

AVOIDING AND OVERCOMING NEIGHBORHOOD OPPOSITION TO AFFORDABLE RENTAL HOUSING

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Not In My Backyard Syndrome (NIMBYism) in affordable housing connotes objections to new housing development based on fear, prejudice, or misconceptions. Often, NIMBY objections focus on the size, design, or character of a project, but they can also reflect deeper biases about who might live there. This is different from legitimate concerns, such as building next to incompatible land uses like a hazardous facility.

NIMBYism is one of the toughest barriers to building affordable homes. Local officials often face intense community pushback, which can lead to long, hostile public hearings, higher development costs, and delays that prevent communities from meeting local housing needs.

The good news is there are tools advocates can use to avoid or overcome these objections, sometimes to the eventual satisfaction of all parties.

Issue Summary

Local zoning decisions shape what kinds of homes can be built in an area and too often, those decisions have reinforced racial and economic segregation. As Richard Rothstein documents in *The Color of Law* (alongside many other prolific writers), for decades, federal and local policies intentionally separated communities by race and income through discriminatory lending, insurance access, and appraisal practices. Today, NIMBYism often works the same way, even if unintentionally, by keeping people out and maintaining long-standing demographic patterns. When NIMBYism is used to stall or outright ban new residents, it perpetuates the overt intentional segregation of the past.

Local zoning codes that segregate uses by housing type require subjective standards of “compatibility” and rely on discretionary, public reviews that set the stage for NIMBYism to flourish. Exclusionary zoning laws that create predominately single-family-only cities 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 create an uphill battle when developers of affordable housing look for sites that will provide desperately needed homes for lower-income households.

Land use decisions are made in a political environment that can be fueled by NIMBYism and NIMTOOism (the Not In My Term Of Office syndrome). NIMBYs are residents determined to maintain homogeneous neighborhoods, “preserve” their property values, and vehemently oppose the development of affordable housing. The NIMTOOs are the local elected officials who may or may not agree with the NIMBYs but will not vote in favor of affordable housing development if it could jeopardize their re-election.

Five Best Practices to Overcome NIMBYism

The best defense to NIMBYism is a good offense. And a good offense means:

1. **Know your legal rights—and make sure local officials know them too.** When opposition crosses into discrimination, based on race, national origin, disability, religion, sex, or other protected categories, it violates the federal “Fair Housing Act” or other civil rights laws. It might also violate state or local fair housing laws which may offer even broader protections.

Litigation is rarely quick enough to save a project that is undergoing intense NIMBY opposition since housing funding cycles are on a tight time clock, and court actions can take years to resolve. But knowing your legal rights and making local government lawyers and elected officials aware of what you know about your rights is often all you need to benefit from fair housing protections. In cases where discrimination is clear and local elected officials act in disregard of that fact, consider reporting the incident to HUD or your state or local fair housing centers. If HUD or the U.S. Department of Justice (DOJ) takes the case, it is a little like standing up to a schoolyard bully—it could make your future dealings with your local government much easier.

Nonprofit developers may be hesitant to challenge a local government over land use issues if they rely on local funding. Establishing good relationships with local legal aid or other local advocates for the public interest is an effective way around the need for the affordable housing developer to cry foul when local government succumbs to neighborhood opposition. Local advocates can make these arguments on behalf of future tenants or residents directly impacted by the land use decision.

2. Strengthen legal protections for affordable housing.

(a) Fair Housing & Due Process

Advocates can push for state or local laws that limit NIMBY influence. For example, in 2000, the “Florida Fair Housing Act” (Fla. Stat. § 760.26 (2025); the state’s substantial equivalent to the federal Fair Housing Act) was amended to make it illegal for local governments to discriminate in a land use or permitting decision on the basis of a proposed development’s source of financing. This law has provided the Florida Housing Coalition and other housing professionals a useful tool to advocate for local government lawyers and commissions to approve affordable homes or face legal challenges. In 2022, an affordable housing developer successfully sued the City of Apopka for prohibiting the use of a parcel of land for affordable housing (*Southwick Commons Ltd. v. City of Apopka*, 2022-CA-005470-O; Fla. 9th Cir. Ct. Nov. 28, 2022). The court cited Section 760.26, Florida Statutes, as

controlling; it would be a violation of the state’s fair housing act for the city to exclude an affordable housing development.

In 2009, North Carolina adopted a similar state law to add affordable housing as a protected class in its fair housing law (N.C.G.S. § 41A-4(g) (2021). Under this statute, it is illegal in North Carolina to discriminate in land-use decisions or in the permitting of development based on “the fact that a development or proposed development contains affordable housing units for families or individuals with incomes below eighty percent (80%) of area median income.”

These laws work only if local government attorneys and elected officials take them seriously. The expansion of the state fair housing act to include affordable housing in Florida, for example, has been successful in keeping local elected officials from succumbing to NIMBY opposition. The success of the law is due to housing advocates ensuring that local government lawyers know about the statute. In Florida, city and county attorneys routinely warn commissioners during hearings when denial of an affordable project may violate state fair housing law—a powerful shield against NIMBY demands. Legal protections for affordable housing provide political cover to elected officials who are sometimes facing an electorate threatening to unseat those officials who vote in favor of affordable development.

(b) Zoning & Land Use

Restrictive zoning gives NIMBYism room 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 is a way for the 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. It is key to allow as much housing as possible by-right, without requiring case-by-case or discretionary approvals and a public hearing.

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 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 (Or. Rev. Stat. § 197.758). In 2021, California passed Senate Bill 9 which, among other policies, provides that a proposed duplex within a single-family zone be “considered ministerially, without a discretionary review or a hearing” if the proposal meets statutory requirements (Cal. Gov. Code. § 65852.21 (2021)). California’s AB 2011 passed in 2022 offers statewide mandates for affordable housing in defined commercial areas. The state of Maine passed LD 2003 in their 2022 Session which among other housing reforms requires local governments to allow duplexes save for certain exceptions on all lots in the state and up to four dwelling units per lot depending on if the lot is undeveloped or served by existing infrastructure (30-A M.R.S. § 4364-A). Policies such as these at the state and/or local level 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.

Reforming other restrictive zoning policies, beyond just allowing more housing types by right, are gaining traction at the state and local level. Enacting inclusionary housing ordinances, eliminating parking minimums, passing lot design reforms such as reducing setback and maximum lot coverages, and expedited permitting for affordable housing via administrative processes that do not require a public hearing are boons to both allow more housing and prevent opportunities for NIMBY opposition. Another land use reform could be to require a supermajority vote to deny housing development approval. State preemptions and state authorizations of when a local government can deny an affordable housing development can also be helpful to approving more housing.

In 2023, the Florida Legislature passed the “Live Local Act”—a comprehensive set of policy directives, incentives, and mandates to produce affordable housing statewide. One of the components of the act was a new statewide mandate that allows developments that set aside 40% of its units as affordable rental housing on parcels zoned for commercial, industrial, and mixed-use to receive favorable use, density, height, floor area ratio, and administrative approval standards. By requiring local governments to approve affordable housing developments that meet certain criteria, much-needed housing can be expedited by reducing the need for affordable housing developers to secure zoning approval in a public forum. This tool has the potential to facilitate adaptive reuse of vacant and underutilized strip malls, encourage economically sustainable development through mixed-use and mixed-income, and reduce auto-dependence through transit-oriented development.

- 3. Educate elected officials.** Once a NIMBY battle ensues, it is often too late to educate. Local elected officials need to understand the importance of affordable housing long before a specific vote comes to their commission; advocates should build relationships with elected officials long before a specific project comes up. It is important to have simple and impactful talking points with key data that tells a story about the need for housing.

Getting good media coverage is also helpful. Whenever possible, invite elected officials to see completed developments and share the credit with them at ribbon cuttings and in news stories. Whether you can meet with your elected officials regarding a future development depends upon the ex parte rules in your jurisdiction. However, if you discover that the community opposition is meeting with elected officials about your development, you certainly should do the same.

- 4. Build a broad, visible coalition of supports.** Too often, the only proponents of an affordable housing development are the developers themselves. Whenever possible, have members of the business community, clergy, and like-minded social service

agencies stand up for your development to demonstrate the community value of new affordable homes. The potential beneficiaries of the development (future residents) can also be effective advocates. If possible, recruit a former member of the opposition to speak on behalf of your development.

The media can be an important ally throughout the process of development approval. Whenever you foresee a potential NIMBY problem, it is best to contact the media first so that they understand your development plans and its beneficial public purpose. In this way, neighborhood opposition will have to justify to the media why it makes sense to stop a development that the media already considers an asset for the community. The best defense is a good offense.

- 5. Address all legitimate opposition.** Some objections are real and deserve serious responses. Key to overcoming NIMBYism is to address all legitimate concerns expressed by the opposition. Those concerns may be, for example, traffic, infrastructure capacity, or project design: issues that may lead you to adjust your proposed development. The developer working in tandem with key government staff should prepare professional traffic studies, infrastructure impact reports, and other important planning documents so that any legitimate concern is addressed. One of the most common objections, albeit not expressed as openly as traffic concerns, is the concern that affordable housing will bring down the value of neighboring properties. There are a multitude of empirical property value studies all reaching the same conclusion: affordable housing does not diminish the value of neighboring properties. A study in April 2022 by the Urban Institute reports that “Although the impact of affordable housing on nearby property values is not the primary reason to build affordable housing, individuals often cite it as a reason to oppose such developments. This analysis adds to the current research on the topic, showing that affordable housing developments in the city of Alexandria, Virginia, not only do not reduce property values but also are associated with a small but statistically significant increase in values.” A 2023 study from

Georgia Tech’s School of Public Policy found that developments funded by the Low Income Housing Tax Credit (LIHTC) program do not cause harm to the value of surrounding properties. Research like this can help make the argument that affordable housing must be viewed as essential community infrastructure.

If you address all legitimate concerns and the opposition persists, you are now in the enviable position of being able to state with certainty that the opposition is illegitimate—it is, therefore, opposition that would be inappropriate, arbitrary, capricious, or unlawful for the local government to consider in making its land use decision. In other words, you win!