

# Making Communities More Affordable

## Regulatory Barriers: Secret (and Not so Secret) Weapons Against Affordable Housing

BY DAVID ENGEL

In the always difficult and complex world of building affordable housing, nonprofit housing developers and housing advocates generally concentrate on two overriding issues – obtaining favorable financing and identifying any and all available subsidies.

However, with interest rates already near all-time lows and subsidy funds always constrained, there is only one other way to further expand affordability – reduce the costs of development and construction.

A key tool available to nonprofit developers is to address the many excessive, unnecessary, or exclusionary regulations – regulatory barriers – that unduly raise costs, sometimes significantly. In 1991, for instance, the “Advisory Commission on Regulatory Barriers to Affordable Housing” found that these barriers directly raise development costs in some communities by as much as 35 percent. They also can limit a wide range of affordable housing options, such as higher-density housing, multi-family rental housing, accessory units, and manufactured homes.

Regulatory barriers’ removal should be viewed as an essential component of – but not a substitute for – an affordable housing strategy. Unfortunately, there is no clear “bright line” definition that can clearly determine whether a state or local policy or rule is a regulatory barrier. The best guidance is that a policy or rule becomes a barrier when it is either a deliberate or de facto action that prohibits or discourages the construction of affordable housing with little or no demonstrated compensating public benefit.

### Barriers in Suburbia

Cities and suburbs each have their own distinct sets of regulatory barriers. In suburban communities across the nation, local governments employ zoning and subdivision ordinances, building codes, and permitting procedures to prevent development of affordable housing. “Not in My Back Yard” – the NIMBY syndrome – has become the rallying cry for many current residents of these communities. They fear that affordable housing will result in lower land values, more congested streets, and mounting pressure for new infrastructure such as schools.

It is clear that the problem has worsened in the past decade. Too few communities, because of NIMBYism, allow for diverse development options, such as multifamily

housing, duplexes, or manufactured housing. Developmental approvals continue to become ever more complex, with lengthening, multiple and duplicative reviews.

In fact, many communities see little public benefit in streamlining the process, even though each day of unnecessary delay eventually increases development costs with resulting increases in housing prices and rents.

Surprisingly, an emerging issue that potentially impacts regulatory barriers is “Smart Growth.” While a number of smart growth principles, such as expanding housing choice and increasing density, if fully implemented, would be important tools for expanding affordable housing in the suburbs, it is far less likely that these components will be enacted than those that limit growth. Open space and growth limits, for example, without other key components that increase housing choice, may actually hurt housing affordability rather than enhance it.

### In Central Cities

In the central cities, the issue is not generally “NIMBYism” but, rather, bureaucratic inertia and special interests. Cities often rely on an assortment of building regulations that impede infill and delay rehabilitation.

Regulatory barriers to urban development include archaic building codes, with special-interest building trade protections, and inordinately complex approval processes, requiring difficult coordination among many dissimilar agencies. Maneuvering through these processes typically adds time and money to projects already hampered by the challenges of site assembly, obtaining clear title, and urban building.

For example, despite a growing need to rehabilitate housing, many cities still utilize building codes that emphasize new construction over rehabilitation. To address this problem, the U.S. Department of Housing and Urban Development, working in partnership with the state of New Jersey, developed a new model rehab code or “smart code,” which sets different levels of rehab for repair, alteration, addition, and change of use. Each level has differing regulatory requirements regarding whether existing building elements can remain or must be replaced.

The impact of this “smart code” can be remarkable where it has been adopted. According to the state of New Jersey, rehab investment quickly increased by 60 percent



after enactment, with an average cost saving of 10 percent, and on certain projects, up to 50 percent. Yet to date, only Maryland and a few cities have followed New Jersey's lead.

Another urban regulatory issue involves infill development, which often faces a complicated and time-consuming process of land acquisition. Difficulties in acquiring sufficient parcels on infill sites prevents many builders from gaining the economies of scale – and, thus, lower prices – they can achieve in affordable suburban housing. In addition, tedious, antiquated procedures in many cities regarding tax foreclosures, condemnations, and clearing titles often result in costs and delays that make many projects economically infeasible.

While the impact of regulatory barriers is serious, obtaining significant reform at the state and local levels is not easy. Change will occur only if housing advocates and nonprofit housing providers are willing to make common cause with private market-rate builders, the business community, mortgage insurers, real estate professionals, and major employers.

### A National Response

Although most regulatory barriers are state and local in nature, HUD has recognized that we also have an important role in support of local reform efforts. In June 2003, the department announced "America's Affordable Community Initiative," which partners HUD with community-wide interests to demonstrate to the public the importance of regulatory reform, and to develop new tools for local governments and housing providers to use in tackling the issue. (For further information on the initiative: [www.hud.gov/affordablecommunities](http://www.hud.gov/affordablecommunities).)

"Affordable Communities" is a department-wide effort managed by senior staff from all major elements of the department. In setting up the initiative, we recognized that before HUD could very well convince localities of the seriousness of the problem, we first had to get "our own house in order." We have published a *Federal Register* notice requesting groups and individuals who use HUD programs to identify any HUD regulation that has been a barrier to affordable housing.

We are in the process of reviewing the replies and will respond quickly. In addition, we in the initiative team are reviewing all proposed new rules and notices of funding availability (NOFAs) to assure that the department is not introducing new barriers to housing affordability.

Second, addressing regulatory reform has become an overall policy priority, as well. As an example, HUD has issued, for public comment, a Federal Register notice that proposes to include in most 2004 NOFAs, additional points in grant application evaluations where the local government has taken significant action to remove regulatory barriers.

Third, HUD is supporting local efforts at coalition

building by working with organizations such as Neighborhood Reinvestment to develop new and innovative solutions to the problem and encouraging local action. As an initial step, the department will soon distribute a brochure to thousands of mayors and other elected officials throughout the nation. They will describe the problem of barriers, the need for reform, suggest possible solutions, and, most importantly, encourage mayors to conduct public forums in every community to discuss regulatory barriers and their impact upon the supply of affordable housing.

Fourth, HUD also offers technical information to housing providers on barriers and ways to address them. I urge all Neighborhood Reinvestment partners, for instance, to visit our Regulatory Barriers Clearinghouse (<http://www.regbarriers.org>). It is a national Web-based forum, database and listserv that provides opportunities to share ideas on barriers and learn how other communities are addressing this unique housing challenge.

We also plan soon to announce a series of "Affordable Communities Awards" to be given to those states, counties, and localities that have made significant changes in reducing barriers to affordable housing.

Finally, we have undertaken an aggressive research program to better understand the impact of regulatory barriers on housing costs and develop new approaches for federal as well as state and local use. More than \$1.5 million is budgeted this year alone.

In April, HUD will convene a major research conference bringing together academics, practitioners, and local government representatives to develop a long-term agenda for regulatory barrier research.

### Conclusion

Reducing the "first cost" of housing to make it more affordable is a challenge that requires the combined talents of nonprofit and market-based housing providers, housing advocates, the business sector, and federal, state and local governments. There is no "easy fix."

Knocking down regulatory barriers requires not only recognition of the problem, but also persistence and long-term commitment to reform by all groups concerned with housing affordability. Regulatory barriers will fall only when enough Americans hearing the term "affordable housing" think "Why Not in Our Community?" instead of "Not in My Backyard." ■

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