



NIMBYism Through a Racial Lens

This article is an excerpt from the Chapter on Avoiding and Overcoming NIMBYism by Florida Housing Coalition CEO, Jaimie Ross published annually in the Advocates' Guide to Housing and Community Development Policy by the National Low Income Housing Coalition.

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 (FHA), 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 (Not In My Backyard) 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.

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 device for screening new development to ensure that it does not depress community property values. As a result, some suburban communities, consisting 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, particularly regulations that unduly restrict flexibility in housing types and densities, enable 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.

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 when we are in desperate need of more affordable 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

Zoning codes that contain predictable standards for development with quick administrative review, and reduce the opportunity for community opposition. 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.

Know the Law

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.

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). 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 found success when the Florida Housing Coalition and other housing advocates have been conscientious about ensuring that local government lawyers know about this increased statutory protection. When used in concert with the quick appeal process afforded under the Bert Harris Property Rights Act, the protection in the Florida Fair Housing Act can thwart NIMBYism.



Jaimie A. Ross is the President & CEO of the Florida Housing Coalition. She initiated the Sadowski Coalition in 1991 and continues to facilitate the Sadowski Coalition today. Ms. Ross served as the Affordable Housing Director at 1000 Friends of Florida, a statewide nonprofit smart growth organization, from 1991-2015. Prior to her tenure at 1000 Friends of Florida, Ross was a

land use and real property lawyer representing for profit and nonprofit developers and financial institutions with a law firm in Orlando. Ross is the past Chair of the Affordable Housing Committee of the Real Property Probate & Trust Law Section of the Florida Bar.