

MERCATUS SPECIAL STUDY



**TENNESSEE'S HPR LAW AND ITS
TRANSFORMATION OF NASHVILLE'S
HOUSING MARKET**
A MODEL FOR OTHER STATES

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Abstract

Tennessee's Horizontal Property Regime (HPR), a state law that allows quick and cheap creation of small homeowner's associations, has been instrumental in Nashville's infill housing boom. By allowing the reuse of existing duplex zoning for owner-occupied housing, rather than rentals, the HPR has spurred the construction of more than 20,000 for-sale homes in Nashville neighborhoods since 2010. The HPR, which avoids costly and time-consuming subdivision regulations and provides a simpler alternative to condominium ownership, generally allows homes to be built at a lower cost than fee simple single-family homes. The unexpected success of the HPR has implications for other states and cities that have recently been broadly legalizing accessory dwelling units, duplexes, triplexes, and quadplexes in areas zoned for residential use. The existence of a state law similar to Tennessee's HPR could allow these reforms to substitute for minimum-lot-size and subdivision regulation reform, providing builders with a wider range of options to meet market demand for urban housing.

JEL codes: K11, R31, R51, R52, R58

Keywords: homeowner's association, HOA, HPR, condominium, Nashville, infill, duplex, zoning, subdivision, townhouse, Tennessee, reform

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Starting in the mid-2000s, Tennessee’s capital city of Nashville experienced a wave of urban development characterized by two narrow single-family homes built on the same lot. Often replacing aged single-family structures in areas with long-standing duplex zoning, these units were typically offered for separate sale, rather than as rentals, thus creating new home ownership opportunities in old neighborhoods. By the early 2020s, this new development style, colloquially referred to as the “tall skinny”¹ or “two-on-one” home (see figure 1), had become a distinguishing feature of several Nashville neighborhoods.² Research revealed that nearly 9,000 tall skinny homes were constructed in the city from 2010 through 2023 alone. As of 2024, Nashville is second only to Houston³ among the United States’ 50 largest metropolitan areas in the number of single-family homes built in 2010 or later and listed for sale within five miles of the central business district (see figure 2).

What enabled the sudden emergence of this distinctive housing type? The answer to that question, according to interviews with Tennessee planners, developers, and land use attorneys, is the Horizontal Property Regime (HPR), a state law that originated in the 1960s and was overhauled by a 1990 amendment to Tennessee’s condominium law.⁴ The success of the HPR in allowing zoning for small multifamily structures to be repurposed as detached homes available for purchase as owner-occupied residences—and at lower costs than fee simple single-family homes—has implications for other states and cities that have, in recent years, been broadly legalizing duplexes, triplexes, and quadplexes in areas

1. Although these “tall skinny” homes tend to be somewhat narrow so two can be placed on a single residential lot, the majority are only two or three stories in height to conform with zoning; the perception of being “tall” appears to have risen from the ratio of height to width or from the contrast with existing homes.

2. For reference, a map of selected Nashville neighborhoods is included as appendix A.

3. The Metropolitan Statistical Area (MSA) anchored by Houston is the fifth largest in the nation, with 7,149,642 residents counted in the 2020 Census—more than three and a half times larger than the Nashville MSA, which boasted 2,014,444 residents in the 2020 Census and ranked 35th in population.

4. 1990 Pub.Acts, ch. 823 § 7, codified at Tenn. Code Ann. §§ 66-27-102–802 (2023).

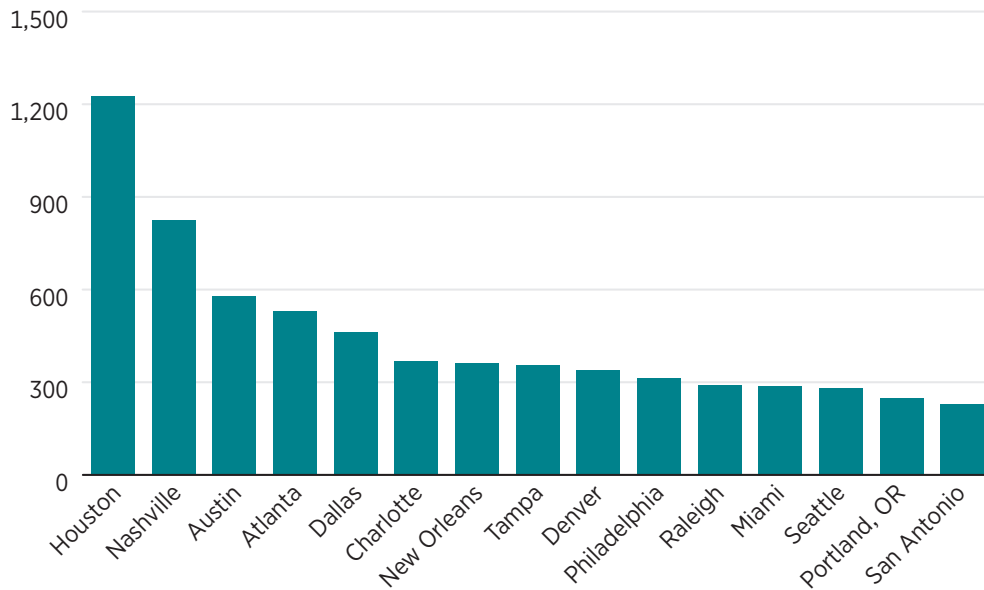
FIGURE 1. Example of two-on-one homes



Note: So-called two-on-one Nashville homes comprise two units, each offered for separate sale, on a single parcel. The residual land is owned by a nonprofit corporation.

Source: Photo by Alex Pemberton.

FIGURE 2. Number of single-family homes (attached and detached), built in 2010 and later, listed for sale within a five-mile radius of the central business district in July 2024



Source: Based on July 2024 data from Zillow.com.

zoned for residential use. The existence of a state law similar to Tennessee’s HPR could allow these reforms to substitute for minimum-lot-size and subdivision regulation reform, thus providing builders with a suite of options to better meet market demand for urban housing.

Despite being part of the state condominium statute, the HPR is not a condominium law nor is it a true homeowners association (HOA) rule, and, in terms of its procedural simplicity, it has few parallels with the laws of any other US state. Instead, the HPR form of organization combines the site-plan flexibility of the condo with the conventional financing of a fee simple home while omitting the usual organizational complexities of an HOA. Thus it provides a fast, simple, and low-cost procedure for entitling small infill projects intended for owner occupancy. By sidestepping burdensome subdivision regulations, contentious public hearings, and onerous condominium financing requirements, the HPR unlocked latent value in Nashville’s urban lots and opened the door to participation by a bumper crop of small-scale, infill developers eager to meet the growing demand for city living.⁵

Nashville’s Metro Planning Department has not performed a study of the impact of the HPR, and local, state, and national housing databases do not track housing production of two-on-one homes or other units produced using the HPR legal structure. Using an analysis of more than 300,000 Davidson County property records,⁶ this study reveals that at least 20,125 homes were built following the HPR in Nashville from 2010 through 2023,⁷ representing 22 percent of total

5. The same law applies to all Tennessee cities, but the “tall skinny” phenomenon has been a distinctive feature of Nashville’s real estate landscape. However, it is much less evident in the smaller, lower-cost metropolitan areas of Memphis, Knoxville, and Chattanooga, which are not addressed in this study. Nonetheless, these cities and other Tennessee localities may benefit from zoning reforms to legalize the small multifamily types that have shown themselves to be so compatible with the HPR. See section 7 for details.

6. Metro Nashville-Davidson County does not track or directly code HPR units in its property records. Because of this limitation, we had to use inferential methods to code HPR units, which we believe to be accurate after manual sample testing. To identify HPR units, we merged Microsoft Excel parcel records from Davidson County and a third-party parcel data provider (ReGrid) with building data from the Davidson County Property Assessor and the Multiple Listing Service. We then parsed the data on the basis of several fields to distinguish HPR units from fee simple planned units and condominium units. We further parsed the data by using building characteristics to distinguish different types of HPR units, such as townhomes, two-on-ones, and detached clusters. Finally, we employed spatial analysis methods using Felt GIS (Geographic Information System) software to differentiate attached and detached units and further refine the subtypes. Data analysis and visualizations were conducted using Microsoft Excel and Power BI.

7. Because Metro Nashville-Davidson County does not track HPR construction over time, this number and other housing data reflect the units that existed at the time of the analysis, and, in this case, do not include those units that were built during or after 2010 but demolished before 2024. While we estimate that very few HPR units would fall into this category, the number of HPR units actually built during this period was slightly higher than shown here.

housing production in the county and comprising 52 percent of all single-family homes built in the county over the same period. Within Nashville’s Urban Zoning Overlay,⁸ 71 percent of all detached single-family homes and 76 percent of all single-family homes built from 2010 through 2023 were HPR homes, reflecting their advantages over conventional resubdivision.

The quantity of this production registers on a national scale. Among the nation’s 50 largest metropolitan areas, Nashville ranks second for the number of recently built single-family attached and detached homes listed for sale within five miles of the central business district—a circle roughly corresponding to the area encircled by Route 155 in Nashville and including most neighborhoods developed before 1950—as of mid-2024 (see figure 2). Houston, first place in number of listings, has experienced an ongoing boom in townhouse construction in legacy neighborhoods, which has been attributed to minimum-lot-size reform that was enacted in the late 1990s and expanded in 2013.⁹ However, on a per capita basis, Nashville ranks first among all 50 metropolitan areas nationwide.

Although 8,675 of Nashville’s 20,125 total homes are two-on-one homes, the HPR has also been used in conjunction with several other development forms, including 8,019 townhouses, 2,397 detached homes in clusters, and 439 clustered duplexes. As we will discuss, the scale and extent of these developments were also due to Nashville’s widespread duplex zoning, which, despite gradual erosion over time, still covers much of the city and county.

1. The Horizontal Property Act and the Rise of HPR Housing

Tennessee’s original condominium law, the Horizontal Property Act,¹⁰ was enacted in 1963 following the passage of the federal Housing Act of 1961.¹¹ The

8. The Urban Zoning Overlay (UZO, see appendix B) is a zoning overlay district that allows modified standards for base zoning to reflect development patterns traditionally found in the historic urban core. The UZO has become a proxy for the urban core, as it roughly approximates preconsolidation Nashville city limits and is often used as the bounds for policy changes that promote urbanist concepts, such as the recent elimination of minimum parking requirements for development.

9. Houston reduced its minimum lot size for detached homes from 5,000 square feet to 1,400 square feet in 1998. See Emily Hamilton, “Learning from Houston’s Townhouse Reforms” (Mercatus Policy Brief, Mercatus Center at George Mason University, April 11, 2023); Jake Wegmann, Aabiya Noman Baqai, and Josh Conrad, “Here Come the Tall Skinny Houses: Assessing Single-Family to Townhouse Redevelopment in Houston, 2007–2020,” Furman Center, New York University, May 3, 2023.

10. Tenn. Code Ann. §§ 66-27-101–802 (2023).

11. See Mortgage Insurance for Condominiums, 12 U.S.C. § 1715y (1961).

federal act had extended the Department of Housing and Urban Development's (HUD) mortgage insurance program to include new, existing, or converted condominiums and led to a wave of state condominium laws being enacted in the 1960s.¹² The impetus for the act was a desire to reconcile high land values that created economic incentives for attached housing, whether in the form of townhouses or apartments, with opportunities for home ownership.¹³ Despite these changes at the federal level, new-construction condominiums remained disfavored by lenders relative to traditional single-family detached homes in Tennessee and elsewhere, requiring developers to presell as many as 50 percent of units and charge purchasers higher interest rates in the secondary mortgage market.¹⁴ Instead, both the policy and market focus in the 1960s and 1970s were on conversion of existing rental apartments to condominiums.¹⁵

An early version of the HPR contained within Tennessee's 1963 condominium law established the core legal framework that allowed units on the same property to be conveyed separately. Under the apparent assumption that the HPR would be used primarily for conversion of preexisting apartment buildings¹⁶ rather than for new, freestanding dwellings, relatively little attention was paid to the ownership of nonprivate elements, including the land between dwelling units.¹⁷ Those elements, according to a 1988 opinion from the Tennessee attorney general, were to be owned through an undivided interest-in-common, similar to the condominium mode of organization.¹⁸ This changed in 1990, when the Horizontal Property Act was reimagined as a device for creating detached or attached townhomes through the use of an organizational form closer to that of an HOA.¹⁹ The 1990 reforms added the option for creating a nonprofit corporation, the "townhouse corporation," the members of which would be the owners of the dwelling units. The townhouse corporation would hold title to the nonprivate elements on the property, including any unbuilt-upon land between and

12. Elmer B. Staats, "Condominium Homeownership Opportunities Could Be Increased" (Comp. Gen. Report to the Congress, CED-78-71; B-114860, March 21, 1978).

13. Staats, "Condominium Homeownership."

14. Interview with Wesley Turner, partner, Gullett Sanford Robinson & Martin PLLC.

15. David A. Fine, "The Condominium Conversion Problem: Causes and Solutions," *Duke Law Journal* 1980, no.1 (1980): 306 (noting that a "primary feature of the condominium boom, accounting for the largest share of new condominium units on the market, is the conversion of rental apartments to condominiums.")

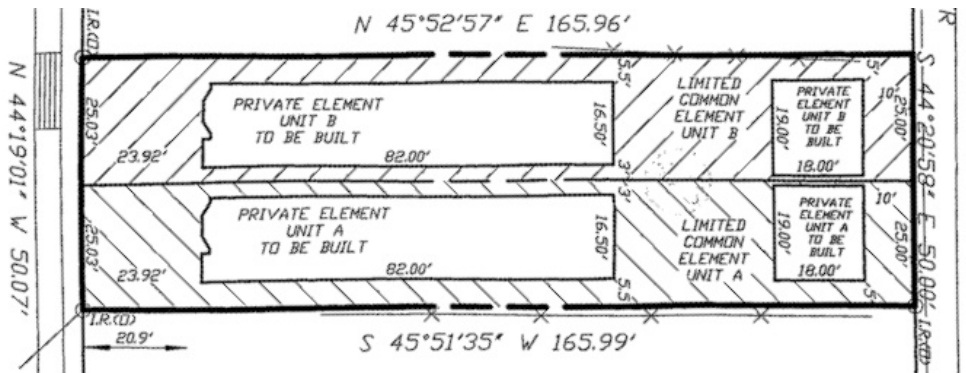
16. Op. Tenn. Att'y Gen. 88-10 (Jan. 11, 1988) (stating that "[a] horizontal property regime created pursuant to the Horizontal Property Act involves the conversion of apartments to condominiums . . .").

17. Tenn. Code Ann. §§ 66-27-101-802 (2023).

18. Op. Tenn. Att'y Gen. 88-10 (Jan. 11, 1988).

19. Interview with Turner. See also Tenn. Code Ann. §§ 66-27-102-802 (2023).

FIGURE 3. Portion of a post-1990 two-on-one HPR dwelling plat map as filed with Davidson County



Note: Only the “private elements” of the property, as indicated in the figure, are owned directly by the homeowners, while the limited common elements, shown in cross-hatching, are owned by the townhouse corporation. There is no land held in an undivided interest in common.

Source: Parcel Viewer (database), Nashville.gov.

around the units (see figure 3).²⁰ A major revamp of Tennessee’s condominium law in 2008 nearly eliminated the HPR, but the HPR’s tenacious survival helped draw greater attention from builders and developers.

Creating an HPR dwelling requires only the filing with the county of a declaration of covenants, bylaws, a professionally stamped plat (see figure 3), and a corporate charter for the townhouse corporation.²¹ The members of the corporation would be, by automatic operation of law, the owners of the private elements. As members, these homeowners would have no obligations other than paying the \$20 filing fee and producing an annual report.²² The paperwork is certified complete by an attorney, and upon filing with the certificate, is by law “deemed” to create a valid HPR dwelling.²³ Although, in the case of townhouses, there was no horizontal division of property, as there would be in an apartment building, a

20. Tenn. Code Ann. § 66-27-103(a)(15) (2023), stating that “[t]ownhouse corporation” means a not-for-profit corporation . . . of which all co-owners shall be members where private elements are involved.”

21. Tenn. Code Ann. § 66-27-103(b) (2023). According to a survey of two-on-one HPR units, the typical filing package is around 40 pages.

22. Interview with Turner.

23. Tenn. Code Ann. § 66-27-103(b) (2023), stating that “[i]f there is substantial compliance with this part as pertaining to private elements, and if an appropriate legal opinion is obtained from an attorney licensed to practice law in this state to the effect that all legal documents required in this part for the creation of a planned unit development are attached and therefore a planned unit development is created under this part, then a planned unit development shall be deemed to have been properly organized and constituted under state law.” Notwithstanding this provision, filings are stamped by the county and may be rejected if incomplete.

2001 opinion from the Tennessee attorney general established that construction of an HPR dwelling did not require a subdivision of land and therefore was not subject to local planning approval.²⁴

2. Practical Advantages of the HPR

By providing for avoidance of local subdivision regulations, ministerial approval of plats, simplification of governance, and eligibility for conventional financing, the HPR combines the varied advantages of formal subdivisions, condominiums, and conventional HOAs into one legal product. Potential disadvantages, including lack of clarity over insurance coverage for parcel areas owned by the townhouse corporation and civil liability for construction defects, have yet to present a significant problem or slow the pace of units according to the HPR legal framework in metropolitan Nashville. Nevertheless, they remain a concern.

Bypassing subdivision regulations: Saving time and money, avoiding uncertainty, and promoting flexible design

Building housing under the HPR, and thereby avoiding local subdivision ordinances, comes with significant benefits. Filing for a permit to build a standard HPR unit can be completed in as little as a week and generally no more than a month, costing only approximately \$2,000 in attorney’s fees and filing costs.²⁵ By contrast, a subdivision application even for a simple lot split in metro Nashville must be submitted at least six weeks in advance of a planning commission meeting, after which the commission has 60 days to issue a decision, the outcome of which is not guaranteed and may involve a conditional approval or outright denial.²⁶ Subdivision applications are also subject to a public hearing on notice to property owners within 300 feet of the applicant’s property, a burdensome procedure that serves as an invitation to criticism from what may be an unrepresentative sample of the neighborhood.²⁷ As of 2024, the filing fee for a final plat involving the subdivision of four lots or less is \$1,375.²⁸ In contrast, costs for

24. Op. Tenn. Att’y Gen. 01-147 (Sept. 14, 2001).

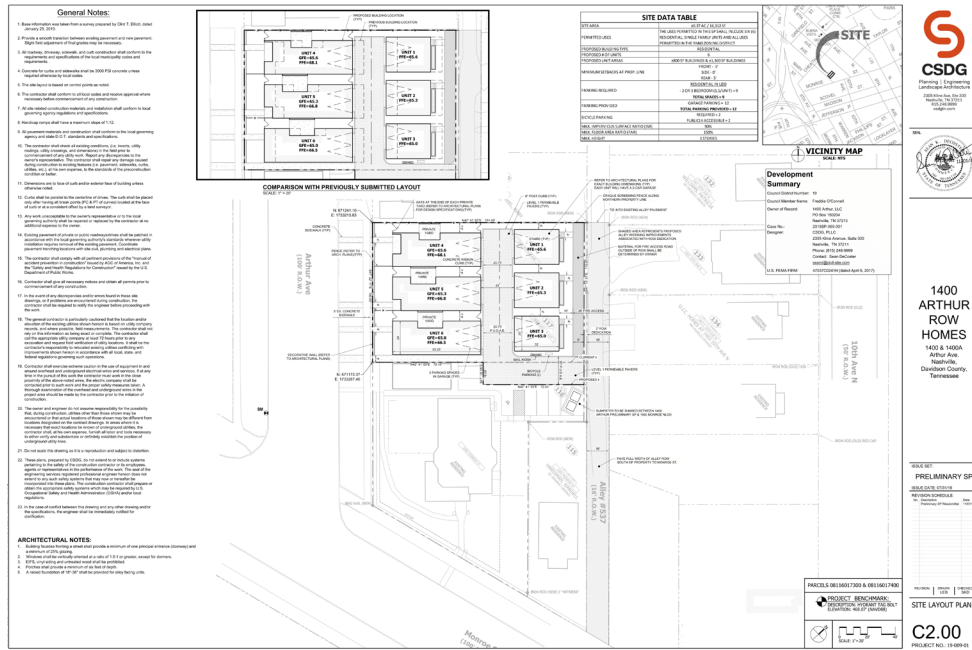
25. Interview with Turner.

26. Subdivision Regulations of the Nashville-Davidson County Metropolitan Planning Commission (2021), § 2-2(5)(b).

27. Subdivision Regulations (2021), § 2-2(5)(a); see also, Alex Hemingway and Simon Pek, “Rethinking Civic Engagement on Housing,” *National Civic Review* 112, no. 3 (2023): 5–14.

28. Subdivision Regulations (2021). Under Nashville’s “Minor Subdivision” rules, lot splits and subdivisions of up to four lots need only submit a final plat. Fees for larger subdivisions total \$6,025 as of May 2024.

FIGURE 4. Annotated site plan from 1400 Arthur Avenue, Nashville, Tennessee, via the preliminary specific plan rezoning



Note: The figure shows accommodation of six units on two lots. The flexibility of the HPR here allows rear units to use Nashville's alleys for street frontage, effectively doubling the linear feet of city streets available for housing construction.

Source: Metro Nashville Planning Department.

surveying and site planning, legal representation, and other consultants typically raise the threshold cost of subdivision into five figures.

A detailed site plan for an HPR project further illustrates how the private elements are separated from the underlying lots for ownership, tax, and address purposes, eliminating the need for subdividing the land itself (see figure 4).²⁹ This result may be indistinguishable in outward appearance from a lot split in which detached homes are built on each lot. On lots zoned for duplexes, where units are allowed to be completely detached since a 2014 change to zoning regulations,³⁰ overlapping maintenance issues are minimized, and the need for complex organizational structures to handle upkeep and repairs is eliminated. Should an owner wish to expand the footprint of the private elements to accommodate an addition or other modification to the property, the original site plan on file with the city can be amended, subject to the constraints of the zoning ordinance.³¹

29. Interview with Turner.

30. This zoning change has given rise to the oxymoronic appellation of “detached duplex.”

31. Interview with Turner.

In theory, a similar result could be achieved through lot splits, but because of minimum-lot-size regulations in Davidson County, subdividing an existing lot into two or more parcels may simply be impossible no matter how much money is paid or how much time is spent.³² Unlike county or municipal zoning ordinances, the HPR regulations do not establish any minimum square footage for the private elements within a lot, nor do they prescribe any minimum frontage requirements, setbacks, or height limits. Subject to the dictates of the zoning code as to the number of units and their form and location on a lot, the HPR provides a homeowner or other developer with maximum flexibility for site planning. Until local zoning ordinances and subdivision regulations are overhauled to eliminate substantive impediments, such as minimum lot sizes and frontage requirements, and procedural hurdles, such as costly fees and public hearings, the distinct advantages of the HPR over conventional subdivision will remain.³³

Currently, Nashville lacks several subdivision methods often found in other municipalities, such as flag lots and perpendicular subdivision with cross-access easements.³⁴ Despite the growing popularity of small-lot subdivision ordinances to expand home ownership opportunities in US cities as varied as Houston, Los Angeles, and Durham, there has been no similar movement in Nashville—possibly because HPR dwellings serve as a viable replacement to small-lot, fee simple housing types and have made formal small-lot subdivisions superfluous in Nashville. Under Nashville’s current transect-based planning model, subdivisions in urban areas are approved only if Walkable Subdivisions standards are met. According to Planning Department staff, however, there has not been a single

32. Nashville and Davidson County, Tenn, Zoning Code, § 17.12.020A District Bulk Tables, showing that the smallest minimum lot size for single-family homes or duplexes, as of 2024, was 3,750 square feet, with side setbacks of 15 feet, and that most zones require more land per dwelling unit, up to and including five acres per home. According to conversations with Nashville developers, variances from lot-size minimums are never granted, even in the case of hardship.

33. Conversations with developers and land use attorneys and analysis of property and sales data suggest that if a fee simple subdivision were available at similar cost and with similar timeframes to the HPR development, it would be the preferred option. Moreover, cities that have greatly reduced minimum lot sizes, such as Houston, have seen infill development of detached homes on a scale similar to or greater than Nashville. See figure 2. See also Hamilton, “Learning from Houston’s Townhouse Reforms”; Wegmann, Baqai, and Conrad, “Here Come the Tall Skinny Houses.” Where minimum lot size reform presents political challenges, however, a law similar to the HPR might assist other states in maximizing the use of so-called missing middle ordinances, which several states have adopted. See Eli Kahn and Salim Furth, “Breaking Ground: An Examination of Effective State Housing Reforms in 2023” (Mercatus Policy Brief, Mercatus Center at George Mason University, August 1, 2023).

34. Flag lots are prohibited in Nashville under Subdivision Regulations (2021), § 3.4.2(d), although the Planning Commission may grant an exception if each of seven conditions are met. Perpendicular subdivision is prohibited by Subdivision Regulations (2021), § 3.4.2(b), which requires newly created attached and detached single-family lots to provide frontage to a public street or other means of vehicular access.

Walkable Subdivision application within the urban core since the standards were adopted in 2006³⁵—another indicator that HPR developments have effectively replaced formal subdivision as a means to divide ownership on existing urban and suburban parcels. There appears to be no reason that provisions similar to Tennessee’s HPR could not serve the same purpose in other states.

Advantages of qualifying for conventional financing

Using the HPR framework rather than a condominium designation grants developers and buyers access to conventional mortgage financing.³⁶ Since an HPR development is considered a planned unit development (PUD) rather than a condominium for purposes of appraisal classification, HPR units are able to use the Uniform Residential Appraisal Report³⁷ rather than the Condominium Unit Appraisal Report,³⁸ thus allowing the HPR units to qualify for standard residential financing, which avoids the added conditions and, frequently, the higher mortgage and construction lending rates associated with condominium financing.³⁹ By contrast, condominium projects ordinarily must have at least half of their units owner occupied to achieve Freddie Mac or Fannie Mae warrantability, which is critical for accretive mortgage terms.

Additionally, HPR units are immediately warrantable, as they are considered single-family units and independent from other units in a complex. Furthermore, HPR dwellings typically do not require presales, whereas condominiums often require presales and deposits for 20 to 60 percent of units in order to close on a construction loan. These financing advantages therefore allow HPR offerings to combine the site-plan flexibility offered by condominium ownership with the lending terms simplicity of a traditional, single-family detached home on its own lot.

Simple requirements for formation and organization

Although the HPR framework resembles an HOA, Tennessee lacks an HOA law, and the state’s HPR does not contain many additional complexities commonly

35. Interview with Lisa Milligan, assistant director, Land Development, Metropolitan Nashville-Davidson County Planning Department.

36. Interview with Stephen Baker, attorney, Holland & Knight LLP.

37. Currently, Fannie Mae Form 1004/Freddie Mac Form 70 (March 2005).

38. Currently, Fannie Mae Form 1073/Freddie Mac Form 465 (March 2005).

39. Interview with Baker. In addition to requiring a higher mortgage interest rate than for traditional single-family homes, lenders for condominiums may inquire into the financial health of the association, the owner-occupancy rate, and the number of units owned by a single investor. These factors are scrutinized closely because they can directly affect the likelihood of loan repayment.

found in the HOA laws of other states. For instance, the HPR does not prescribe the content of bylaws, require annual budgeting, or impose any constraints on a developer’s control over the conveyance of the properties or the corporation, which are requirements that often appear in the HOA laws of other states.⁴⁰ When Tennessee legislators proposed a formal HOA law in 2015 that would have implemented typical HOA provisions and applied them to HPR developments, the bill received little support from builders and failed to advance out of committee.⁴¹

Interestingly, a survey of state property laws indicates a tendency for states to move away from the simplicity of Tennessee’s HPR model and toward increasingly complex HOA laws. For example, Washington State’s Horizontal Property Regimes Act, a 1963 law, will be repealed in its entirety on January 1, 2028, pursuant to a bill signed into law on March 28, 2024,⁴² that has been criticized for adding procedural complexity for small common-interest communities.⁴³ Kentucky, which had previously used its nonprofit corporations law to accommodate HOAs, enacted a new statute in 2023 that overhauled existing law and imposed many new requirements on HOAs, including developer control periods, accountant-prepared budgets, recordkeeping requirements, annual meetings, and other mandates.⁴⁴ States where HOAs are common practice for new residential development, such as Texas and Florida, have extremely detailed HOA statutes that are regularly revised—adding to the cost of compliance for small projects—and are typically envisioned as applying to large-scale subdivisions with their own streets and infrastructure or to high-rise towers with hundreds of dwelling units.⁴⁵ Although formal HOA laws are usually well-intentioned measures that aim to clarify the rights of unit owners and redress lack of uniformity in the organization

40. Compare Tennessee’s Horizontal Property Act (Tenn. Code Ann. §§ 66-27-101–802 (2023)) to Fla. Stat. Ann. §§ 720.301–318, Ohio Rev. Code § 5312.01, and Ala. Code § 35-20-1–14.

41. Tenn. S.B. 405, “An Act to Amend Tennessee Code Annotated, Title 66, Relative to Enacting the ‘Tennessee Homeowners Association Act’” (Tenn. Code Ann. §§ 66-27-601–626 (2015)).

42. Wash. S.B. 5796, Wash. State Legislature 2023–24 Regular Session.

43. See Michael Spence, “Senate Bill Proposes to Repeal Condo and HOA Laws” (Helsell Fetterman blog) (January 23, 2024) (characterizing the bill as “a very top-heavy and process-intensive statute” and noting that bill proponents “appear to not have considered the burden this proposal will place on the human and financial resources of small condominiums or HOAs”); see also Ryan Swanson & Cleveland, PLLC, “HOAs Beware! Recently Passed Bill Changes the Governance of Common Interest Communities in Washington State,” press release, April 19, 2024.

44. Ky. Senate Bill 120, “An Act Relating to Residential Communities,” Kentucky General Assembly 2023 Session, codified at KRS Ann. §§ 381.785–910.

45. See Tex. Prop. Code Ann. §§ 209.002–017 (which contains 40 subchapters and was amended by Acts 2023, 88th Leg., ch. 666 (H.B. 614), § 1, eff. Jan. 1, 2024 and Acts 2023, 88th Leg., ch. 807 (H.B. 886), § 1, eff. Sept. 1, 2023) and Fla. Stat. Ann. §§ 720.301–318 (which contains 29 subchapters and was extensively amended by 2024 Fla. Sess. Law Serv. Ch. 2024-202 (H.B. 59)).

of common-interest communities, that uniformity may come at the cost of the simplicity and flexibility required for small-scale projects.

Several states where HOAs have tended to be less popular, whether because of lack of familiarity or lack of housing development in general, continue to lack dedicated HOA laws entirely (though they may have condominium laws).⁴⁶ These states may allow an HOA or an equivalent association to be formed under state laws governing nonprofit organizations. None of these laws, however, are specifically designed around common-interest communities and may impose requirements as complex as (or more complex than) those in formal HOA laws. Rhode Island's Nonprofit Corporation Act, for instance, has 108 sections with requirements for at least three directors of the corporation, annual meetings, recordkeeping, and other obligations that were not drafted with a small-scale residential development in mind.⁴⁷

Tennessee's HPR law appears to be the only state statute intentionally designed to promote small-scale development using nonprofit corporate ownership of common elements. Its survival has never been assured; it was nearly repealed during Tennessee's 2008 reforms to state condominium laws⁴⁸ and also was threatened with supersession by legislative proposals in 2015 and 2022.⁴⁹

Lower housing costs through enabling densification

Under the HPR, buyers need not buy any more land than that which lies beneath their home, though the building footprint remains subject to zoning mandates for setbacks and maximum lot coverage. As land prices in Nashville rise and old, depreciated homes on relatively large lots become attractive opportunities for new housing investment, the HPR allows builders to efficiently spread the cost among more buyers. By doing so, the HPR provides a straightforward means to offset a rise in land values by increasing the density of dwelling units. A survey of recent sale prices by neighborhood shows that HPR two-on-one homes have uniformly sold for lower prices than fee simple, single-family homes (see figure 5), though discounts vary widely from neighborhood to neighborhood. In affluent Green Hills, HPR homes sold for 45 percent less than single-family homes in

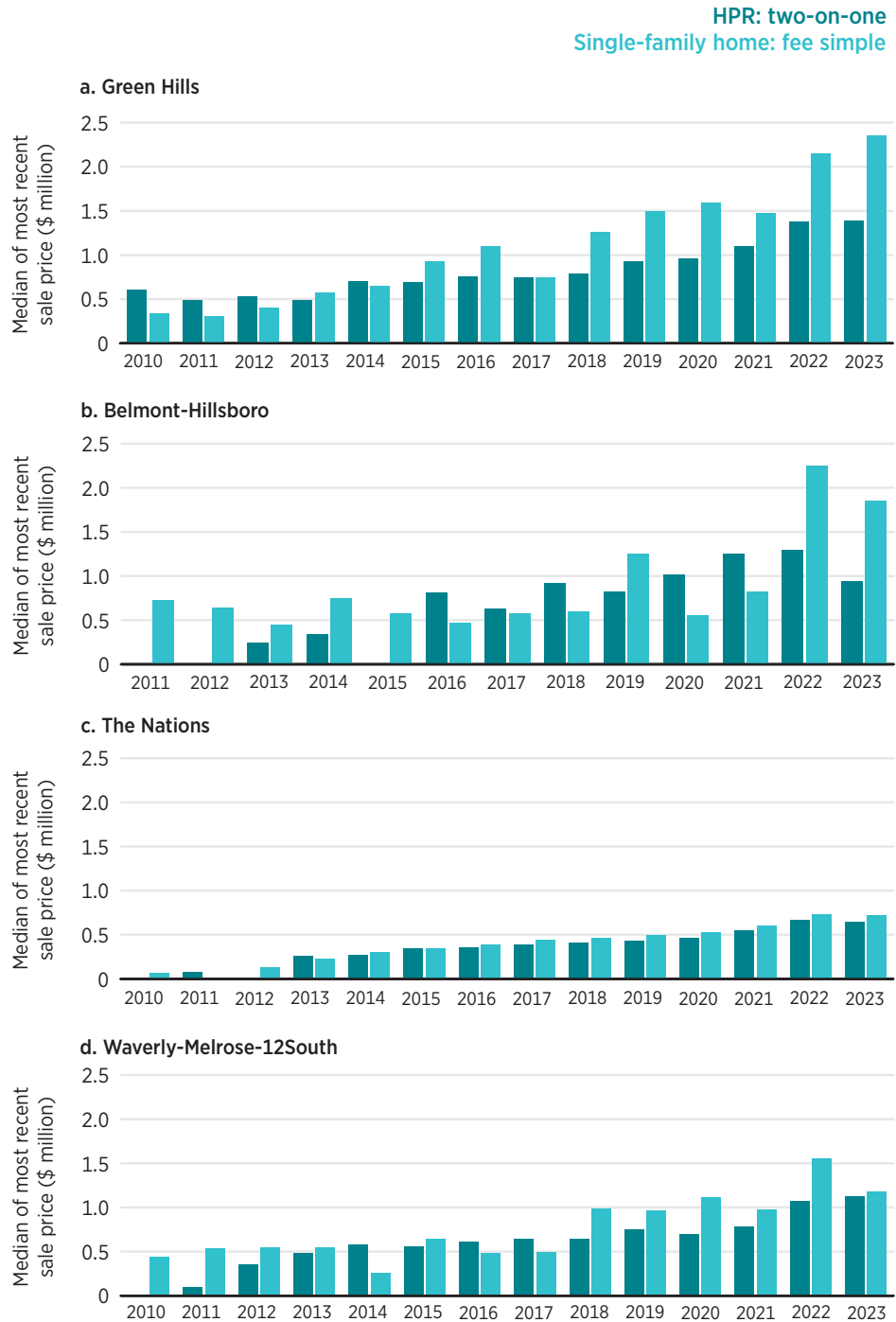
46. These states include New York, Massachusetts, Montana, Iowa, Mississippi, Michigan, Nebraska, Rhode Island, and Wyoming.

47. R.I. Gen. Laws Ann. §§ 7-6-1-108.

48. Interview with Baker.

49. Tenn. SB 405, "An Act to Amend Tennessee Code Annotated, Title 66, Relative to Enacting the 'Tennessee Homeowners Association Act'" (2015) and Tenn. HB 2209, "Tennessee Homeowners Association Act" (Tenn. Code Ann. §§ 66-27-601-626).

FIGURE 5. Median of most recent sale price by year, use subtype, and neighborhood name



Source: Based on parcel records from Davidson County and ReGrid and building data from the Davidson County Property Assessor and the Multiple Listing Service.

2023, while in Belmont-Hillsboro, HPR homes sold for 49 percent less. In The Nations, where overall home prices are relatively lower, sales of HPR homes were only 4 percent less. In general, moderation in unit-price increases has been proportional to the number of units allowed by the underlying zoning, with HPR projects of three or more units showing a stabilization in unit sizes over time. However, two-on-one HPR dwellings displayed some inflation in unit size over the most recent real estate cycle, though less than in the case of single-family homes replacing other single-family homes in one-to-one fashion.

No stigma for HPR homes plus better design: The example of The Nations neighborhood

While some market participants view HPR units as an “exotic” form of ownership that is inferior to fee simple conveyance, this review has found no evidence that the market penalizes HPR homeowners. Instead, even where density is held constant, prices are comparable, with the slight cost advantages of the HPR unit appearing to be due to more efficient floorplans enabled by flexible site planning rather than to stigmatization of the HPR organizational form.

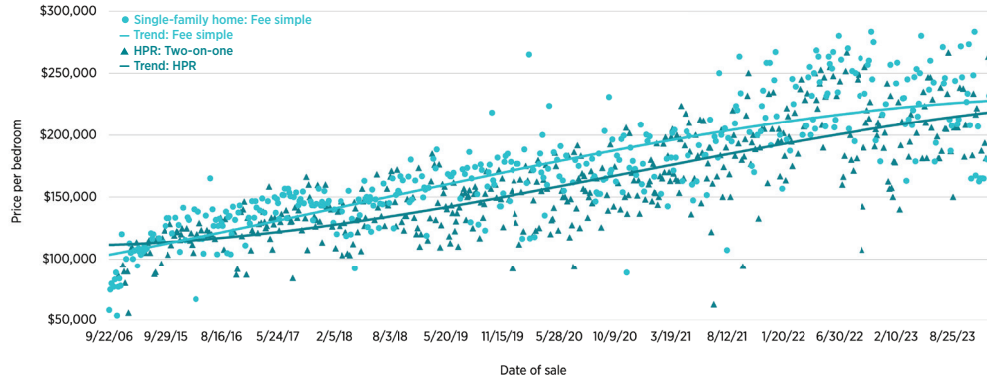
A particularly useful illustration of this point is provided by The Nations neighborhood, which was originally platted with 25-foot-wide lots, which were sold in pairs. In the decades that followed, houses were developed on 50-foot-wide parcels, while the 25-foot-wide underlying lots remained. Around the same time that two-on-one HPR development began to boom, builders discovered that the letter of Nashville’s zoning code allowed these platted lot lines to be reestablished in a ministerial process, without the long and costly undertaking of traditional subdivision. Builders were able to purchase a 50-foot-wide double-lot parcel in The Nations, tear down the small existing house, and reestablish the underlying lot lines for two fee simple houses. Effectively, The Nations is an example of what Nashville might look like with subdivision regulation reform placing lot splits on even footing, procedurally and cost wise, with the HPR.⁵⁰

In The Nations, HPR homes have sold at a 7 percent discount to fee simple homes from 2006 to the present, despite generally having the same allowed density. The price per square foot for HPR homes, however, has only been 4 percent less. A comparison of price-per-bedroom with square-feet-per-bedroom

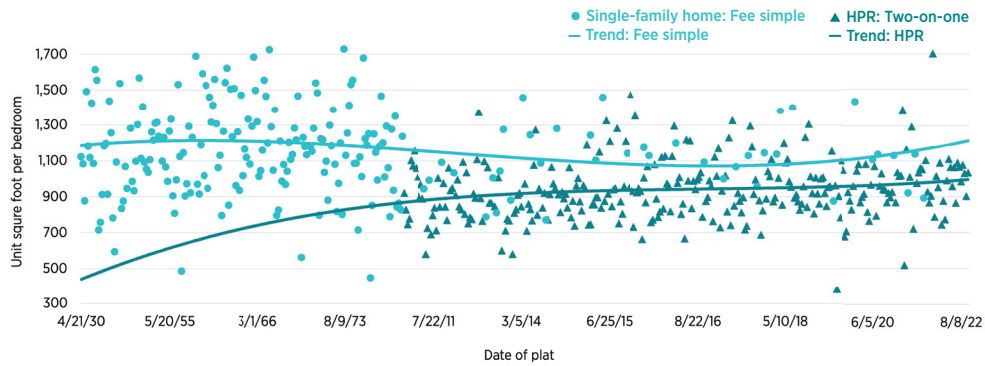
50. Where parcel lines align with the original lot lines, builders have almost always chosen to reestablish the underlying lot lines to build two detached units on a 25-foot-wide lot. Where parcel lines and underlying lot lines do not align, the HPR comes into play. Thus, builders and their customers appear to prefer fee simple conveyance, where possible.

FIGURE 6. Comparison of fee simple and HPR homes in The Nations neighborhood

a. Price per bedroom



b. Square feet per bedroom



Note: The more flexible floor plans allowed by the HPR are reflected in data on bedrooms, indicating that the HPR enables builders to deliver a more efficient product with less surplus space.

Source: Based on parcel records from Davidson County and ReGrid and building data from the Davidson County Property Assessor and the Multiple Listing Service.

(see figure 6) reveals that the lower price of HPR homes in relation to fee simple homes is attributable to more efficient layouts, which we surmise is due to the greater flexibility in site planning that the HPR allows, as noted previously. While more robust statistical analysis would be beneficial, there does not appear to be a difference between HPR and fee simple conveyance on any market dimension—price per square foot, price per bedroom, and so forth—greater than can be explained by hedonic factors.

Another significant implication of the similarity between HPR and fee simple market dimensions in The Nations is that buyers place low hedonic value on land ownership and lawn area. HPR owners do not enjoy full control and decision

rights over the land on which their homes sit, as fee simple owners do, but there does not appear to be a significant price associated with those rights. Similarly, HPR owners typically enjoy smaller yards than fee simple owners in the same neighborhood, as indicated by building-coverage ratios, but contrary to assumptions about the importance of lawns to single-family home buyers, there does not appear to be a significant price associated with that open space. This finding, if it applies beyond the Nashville context, has ramifications for minimum-lot-size and setback regulations mandating lawn area that may not even be desired by buyers.⁵¹

Ownership + density = improved financial viability

In the United States, home buyers tend to be wealthier than renters.⁵² Furthermore, particularly in wealthier neighborhoods, the prices homebuyers are willing to pay may exceed the capitalized value of rental income, resulting in homebuyers outbidding renters for the same property. Additionally, housing units intended for ownership are typically larger than those built for rental.

There is evidence that the HPR has increased redevelopment viability in Nashville by enabling the sale of units on the same lot or in the same building, a point that has been echoed in interviews with developers for this study. First, construction of small multifamily buildings offered as rentals has virtually disappeared since 1990 amid an explosion in construction of similar building forms offered for sale as HPR dwellings. Second, at least 597 units in multiplex buildings constructed prior to 2000 have since converted to HPR units, which indicates that owners found conversion to individual ownership a more lucrative option for those units than continuing to operate them as rentals. Finally, only a small percentage of HPR units are held by business entities, which suggests that sale upon completion is preferable to renting.

Residential code construction lowers costs

In most US cities, including Nashville, building construction is regulated by two distinct model codes: the International Building Code (IBC), which covers commercial and multifamily structures, and the International Residential Code

51. See Salim Furth, “Minimum Lot Size Regulations Are a Barrier to Homeownership in Dallas” (Mercatus Policy Brief, Mercatus Center at George Mason University, December 6, 2023).

52. Federal Reserve Board, 2022 Survey of Consumer Finances (SCF) (database), accessed August 16, 2024, <https://www.federalreserve.gov/econres/scfindex.htm>. The SCF found that the median homeowner has 38 times the household wealth of a renter.

(IRC), which covers one- and two-unit structures.⁵³ Standards for IRC construction are generally less stringent than for IBC construction, lowering costs for materials, mechanical systems, and life-safety features. The lower skill required for IRC construction expands the labor pool and availability of contractors, further reducing costs. In Nashville, vertical construction hard costs for infill residential development under the IRC typically start around \$160 per square foot, whereas IBC construction with similar site conditions costs upward of \$200 per square foot. Further efficiencies are gained by production builders on greenfield sites, with vertical hard costs as low as \$115 per square foot.

Residential code cost savings—and the exceptional level of competition, especially among small-scale infill builders, that results from lower barriers to entry such as by-right approvals, smaller project sizes, and so forth—are passed on to housing consumers, who will typically pay less per square foot for detached and semidetached residences built under the IRC than for stacked flats with more than two units built under the IBC. The home categories popular under the HPR, such as the two-on-one and townhouse forms, therefore have a cost advantage over units arranged in conventional apartment or condominium form with units occupying multiple stories.

Insurance and liability: Benefits and pitfalls

Tennessee has one of the most builder-friendly statutes of limitation for design-defect lawsuits in the United States, yet liability concerns for condominium projects are as evident in Tennessee as in other states.⁵⁴ In Tennessee, as elsewhere, insurers perceive condominiums as having risk-of-defect litigation greater than other residential types, and this risk limits the talent pool available for designing and building horizontally stacked condominiums. Interviews indicate that architects, contractors, and other consultants who may not be insured to work on condominium projects are nonetheless willing to work on HPR projects. The reason for this willingness is partly that in the case of detached HPR typologies, such as two-on-one and detached cluster, there are no shared building components,

53. See International Code Council, *International Building Code 2024* (Cengage Learning, 2024); *International Residential Code for One- and Two-Family Dwellings 2021* (Cengage Learning, 2021). Attached townhouses are treated as one-unit structures with firewall provisions and fall under the IRC subject to fire code regulations, which vary by jurisdiction. In Metro Nashville, up to seven attached units are allowed under the IRC.

54. Tenn. Code Ann. § 28-3-202 (2023) provides a four-year period following substantial completion, during which a party can commence an action for design or construction defects. Nearly all other states prescribe a limitations period of 6 to 10 years, and none provide for less than 4.

so each potential defect affects only one unit and is less likely to result in litigation. While this factor is less applicable to attached townhouses—which may share foundations, roofs, drainage, and other building systems—they generally share the lack of an active association that meets regularly and can coordinate legal action among a large pool of owners.⁵⁵ Regardless of the specific reasons, few designers or contractors refuse townhouse work. Consultants interviewed unanimously stated that they believe townhouses are covered by their corporate insurance policies. As HPR types are perceived as being less prone to defect liability claims, developers of HPR units benefit from a more competitive market for designers and contractors.

Purchasers of HPR homes, however, may benefit from more caution. While many two-on-one HPR homes are effectively two single-family properties and do not share common elements, those that do share them are vulnerable to liability claims arising from injuries that occur on those common elements that are owned by the nonprofit townhouse corporation. It is commonplace for buyers of two-on-one HPR homes to allow the legal standing of that corporation to lapse after purchase from the developer, which leaves insurance covering the corporation's property in an unclear status at best and invalidated at worst. Insurance policies for the private units may protect those owners from exposure for liability related to any alleged negligence that caused injury on land owned by the townhouse corporation, but this protection depends on the specific terms of the particular policy. The possibility that HPR unit owners may be held liable for injuries that occur on common property—and be denied insurance coverage for the event—does not appear to have caused any noteworthy problems with obtaining insurance or resulted in any significant litigation to date,⁵⁶ but the risk remains. Such risk of litigation is not a complication that arises in the case of fee simple ownership, which is uniform. Additionally, some states' HOA laws have incorporated provisions on torts, which explicitly assign responsibility, indicating the possibility of a legislative fix should problems arise.⁵⁷

3. The Role of Nashville's Duplex Zoning

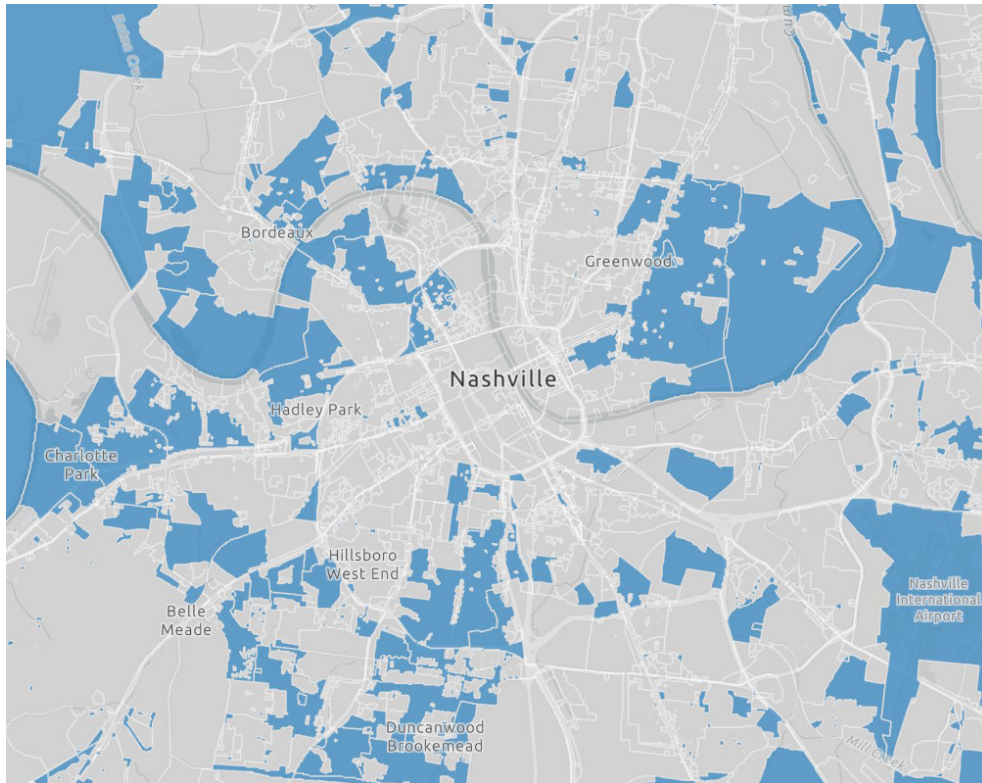
Even with these advantages, the existence of the HPR dwelling option would have been of little benefit to developers in Nashville had preexisting zoning not widely

55. An internet search of townhouse corporations within Davidson County indicated that the majority were administratively dissolved shortly after formation for failure to file the required annual report and pay the annual filing fee.

56. Interview with Turner.

57. N.C. Gen. Stat Ann. § 47F-3-111 (2015).

FIGURE 7. Duplex zoning in Nashville–Davidson County



Note: The majority of land zoned as residential in Nashville–Davidson County allows two units by right. Blue-shaded areas are two-unit zones as of May 2024.

Source: Metro Nashville Open Data website.

permitted two units on many residential lots. Nashville did not adopt a permanent city zoning ordinance until 1933. And although parts of Davidson County were zoned beginning in 1940, the county was not comprehensively zoned until city and county zoning were consolidated (COMZO) in 1974. City, county, and consolidated zoning ordinances permitted duplexes in all residential zones from implementation until 1984, when single-family (“RS”) zoning was introduced in the consolidated Nashville–Davidson County Metropolitan Government (“Metro”).⁵⁸ While large areas within the county incorporated to establish their own zoning regimes prior to consolidation, and more large swaths of Metro were downzoned to single-family throughout the 1990s and 2000s, duplex zoning has remained to this day in many areas of what now is Metro (see figure 7). Furthermore, duplexes

58. *Nashville Tennessean*, July 11, 1933, 5.

are allowed in a number of commercial zones and can be built on 58 percent of total zoned acres in Nashville.⁵⁹

With the two units required to be within the same structure, the zoning classification introduced in the 1930s contemplated both units being let out to tenants or for an owner of the property to live in one unit and rent the other to assist with high mortgage payments in an era before the arrival of the fixed-rate, 30-year mortgage.⁶⁰ As mortgage finance began to favor the single-family home in the 1950s, minimum-lot-size regulations made division of the side-by-side duplex into two separately owned units impossible in many cases, setting them at a market disadvantage.⁶¹ Division of units set on top of each other was not even an option: Neither state laws nor the US common law of property made any provision for the horizontal separation of ownership. The timely arrival of Tennessee's Horizontal Property Act of 1963 introduced a legal means for offering two or more units within the same structure for sale, regardless of whether those units sat alongside each other or were stacked on top of one another, whereas the HPR reforms of 1990 provided a means of doing so with a minimum of procedural and organizational complexity. It was this set of advantages that led to the HPR being used to reinterpret and reinvigorate duplex zoning, which had been largely dormant when demand for city living was low and investment in Nashville's urban neighborhoods was limited.⁶²

The development boom arising out of the availability of the HPR in tandem with duplex zoning is detailed in the next section, but the lessons from the success of the HPR are not limited to Nashville or even to Tennessee. In recent years, states across the country have been active in proposing and passing zoning reform bills that have legalized more than one unit on many or most residential parcels.⁶³ During 2023 and 2024, Arizona, Maryland, Montana, Vermont, and Washington all passed state laws legalizing duplexes, triplexes, or quadplexes in

59. See National Zoning Atlas (database), https://www.zoningatlas.org/atlas/?state_id=80.

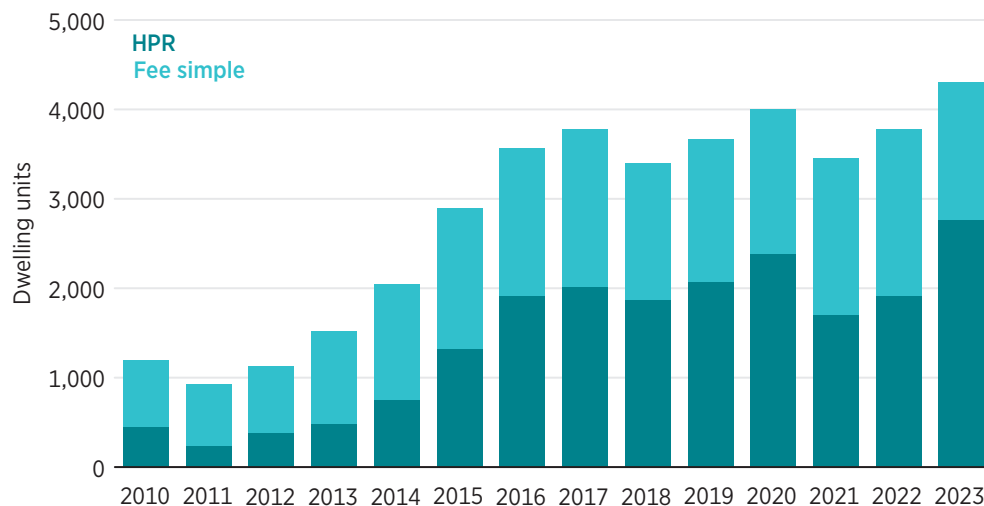
60. Congress authorized the 30-year term for home mortgages for new construction in 1948 and for existing homes in 1954. Edward J. Pinto, "Housing Finance Fact or Fiction? FHA Pioneered the 30-Year Fixed Rate Mortgage during the Great Depression?," American Enterprise Institute, June 24, 2015. See also Jacob Wegmann, "What Happened to the Three-Decker?" (master's thesis, Massachusetts Institute of Technology, September 2006), 37–38.

61. According to data from the US Census Bureau, "Characteristics of New Housing," production of small multifamily homes has been declining at a national level at least since the early 1970s.

62. Housing data from the US Census Bureau indicates that property values in Nashville census tracts that existed as of 1940 declined relative to the metropolitan area as a whole during 1940–1970.

63. Eli Kahn and Salim Furth, "Laying Foundations: Momentum Continues for Housing Supply Reforms in 2024" (Mercatus Policy Brief, Mercatus Center at George Mason University, July 22, 2024); Kahn and Furth, "Breaking Ground."

FIGURE 8. Fee simple versus HPR single-family dwelling units in Nashville–Davidson County



Source: Based on parcel records from Davidson County and ReGrid and building data from the Davidson County Property Assessor and the Multiple Listing Service.

single-family zones, while similar legislation was proposed in 17 other states.⁶⁴ Other states have legalized an additional unit on lots in single-family zones through accessory dwelling unit legislation.⁶⁵ The results of Tennessee’s HPR law suggests that the effectiveness of these reforms in contributing to needed growth of the housing stock may be enhanced by a similar legal framework.

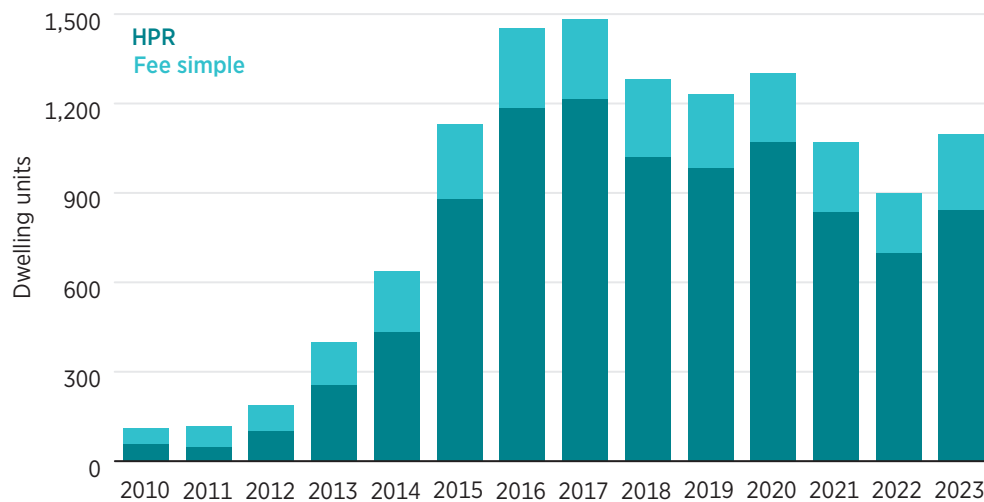
4. Crunching the Numbers: How Has the HPR Assisted Nashville’s Urban Boom?

How have the advantages of the HPR translated into housing production in Nashville? Remarkably, housing types enabled or enhanced by the HPR constitute an outright majority of all single-family units delivered in Nashville–Davidson County in each year but one from 2016 to 2023 (see figure 8). As opportunities for greenfield development have grown scarce in Davidson County, the HPR has been playing a critical role in enabling family-sized, ownership-oriented housing production. The flexibility of the HPR allows for a variety of applications and

64. Kahn and Furth, “Laying Foundations”; Kahn and Furth, “Breaking Ground.”

65. Kahn and Furth, “Laying Foundations”; Emily Hamilton and Abigail Houseal, “A Taxonomy of State Accessory Dwelling Unit Laws” (Mercatus Policy Brief, Mercatus Center at George Mason University, March 30, 2023).

FIGURE 9. Fee simple versus HPR single-family dwelling units in the Urban Zoning Overlay



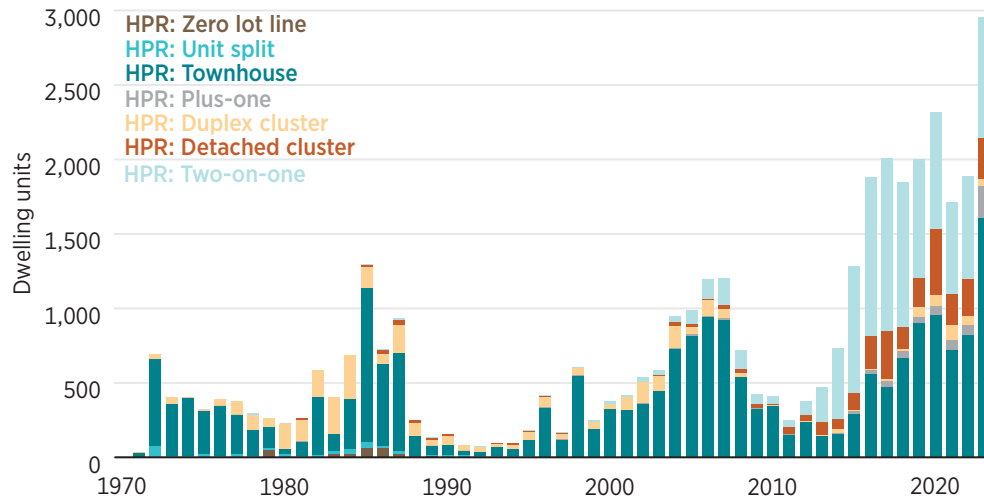
Source: Based on parcel records from Davidson County and ReGrid and building data from the Davidson County Property Assessor and the Multiple Listing Service.

site layouts with higher densities to improve project viability relative to both traditional and emerging alternatives for small-lot subdivision.

The increasing popularity of HPR units for small-scale housing has been especially pronounced in Nashville’s urban core. From 2010 to 2023, fee simple single-family production within the Urban Zoning Overlay (or UZO, a proxy for the urban core, as its boundaries roughly correspond to the preconsolidation city limits) averaged 233 units annually, while HPR units averaged 855 (see figure 9). In 2023, 80 percent of all new single-family homes in the UZO were built using the HPR legal framework. It is arguable that Nashville’s urban core simply would not have undergone such substantial redevelopment had it not been for Tennessee’s HPR law, or that new development would have generally taken the form of large and expensive single-family homes replacing smaller single-family homes, with little or no net gain in the total housing stock.

Within the HPR-dwelling category, until the mid-2000s, the two-on-one form was virtually unknown, and the majority of HPR units were built as attached townhouses, a form that remained popular as of 2023 (see figure 10). Use of the HPR for larger developments of detached homes—to which we assign the term *detached cluster developments*, defined as three or more detached homes on one parcel—grew in popularity in the early 2010s as the HPR expanded beyond its roots as a device for separate conveyance of duplex units and townhomes into a

FIGURE 10. HPR units by year built and subtype



Source: Based on parcel records from Davidson County and ReGrid and building data from the Davidson County Property Assessor and the Multiple Listing Service.

means for creative design of larger developments. The flexible HPR framework, which is simple enough to accommodate two-unit projects, can also be scaled up to account for the added complexities involved in projects with numerous units spread over a larger area.

Prior to the 1990 HPR reform, Nashville neighborhoods had primarily been densified in three ways: traditional resubdivision, planned unit developments (PUDs), and zero-lot-line subdivision. On parcels that were more than double the zoned minimum-lot-size requirements, developers would undertake resubdivision of the parcel—often the lot platted in the original subdivision—into separate, fee simple parcels for detached houses. This method was common in Nashville’s favored quarter, Green Hills, where one-acre lots from early mass suburbanization were rezoned into more urban zoning classifications with Metro’s consolidated code, the 1974 COMZO, and with the introduction of a sanitary sewer network to replace individual septic systems. While this method retained the detached, large-unit character typical of Green Hills and other suburban areas, neighborhood leaders generally disdained resubdivisions and, over the next three decades, sought to downzone or raise regulatory lot-size minimums into alignment with existing lot sizes. Few opportunities for this style of traditional resubdivision remain unexploited today.

Multiunit buildings were often permitted in PUDs after the 1974 COMZO and were conveyed as condominium units under Tennessee’s 1963 Horizontal

FIGURE 11. Two zero-lot-line duplexes on Westwood Avenue, Hillsboro–West End, infilled in 1985



Source: Photo by Alex Pemberton.

Property Act. A form of design-based zoning, PUDs enabled discretionary review and approval by planning commissions in exchange for higher density and flexibility for developers. In Nashville, PUDs were widely used in the 1970s to build suburban townhome and garden-style condominium projects. A second wave of PUDs occurred in the mid-1980s. In both periods, these projects were most prolific in Southeast Nashville and the Bellevue area of West Nashville, where greenfield land was abundant. Developers and homeowners had two options: Denser attached units had to be either conveyed as condominiums, with less attractive financing and the complexities associated with HOAs, or arranged at lower densities to achieve fee simple ownership.

Finally, Metro subdivision regulations adopted in 1982 allowed zero-lot-line duplexes to replat for the purpose of conveying fee simple deeds for each unit. For the purposes of zoning, the two platted zero-lot-line parcels were considered one. This allowed for widespread by-right use, as two-family zoning was the baseline residential zoning category at the time. Zero-lot-line units, typically in duplex form with the addition of a fire wall (see figure 11), were immediately popular and accounted for approximately 40 percent of all permits issued in Davidson County by 1983.⁶⁶ This explosion in permitting of an inherently more affordable type of ownership unit—along with an attendant boom in rental duplex and suburban garden apartment construction—led to a backlash from

66. *The Tennessean*, June 5, 1983, 58.

incumbent homeowners that resulted in the introduction of single-family zoning to Nashville–Davidson County, severe limitations on zero-lot-line construction except in designated subdivisions,⁶⁷ and convoluted restrictions on duplexes, which remain in the zoning code to this day.

Like two-on-ones, zero-lot-line duplexes had the advantage of fee simple ownership and financing. Buyers were able to attain lower interest rates—critical during the inflationary period known as the Volcker Shock, when mortgage rates spiked to 18 percent and higher—and avoided the complexity of common interest ownership. In total, more than 5,400 zero-lot-line units were built, despite being legally permitted for only two years. This type of housing was remarkably flexible and popular across vastly different submarkets—zero lot lines were built in small, simple forms for low-income buyers in urban infill areas; in modest, middle-class forms in greenfield subdivisions; and in large, often minimally attached forms in affluent Green Hills. The zero-lot-line duplex was the precursor to Nashville’s modern two-on-one form, which was enabled by post-1990 HPR reforms, though it is unclear whether the 1990 reforms were directly intended to replace zero-lot-line development after its political demise. The survival of the 1990 reforms for over 30 years, whereas zero-lot-line regulations lasted only 4 years, may be due to the reforms having been adopted at the state level rather than the local level. While state law does not insulate HPR units from political blowback entirely, it does complicate local efforts to restrict ownership-oriented urban infill.

5. Design Evolution and Opportunities

Tennessee’s HPR law has enabled several distinct housing types—and unique arrangements of common housing types—that bring diversity to the Nashville housing market (see figure 12). While each of these types must conform to existing zoning and land use regulations, the HPR has enabled ownership of these forms in a manner that approximates fee simple ownership and has enabled more flexible site design, which has yielded greater densities and improved project viability.

Townhouses

The HPR law allows attached housing to be conveyed separately without requiring street frontage for each unit, as would otherwise be required by formal lot

67. *The Tennessean*, January 16, 1988, 16.

FIGURE 12. Examples of the variety of forms built in Nashville using the HPR legal framework

TOWNHOUSE



10 to 40 DU/acre
0.25 to 1.25 FAR
4 to 100+ per project
Attached

DETACHED CLUSTER



5 to 25 DU/acre
0.20 to 0.75 FAR
10 to 100+ per project
Detached

DUPLEX CLUSTER



5 to 25 DU/acre
0.50 to 1.25 FAR
10 to 100+ per project
Semidetached

TWO-ON-ONE



5 to 15 DU/acre
0.30 to 0.70 FAR
2 per project
Attached/detached

PLUS-ONE



2x existing density
0.20 to 0.50 FAR
1 per project
Attached/detached

CONVERSION



Rental-to-ownership
Varies
2 to 20 per project
Attached

Note: DU = dwelling unit; FAR = floor area ratio.

Source: Photos by Alex Pemberton.

TABLE 1. Townhouses in Nashville

Statistics	All townhouses	2010 to present
Number of units	20,924	8,019
Average year built	2002	2019
Average unit size	1,557 square feet	1,619 square feet
Average floor area ratio	0.39	0.51
Average unit density	10.96 DU/acre	13.56 DU/acre
Average lot coverage	20.8%	23.3%

Note: DU = dwelling unit.

Source: Based on parcel records from Davidson County and ReGrid and building data from the Davidson County Property Assessor and the Multiple Listing Service.

subdivision. For this reason, for-sale townhouses in Nashville have been conveyed as HPR units almost exclusively since the law was established in 1963, apart from a handful of PUDs and modern greenfield subdivisions. Table 1 shows townhouse statistics.

Nashville subdivision regulations require street frontage for all lots and require units to face a primary street or common area, with vehicular access to a public alley or private lane. Greenfield subdivisions, planned from scratch, are often able to design individually salable lots to meet these requirements while maintaining efficient lot dimensions.

Infill townhouses are more challenging to convey fee simple, however. Lot dimensions are rarely conducive to the compact townhouse form, which poses challenges to achieving the density needed to redevelop infill lots with financial feasibility. Other aspects of site design, such as parking layout and stormwater management, are also more difficult to efficiently plan on narrow individual parcels. Because of the unique nature of townhouse projects and the drive for density, urban infill projects are often entitled under specific plan design-based rezoning. By contrast, greenfield townhouse projects typically develop by right under existing multifamily zoning or pursue policy supported rezonings to a base zone at suitable density.

By conveying townhouses as HPR units, developers can individually sell units while more efficiently providing drive lanes, parking areas, and other site features. Because each townhouse is a unit within a parcel, rather than a unit on a lot, individual units do not require street frontage. This unlocks front-and-back layouts critical to densely and efficiently using the deep parcels characteristic of Nashville’s historic urban core, as well as parcels with nonstandard dimensions.

Figures 13 and 14 show the advantages of HPR townhouses for site layout and density for infill applications in comparison to the fee simple form of

FIGURE 13. Site layout of fee simple townhouses



Source: Parcel Viewer (database), Nashville.gov.

FIGURE 14. Site layout of HPR townhouses



Source: Parcel Viewer (database), Nashville.gov.

TABLE 2. Detached cluster housing in Nashville

Statistics	All detached clusters	2010 to present
Number of units	2,738	2,397
Average year built	2016	2019
Average unit size	2,119 square feet	1,976 square feet
Average floor area ratio	0.48	0.49
Average unit density	10.67 DU/acre	11.10 DU/acre
Average lot coverage	23.6%	23.2%

Note: DU = dwelling unit.

Source: Based on parcel records from Davidson County and ReGrid and building data from the Davidson County Property Assessor and the Multiple Listing Service.

ownership that were prevalent prior to modern versions of Tennessee’s Horizontal Property Act.

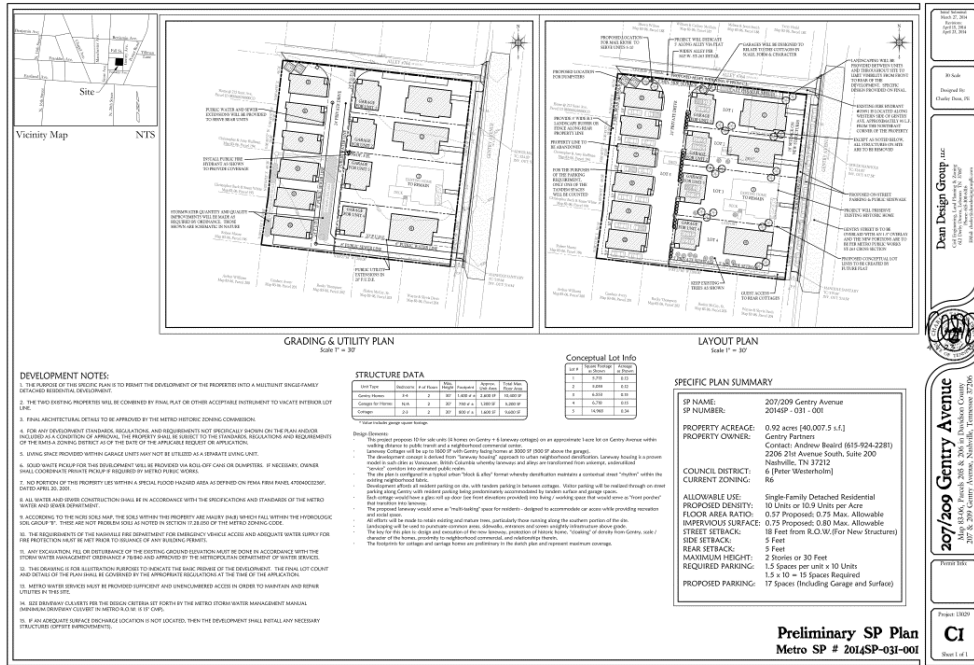
Detached clusters

Detached cluster housing is similar to the townhouse housing in site design, density, and other practical considerations, albeit with detached units rather than units sharing party walls. Detached cluster housing consists of three or more detached units developed as a single project under the same HPR master deed. Projects are typically more compact than traditional single-family detached subdivisions and applied to relatively large urban infill sites, with small or nonexistent private yards in favor of shared open space. Table 2 shows detached cluster statistics.

This form of development has only recently gained in popularity. Before the 1990 HPR reforms, detached housing clusters were rare and concentrated in the affluent Green Hills neighborhood, where buyers were willing to pay top dollar, despite the challenges of condominium ownership. With the improvements to financing brought by the new HPR law, detached clusters have grown in popularity—an indicator that the 1990 reform has narrowed the desirability gap between fee simple and HPR ownership.

On average, for-sale detached cluster units are larger and feature more bedrooms than townhouse units, although they are among the most efficient types based on square feet per bedroom. The detached cluster also boasts a wider range of unit sizes and bedroom and bathroom counts, as it can be targeted to the starter-home, established, and luxury segments, depending on the location and community amenities.

FIGURE 15. Example of a detached cluster



Note: The figure shows an annotated site plan from 207-209 Gentry Avenue, via the preliminary specific plan rezoning. Source: Metro Nashville Planning Department.

Detached cluster housing is also amenable to the growing single-family rental submarket. These projects are typically entitled under design-based specific plan rezonings to enable smaller units suited to the rental market while achieving the total floor area needed to offset alternative uses for the land.

Detached cluster housing gains the benefits of HPR units for townhouse site design, while also being adaptable to detached settings—lending itself well to innovative infill projects (see figure 15).

Duplex clusters

Duplex cluster housing, as shown in figure 16, is a minor subtype that reached its peak of popularity in the 1980s. The type predates its more prolific sibling, the zero-lot-line duplex, which was legal from 1982 to 1986. Builders in the early 1980s responded to the Volcker Shock with inherently affordable product types, such as multiplexes, townhomes, and garden-style apartments and condos. At the time, the only means to convey units to individual buyers was via the old HPR

FIGURE 16. Example of duplex cluster housing



Note: Earlier iterations of the duplex cluster, like the example shown here, tended to feature traditional styling, one-car garages, and greater street presence. Modern duplex cluster housing tends to imitate suburban tract housing, with prominent garages and little engagement between each unit.

Source: Photo by Alex Pemberton.

TABLE 3. Duplex cluster housing in Nashville

Statistics	All duplex clusters	2010 to present
Number of units	3,567	439
Average year built	1993	2020
Average unit size	1,781 square feet	2,152 square feet
Average floor area ratio	0.30	0.62
Average unit density	7.44 DU/acre	12.52 DU/acre
Average lot coverage	25.6%	33.6%

Note: DU = dwelling unit.

Source: Based on parcel records from Davidson County and ReGrid and building data from the Davidson County Property Assessor and the Multiple Listing Service.

law, under which common elements were held by tenancy in common rather than by a townhouse corporation. Table 3 shows duplex cluster statistics.

With the introduction of zero-lot-line housing in 1982, many buyers preferred fee simple ownership and its ease of financing and maintenance—but some builders continued to deliver duplexes under HPR law.

Unlike the two-on-one duplex style that would follow, the duplex cluster was built in bunches to gain economies of scale during an era of high interest rates and affordability pressures. The type has seen a minor resurgence in the post-2010 boom—at considerably higher densities and larger units—although in neither period was the duplex cluster as prolific as its contemporary housing types.

TABLE 4. Two-on-one housing in Nashville

Statistics	All two-on-ones	2010 to present
Number of units	9,616	8,675
Average year built	2016	2018
Average unit size	2,493 square feet	2,502 square feet
Average floor area ratio	0.47	0.49
Average unit density	8.86 DU/acre	9.03 DU/acre
Average lot coverage	27.9%	28.4%

Note: DU = dwelling unit.

Source: Based on parcel records from Davidson County and ReGrid and building data from the Davidson County Property Assessor and the Multiple Listing Service.

The two-on-one

No housing type has been more prolifically built within established neighborhoods than the two-on-one or tall skinny—and as a result, no type has been more controversial. The two-on-one takes advantage of Nashville’s long-standing and widespread two-family zoning to build two units on one lot—often in place of an existing single detached house. Synonymous with the HPR and urban infill in Nashville, the tall skinny has become a symbol of the gentrification of inner-city neighborhoods, as its popularity as a middle-class housing option has served as a visual harbinger of transition. This type has grown from modest tall skinnies for urban pioneers to ostentatious tall fatties for the established upper crust. The two-on-one has spurred regulatory responses from aesthetic mandates to historic districting, to downzoning, to increasingly exotic zoning overlays—but for every new regulation and market fluctuation, the two-on-one adapts and evolves. Table 4 shows two-on-one statistics.

The two-on-one type is defined by four distinct eras, each with its own unique form:

- Precession, with large units in wealthy neighborhoods and minimal attachment
- 2010–2014, with more modest units in areas transitioning into late-stage gentrification
- 2014–2020, with a booming market and a new form enabled by code changes
- 2020–present, with a return of large units in response to hypergentrification, zero interest rate policy, and skyrocketing land prices

We will describe each of these eras individually and then discuss the impact of two-on-one development in Nashville as a whole.

In general, the two-on-one style of HPR unit was exceedingly rare until the housing boom of the 2000s. In 2005, at least 96 units were completed, exceeding the total from all previous years. As the market boomed, the number of two-on-one units grew by over 30 percent in each successive year until the crash. These units were concentrated almost exclusively in Nashville’s affluent Green Hills neighborhood—long the leading edge of high-end forms of HPR development. The combination of large, two-unit-zoned lots and a booming market spurred the construction of spacious units. In 2005, the median two-on-one boasted 2,974 square feet, with a quarter of units larger than 3,750 square feet. In the early 2000s, builders and realtors began to popularize the use of the HPR to refer specifically to the two-on-one form, as the words *duplex* and *two-family* carried connotations of rental property. (Although, under the zoning code, the two-on-one is technically considered a duplex or two-family dwelling.)

Pre-2008: The Siamese mansion era. Examples from the early 2000s typically feature a connection between the two units on a parcel, known as a *hyphen*, which was required by code at the time (see figure 17). In response to spacious lots and a market preference for single-family detached units, builders minimized the connection—often reserving the hyphen for storage, bathrooms, and other, lesser space. The hyphen was typically located near the rear, to hide it from street view and present two detached dwelling forms to passersby; when that was not enough, landscaping was added in front of the connector to further obscure its existence. The 1974 COMZO defined a duplex as “two dwelling units in any way connected or joined by their construction.” The 1998 rewrite sought to ensure minimum dimensions to create usable space, rather than the walls or breezeways that had been used for connection under the old code.

As more and more oddly attached two-on-ones were built in affluent and politically connected neighborhoods—and with agitation from both the real estate lobby and urban design aesthetes alike—one Metro council member sought to amend the code to “get rid of the stupid connector you see in Green Hills.” The push was unsuccessful, as neighborhood defenders objected to detached duplexes on the basis that removal of the connector would yield a more desirable product and thus encourage more teardowns.

2008–2014: The umbilical cord era. The housing crash slowed construction from 2008 to 2012, but the two-on-one type endured. Even at the trough of deliveries

FIGURE 17. Example of two-on-one housing, early 2000s



Note: In the early 2000s, garages were commonly used for the mandated connector between units.

Source: Google Maps.

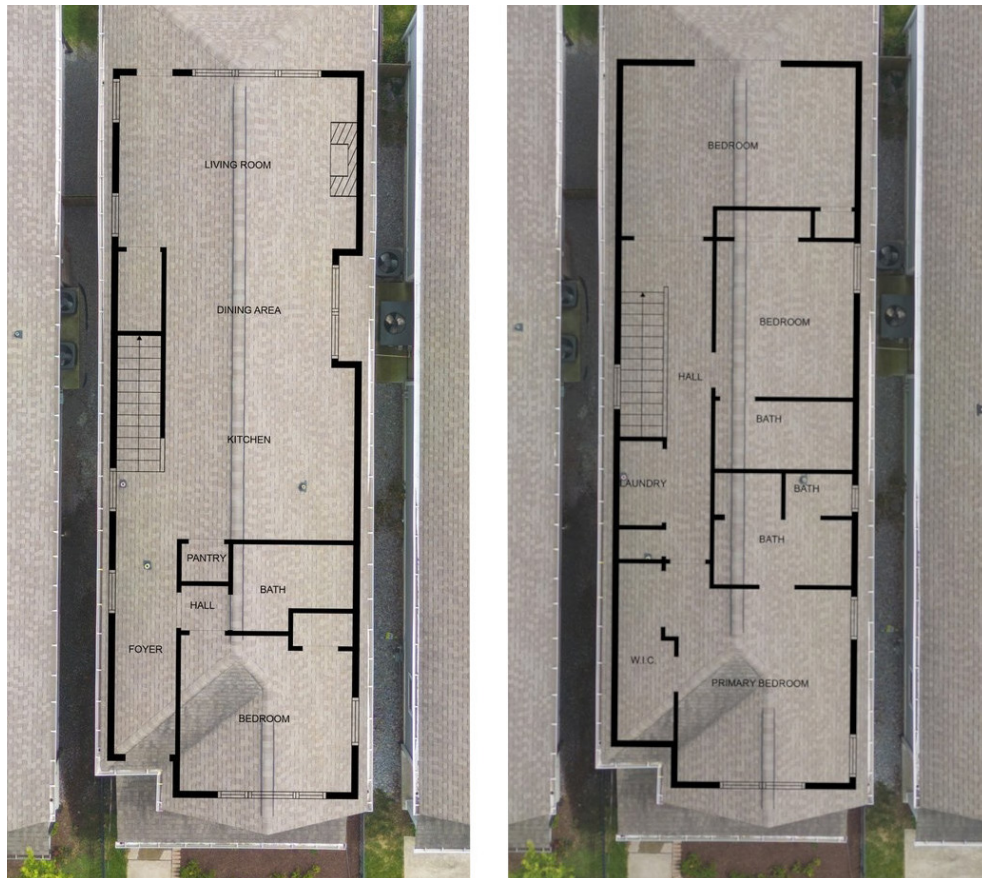
in 2011, more two-on-one units were built than in any year prior to 2005. As the form expanded to less affluent neighborhoods with smaller lots, builders were less able to easily arrange the site to hide the connector. A bevy of new forms resulted, ranging from deep, U-shaped, two-story versions to tall and skinny pairs with a tiny umbilical cord to paired front entries between front-loaded garages and even second-story bridges.

With the two-on-one boom growing more intense and the means of attachment growing more absurd, Metro council members found neighborhood activists more amenable to ending the fiction of connection. A 2014 ordinance modified the definition of a two-family dwelling to enable the oxymoronic “detached duplex”—two freestanding, single-family units on one lot.⁶⁸ A companion ordinance created a Contextual Overlay District, which regulates street setbacks, building height, maximum building coverage, driveway location, and garage access on the basis of contextuality with adjacent houses in neighborhoods that do not qualify for historic zoning overlays—a tool that had proven effective in preventing two-on-one redevelopment.⁶⁹

68. Nashville and Davidson County, Tenn, Metropolitan Code Ordinance Number BL2014-770, amending codes, §§ 17.04, 17.12, and 17.16.

69. Nashville and Davidson County, Tenn, Metropolitan Code Ordinance Number BL2014-771, amending codes, §§ 17.36 and 17.40.

FIGURE 18. Floor plans overlaid on an aerial photograph of a typical deep-and-skinny unit



Note: The unit is 80 feet deep with 2,098 square feet of floor area.

Source: Photo courtesy of Amanda Morris, listing agent, and Clear Lens Real Estate Photography.

2015–2020: The deep skinny era. After the 2014 ordinances, developers would primarily opt for detached units arranged side by side facing the street, except where unique topography, lot dimensions, or overlay requirements dictated attachment (see figure 18). Many builders and realtors believe that detached duplex units are more marketable than units with any attachment, no matter how minimal. Metro records do not track whether a duplex is attached or detached—in fact, the city does not track HPR units at all. To prepare this report, we used a unique method to parse spatial data from Metro GIS and determine whether a unit is attached or detached. We controlled for various hedonic, locational, temporal, and other factors and found no consistent price-per-square-foot disparity at the city level, although disparities emerge at the neighborhood level. In more

affluent neighborhoods, there does appear to be a premium for detached units, while the difference diminishes in more modest districts.

It does not appear, however, that detachment accelerated teardowns and two-on-one development. Existing two-on-one HPR units were sorted by the date of plat—one of the first steps in the development process, thus a reliable proxy for project start. The results revealed that, while the volume of two-on-one HPR units did increase after the detached duplex bill, the rate of increase noticeably slowed from its prior trend. However, it is possible that the new dimensional restrictions, a wave of new downzonings and restrictive overlays, or a winnowing supply of sites outweighed any benefit from detachment. As land prices escalated from 2015 to 2020, builders were pushed toward larger units to achieve higher floor area ratios. With zoned density constrained to two units, builders had two choices to “pencil out” a project with greater bulk: deeper units or attached units. Some detached side-by-side units—limited to 17-foot width per unit on a standard 50-foot-wide lot because of side setbacks and required spacing—began to reach 80 feet deep or more. Builders began to consider the 6-foot gap too valuable to waste, and the ratio of attached units began to rise.

Postpandemic: The tall fatty era. The combination of regulations against tall and skinny building proportions and escalating land prices—which skyrocketed as the COVID-19 pandemic provoked a zero-interest-rate policy response that expanded homebuyers’ purchasing power—led to the latest era of the two-on-one form.

The front-and-back detached duplex—a form previously reserved for unusually deep or narrow lots—has grown common in high-value neighborhoods, as land prices require higher density (see figure 19). The tradeoffs for developers are simple—a broader building enables a third story that was otherwise barred by height-to-width ratio regulations, while a front-and-back arrangement allows detached units with separation across less than 40 square feet of building footprint rather than the 80 or more square feet of a side-by-side detached duplex. It also became more common for builders to attach units to maximize the building envelope (see figure 20). Some neighborhoods have responded with further zoning barriers.

The plus-one

In recent years, as the supply of vacant land and teardown sites have dwindled, builders and property owners have begun to build an additional unit on the same parcel as an existing house, similar to the manner in which accessory dwelling

FIGURE 19. Example of a front-and-back detached duplex



Note: Four large, front-and-back detached duplex units replaced two modest mid-century duplexes on two parcels in single-family zoned Sylvan Park.

Source: Photo by Alex Pemberton.

FIGURE 20. Example of three-story attached units



Note: As land prices have escalated, builders have increasingly opted for attached units to achieve a third story and maximize the building footprint.

Source: Photo by Alex Pemberton.

TABLE 5. Plus-one housing in Nashville

Statistics	All plus-ones	2010–2023
Number of units	503	453
Average year built	2018	2020
Average unit size	2,269 square feet	2,209 square feet
Average floor area ratio	0.31	0.31
Average unit density	7.57 DU/acre	7.71 DU/acre
Average lot coverage	22.4%	22.5%

Note: DU = dwelling unit.

Source: Based on parcel records from Davidson County and ReGrid and building data from the Davidson County Property Assessor and the Multiple Listing Service.

units are built in other cities, but pursuant to duplex zoning. In areas with smaller lots, the plus-one type is most common on corner sites, with the new unit facing the side street—mimicking the form of small-lot subdivision that was widespread in the days before zoning, as streetcar suburbs built out and densified. Table 5 shows plus-one statistics.

While some builders in recent years have pursued a strategy to buy single-unit properties with the intention of adding a second unit, it is more common for homeowners to partner with a builder (or undertake the process themselves) to add a second unit while remaining in their home. Horizontal Property Regime law allows homeowners to essentially sell off a building site in their backyard, while retaining the ability to maintain control over the use of the new site via the development process and HOA bylaws (see figure 21).

While property owners in Nashville’s widespread two-unit zones can add a second unit by right, many find that financing a second unit under common ownership is a challenge. There are no standard construction loan products, aside from the rare portfolio loan from a local lender. This is where the HPR shines: As a separate legal unit, the second unit can be financed as if it were a standalone project. This feature allows property owners to use standardized construction loan products, take out the construction loan with a standard mortgage, and even enhance their credit by bringing on a better-resourced partner—all of which confer better terms and lower rates for financing.

The plus-one HPR unit makes use of excess land with low marginal value. The value of the entire parcel is less than the value of continued use of the existing house; therefore, there is theoretically zero marginal value for any land in excess of the owner’s desires. As such, the economic forces that drive upward

FIGURE 21. Example of plus-one housing



Note: Large, deep lots are ideal for the addition of a detached, front-and-back plus-1 unit. The ability for existing homeowners to define private and common elements offers flexibility.

Source: Google Maps.

the size of two-on-one units are weaker. The median plus-one unit is around 300 square feet (or 12 percent) smaller than the median two-on-one unit.

The plus-one type shows promise as a tool for densification without displacement and the reintroduction of smaller, more efficient starter homes.

Conversion of rental units

One indication of the power of the HPR to enable home ownership is the prevalence of buildings constructed as multiunit rentals that have since been converted into individually owned units. In the absence of alternative means of small-lot subdivision, the HPR allows property owners to meet the market and maximize value when for-sale prices exceed the capitalized value of rental income. These conversions reflect the original intended purpose of condominium laws in enabling transition of rental apartments to ownership form, and the average year of conversion (1976) reflects Tennessee's HPR law before the 1990 reforms that encouraged townhouse construction. See table 6 for conversion statistics.

TABLE 6. Conversions in Nashville

Statistics	All conversions
Number of units	870
Average year built	1976
Average unit size	1,311 square feet
Average floor area ratio	0.24
Average unit density	8.32 DU/acre
Average lot coverage	18.8%

Note: DU = dwelling unit.

Source: Based on parcel records from Davidson County and ReGrid and building data from the Davidson County Property Assessor and the Multiple Listing Service.

FIGURE 22. Example of a conversion

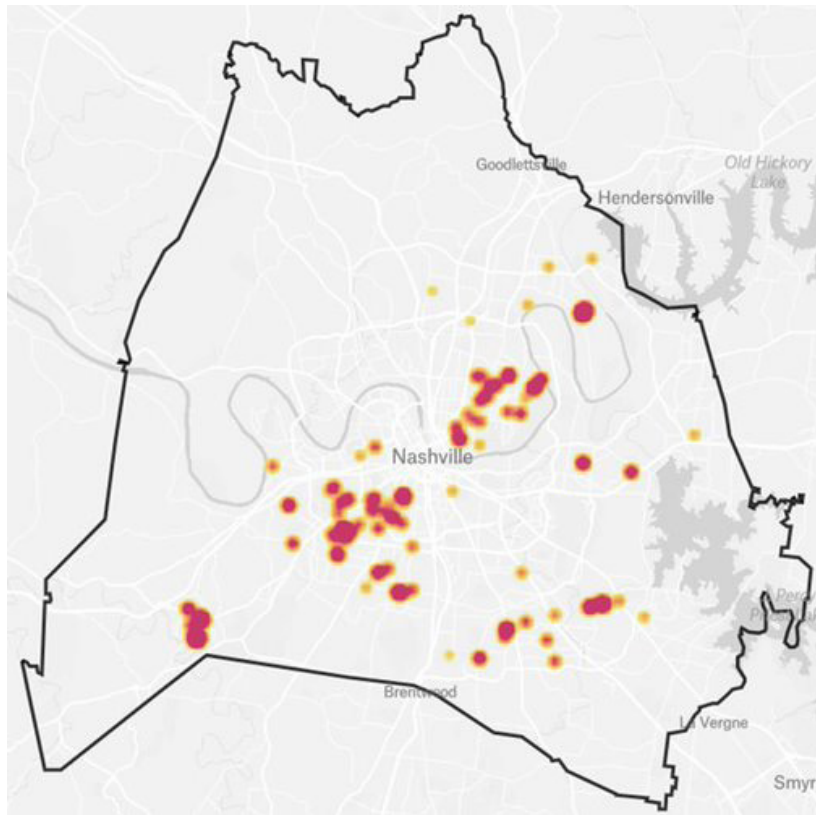


Note: Horizontal Property Regimes allow existing multiunit buildings to be easily converted into individual for-sale units, often at a far lower price point than new-builds or single-unit houses in the same neighborhood.

Source: Photo by Alex Pemberton.

From the perspective of the original drafters of the HPR law, conversions have had modest success in expanding ownership options in centrally located areas. Nashville, like many other US cities, produces more rental housing types close to the city center than for-sale products, and the increase in prices has outpaced the rise in rents. The ability to convert buildings from rental to ownership easily and inexpensively offers the benefit of supplying smaller, lower-priced units (see figures 22 and 23).

FIGURE 23. Locations of conversions around Nashville



Note: Conversions mirror the location of development in the 1960s–1980s, with both the urban core and older suburban submarkets represented.

Source: Based on parcel records from Davidson County and ReGrid and building data from the Davidson County Property Assessor and the Multiple Listing Service.

6. Local Political Reaction to Redevelopment under the State HPR Law

The housing types produced under the HPR law have been polarizing in Nashville. The two-on-one type, in particular, has spawned a range of reactions. On the one hand, the type is popular and accepted by builders and buyers; on the other, it is often derided in popular discourse and a primary target of neighborhood defenders. Redevelopment of established neighborhoods has been resisted with three tools: downzoning, historic overlays, and contextual overlays.

Downzoning has been the tool of choice in Green Hills and further outlying suburban neighborhoods with legacy two-family zoning. Thousands of parcels were downzoned in the comprehensive rewrite of the zoning code in 1998, and

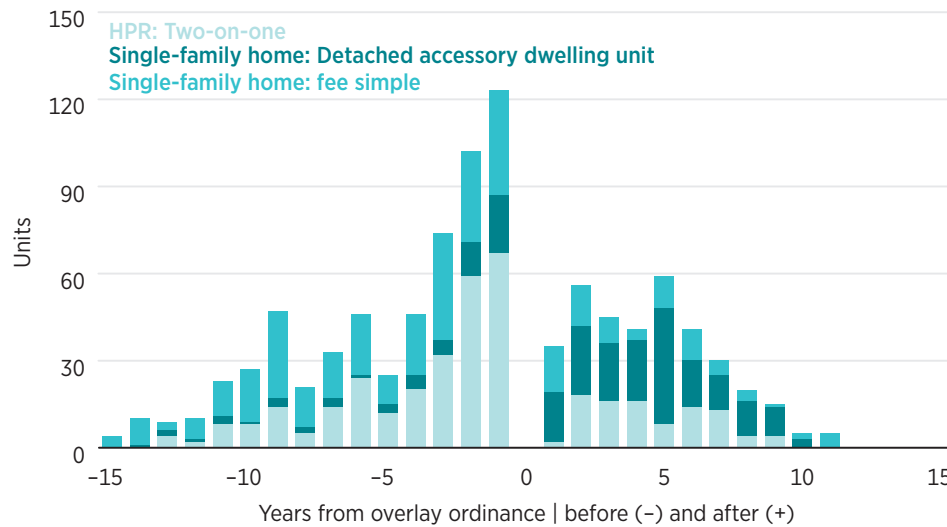
thousands more were downzoned at the behest of homeowner groups in the 2000s. Nevertheless, downzoning has been relatively rare in the urban core since two-on-one HPR units have come into vogue. Downzoning is the most direct restriction on HPR units, as it directly controls density. Within single-family zones, HPR units can be built only by redeveloping existing multiunit properties.

Nashville has two types of historic overlay: the historic preservation overlay and the neighborhood conservation overlay. The Historic Preservation Zoning Overlay (HPZO) was enabled in the 1974 COMZO, following the passage of the National Historic Preservation Act of 1966, and was first implemented in 1978. The HPZO failed to gain significant traction with neighborhoods, as it requires strict compliance with historic preservation standards for all types of improvement work—demolition, new construction, additions, renovation, and maintenance. The slow uptake of the HPZO prompted the creation of the Neighborhood Conservation Zoning Overlay (NCZO) in 1985, which was the first conservation overlay in the nation to leverage the legal infrastructure of historic preservation. The NCZO regulates demolition, new construction, and additions, but it does not regulate minor renovations or maintenance. As such, it has become popular with homeowner interest groups that seek to throttle neighborhood change without creating severe impediments to their own property rights. The Metropolitan Historic Zoning Commission now manages 29 NCZOs and 8 HPZOs. Both NCZOs and HPZOs are locally designated districts and do not require listing on the National Register of Historic Places.

A more direct reaction to two-on-one HPR development, the Contextual Overlay⁷⁰ was created as a companion to the bill that enabled detached duplexes in 2014. Contextual Overlay Districts (CODs) are used for areas that do not meet Department of the Interior standards for historic district status, primarily in suburban areas of Nashville–Davidson County. Individual CODs use the same design standards, which govern setbacks, height, lot coverage, and vehicular provisions. Bulk standards float for each parcel that are based on the characteristics of the two developed lots abutting each side of the subject property. There are now 33 CODs, which are generally less restrictive than historic districts. Lacking a grounding in principles of historical preservation, the CODs outwardly resemble the form-based zoning or urban design overlays often found in other cities.

70. “Residential Design Standards: Contextual Overlays,” Metropolitan Government of Nashville and Davidson County (website), accessed August 16, 2024, <https://www.nashville.gov/departments/planning/land-development/overlays/contextual-overlays>.

FIGURE 24. Effect of restrictive overlays on housing construction and composition



Note: Restrictive overlays are preceded by a surge in new housing construction, especially two-on-one HPR construction. Housing production immediately and severely declines after an overlay is enacted.

Source: Based on parcel records from Davidson County and ReGrid and building data from the Davidson County Property Assessor and the Multiple Listing Service.

Two-on-one HPR development precedes restrictive overlays

We analyzed development patterns in and around neighborhoods that have implemented restrictive overlays (HPZO, NCZO, or COD) since 2010 to determine the relationship between HPR development and restrictive zoning. As figure 24 illustrates, we found that restrictive zoning overlays are often preceded by a surge of two-on-one HPR redevelopment—a conclusion that aligns with qualitative and anecdotal observations, including public statements by overlay proponents.⁷¹ New housing construction immediately declines upon implementation of a restrictive overlay, with few exceptions. Restrictive overlays reduce both fee simple single-family unit production and two-on-one HPR production; the drop in single-family unit production is slightly offset by an increase in detached accessory dwelling unit production, which is enabled by right in historic overlay districts. The effect is robust across the districts that have received the most two-on-one redevelopment, as well as aggregated across all overlay districts. The effect is greater in historic districts, where demolition protections reduce the number of potential redevelopment

71. Hearing and Public Comment (YouTube video), Planning Commission for the Metropolitan Government of Nashville and Davidson County, Metro Nashville Network, September 23, 2021.

opportunities and contextual height limits often restrict new construction to one or one-and-a-half stories. The effect is less intense in CODs and historic districts with codified two-story height limits.

Although the proliferation of restrictive overlays has hindered production of HPR units in certain areas of Nashville, the HPR itself has remained intact and, as a state law, has remained unaffected by local politics swirling just below Nashville’s Capitol Hill. Despite obstacles, it continues to enable the production of hundreds of units in Nashville’s UZO each year, expanding the housing stock and keeping ownership options in the urban area within reach of a wide range of potential buyers.

7. Conclusion and Recommendations

Tennessee’s 1990 reforms to its condominium law, in conjunction with preexisting duplex zoning, helped bring about an urban housing boom in Nashville, which created thousands of new home ownership opportunities in established urban districts. The two-on-one housing type, in particular, has defined Nashville’s post-2000 era of residential development and has established a track record of success in producing much-needed housing that until now had not been cataloged and quantified. With the United States facing a critical shortage of housing as of 2024, can Tennessee and Nashville help inform housing efforts in other states and cities? Most likely, the answer is yes, and we recommend that, as part of their housing agenda, other states consider legislation to implement reforms that are based on Tennessee’s HPR law.

State reforms create a golden opportunity for simple HOA and HPR laws

One reason for optimism about the impact of a law like the HPR is that over the past few years, several states have considered or enacted bills legalizing more than one unit on most or all residential lots. In some states, including California, Oregon, Utah, Connecticut, Massachusetts, New Hampshire, and Maine, accessory dwelling units have been widely legalized.⁷² Arizona, Maryland, Washington, Vermont, and Montana have gone further, legalizing duplexes,

72. Emily Hamilton and Abigail Houseal, “Legalizing Accessory Dwelling Units at the State Level: A New Hampshire Case Study” (Mercatus Policy Brief, Mercatus Center at George Mason University, March 30, 2023); Kahn and Furth, “Laying Foundations”; The Affordable Homes Act (H.R. 2023, c.4138).

triplexes, and quadplexes in single-family residential zones, as well as accessory dwelling units.⁷³ Cities have also adopted notable reforms, with Austin, Texas, legalizing up to three units on all parcels in 2023.⁷⁴ The example of Nashville, with its long-standing duplex zoning, demonstrates that it is reasonable to expect these reforms to be more effective in producing new housing if they are accompanied by a cheap, simple, and reliable method for offering the dwelling units for sale using conventional financing, rather than as rentals or condominiums.⁷⁵ Tennessee’s HPR law, in effect for more than three decades, provides one such method, and one that can enable a diverse variety of forms, as detailed in section 5 of this study.

Although this study has not examined the effect of the HPR law in cities other than Nashville, its findings suggest that other Tennessee counties and municipalities may stand to benefit from legalizing small multifamily types of housing throughout their jurisdictions. Cities such as Memphis, Knoxville, and Chattanooga may not presently have population growth pressures to the same degree as Nashville, but freely allowing duplexes, triplexes, and other small multifamily types in all zones, including single-family zones, will help meet existing demand for infill development and accommodate future growth in areas with the infrastructure already in place to service it.

Isn’t minimum-lot-size reform a better alternative?

Minimum-lot-size reform could provide an alternative means to achieve similar results, as shown by Houston’s resounding success with its lot-size reduction in the 1990s,⁷⁶ but to date, accessory dwelling unit and small multifamily housing legislative reforms have enjoyed much greater success on a statewide level than has lot-size reform.⁷⁷ While lot-size reform may aid affordability by allowing denser development in greenfield subdivisions, cities may find that procedural barriers remain for urban infill. Builders will likely prefer allowing use of a law such as the HPR to add detached units at smaller scales and infill

73. Kahn and Furth, “Laying Foundations”; Kahn and Furth, “Breaking Ground.”

74. Austin, Tex. Ord. 20231207-001 (Dec. 7, 2023).

75. California’s AB-1033, enacted in 2023 and first applied by way of local ordinance in San Jose in 2024, allows accessory dwelling units to be conveyed separately, but only as condominiums. The effectiveness of this method remains to be seen but would be enhanced by allowing sale through California’s Nonprofit Mutual Benefit Corporation Law (Cal. Corp. Code §§ 7110–8910 (2023)) rather than only the Davis-Stirling Common Interest Development Act (California Civ. Code §§ 4000–4070 (2023)).

76. Hamilton, “Learning from Houston’s Townhouse Reforms.”

77. Kahn and Furth, “Breaking Ground.”

settings unless minimum-lot-size reductions are paired with reforms to subdivision regulations that dramatically reduce time, cost, and uncertainty, such as by making lot-split approval ministerial, slashing application fees, and reducing processing time to a month or less. With that said, both types of reform can and should coexist, and an abundance of options for infill is preferable to none.

Essentials for reform in other states

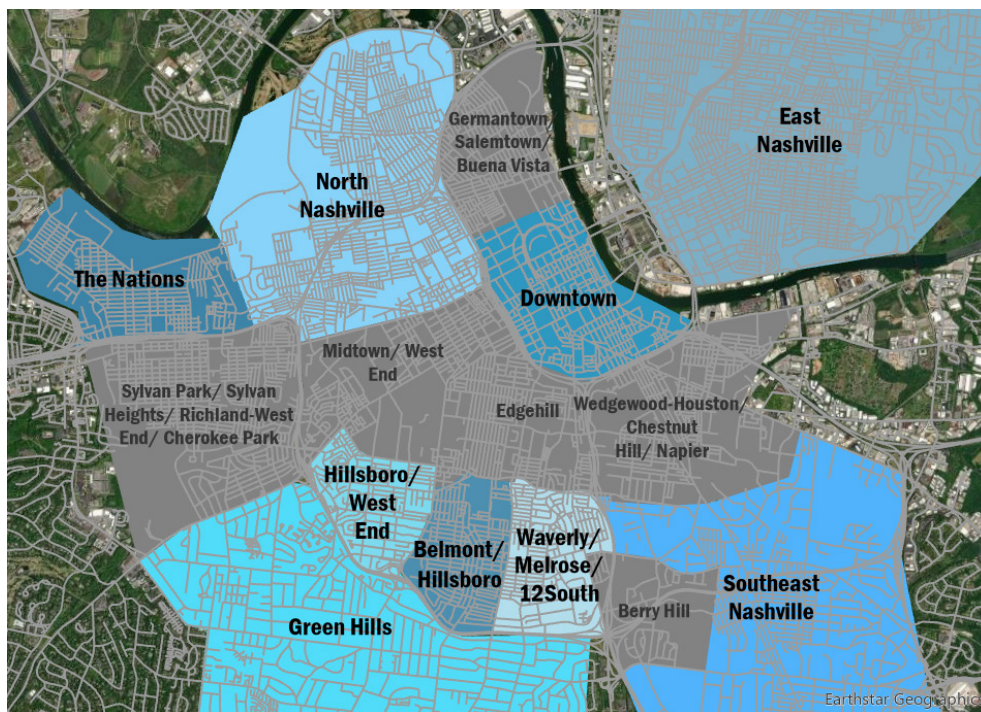
Which elements of Tennessee's HPR law have been most consequential? The combination of (a) simplicity in organization of the townhouse corporation, (b) a minimum of mandates on the corporation and its members, and (c) automatic approval subject to certification by qualified third parties appears to have been instrumental in allowing the HPR organization to economically scale down to as few as two units. Should a state wish to incorporate these reforms, however, the process of doing so will differ depending on whether a state has an existing HOA statute:

- **States without an existing HOA law.** For states that lack an HOA law or do not specifically address HOAs in their statutes, these elements could be adopted in straightforward fashion without creating a conflict with existing law. Builders in states that lack dedicated HOA laws, such as Michigan and Rhode Island, have the option of using their states' nonprofit corporation law to form HOAs, but Tennessee's adoption of the HPR statute has not resulted in friction with the state's own law of nonprofit corporations.⁷⁸ As discussed previously, state nonprofit laws were not typically drafted with HOAs in mind and may be particularly poorly adapted to small developments of the sort that have flourished in Nashville. Conversely, condominium laws generally rely on tenancies in common that the HPR avoids through corporate ownership and its clear division of land into separate elements. A statute modeled on Tennessee's HPR law should coexist harmoniously with nonprofit and condominium law while encouraging production of for-sale homes using state and local laws and regulations.
- **States with an HOA law.** For states that have an HOA law, adopting these elements may require careful amendment and modification of statutory language, potentially involving carve-outs for small HOAs or outright

78. Tennessee's law of nonprofit corporation is codified at Tenn. Code §§ 48-51-101-48-69-123 (2019).

streamlining of HOA statutes. Barriers to use of existing HOA laws for small multifamily housing should be studied, identified, and taken into account as part of any amendment process. The experience of Tennessee and Nashville should serve to highlight the importance of considering small developments when undertaking major reforms to the law on common interest communities and of closely examining the data on construction of for-sale housing using HOAs. Tennessee’s HPR law has survived reforms to state condominium law and proposals by state legislators for more complex HOA laws, thanks to good luck and alert builders and attorneys, but other states can be self-aware when identifying HOA reforms as a critical means of assisting infill housing production.

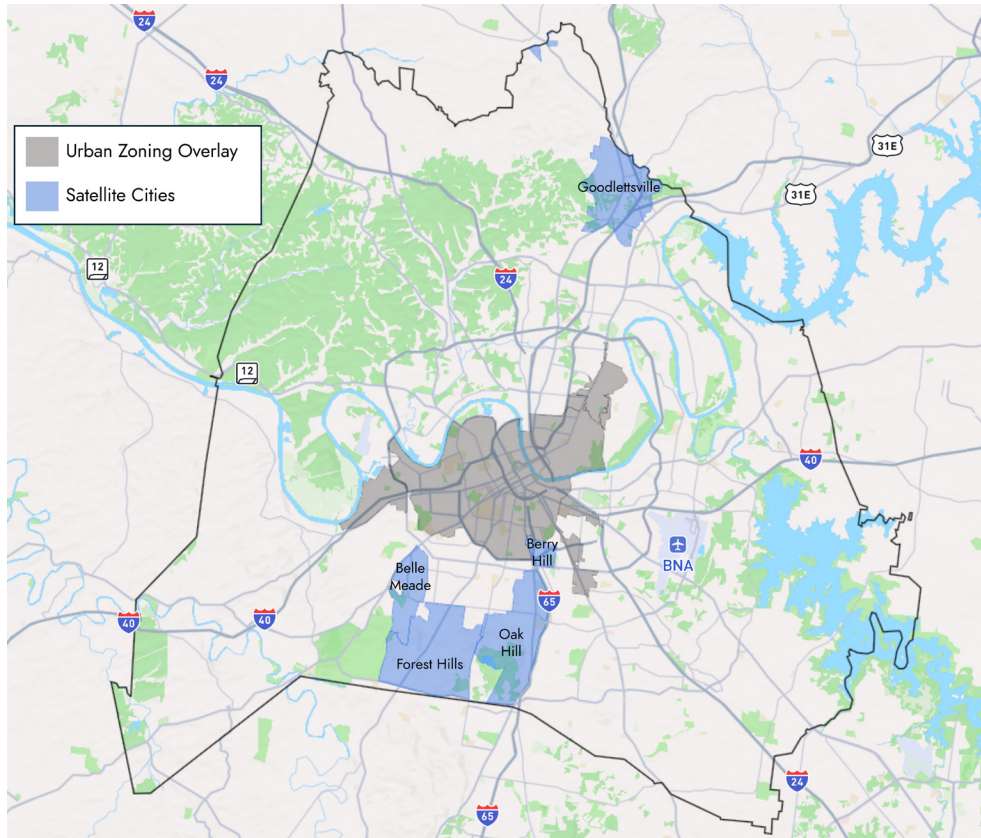
Appendix A: Neighborhoods in Nashville



Note: Highlighted neighborhoods are discussed in this study.

Source: Map courtesy of Eli Kahn.

Appendix B: Davidson County: Urban Zoning Overlay and Satellite Cities



Source: Original to this publication.

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