

Avoiding and Overcoming Neighborhood Opposition to Affordable Rental Housing

By Jaimie Ross, President and CEO,
Florida Housing Coalition

Not in My Backyard (NIMBY) connotes objections made to stop the development of affordable housing based on fear and prejudice. NIMBYism presents a particularly pernicious obstacle to meeting local housing needs. The outcry from constituents expressing concerns over the siting and permitting of affordable housing can lead to lengthy and hostile public proceedings, frustrated Consolidated Plan implementation, increased development costs, and property rights disputes. The consequence is less development and preservation of housing at a time when the country is in desperate need of more rental housing. The resulting unmet need for rental units leads to an increase in homelessness. Avoiding and overcoming opposition to affordable rental housing is key to producing and preserving desperately needed affordable homes.

TOOLS FOR SUCCESS

Reduce Unnecessary Approvals

The more land use and development approvals requiring a vote by an elected body, the more opportunities there will be for neighborhood opposition. There are two ways to reduce unnecessary approvals: (1) “by right” development and (2) approvals made by staff rather than at a public hearing. In Los Angeles, neighborhood opposition against siting supportive housing led advocates to push for a local code change to permit supportive housing on property zoned for public facilities. This change removed the requirement for a zoning change in certain circumstances and reduced the threat of neighborhood opposition.

To encourage “by right” affordable rental housing development, advocates should fight for zoning codes that contain predictable standards for development with quick administrative review,

reducing the opportunity for community pushback. There must be a balance between public input at the outset while also giving affordable housing developers the predictability needed to carry out their projects without delay.

Restrictive zoning, particularly single-family zoning, creates a high hurdle for affordable housing. In December 2018, Minneapolis, Minnesota became the first major city in the United States to adopt a plan to allow up to three dwelling units on a single-family lot in areas zoned for single-family only housing. This change allows duplex and triplex rental housing in what would otherwise be an exclusively single-family homeownership area. In 2019, Oregon passed a law requiring cities with populations of 25,000 or more to allow duplexes, triplexes, townhomes, and other “missing middle” housing types in single-family districts. Cities of 10,000-25,000 in population are required to allow duplexes in single-family zones. Up-zoning policies such as these remove the obligation for an affordable housing developer to seek land use changes on a case-by-case basis and thereby avoid forums that invite NIMBYism. If clear and predictive development standards are implemented from the outset, there will be less NIMBYism on the back end.

In 2020, the Florida legislature passed a law permitting all local governments to approve affordable housing developments without zoning or land use changes on land zoned for residential, commercial, or industrial uses. This state permission for local governments to override its own zoning requirements may prove to be a powerful tool in avoiding NIMBYism by reducing the need for developers to secure zoning approval in a public forum. It could be particularly useful for incorporating small scale rental developments in single-family zoning districts and for adaptive reuse of commercial properties for affordable residential development. Of course, advocates

will need to ensure that this zoning override is never used to site affordable housing in industrial areas that would be harmful to the health of nearby households.

Launch General Audience Education Campaigns

Increased understanding of affordable rental housing and the positive impact it has on individuals, families, and the community at large is instrumental to gaining wide support. The more informed the public, local government staff, and elected officials are about the need for affordable rental housing and the benefits of avoiding housing insecurity and homelessness, the more leverage advocates have to advance the development of affordable rental homes.

Advocates should make use of credible research and local data to support their message. Anecdotal information about particular residents and the success of previous developments goes a long way in a public education effort. There are many resources available to help in an education campaign. The *ALICE Report* (Asset Limited, Low-Income, Constrained, Employed) by United Way shows that that fulltime low-income employed workers do not make enough money to pay for market rate apartments. Pairing research reports from credible entities that are not housing organizations with reports prepared by housing organizations, like the *Out of Reach* report, *The Gap* report, and *Home Matters*, makes for the strongest argument. Reports on housing prepared by non-housing advocacy organizations attract the attention of news outlets and provide allies for the cause.

Advocates should educate elected officials and the community at large to view affordable rental housing as a community asset or as infrastructure. Without an adequate supply of affordable rental housing, local businesses will suffer, and communities will lose essential workers like teachers, first responders, and hospital personnel. Without sufficient affordable rental housing, workers will be forced to live far away from their jobs and will spend more of their money on transportation and housing costs, leaving less money to invest in the local economy.

Affordable rental housing should be viewed as an essential infrastructure need for communities in the same vein as roads, bridges, parks, and sanitary water. Framing affordable housing as infrastructure also supports ancillary objectives, like building public support for inclusionary housing policies whereby affordable rentals are produced concurrent with market rate housing. This has the double benefit of producing more affordable housing and overcoming NIMBY opposition, as the developer can respond to neighborhood opposition, if any, by explaining that the affordable housing component of the development is a local government requirement.

Garner Support from a Broad Range of Interests

Advocates should ask members of the business community, clergy, social service agencies, and others who will be well received to support them in advancing affordable housing goals. State and local business chambers and economic development councils are increasingly adopting workforce housing as a legislative priority. These supporters can help in making the connection between housing development and other community concerns. For instance, local chambers can speak to the need for workforce housing. Members of the local school board or parent advisory committees can attest to the need for stable rental housing for teachers, support staff, and lower income families to support children's success in school. Potential beneficiaries of the development, including future residents, may also be effective advocates.

The media can be a crucial ally; whenever advocates foresee a potential NIMBY problem, it is best to contact the media right away so that they understand the development plans, the public purpose, and the population to be served before they hear neighborhood opposition.

Engage Elected Officials

Once a NIMBY battle ensues, it is often too late to educate. Advocates should anticipate the value of and the need to build relationships with elected officials and their staff members before a NIMBY issue arises. It is imperative to underscore the importance of affordable housing

and the consequences of not having enough rental housing, such as homelessness, so that elected officials make the connection between adequate rental housing and the economic health of the entire community. Embracing affordable rental housing as a community asset and as essential infrastructure helps shape the vision of a successful affordable housing strategy and maximizes community potential. When residents oppose lower-priced housing in their neighborhoods, it will help elected officials overcome any opposition knowing that workforce housing is a critical part of the community's infrastructure.

Advocates should include allies in the engagement process. Learning about elected officials' interests helps identify the best allies to bring to meetings. For example, one elected official may be more inclined to hear from local businesses about the need for employee housing, while another may be moved by hearing from local clergy about the needs of homeless veterans, elders, and people with disabilities. Whenever possible, advocates should invite elected officials to visit completed developments and should share credit with them at ribbon cuttings and when speaking with the media. Whether advocates can meet with elected officials regarding a pending approval depends upon the *ex parte* rules in each jurisdiction. If advocates discover that community opposition is meeting with elected officials about a development, advocates should try to do the same.

Engage Neighborhood Groups with Specific Developments

Outreach to the neighborhood can be key to avoiding a NIMBY battle but it can also ignite a NIMBY battle. The decision about when and how to engage the neighborhood is one that is best done with as much consideration as the development plans themselves. If neighborhood engagement is done well, it can smooth the development process to success. But if the first step is a misstep, it can be extremely difficult to get the project back on track.

Here is some critical guidance for neighborhood

engagement: (1) find out if there is a neighborhood association, either formally incorporated or organically comprised; (2) identify the leader(s) of the neighborhood group; (3) set up a one-on-one or very small group meeting with the leaders; (4) encourage the neighborhood leaders to share any concerns with you after you have shared your development plans; (5) be willing to revise your plans in ways that respond to any *legitimate* concerns; (6) if leadership is supportive, include them in your presentation to the larger neighborhood group. An inclusive, transparent, and collaborative approach from the outset can be key for the success of a new affordable housing project.

Address All Legitimate Opposition

The key to overcoming community opposition is addressing the opposition's legitimate concerns. Legitimate, non-discriminatory concerns around issues like traffic or project design may lead the affordable housing developer to modify plans for the proposed development. For example, moving the location of an entrance driveway or adjusting the design of the building to ensure that the building fits within the aesthetics of the existing community may be changes worth making, even if they come with an increase in cost. It is always wise for the affordable housing developer to work with the neighbors and be able to report to the local elected body that they have done their best to address the concerns of the opposition.

Neighborhood opposition is often based on fears of falling property values. Yet, virtually without exception, property value and affordable housing research finds no negative effect on neighboring market rate property values. In fact, in some instances, affordable housing has increased the value of neighboring property. In November 2016, Trulia released a report, *There Doesn't Go the Neighborhood: Low-Income Housing Has No Impact on Nearby Home Values*, adding fresh data to the large body of research showing that affordable housing does not decrease neighboring property values.

The critical point is this: once all legitimate concerns are addressed, if opposition persists, it

can be stated with certainty that the opposition is illegitimate and is therefore inappropriate, arbitrary, capricious, or unlawful for the local government to consider in making its land use decision. The unlawfulness of the opposition may be a violation of fair housing laws and in violation of the substantive due process rights afforded by the 14th Amendment to the U.S Constitution, as explained below.

Know the Law and Expand Legal Protections

Advocates should view neighborhood opposition through the lens of fair housing and fundamental rights. If all legitimate concerns have been addressed, it is likely that local efforts to thwart the affordable rental development violates federal fair housing law and/or the 14th Amendment, as well as private property rights.

Under 14th Amendment jurisprudence, local officials must have some rational, police power-based (public health, safety, or welfare) purpose for exercising development decisions. Individuals have a fundamental right to fair and non-arbitrary land use decisions. Courts have held that the public's negative attitude, or fear, unsubstantiated by factors that are properly cognizable in a development proceeding, are not permissible bases for land use decisions. If a local government denies an affordable rental housing development due to illegitimate political or otherwise irrational motives not based on rational evidence, its decision may be challenged under the "Civil Rights Act of 1871" (42 U.S.C. § 1983) for violating the affordable housing developer's substantive due process rights. As advocates, we can help local elected officials avoid liability by providing education about the protections provided by fair housing law and the affirmative duty that government must safeguard fair housing.

Advocates can push for state or local discrimination laws that make it harder for NIMBY-ism to prevail. For example, in 2000, the "Florida Fair Housing Act" (the state's substantial equivalent to the federal "Fair Housing Act") was amended to include affordable housing as a protected class (Section 760.26, Florida Statutes).

In 2009, North Carolina adopted a similar statute to add affordable housing as a protected class in its fair housing law. Laws similarly intended to provide protection for affordable housing developments have been adopted in California and the state of Washington (see Additional Examples at the end of this section). Decision makers must be made aware of the law if it is to be helpful to the cause. The expansion of State Fair Housing Protections to include affordable housing in Florida has been successful because housing advocates have been conscientious about ensuring that local government lawyers know about the statutory change. It is now commonplace in Florida for a city or county attorney to inform the elected body during a heated public hearing that they will run afoul of the state's fair housing law if they deny an affordable housing developer's application.

NIMBYism Through a Racial Lens

In Richard Rothstein's *The Color of Law*, the thread of government lending, insurance, and appraisal requirements for housing, including redlining and the security maps used by the Homeowners' Loan Corporation and Federal Housing Administration, details the intentional segregation wrought in nearly every community. A parallel argument can be made that government planning and zoning discrimination used to entrench NIMBY opposition is the perpetuation of modern-day segregation. NIMBYism is often a proxy for intentional segregation as it keeps people confined to pre-existing demographic patterns; demographic patterns that often reflect the overt, intentional segregation of the past.

Since the landmark 1926 Supreme Court case of *Village of Euclid v. Amber Realty Co.*, local governments have used "Euclidean" zoning to separate "incompatible" land uses and divide cities and towns into specific uses are permitted. Legally affirmed as a tool to curb nuisances, pollution, and to act for the public health, safety, morals, and general welfare of the people by separating potentially toxic industrial and commercial facilities from residential areas, zoning since *Euclid* has been used to justify

exclusion.

In the *Euclid* decision, Justice Sutherland wrote:

“[w]ith particular reference to apartment houses, it is pointed out that the development of detached house sections is greatly retarded by the coming of apartment houses, which has sometimes resulted in destroying the entire section for private house purposes; *that in such sections very often the apartment house is a mere parasite*, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district. Moreover, the coming of one apartment house is followed by others, interfering by their height and bulk with the free circulation of air and monopolizing the rays of the sun which otherwise would fall upon the smaller homes, and brining, as their necessary accompaniments, the disturbing noises incident to increased traffic and business, and the occupation, by means of moving and parked automobiles, of larger portions of the streets, thus detracting from their safety and depriving children of the privilege of quiet and open spaces for play, enjoyed by those in more favored localities, -- until, finally, *the residential character of the neighborhood and its desirability as a place of detached residences are utterly destroyed*. Under these circumstances, apartment houses, which in a different environment would be not only entirely unobjectionable but highly desirable, come very near to being nuisances.”

Local zoning codes that segregate uses by housing type and require subjective standards of “compatibility” with existing surroundings sets the stage for NIMBYism and for segregation. Exclusionary zoning laws that create single family only districts and use a subjective test of “compatibility” and consistency with the “character” or “neighborhood scale” perpetuate homogenous neighborhoods of low-density, single-family homes. These policies set the stage for an uphill battle when developers of

affordable housing look for sites that will provide desperately needed homes for lower income households who are frequently people of color.

A 1991 Report by the Advisory Commission on Regulatory Barriers to Affordable Housing to then-President George H.W. Bush and HUD Secretary Jack Kemp found that, “[i]n theory a way of separating ‘incompatible’ land uses to protect health and safety, zoning has become a devise for screening new development to ensure that it does not depress community property values. As a result, some suburban communities, consisting mainly of single-family homes on lots of one acre or more, end up as homogeneous enclaves where households such as schoolteachers, firefighters, young families, and the elderly on fixed incomes are all regulated out.” Although this claim is thirty years old, it could have been written today.

Subjective development regulations, and regulations which unduly restrict flexibility in housing types and densities, enables NIMBYism to thrive and allows existing patterns of segregation to continue. For communities that do not look all that different from the days of redlining, NIMBYism in the form of local land development regulations requiring a subjective test of neighborhood compatibility is a way for government to perpetuate the overt, intentional segregation of the past. Housing advocates can study their local land development processes and push for reforms that facilitate more integrated communities.

FOR MORE INFORMATION

Managing Local Opposition through Education and Communication

Opposition to Affordable Housing in the USA: Debate Framing and the Responses of Local Actors: https://www.researchgate.net/publication/263225197_Opposition_to_Affordable_Housing_in_the_USA_Debate_Framing_and_the_Responses_of_Local_Actors.

The Original NPH Toolkit: <http://nonproflthousing.org/resources/the-original-nph-toolkit>.

California Department of Housing and Community Development: <http://www.hcd.ca.gov/community-development/community-acceptance/index.shtml>.

Myths and Facts About Affordable and High Density Housing: <http://www.hcd.ca.gov/community-development/community-acceptance/index/docs/mythsnfacts.pdf>.

Oregon Department of Land Conservation and Development on House Bill 2001: <https://www.oregon.gov/lcd/UP/Pages/Housing-Choices.aspx>.

Property Value Studies

There Doesn't Go the Neighborhood: Low-Income Housing Has No Impact on Nearby

Home Values: <https://www.trulia.com/blog/trends/low-income-housing/>.

Documents and Websites on Affordable Housing and the Relationship to Property Values: http://www.hcd.ca.gov/community-development/community-acceptance/index/docs/prop_value.pdf.

Effects of Low-Income Housing on Property Values: <https://www.nar.realtor/effects-of-low-income-housing-on-property-values#>.

Additional Examples of State Laws

California law bars state-sponsored discrimination in residency, ownership, and land use decisions based on the method of financing and the intended occupancy of any residential development by persons who are very low-, low-, moderate-, or middle-income. CA: Cal Gov. Code S. 65008 (1984).

Washington law provides that "A city, county, or other local governmental entity or agency may not adopt, impose, or enforce requirements on an affordable housing development that are different than {sic} the requirements imposed on housing developments generally." WA: RCW 36.130.020 (2008).