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AND AGING-FRIENDLINESS**

By

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LOCAL LAND-USE CONTROLS AND AGING-FRIENDLINESS

Larry A. Rosenthal¹

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Introduction

In choosing to relocate from their hometowns, or remain in place, aging persons prize the same civic, cultural, and lifestyle features they have throughout their adulthoods. They value good neighbors, public safety, clean air and water, limits on traffic and noise, and plentiful options for shopping and entertainment nearby. Since they often stay employed later in life than their parents did, they cultivate networks of professional clients and colleagues in the community and on-line. They seek connection with friends and colleagues in their neighborhoods, faith-based settings of common concern, and financial opportunities. Planning for future necessities to the extent they can, they locate appropriate services and support suitable to their changing needs.

Such aging-friendliness is rarely something City Hall can mandate directly. Household needs and circumstances vary greatly, as do desires to stay or relocate post-retirement. Since individual goals differ, maintaining and improving quality-of-life for all aging persons can be an elusive target for local policymakers. Indeed, the public service many fixed-income seniors most value is, quite simply, a low and decreasing tax-burden in their advancing years. The current fiscal environment facing the local public sector makes the situation particularly vexing. With growing needs in the elderly population, local government must increase the tax burden commensurately, to pay for extensive public services and amenities. This creates increasing pressure to resolve the mismatch between services demanded and residents' reluctance to foot the bill. An economy recovering too slowly from deep recession only worsens the dilemma.

Despite these structural challenges, we rely on representative government to ensure that shelter-based services generally meet the needs of the elderly and their younger neighbors. All this sorts itself out in the local political economy and the markets for residential location across regions. At various aging stages, families and individuals stay or relocate based on what seems best among their known options at the time. The aging-friendliest places often evolve as "naturally occurring retirement communities" (NORC) (Hunt and Gunter-Hunt, 1986) with some government involvement (or despite it). Places failing to evolve as NORCs exhibit cultural and economic barriers to change typically lying beyond the reach of local government.² Often such conditions

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² Key elements of local "mismatch" with aging-in-place needs include (i) quality of shelter and support services, (ii) quantity of such amenities with growing elderly populations, (iii) decline in community

persist simply because the prevailing political balance is, simply put, unfriendly towards aging-in-place related shelter and services.

Nevertheless, cities and towns continue act as more than fiscal agents in shaping outcomes. They heavily influence development patterns and controlling how land and structures can be utilized. Given some threshold public desire for aging-friendliness—which by necessity will become more prevalent in cities and towns nationally—an appropriate area of focus for governance and reform is local land-use regulation.

Land-Use Regulation: One Arena for Reform

In the codification and practice of zoning and planning, communities set priorities for what they build, where they build it, and how development best matches collective preferences and values. Those preferences are hardly monolithic, however. Since property values and quality-of-life are perceived to be at stake, city councils often host raucous public conflict over residential development proposals. “Not in my backyard” (NIMBY) revolts target unwanted projects. Some incumbents unconditionally oppose growth of all stripes, while others insist upon stringent mandates and exactions ultimately inducing developers simply to locate projects elsewhere.

Amidst the aging of America’s communities, local politics over land-use and development will may not evolve toward aging-friendliness quickly enough. We cannot assume existing zoning and planning regimes, as currently configured, are optimized for the population’s changing needs. Though they occur more slowly than needed, reforms are clearly warranted in many places. These changes must take the form of both accelerated removal of regulatory impediments and enhanced promotion of private construction and rehabilitation activities having public benefit. The discussion which follows identifies a number of key considerations civic leaders should bear in mind in managing the land-use regulatory aspects of aging-friendliness moving forward.

Enhance Affordability

Development of housing affordable to all income levels is an ongoing challenge, particularly in high-cost regions. Price increases caused by exclusionary, density-reducing planning and zoning, and community opposition to housing development, are well understood (Quigley and Rosenthal, 2005). Longstanding federal and state subsidies directed toward the elderly in particular will likely be revisited as demographic change takes hold. Growing segments of need among retirees will increase the urgency of policy reform and expansion in such transfer programs.

upkeep, and (iv) adverse selection by income and need-levels (since the healthiest and wealthiest households enjoy wider options) (Matthews and Turnbull, 2008).

Indeed, affordability is so central to livability for aging persons it barely warrants mention. Beyond this general point, however, the complex manner in which such housing is financed and built for low- and moderate-income households of all aged lies beyond our scope here. Suffice it to say that the need is great and growing (GAO, 2003). Cities and towns cannot resist higher-density affordable development if they wish to stake out any credible reputation for aging-friendliness. That being said, however, the existing knowledge base and attitudes of housing professionals in government and the nonprofit sector, and among potential neighbors, must be augmented to include and appreciate options and innovations in aging-friendly residential development (Earhart, 1999; Laws, 1993).

*Promote Aging-Friendly Features,
and Eliminate Known Barriers³*

Aging-friendly development allows for diverse housing product, including single-family, apartments, and assisted living, occupied by owners or renters. Proximity to services, commerce, and public facilities is emphasized. Grid-based layouts provide shorter blocks, easier navigation, and redundant routings. Pedestrian connections call for well-maintained sidewalks, narrow crossings, and hiking/biking trail systems. Transit, bus/taxi shelters, and bike lanes furnish ready alternatives to automotive travel. Parks and public walkways are firm-surface and at grade, with no sharp elevation changes. Public commodes and benches are plentiful. Signs and equipment are easily identifiable and interpretable. Buildings accommodate physical and cognitive disabilities, with distinctive colors and features and straightforward indoor navigation. Steps and staircases disappear, in favor of ramps and large elevators.

Known regulatory barriers to such aging-friendly features include:

- Zoning and subdivision ordinances restricting the types of homes which can be built
- Limits on multifamily structures and manufactured housing
- Minimum set-backs, square-footages and lot sizes, and maximum floor-area ratios
- Controls on additions of accessory dwelling units (detached, garage, basement)
- Treatment of assisted-living operations as commercial and thus excludable from residential zones
- Excessive parking requirements ignoring lower ownership and usage rates among aging persons
- Mandated pedestrian-unfriendly street design (e.g., long blocks, missing sidewalks, commute-oriented traffic flows)
- Absence of universal-design⁴ provisions in local building codes

³ This section draws upon the thorough taxonomy of features and barriers recently published by Boulder's National Research Center (2007) in a study of challenges to aging-friendly development in the Denver metropolitan area.

Well managed amelioration of regulatory barriers to aging-friendliness requires localized policy evaluation and targeted reform.

Expand Flexibility and Discretion

Naturally each community's longest-standing members would prefer to remain in their beloved homes for as long as their economic, health-related, and family circumstances will allow. At the very least, they wish to maintain social networks and minimize the disruption and cost of multiple relocations. These preferences are increasingly well documented (N4A, 2006; Lawler, 2001; Schafer, 2000). The central civic ingredient for assisting those wishing to age in place is the *flexibility* to ensure physical structures and household arrangements adapt as individuals age. Often this requires localities to utilize administrative *discretion* and also consider appropriate revisions to antiquated building codes and practices.

Residents and visitors need accessible entryways and facilities. Health-care and other service providers need parking and other accommodations. Fixed-income communities need shared housing (or "co-housing"), cooperative provision of meals and other needs, and transit to and from nearby service centers. The elderly may work less, and may drive less to places of employment. But as they continue to work, often by economic necessity, they need jobs and transit.

Local governments should not stand idly by as these changes occur. The dependency ratio in small places and across regions will only increase; public officials should mark these changes and make it their business to lead the way toward necessary reform. At the very least they should be proactive in identifying regulatory impediments and analyzing how best to reduce them. They should promote opportunities for employment within aging populations. They might consider local assistance programs lending support for needed home modification and repairs so that existing residences can grow more hospitable over time (US Senate, 2002). And they should help similarly situated families and neighborhoods locate and cooperate with one another in the provision of support for aging individuals. They should encourage new development to honor universal access principles. And they should streamline procedures for approving "smart house" (Benedict, 2001) home-modification permits where basic accessibility, visitability, and quality-of-life for aging residents is clearly at stake (APA, 2006).

It may well be that supporting longer-term supportive tenure in existing residences will reduce the rate of increase in publicly funded residential care facilities, but it is important that aging-in-place service nodes be well integrated within the community fabric (Golant, 2003).

⁴ At a minimum, universal design principles for aging-friendly construction call for at least one zero-step entrance, thirty-two inches of clearance for all main-floor interior and exterior doors, and accessible main-floor toileting (Maisel et al., 2008).

Accommodate Diverse Needs

There are no hard and fast rules families follow as their eldest members age and their independence fluctuates and ultimately recedes. Whether for existing residents or newcomers, communities must find ways to host greater numbers of housing options (Sykes, 1993). The more options families have, the more satisfactorily placements will become and the more smoothly transitions will occur. Not every jurisdiction is large enough to envision operating a panoply of housing types at efficient scale, so regional cooperation may be needed in rural areas and fragmented metropolises. Good examples of regional collaboration on the planning/zoning side of aging policy are the “lifecycle communities” initiative of the Twin Cities Metropolitan Planning Council in Minnesota (Howe, 2001) and the Atlanta Regional Commission’s “Livable Centers” initiative.⁵

Well-to-do suburbs—where such vision and collaboration are often in short supply—likely should consider allowing single-room occupancy (SRO) shelter and even manufactured housing (Hare, 1992). Defined single-family zones must expand to allow for congregate-living for “families” comprising individuals not related to one another.⁶ Dense cities should explore facilitating parcel assembly and clearance for infill construction targeting active adults and life-care developments. And those responsible for ensuring that planning and zoning serve public need must help reduce the stigma attaching to construction and rehabilitation of congregate housing, adult foster care and group homes, residential care facilities and continuing care retirement communities (CCRCs).

For each construction type there a number of innovative planning and zoning devices available, such as:

- “Elder housing” ordinances specifically promoting planned special-purpose development and identifying dedicated land parcels
- Special use permits for a variety of aging-friendly housing product-types
- Locationless “floating” zones for authorized aging-friendly uses, planned unit developments (PUDs), overlay zones, incentive and inclusionary zoning, and flexible density and cluster-style zoning (McCarthy and Kim, 2005).

(Salkin, 2004; Howe et al., 1994). Particularly when mixed-use combining residential units, retail and commercial space for care providers and other uses is warranted, land-use regulation should not stand in the way. Walking-distance access to shopping and services promotes exercise; zoning and land-use design can thus envision ways to facilitate health maintenance merely by locating residences and businesses in an intelligent manner (Masotti and Johnson-

⁵ See <http://www.atlantaregional.com/html/308.aspx>.

⁶ In a number of cases local zoning restrictions upon the number of non-related individuals occupying residences in single-family zones have been held invalid infringements of privacy and related constitutional guarantees (see Pollak, 1994 & 1991).

Masotti, 2006). The more the ordinance book makes room for a variety of uses, clearly authorizing the granting of permits in appropriate circumstances, the easier it is for elected officials to ward off resistance to any given project clearly benefiting the public interest.

Allow Accessory Units
(“Elder Cottages”)

A local land-use regime designed to favor aging-in-place would best authorize homeowners to add additional units to vacant portions of their land, assuming they have the desire and financial wherewithal to do so. Separate structures, not unlike separate entrances to basement and above-garage residences in single structures, provide flexible spatial arrangements for intergenerational households. Within the same nuclear family or otherwise, co-occupancy of diverse-age individuals together on one property facilitates caregiving, regularity of contact, and localized emergency safety networks, among other benefits (Liebig et al, 2006; Chapman and Howe, 2001; Pollak, 1994).

Accessory dwelling units are unfortunately forbidden in many of the zoning categories utilized in America’s urban and suburban communities. Where tolerated, strict person- or dwelling-unit-per-acre density restrictions are often imposed. Specific site and design review may be compelled. The expandable reach of added living space can be pegged to a set maximum proportion of the floor area of the main dwelling unit on the host parcel. Those wishing to densify the residential use of their land—otherwise a laudable goal from smart-growth and environmental management perspectives—face long odds on their petitions for zoning variances and special use permits. Neighbors and planning officials may also seek minimum parking provision, even if the elderly resident of an accessory unit no longer has a driver’s license or owns a car. Minimum lot-size and street-setback requirements are not uncommon, along with “family member only” residency requirements.

Not all local regulations of accessory units impede aging-in-place, however. The same building department which imposes a minimum parking-space requirement may also monitor accessibility and universal design, along with consistency of design within the surrounding neighborhood. In the face of the known obstacles to accessory-unit development, some commentators advise concentrating on temporary structures, locating them in lower-density and rural areas, applying for one-time conditional use permits instead of full-fledged variance or zoning changes. Needless to say, in communities with a palpable commitment to housing affordability, accessory units offer economies of scale in land use and provide savings through smaller floor plans and lesser amenity packages relative to their host units (Cavell, 2004; Koebel et al., 2003).

One key consideration politically may involve characterizing accessory units as temporary. Opposition may be mollified by dedicating such permits to specific residences only during the time care is being provided to an aging member or members in intergenerational households (Salkin, 2004).

Reduce Pace of Age-Restricted Development

Aging-friendliness used to translate solely into expansive gated communities, built in spoke-and-wheel phases around a central clubhouse facility, and marketed to the “active-adult” retirement set seeking to avoid interactions with family-based households. Authorities should be weary about building such product exclusively, or predominantly, because it creates homogenous-age zones, defeats smart-growth priorities for denser infill development and diversity of structure types and uses,⁷ and diverts from the more nuanced preferences of younger retirees and those soon following.

Although the federal Fair Housing Act generally prohibits age-based discrimination, in 1995 Congress created an exception for active-adult developments in the Housing for Older Persons Act (HOPA). Under certain limited circumstances residences may be developed and marketed exclusively to customers aged fifty-five and older. Federal subsidy programs supporting shelter for the “elderly” allow an age-cutoff of sixty-two.

A number of communities are now quite weary about overbuilding age-restricted residences in isolated planned-unit developments. Aging-friendly planners should consider requiring “active-adult” developers do the following as a prerequisite to approval: (1) declare their intention to operate with age restrictions at the outset (rather than shifting to that category late in the game to avoid school-impact exactions; (2) surpass minimum unit levels and densities (again to discourage mere school-fee avoidance); and (3) locate projects in growth-designated areas where water and sewer connections are already planned (Adler, 2006). Outright numerical caps on the growth of age-restricted units might also help encourage a wider range of new housing types, thus integrating aging households into the broader fabric of the community more effectively.

Interestingly, jurisdictions amenable to construction of age-restricted planned-unit developments have proven decidedly less so when it comes to elderly care facilities, CCRC’s and other assisted-living projects. There appear only sketchy legal avenues to encourage localities to accommodate such construction, even though their denials of building applications may represent some generalized form of discrimination against aging persons and the infirm. Despite efforts of enterprising plaintiffs’ attorneys to fashion actionable discrimination claims under the Americans with Disabilities Act⁸ and the Fair Housing Act Amendments,⁹ reviewing courts in

⁷ There is some evidence associating loss of land-use diversity and increasing functional limitations among the disabled (Freeman et al., 2008; Clarke and George, 2005).

⁸ 42 United States Code § 12101 et seq.

⁹ 42 United States Code § 3601 et seq.

the federal system have been reluctant to intrude upon local prerogative (Schwemm and Allen, 2004; Grogan, 2000). Denials of building permits are most often upheld.¹⁰

Conclusion

As the foregoing discussion has evidenced, there is much localities can do to support aging households wishing to remain in the long-term homes. Particularized assessment of impediments to aging-friendly governance and development can lead to needed reforms. Informed leadership and education of the electorate will be key ingredients moving forward.

Aging residents sometimes can influence the path of public policy in their communities. They can organize support for regulation of space and place that removes impediments to livability and promotes access and flexibility. Yet individual locations must remain self-determinative. Individual needs can be ignored or undermined by majorities having adverse priorities.

As planning and land use practice evolves, the same axioms of urban economics will continue to operate. Cities and towns will compete for the types of residential development projects and occupants they most prize and ward off others with high-cost regulation and other barriers. Veterans of movements promoting social goals like livability, affordability and environmental conservation must recognize that market forces frequently dominate the local political economy. Land-use regulation in the local ordinance binder often follows, rather than dictates, community outcomes. Attaining incremental enhancements in aging-friendliness will likely depend more upon savvy project-based transactions than generalized planning regimes. That being said, jurisdictions harmonizing governance and private choice will remain the most pleasant places to live, for citizens of all ages.

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¹⁰ See, e.g., *Budnick v. Carefree*, 518 F.3d 1109 (9th Cir. 2008) and *Lapid-Laurel v. Zoning Bd. of Scotch Plains*, 284 F.3d 442 (3rd Cir. 2002).

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