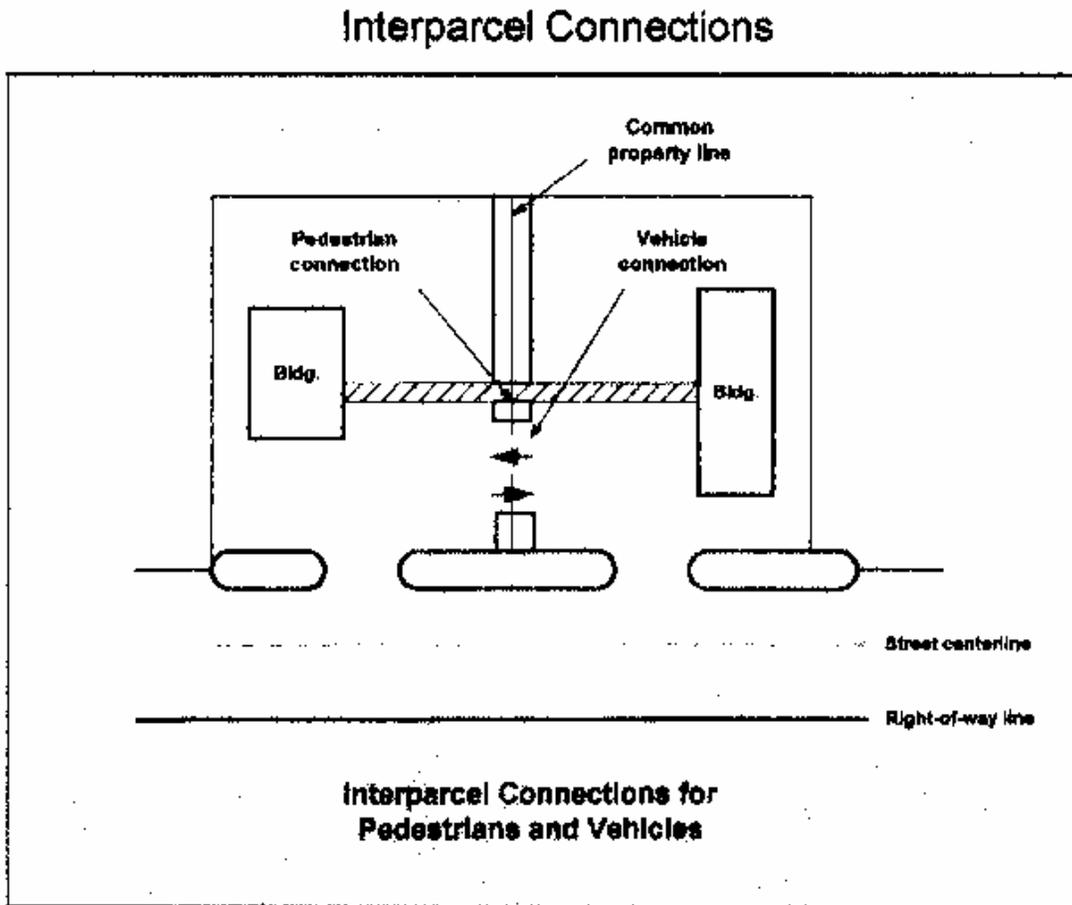
Inter-parcel Access

For any new or redeveloped commercial use (see Redevelopment Triggers section), the property owner shall grant an inter-parcel access easement to each adjoining property within the Dalton Overlay District. The easement shall be properly recorded in the chain of title of the subject property. The easement shall provide access to customer/employee parking areas and driveways on the adjoining property in the most efficient and safe manner, and to the mutual benefit of both properties. The location of the easement shall be negotiated at the time of the reciprocal granting of easements by the adjoining property owners. Placement of the easement is also subject to approval under the development review process (see §___ of [the Dalton Zoning Ordinance]). Inter-parcel access shall not be placed within the front yard maximum setback required within the District.

The following shall be express terms of the easement:

(a) The easement shall permit vehicular and pedestrian access from the adjoining property to driveways and parking areas intended for customer or tenant use on the subject property. The minimum acceptable width shall be 20 feet. Parking spaces on the subject property may be restricted to use only by the owner's customers and tenants.

(b) Both property owners shall extend a pavement or asphalt driveway to the point of access on the property line.



(Source: Unified Development Code of Forsyth County)

(c) Once the driveway is constructed, the property owners shall maintain the interparcel access. For the purpose of this section, "maintain" includes, but is not limited to, keeping the pavement or asphalt in good condition and keeping access available for customer use. At no time may the access be blocked in any manner, including by a structure. Any elimination or relocation of an access easement must be renegotiated, approved, and recorded under the terms of this section.

Appeals

Any appeals to the applicability of this ordinance or to denial of a permit under the requirements of this ordinance shall be made to the Dalton Board of Zoning Appeals under the appeals provisions of §_____ of [the Dalton Zoning Ordinance].

VariANCES

A variance may be granted upon application if an individual case of unnecessary hardship is placed upon the applicant, when such variance will not be contrary to the public interest of the purposes of this ordinance. The request for a variance must meet all of the following conditions:

(a) There exists extraordinary and exceptional conditions pertaining to the property in question resulting from its size, shape, or topography that are not applicable to other lands or structures in the area. The conditions must not be the result of actions of the applicant.

(b) The requested variance will be in harmony with the purpose and intent of these regulations and will not be injurious to the neighborhood or to the general welfare.

(c) The variance requested is the minimum variance which will make possible the logical use of the land.

MENU

The Ordinance

The following provides background to the substantive requirements of the ordinance, to both explain how they were developed and what the particular regulation attempts to accomplish.

Redevelopment Triggers

Redevelopment triggers are designed to require that the conditions of the Overlay District be met once a certain level of change is being made to the building. The language in this ordinance provision comes from the language in the Sandy Springs Zoning Overlay District. All new construction must come into compliance with the Overlay District through the requirements for land disturbance and building permits. Requiring renovations to be 40% of the property's most recent tax assessment does not hinder minor necessary repairs, yet requires major repairs or improvements to come into compliance with the overlay's standards. Accumulating the improvements over a seven year period avoids attempts to circumvent the overlay's requirements by renovating in smaller stages to stay under the 40% requirement. As an alternative or addition, the ordinance could trigger only the landscaping requirements with a 25% provision, as suggested in the footnote to this section in the ordinance.

Landscaping/Tree Planting

This provision establishes tree planting and landscaping requirements for the Overlay District. It modifies the requirements under the Dalton Tree Ordinance by changing planting area dimensions and requirements, and by increasing protection of planting areas by mandating the use of wheel stops.

The provision requires street trees, parking lot trees, and ground cover. It is designed to encourage pedestrians to use sidewalks, improve the "look" of developments, and reduce the "heat island" effect in parking lots. Requirements for tree size at planting and maturity ensure survival of the trees, and maximize aesthetics and shade.

Sidewalks

Sidewalks are required in the Overlay District to encourage pedestrian traffic along Walnut Avenue, and also to provide sidewalk seating for restaurants in the planned commercial district intersections. Sidewalks will be six feet wide, except in areas near neighborhoods where they will be twelve feet wide. Caleb Racicot of Tunnel-Spangler-Walsh and Associates suggested the language requiring a smooth transition in the areas where the sidewalk width changes. The provision includes the phrase, "without an intervening street" because no tapering will be necessary if the transition point occurs at a

street intersection. Having a six-foot sidewalk on one side of the intervening street and a twelve-foot sidewalk on the other would not be an awkward transition.

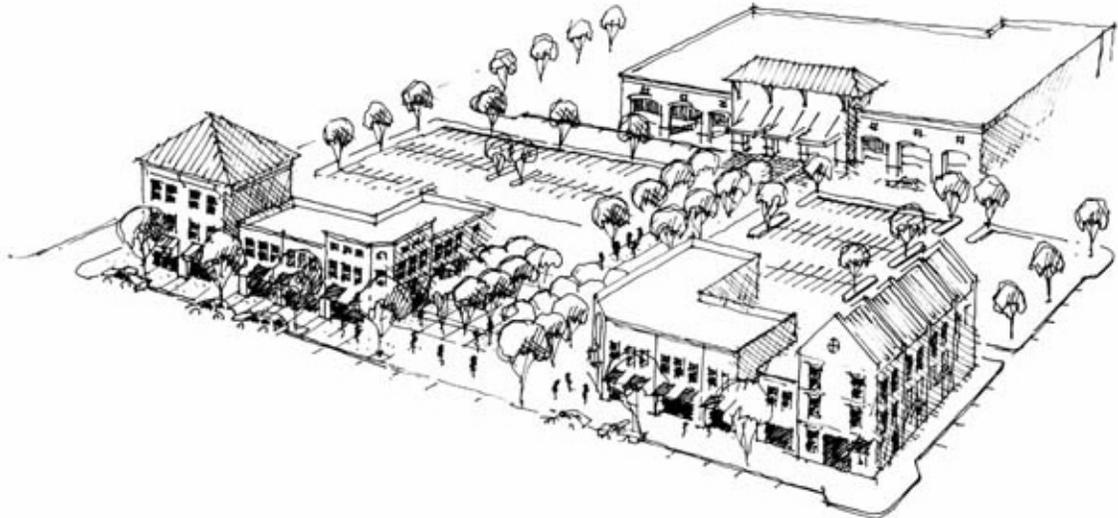
Building Site Requirements

Orienting buildings towards Walnut Avenue creates a more aesthetically pleasing and pedestrian-friendly environment. The fenestration and front entrance requirements discourage developers from skirting the requirement by using fake entrances. This also encourages developers to place the main entrance on Walnut Avenue. Requiring that the building have pedestrian access from the sidewalk encourages pedestrian circulation and keeps pedestrians out of harm's way by not forcing them to walk through parking lots.

A twenty foot maximum setback brings new buildings closer to the street so that developers will put parking behind or beside the buildings rather than out front. In policy discussions, it was decided that this ordinance would require a strict twenty foot setback. However, as noted in a footnote to the ordinance, this simple requirement may not adequately address corner lots or lots on intersecting streets. Therefore, Dalton may wish to amend this provision to cover those situations before passage of the ordinance. Also, flexibility could be built into this requirement for desired public purposes, such as outdoor dining, or civic/gathering space.

Multiple building sites are subject to approval as Planned Unit Developments (PUDs). This will allow the city to capture the purposes of the Overlay District not just in single building sites, but in larger developments as well. This PUD ordinance should be drafted and passed at the same time as the Overlay District ordinance.

Below is an illustration of a potential lot layout of a multi-building site;



(Source: Congress for New Urbanism/The Lawrence Group)

Parking

In Dalton, the primary mode of transportation is the automobile, so each new development or redevelopment project should have adequate parking. Much of the time, however, local zoning ordinances, bank financing rules, and other development practices result in an oversupply of parking spaces. When too many parking spaces are provided for in a project, resources that could be spent elsewhere are wasted, valuable land is not put to its highest and best use, and the environment is degraded through stormwater runoff and accumulation of oil and other pollutants. The overlay ordinance reduces slightly the general minimum parking requirement for commercial buildings, from 5 spaces per 1000 square feet in the Dalton Zoning Ordinance to 4.5 spaces per 1000 s.f. This reflects the national trend of falling parking requirements for commercial centers. The Urban Land Institute reports that parking requirements for shopping centers continue to decline. Often, for centers between 25,000 and 400,000 square feet GLA, 4.0 spaces per 1,000 square feet are required; for centers over 400,000 square feet GLA, between 4.0 and 4.5 spaces per 1,000 square feet are required. *See Urban Land Institute, Parking Requirements for Shopping Centers*, 2nd ed. (1999). Therefore, if local parking assessments indicate that the 4.5 spaces per 1,000 square feet requirement result in oversupply of parking, this figure could be adjusted downward.



Existing Dalton parking lot

We also suggest that Dalton work toward providing the optimal amount of parking within the District and throughout the city limits. Providing the optimal amount of parking is important because the availability of free or cheap parking is one of the main determinants of which mode of transportation travelers use to get to their destination. When there is a glut of free or cheap parking, travelers will drive to their destinations rather than using transit, walking, bicycling, or using carpools. When more people are driving, congestion increases and governments are pressured to build more roads to accommodate the amount of vehicular traffic. As Dalton and Whitfield County are planning to implement alternative transportation options over the next two decades, parking becomes an important consideration. The following are suggestions for achieving the optimal level of parking in the Overlay District and the greater Dalton area.

Identify Parking Demand

Parking demand varies widely from community to community, so it is preferable for Dalton to generate its own estimates of parking demand. The minimum parking requirements of Article VI, Section 6-3 of the City of Dalton Zoning Ordinance should be reviewed to see if they are creating an over-supply or under-supply of parking. The best way to make such a determination is to periodically survey current and planned land uses, local travel patterns, and parking problems at different locations in the community. This type of community-specific data collection can help Dalton adjust its parking requirements over time.

Allow for Flexibility

Although predetermined parking formulas are easier to implement, they do not allow for much flexibility. On the other hand, allowing many variance requests can be inefficient and troublesome for local governments. As discussed below, some provisions that allow more flexibility include off-site parking and requiring a parking study to evaluate site-specific circumstances and demand. These options and other options are reviewed in more detail in the APA's report *Flexible Parking Requirements*. See T.P. Smith, *Flexible Parking Requirements*, Planning Advisory Service Report No. 377, American Planning Association (1983).

Some new plans include on-street parking as a traffic-calming device and as a buffer for pedestrians on sidewalks. For new developments and redevelopment projects, on-street parking can be considered as part of a lot's minimum parking requirement. For example, if a lot has enough frontage with on-street parking to accommodate eight parking spaces, those eight spaces could be deducted from the amount of spaces required to be provided on the lot itself. While there are no plans at the moment to allow on-street parking on Walnut Avenue, there may be opportunities for the addition of on-street parking on side roads and access roads. Properties fronting such roads could include on-street parking to their overall parking space total.

Also, when the required off-street parking cannot reasonably be provided on the same lot on which the principal use is located, Dalton's current zoning ordinance allows

the Board of Zoning Appeals to provide off-street parking on another property, so long as the space is within five hundred (500) feet of the principal use. It may be advantageous to increase this distance requirement to one thousand (1,000) feet.

Another way to ensure that parking issues have been fully considered for a particular development is to require a parking plan be submitted with development permit applications. The parking plan would incorporate site-specific data and would explain how the development plan meets existing parking regulations. Developers could be asked to submit plans to reduce the amount of parking on the site.

Parking Structures

When land is at a premium or walking distances from parking spaces are too great (generally more than 1,000 feet), then parking structures should be considered. Although parking structures are more expensive than surface parking (sometimes more than five times as much per space), parking structures can add aesthetic, environmental, and overall cost-saving features if placed in an ideal location. In addition, depending on the site and purpose of the parking structure, the structure may house additional uses. For example, a large shopping center could include a parking structure with small shops on the ground floor and parking on the upper levels.

Additional Sources to Consider:

Tri-State Transportation Campaign, *Parking Management: A Brochure*, <http://www.tstc.org/pricing/parkman>.

Urban Land Institute, *The Dimensions of Parking*, 4th ed. (2000).

Institute of Transportation Engineers, *Transportation Planning Handbook*, John D. Edwards, ed., 2nd ed. (1999).

Inter-parcel Access/Alleys

Traffic congestion is a concern along Walnut Avenue. Currently, customers must exit each commercial parcel, merge onto the main roadway, then turn into the next driveway to shop in a commercial center next door to the first property. This leads to traffic congestion and accidents at the intersections of the main corridor and entrances into commercial complexes. The inter-parcel access provision in the Overlay District will hopefully help alleviate these problems. In the Overlay District, inter-parcel access is required across a boundary line between commercial properties.⁶

⁶ It has been suggested that reciprocal *private* easements by adjacent property owners may ripen into *public* easements unless the easement is closed at least once every seven (7) years. Under O.C.G.A. §§ 44-9-1a right-of-way may be acquired for the public by prescription either by express grant or by seven (7) years uninterrupted use of improved lands. However, according to Georgia case law (*Jordan v. Way*, 220 S.E.2d 258, 261 (1975); *Tribble v. Forsyth*, 167 S.E.2d 142, 143-44 (1969)) the mere use of one's property

Alternatively, Dalton could finance the construction and maintenance of an alley system behind commercial properties on Walnut Avenue. An alley system would provide consistent alternative access to commercial properties. Alleys would also avoid potential conflicts between adjacent property owners over the sites of inter-parcel access driveways. The city could require property owners to provide alleys. However, this could cause a timing problem in creating the entire alley system, since properties will be redeveloped at different rates. Use of tax allocation district (TAD) or other public funds to create the alley system would help avoid the timing issue.

Other Smart Growth Options

Solutions to the “Rolling Strip”

Like many local municipalities, the City of Dalton is concerned with containing the crawl of a commercial corridor into areas that have until now remained undeveloped. Walnut Avenue is currently one long stretch of commercial and industrial development (with the exception of the small segment of residential housing) running from Interstate 75 to the city limits. The corridor contains the typical cast of characters, from the small and large strip shopping centers, grocery store complexes with out-parcel fast food restaurants and gas stations, and “big-box” retail. There is local sentiment that this “rolling strip” of visually unappealing commercial development has gone far enough, and that solutions are needed.

There are several possible solutions available to Dalton for controlling the “rolling” commercial corridor along Walnut Avenue.⁷ These include re-zoning excess commercial property, strategic placement of infrastructure, density and height requirements, and transfer of development rights. These solutions are described in separate sections, but they are all related and may be most effective in containing commercial development when used together.

for travel purposes by members of the public, even for a period of seven years or more, will not create a public easement. This is true unless it is clear that there was an intention on the part of the owner to dedicate the property, and acceptance by the public authorities, either expressly or by implication. Maintenance or repair can constitute such acceptance. Use of TAD or other public monies to maintain and repair the easement could be seen as public dominion and acceptance of the property which gives rise to a public right-of-way. If Dalton decides to use public funds for inter-parcel access purposes, it may consider creating public rights-of-way for inter-parcel access, rather than private easements.

⁷ The “rolling strip” is a development pattern in which businesses in an older shopping center will readily move onto a newer center further down the road, leaving behind a vacant or underutilized center, which complicates redevelopment efforts by weakening the market for commercial space in older parts of the strip. As long as businesses can keep moving into new space further down the road, they have little incentive to stick around as participants in revitalization of the older strip.

Re-zoning

One solution is to reduce the amount of commercially zoned undeveloped property along Walnut. If the commercial zoning of the property is changed to a more restrictive classification, then commercial growth along the corridor would stop. In terms of areas suitable for re-zoning, most of the undeveloped lands along the western end of Walnut Avenue are outside of the city limits, in Whitfield County. To the extent that there is undeveloped property in both the city and county that is zoned commercial/industrial, some property could be rezoned to agricultural or residential classifications.

The main problem with re-zoning is the potential for takings claims by unhappy property owners who were expecting to develop their land as commercially zoned. Though “re-zoning” is rarely found to be a taking if properly done, it can be done in conjunction with a transfer of development rights program as a form of compensation, creating a less harsh result on the affected property owners (more on this below, in transfer of development rights section). *Gradous v. Board of Commrs.*, 349 S.E. 2d 707, at 709 (Ga. 1986). Case law in Georgia has been decidedly in favor of the local government’s zoning decisions, giving them the presumption of validity that must be overcome with a showing of significant detriment on the part of the land owner and a showing that the new zoning is not substantially related to the public health, safety, morality, and welfare.⁸ However, if Dalton decides to pursue the re-zoning option, it should take some precautionary steps.

The first precaution is to include language in the zoning amendment that demonstrates the re-zoning of the property is sufficiently related to the public health, safety, morals, and welfare. The preservation of open space falls within the public welfare.⁹ Declaring this in the amendment strengthens the presumption of validity due to any zoning action.¹⁰

The second precaution is to make sure there are no vested rights issues with property to be re-zoned. If the property owners have already sought assurance from the local government concerning the right to use the property for commercial purposes, either through applying for a building permit or through some other form of official written assurance, then their right to develop the property may be vested.¹¹ This means that they must be allowed to build, or compensated for the loss of their vested right.

The final precaution is to provide proper notice of the change to the property owners to avoid due process problems. If Dalton follows the state Zoning Procedures Law and the City’s own notice and public hearing procedures in adopting the zoning amendment this should satisfy the due process requirements.¹²

⁸ *Gradous v. Board of Commrs.*, 349 S.E. 2d 707, at 709 (Ga. 1986).

⁹ *Parking Assoc. of Ga., Inc. v. City of Atlanta*, 450 S.E. 2d 200, at 202 (Ga. 1986).

¹⁰ *Gradous*, *supra* note 1

¹¹ *Barker v. Forsyth Co.*, 281 S.E. 2d 549, at 552 (Ga. 1981).

¹² O.C.G.A. § 36-66-4.

Increased Density on Currently Developed Sites

In anticipation of growth and demand for future commercial development, some higher density solutions should be considered. One option is to allow more density along the already developed portions of Walnut Avenue. Locations on Walnut Avenue closer to Interstate 75 and downtown Dalton are already more attractive locations for commercial development because of proximity to the highway and other developed parts of Dalton. By increasing height and/or FAR requirements in the Overlay District, the City could encourage businesses to build upwards in sites currently containing one story buildings.

Another idea is the creation of a “floating zone” that permits more dense commercial and residential development in appropriate areas. This is achieved by adopting a zoning district that allows for a higher density use, without immediately affixing it to a spot on the future land use map. The City can then use its own discretion to attach that higher density zoning to a particular spot along Walnut Avenue (or another part of the city), or grant a developer’s request to have it attached.

Transfer of Development Rights

Transfer of development rights (TDR) is a related option available to Dalton to preserve the greenfield sites. Under a TDR program, development rights are transferred from “sending zones” which are designated for protection to “receiving zones” which are designated for future growth.

A TDR program benefits landowners, developers, and the local government. In creating a TDR program a local government will identify a “sending” area where conservation is desired. In this case it might be the undeveloped lands at the western end of Walnut Avenue. Also identified is a “receiving” area, where the local government wants to encourage more development.¹³ In this case the receiving area could be another part of Walnut Avenue, closer to the Interstate, or another part of Dalton or Whitfield County where there is a desire to promote more commercial development.

The zoning of the sending area is usually changed to a lower density level than was previously allowed. In exchange for giving up the right to develop at the higher density, the property owners are allowed to sell those development rights to developers in the receiving district, or to the development rights “bank” set up by the community. Property owners in the receiving district who purchase the development rights may increase the density on their lands.¹⁴

TDR programs have been successfully implemented around the country. Each community considering TDRs must assess the concept within larger development goals.

¹³ Stinson, Joseph and Michael Murphy. Transfer of Development Rights, Pace Land Use Law Center, 1996, available at <http://law.pace.edu/landuse/tdr.html>

¹⁴ Id.

In Dalton issues to be considered include whether a small scale TDR program could work on Walnut Avenue or whether a city or county wide program would be necessary to appropriately steer commercial density to suitable areas. Generally speaking, larger scale TDR programs are more successful.

Infrastructure Control - Sewer Ordinances

Another way to prevent continued advancement of commercial development out Walnut Avenue may be to avoid extending sewer and public facilities. One way this can be achieved is through the development of a sewer ordinance.¹⁵

The creation of a sewer ordinance has the benefit of allowing Dalton and Whitfield County more control over where to direct future growth. This solution is best implemented on both a city and county wide scale. In developing an ordinance the local government first needs to determine a sewer service area. The service area should allow for a realistic expectation of future growth in the City. Unrealistic projections can undermine the effort to direct growth, causing developers to move into other jurisdictions.¹⁶

The location of the service area can depend on any number of factors including, “existing development patterns, natural features which help define the developed and rural parts of town, locations which are appropriate for sewer from an engineering standpoint, and areas where the town wants to encourage future growth.”¹⁷ The sewer ordinance can also control the pace at which sewer capacity should expand and the percentage of sewer capacity dedicated to different types of uses.¹⁸

One problem with the sewer ordinance solution in Dalton is that there are currently commercial developments along Walnut using septic tank disposal systems. Although the regulations require a certain amount of unpaved, open space for such systems, our observations of current development suggests enforcement of this requirement is loose. It appears that the absence of sewer connection has not discouraged development, because developers use septic tanks without worrying about loss of parking or building space. Thus, denial of sewer services on the western end of Walnut may not be as great a deterrent as it could be if the septic system regulations were enforced.

¹⁵ Sewer moratoria, a more limited solution in terms of time and scope, may be allowed in Georgia with a showing of reasonable necessity. A showing of reasonable necessity would require that the sewer system was at or over capacity and that allowing more connections would be dangerous to the public health. See, Dekalb County v. Townsend Associates, Inc., 243 Ga. 80, at 82, 252 S.E.2d 498 (Ga. 1979)

¹⁶ Lampton Kate, *Developing a Sewer Ordinance: One Town's Experience*. Planning Commissioners Journal. p. 2, Vol. 44, Fall 2001

¹⁷ Id.

¹⁸ Id. at 3.

Retroactivity/Non-Conforming Uses/Amortization

One issue involved in placement of the Overlay District on Walnut Avenue is retroactivity – whether the overlay ordinance requirements could be made to apply to existing development along the corridor. As with many areas of law, the answer is uncertain and several factors must be considered. The first two factors are the U.S. and Georgia Constitutional provisions prohibiting passage of retroactive laws, and prohibiting a taking of a property right without compensation. These provisions make it unwise to simply require that all sites within the overlay immediately comply with Overlay standards. This would require removal of existing buildings and re-working of entire sites. Therefore, the Overlay ordinance designates all existing uses and structures as non-conforming uses which can be continued except under certain circumstances.

Amortization is another possible way to terminate nonconformities.¹⁹ Amortization is a useful tool mainly for terminating non-conforming uses and minor structures associated with those uses rather than significant non-conforming buildings. Local governments in other states use amortization as a tool to terminate non-conforming uses, even on purely aesthetic grounds. For example, Prince Georges' County, Maryland recently passed an ordinance providing for the amortization of used car lots under 25,000 square feet within three years. However, Georgia case law lends only indirect support to amortization of non-conforming uses. Also, in 1990 the Georgia Supreme Court categorically rejected amortization for the removal of non-conforming signs.²⁰

Drafting an appropriate, defensible amortization provision

Even though Georgia courts have repeatedly upheld aesthetics as a valid public purpose, and the exclusive pursuit of which is not unreasonable,²¹ an amortization provision should include other reasonably related public purposes and benefits of amortization, such as the economic benefit to the community and city accompanying better uses of the land in the district, and the need for a comprehensive approach to controlling uses for the achievement of these goals. The provision should also minimize the detriment to property interests by providing amortization periods that are reasonably related to the non-conforming use.

¹⁹ The concept of amortization of non-conforming uses and structures comes from the accounting term, which is used to describe the process of depreciating an asset over a set period of time. In zoning law it has come to mean a set period in which the owner recoups the value of the asset by some method, as further discussed below, after which the non-conforming use or building is terminated.

²⁰ Lamar Advertising of South Georgia v. City of Albany, 389 S.E.2d 216 (Ga. 1990). However, it is important to note that the case was governed by State Highway Department v. Branch.²⁰ That case held the state billboard statute, which governed the regulations challenged in Lamar, was an unconstitutional taking and violation of due process. Therefore, this case can be factually distinguished and narrowly read as a limitation on amortization of billboards only.

²¹ Parking Ass'n v. City of Atlanta, 450 S.E.2d 200, 202-03 (Ga. 1994) (quoting Berman v. Parker, 348 U.S. 26, 33 (1954)).

There is no generally accepted method of amortization used by a majority of jurisdictions.²² Picking the right technique is “perhaps more art than science.”²³ There are, however, two steps to calculate the proper amortization period for nonconformities. First, the “unrecoverable costs” must be established. There are three primary approaches for evaluating unrecoverable costs: “(1) the owner’s investment in the premises; (2) the fair market value of the property; and (3) the replacement cost.”²⁴ For amortizing major buildings or land, the replacement value basis is perhaps the most useful, although the owner or lessee’s investment in the premises might be calculated if she has made improvements that will not be recoverable.

The next step is establishing an amortization period. This can be done by having fixed periods in the ordinance for different classes and subcategories of nonconformities, or it can be done by providing criteria for the local government to determine the period on a case-by-case basis. Fixed periods are usually best because they allow ease of administration.²⁵ The challenge is to pick a defensible, reasonable amortization period for the types of uses Dalton might consider amortizing. Although the case law is not clear in Georgia, the courts will likely look to the reasonableness of the amortization period in determining whether a taking has occurred. It is advisable to err on the side of generosity with the amortization period. However, a very long amortization period raises questions of its usefulness as a strategy.

Due to the absence of Georgia law on this issue it is difficult to give concrete guidance about amortization. However, we do know that: 1) there is not prohibition of amortization for non-conforming uses in Georgia, 2) amortization works best for termination of non-conforming uses, rather than buildings, and 3) expert guidance and legal counsel is necessary to help create a defensible ordinance.

Architectural Design Guidelines and Review

As an additional element to the Walnut Avenue Overlay, Dalton could create design guidelines to promote quality, consistent development along Walnut Avenue. Design guidelines are used to promote aesthetics and architecture, and to provide a unique sense of place to the community. Wherever they are used, architectural design guidelines should have a clearly defined purpose. This serves to inform builders of the reasoning behind requiring such standards and to give credence to their enforceability.

²² Margaret Collins, Methods of Determining Amortization Periods for Non-Conforming Uses, 3 Wash. U. J. L. & Pol’y 215, 217 (2000). This is the best single resource for dissecting actual amortization provisions and courts’ analyses of these provisions. The accompanying section borrows heavily from this article.

²³ Id.

²⁴ Id. at 218.

²⁵ Non-Conforming uses in conforming buildings have typically been amortized in 1 to 5 years. In other states, periods upheld by courts for minor structures and outdoor storage have ranged from 6 months for a riding stable in a residential area of Dallas up to 7 years for dog kennels in an Omaha neighborhood. A limited number of more major structures have been successfully amortized. These have been deemed to constitute a substantial nuisance to their environs and have been given periods ranging from 10 years for gas stations and up to 20 years in the case of a cement plant. Id. at 229.

Typically, local governments adopt an ordinance describing the process along with text and graphical design guidelines used in the review of projects.²⁶ More successful design guidelines do not try to dictate style, which stifles innovation. It is more important to focus on illustrating spatial elements such as building type or form, proportion, scale, height, and setback, as well as delineating acceptable and unacceptable building materials. Elements that should be addressed in any design guidelines are:

Setbacks – minimum setbacks require buildings to “address the street”

Building shape and height - buildings should be proportionally designed and in context with their surroundings. Requirements for upper stories and attractive façades are highly recommended for good design and relationship to the street.

Roof line and overhang - for example, buildings with flat roofs should have cornices or decorative bands to “cap” the façade.

Window and door proportions and grouping - generally, there should be more glass and less wall at the storefront level, which these “fenestration” requirements help achieve.

Storefront standards - storefront design should not be allowed to stray out of its natural place within the façade. Storefronts should be as transparent as possible.

Lighting standards – lighting should be appropriate for the context, and balance visibility and safety against light pollution problems.

Landscaping standards and greenspace requirements – landscaping and requirements for green areas and “pocket parks” help create aesthetically pleasing sites and encourage pedestrian use.

Parking lot design – good design reduces the “acres of parking in front” phenomenon.

Site grading – grading should be minimized to reduce environmental damage and to encourage “context sensitive” design.

Signage requirements – should balance visibility with aesthetics.

Following is an illustration of an appropriately designed storefront:

²⁶Mark Hinshaw, “Making Your Design Review Process Defensible,” [available at http://www.planning.org/thecommissioner/summer01.htm](http://www.planning.org/thecommissioner/summer01.htm)



(Source: Caleb Racicot; Tunnell-Spangler et al.)

The Dalton Quality Growth Resource Team Report (June 2001) takes many of Dalton’s unique characteristics into its recommendations and proposals. As recommended by the team, compatibility with Dalton’s historic sites and other inherent designs should be taken into consideration when creating architectural design guidelines.

As part of the implementation of the design guidelines, Dalton could either create a design review board, or have the City Council oversee the design review process. The former is preferable because experts or those with architectural experience or training could be appointed to the board, thereby strengthening the authority of the board and defensibility of its decisions. The design review board, if implemented, should make recommendations to the Council. The design guidelines should be objective in nature so that the review board’s recommendations are not considered arbitrary or capricious.

Like any administrative process, the board must ensure due process by following its procedures and making justifiable decisions based on a reasoned—and well documented—application of the design guidelines to the proposed project. There should also be an appeals process to protect due process rights of applicants for permits. This protects the ordinance from challenge.

Transportation Recommendations

The automobile is currently the primary mode of transportation in Dalton. However, as the community has recognized, Dalton needs a more comprehensive

multimodal transportation network. *See, e.g., Greenhorne & O'Mara, Inc., Whitfield County/City of Dalton Multimodal Transportation Study (2003); Whitfield County and Cities Joint Comprehensive Plan Update 2000-2020 (2002); Georgia Quality Growth Partnership, Dalton Quality Growth Resource Team Report (2001).* These sources address transportation issues throughout Dalton and Whitfield County. With regard to the easing of traffic congestion and the improvement of access to sites within the Dalton Overlay District, the following transportation issues should be considered:

Bicycle Routes and Racks

Although plans call for the expansion of the size and connectivity of the existing bicycle network, the primary artery for bicycle travel in the Overlay District is Walnut Avenue, a crowded, dangerous stretch of road. In order to facilitate bicycle travel to, from and within the District, well-marked bicycle lanes could be added to Walnut Avenue. Whether these paths could be combined with pedestrian paths or separate should be addressed. Also, convenient bicycle racks should be provided at numerous locations along the corridor.



Traffic on Walnut Avenue

Transit

Dalton is a relatively compact city, and its physical layout makes it conducive to service by public transit. In addition, there is a growing population of citizens who traditionally rely on public transit. Two of the proposed fixed routes in the *Whitfield County/City of Dalton Multimodal Transportation Study* use Walnut Avenue/SR 52: The Dalton Trade Center Route and the Wal-Mart Route. The presence of transit along these routes could reduce traffic within the Dalton corridor and provide another means for citizen access to the commercial activity within the District. However, such transit access is made most effective when it has a high degree of connectivity with other modes of transportation, such as sidewalks, bicycle routes, and parking areas for commuters. Also, Dalton may consider a transit route to ferry passengers to commercial and industrial uses along Walnut Avenue from other parts of the city.²⁷

Environmental & Greenspace Protections

Although the vast majority of the Overlay District area is already developed, there are still environmental and greenspace considerations to take into account. Also, should Dalton or Whitfield County choose to extend the District further to the east into unincorporated Whitfield County, more of these considerations will come into play. The following are recommendations on how to preserve and protect natural resources within the District.

Wildlife/Vegetation

Coahulla Creek has been identified as intermittent habitat for trout. The Georgia Department of Natural Resources (DNR) prohibits development within 100 feet of all designated trout streams. Thus, in order to protect downstream trout habitat, development in the Overlay District should not occur within 100 feet of Coahulla Creek.

DNR, through the Georgia Natural Heritage Program, has identified a number of plant and animal species as endangered, threatened, rare, or unusual. Although the amount of habitat for such plants and animals within the current city limits is expected to be small, should the Overlay District be extended to the east, any land development project should take into account the impacts of the development on wildlife and vegetation, pursuant to the Georgia Wildflower Preservation and Endangered Species Act. Such consideration is particularly important in the Conasauga River watershed, an area noted for its ecological diversity.

Floodplains

Flood zones have been identified for Tar Creek, Mill Creek, Coahulla Creek, and the Conasauga River, all of which are near or within the Overlay District. Therefore, care should be taken to protect these areas from development. Limiting development within

²⁷ TAD funds could be used for this and other transportation improvements along the corridor.

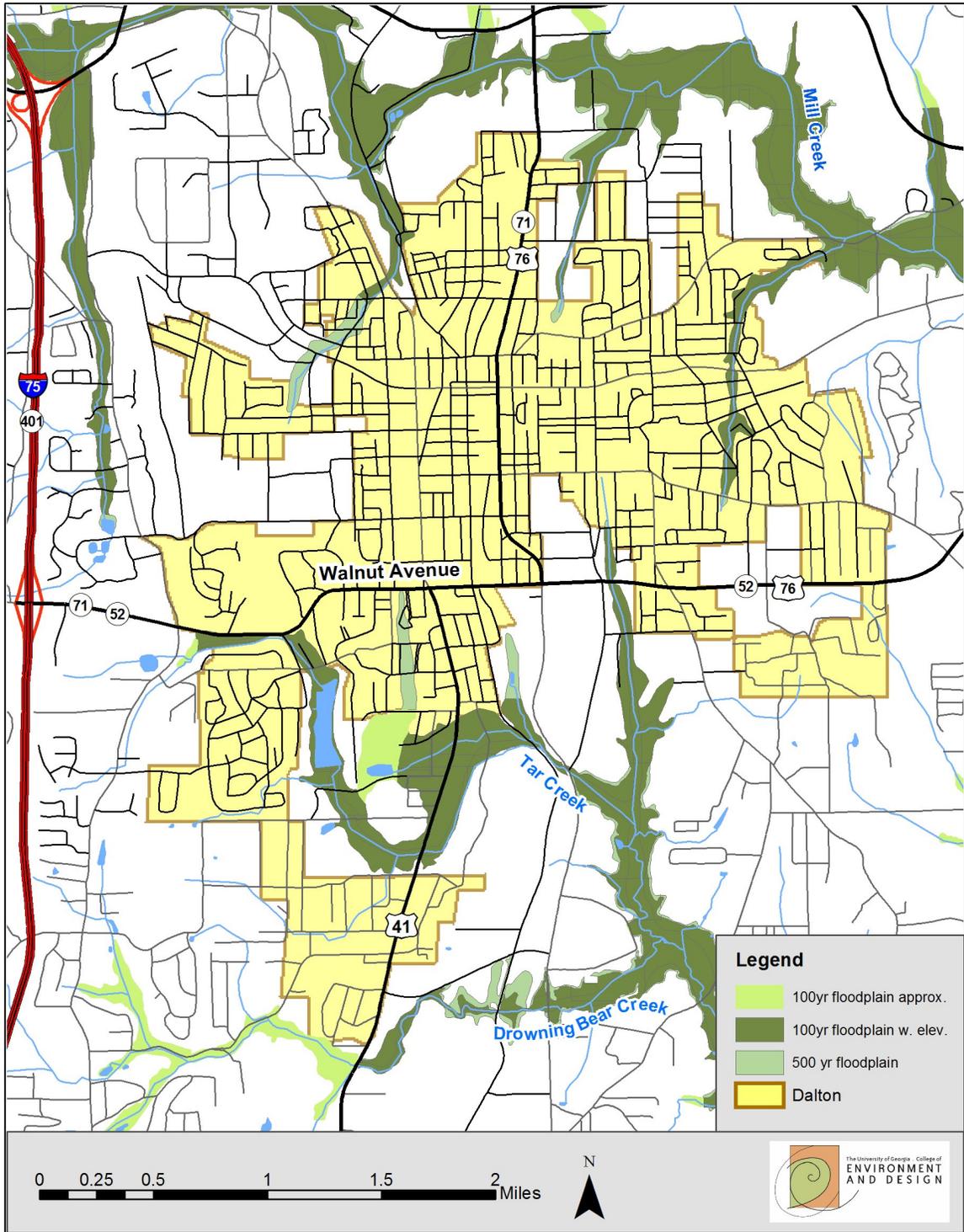
or near floodplain areas not only preserves aesthetic values, it also preserves natural water storage and conveyance, water quality maintenance, and groundwater recharge. In addition, county law restricts development within these areas, although local ordinances allow floodplain land to be developed in certain instances. These exceptions should be removed from local law and floodplain development should be prevented within the Overlay District. At the end of this section is a map of Dalton/Whitfield County floodplain areas.

Water Supply Watersheds

The DNR Environmental Planning Criteria require an assessment of environmental impacts on water supply watersheds and significant groundwater recharge areas. The water supply watersheds of Coahulla Creek and the Conasauga River and the significant groundwater recharge area underlying Dalton are within the Overlay District. Therefore, DNR water supply watershed protection strategies should be followed. However much of this area has been subject to development. For those areas subject to first-time development or redevelopment within the groundwater recharge areas, projects should take into account the effects on groundwater recharge and implement strategies and technologies to minimize the project impacts on the natural system.

Greenspace Areas

The City of Dalton and Whitfield County participate in the Georgia Greenspace Program. Little of the area within the Dalton city limits is slated for protection under the Greenspace Program. However the floodplains of Mill Creek, Coahulla Creek, and the Conasauga River are slated for inclusion in the program. Should the Overlay District be expanded to include these areas, steps should be taken to integrate this preserved land with the plans and goals of the Overlay District. In addition, should any land suited for inclusion within the greenspace program become available within the District, such land could be added to the city and county's roll of land permanently set aside for preservation.



(Map and analysis courtesy of Seth Wenger, UGA Institute of Ecology)

Big Box Solutions

Large retail and warehouse stores such as Wal-Mart, Home Depot, Target, and Sam's Club have become increasingly common among commercial developments. Sometimes referred to as big box stores, these types of businesses are often thought to be beneficial to communities that seek lower priced goods, job growth, and increased tax revenue. While the existence or magnitude of such benefits remains debatable,²⁸ it has become clear that large retail stores present unique problems to the communities in which they are located. Those problems include increased motor vehicle traffic in the immediate area and reduced emphasis on pedestrian-friendly infrastructure, reduced aesthetic value, and the blight that accompanies empty big box buildings. Therefore, it is important that communities follow policies that mitigate the costs associated with big box development. Following are suggested policies that go beyond the protections offered by the overlay ordinance.

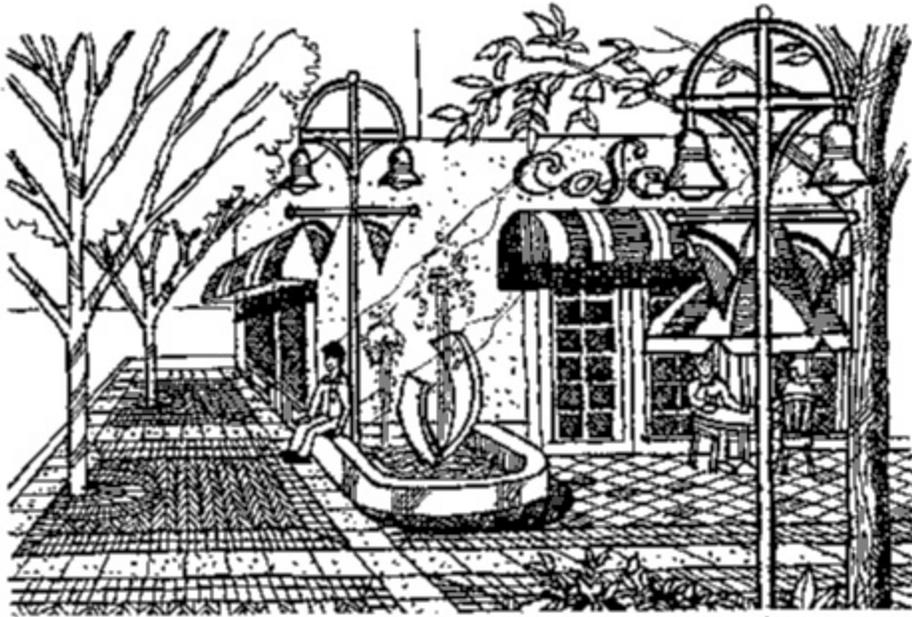


Existing "Big Box" Site in Dalton

²⁸ It has been argued that big box stores draw sales from local businesses rather than increase the total sales in a community. Also, the infrastructure costs to a community may exceed the tax revenue gained from a big box store. For more information on the economic impact of large retail stores on small businesses, see the August 10, 1994 testimony of Thomas Muller before the House of Representatives Committee on Small Business, which is available at 1994 WL 417197.

Pedestrian Amenities

The Walnut Avenue Overlay requires 6-12 foot sidewalks along the corridor, and pedestrian access through the front door of each building. Street and parking lot trees and landscaping are also required. In the case of big box sites, additional pedestrian amenities might be required. For example, Hernando County, Florida requires that large retail projects contain pedestrian amenity areas near high pedestrian traffic. These amenities include sitting areas that are landscaped, covered, or shaded.²⁹ Below is a drawing of how such a pedestrian amenity area might appear.³⁰



Aesthetics

Many successful big box ordinances address the architectural style that gave rise to the big box moniker. For example, a proposed Madison, Wisconsin ordinance would prohibit the flat, plain walls common to such stores.

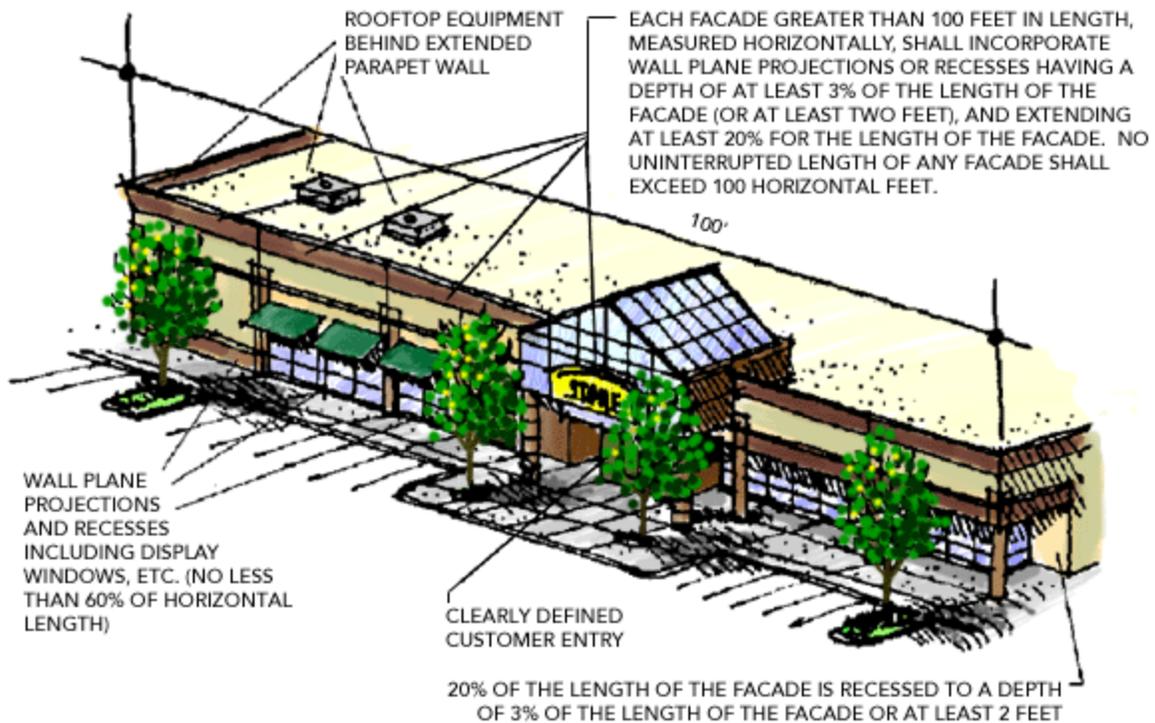
Façades greater than one hundred (100) feet in length, measured horizontally, shall incorporate wall plane projections or recesses having a depth of at least three percent (3%) of the length of the façade and extending at least 20 percent (20%) of the length of the façade. No

²⁹ Hernando County Code of Ordinances, Appendix A, Article 3, Section (3)(J)(2)(F)(2).

³⁰ Tampa Central Business District Urban Design Guidelines: Pathways and Connections (available at <http://www.tampagov.net/dept_Planning/_private/Archive/UDG_2000413/pathways_and_connections_2000413.asp>).

uninterrupted length of any façade shall exceed one hundred (100) horizontal feet.³¹

Additionally, ground floor façades that face public streets would have arcades, display windows, entry areas, awnings, arcades, or similar features along at least 60 percent of the horizontal length.³² The façade must also feature elements including varying colors, changes in texture, or expressions of an architectural or structural bay.³³ Also, the Madison proposal would control the roof lines of large retail establishments by mandating a change in height every 100 feet and requiring design features such as parapets to hide flat roofs and rooftop equipment.³⁴ Third, buildings would have a “clearly defined” and “highly visible” customer entrance with three of the following features: canopies or porticos, overhangs, recesses or projections, arcades, raised corniced parapets over the door, display windows, peaked roof forms, arches, outdoor patios, architectural details such as tie work or moldings, and integral planters or wing walls that incorporate landscape areas and/or places for sitting.³⁵ The drawing below is an example of how a building that conforms to the Madison design standards would appear.³⁶



Building Façade Requirements for Large Retail Centers

³¹ Madison Code of Ordinances, Section 33.02(4)(f)(2)(a) (presented March 4, 2003).

³² Madison Code of Ordinances, Section 33.02(4)(f)(2)(b) (presented March 4, 2003).

³³ Madison Code of Ordinances, Section 33.02(4)(f)(2)(c) (presented March 4, 2003).

³⁴ Madison Code of Ordinances, Section 33.02(4)(f)(3) (presented March 4, 2003).

³⁵ Madison Code of Ordinances, Section 33.02(4)(f)(5)(a) (presented March 4, 2003).

³⁶ This image is from Section 6.9.5 of Arvada, Colorado’s Arvada Land Development Code (available at <http://www.ci.arvada.co.us/LDC/ARVADA_LDC/5a8d341.htm>), which has many provisions that are similar to those within Madison’s proposed ordinance.

Other local governments have imposed design requirements on large retailers. For example, Hernando County, Florida also prohibits uninterrupted façades of over 100 feet and requires design elements to conceal flat roof lines.³⁷ The ordinance states that “[i]nterruptions of such continuous lengths of the façade shall include wall plane projections and/or recesses of not less than five (5) feet in off-set, and twenty (20) feet in length, and one or more of the following: architectural features such as pilasters, columns, canopies/porticos, arcades, colonnades, and/or parapets.”³⁸ For retail businesses exceeding 10,000 square feet in Peachtree City, Georgia, “[a]ll exterior building elevations that face public streets and/or customer parking areas shall be designed so that there are no large expanses of blank walls.”³⁹

Empty Stores

Empty big box stores currently exist in many communities. Currently, Wal-Mart alone owns or leases twenty-one empty buildings in the state of Georgia, with eleven more vacancies expected by Summer 2005.⁴⁰ Many communities welcome large retail stores into their community, only to see that building abandoned years later in favor of a larger and newer building. Often, the former tenant is reluctant to allow any possible competitor to occupy the space, which severely limits the possible uses for large retailer’s former site. The result is ghostboxes, unattractive blights on the commercial district that waste land, hurt nearby businesses, and sometimes act as a haven for criminal activity.⁴¹

In an effort to prevent empty big boxes, Peachtree City, Georgia has enacted an ordinance that requires that a former tenant allow another tenant to lease the premises the former tenant once occupied.⁴²

Any tenant that occupies more than 10,000 square feet shall provide the city attorney with a copy of the rental agreement between the tenant and its landlord which contains a contract provision prohibiting the tenant from voluntarily vacating such premises or otherwise ceasing to conduct its retail business on such premises while simultaneously preventing the landlord, by continuing to pay rent or otherwise, from leasing the premises to another person or company who will operate a permitted business on the premises. If such a tenant voluntarily vacates such premises or otherwise ceases to conduct its retail business on the premises, the landlord shall be free to market and lease such premises to another person

³⁷ Hernando County Code of Ordinances, Appendix A, Article 3, Section (3)(J)(2)(A) and Appendix A, Article 3, Section (3)(J)(2)(E).

³⁸ *Id.*

³⁹ Peachtree City Code of Ordinances, § 1006.3(a)(5).

⁴⁰ Wal-Mart Realty (<http://wal-martrealty.com/Buildings/Territory/southeast/southeast.html>). Wal-Mart lists its vacant properties on this website as available for lease.

⁴¹ For more information on ghostboxes, see Let’s Talk Business, Issue 81 (May 2003) (available at <<http://www.uwex.edu/ces/cced/lets/0503ltb.pdf>>).

⁴² According to a recent media report, Peachtree City’s ordinance has been challenged by the Target Corporation. Jurisdictions wishing to adopt provisions should keep a close eye on this litigation. “‘Big box’ plan stirs legal fight,” Atlanta Journal Constitution, February 23, 2004, E2.

or company, except to a direct competitor of the tenant, regardless of any contractual right the tenant may have with the landlord.⁴³

Initially, this ordinance seems to raise issues with the U.S. Constitution's Contract Clause because of the city's involvement in the contracting process between lessor and lessee.⁴⁴ However, the Contract Clause issue may be avoided if the ordinance is drafted prospectively. As long as the ordinance only affects future contracts, there would appear to be no Contracts Clause claim, because "the settled doctrine is that the contract clause applies only to legislation subsequent in time to the contract alleged to have been impaired."⁴⁵

There are other options for a local government seeking to prevent large retail stores from becoming empty buildings. One such option is to require that the developer of a big box place funds in an escrow account for demolition of the building if it remains vacant for more than a year.⁴⁶ Another alternative is to request a relocating retailer's assistance in finding a new tenant for the abandoned building.⁴⁷

Public Financing

Money is key to redevelopment. While a better aesthetic can be achieved along the corridor through private redevelopment efforts and site improvements, public financing also plays an important role. However, in tight economic times, it can be difficult to draw from general funds for revitalization purposes. Therefore, this document contains suggestions regarding four types of public finance mechanisms.

SPLOST

Dalton might use SPLOST funds to help fund redevelopment along Walnut Avenue. The SPLOST statute gives an expansive list of broadly defined acceptable uses that would allow Dalton to use SPLOST funds for revitalization of the Walnut Avenue corridor.⁴⁸ The statutory list includes as subsection "A," "Road, street, and bridge purposes, which purposes may include sidewalks and bicycle paths." Other subsections authorize variously arranged "capital outlay project[s]... which will be for the use of or benefit of the citizens of the county." There is no requirement that the county must use the entire amount of SPLOST revenue to fund a single project or that the projects receiving SPLOST funding must be related to each other in any way. In fact, unlike Fulton County, which has directed all of their SPLOST funds toward the local school system, Whitfield County has recently allocated SPLOST funds to a variety of different projects, including a new Sheriff's department and jail (\$21.1 million), courthouse expansion (\$22.8 million), a new parking deck (\$3.7 million), county water expansion

⁴³ Peachtree City Code of Ordinances, § 1006.3(a)(6).

⁴⁴ U.S. CONST., art. I, § 10, cl. 1: "no state shall pass any... Law impairing the Obligation of Contracts..."

⁴⁵ *Munday v. Wisconsin Trust Co.*, 252 U.S. 499, 503 (1920).

⁴⁶ BUCKINGHAM TOWNSHIP ORDINANCE, 98-02, § 5 (1998).

⁴⁷ News Release, AMERICAN PLANNING ASSOCIATION (August 14, 2001) (available at <http://www.planning.org/newsreleases/2001/ftp081501.htm>).

⁴⁸ O.C.G.A. § 48-8-111(a)(1)(A-L).

(\$4.8 million), library renovations (\$1/2 million), and information technology (\$2.2 million).

Currently, all of the funds from Dalton/Whitfield County's SPLOST resolution have already been fully allocated. Although the current SPLOST is fully allocated, Dalton officials have expressed interest in including the Walnut Avenue project in a future SPLOST. A new SPLOST resolution may be enacted after the current SPLOST expires on March 31, 2006.⁴⁹ At that time, Dalton could choose to include the Walnut Avenue project as a specified purpose for the new SPLOST.

General Obligation Bonds

Another option Dalton might use to help fund the Walnut Avenue Project would be to issue general obligation bonds. O.C.G.A. § 36-82-1 allows local governments to issue bonds in order to generate funds. Under this section, the local government must hold an election and submit the issue of whether or not to issue such bonds to the voters. Notice must be published to the voters in a newspaper 30 days before the election. "The notice shall specify the principal amount of the bonds to be issued, the purpose for which the bonds are issued, the interest rate or rates which such bonds are to bear, and the amount of principal to be paid in each year during the life of the bonds."

Dalton has used bonds on several occasions but usually does not use the O.C.G.A. § 36-82-1 general obligation bond described above. However, general obligation bonds are an available tool to raise additional funds.

Tax Allocation Districts and Community Improvement Districts

Two options Dalton is not currently using, but may be of significant help, are Tax Allocation Districts (TADs, also known as Tax Increment Financing or TIF) and Community Improvement Districts (or Business Improvement Districts). Extensive discussions of both of these mechanisms and their potential for effective use in Dalton are attached as appendices.

Conclusion

Upon passage of the Walnut Avenue Overlay Ordinance, Dalton will on its way to improved strip corridor development. We hope all of the information in this document proves useful to Dalton as it creates a livable and viable community.

⁴⁹ End date taken from Georgia Department of Revenue's county-by county list of sales and use taxes provided at <http://www2.state.ga.us/departments/dor/salestax/salestaxrates/oct2003.pdf>.

Disclaimer of Legal Advice

This document provides general information only and is not intended as a substitute for specific legal advice. Consult with an attorney familiar with this area of law before taking action based on any information in this document.



Existing “Greenfield” Site Along Walnut Avenue