

# Building Bridges Between Affordable & Fair Housing



## **Fair Housing Project**

Legal Aid Of North Carolina

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[www.fairhousingnc.org](http://www.fairhousingnc.org)

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EQUAL HOUSING  
OPPORTUNITY



**Fair Housing Project**

A Project of Legal Aid of North Carolina

# NEED FOR AFFORDABLE HOUSING

- “Affordable Housing” = no more than 30% of a family’s income spent on housing & utilities
- In US, family needs income of \$39,360 (\$18.92/hr.) to afford 2-BR unit at FMR
- In NC, need income of \$29,897 (\$14.37/hr.) to afford 2-BR unit at FMR
- In Raleigh, need income of \$34,240 (\$16.46/hr.) to afford 2-BR unit at FMR

# OBSTACLES TO BUILDING AFFORDABLE HOUSING

- Neighborhood Opposition (“NIMBY”)
  - Property values
  - Character of neighborhood
  - Crime/safety
  - Traffic
  - Parking
  - Project design
  - Environmental considerations
  - Overcrowding of schools
  - Who will be living in housing
- Local Government Support & Approval
  - Zoning approval
  - Other land use decisions
  - May need financial support from local gov’t

# STRATEGIES TO ADDRESS NIMBYISM

- Education
  - Target to audiences:
    - Gov't staff & officials; general public; neighbors
  - Develop materials to address legit. concerns w/ info
    - Affordable housing does not decrease housing values
    - Affordable housing does not increase crime
    - Design can address traffic/congestion & aesthetics
    - Tours of already-built projects
  - Some opposition is not based on data
    - Opposition to growth or development
    - Prejudice/bias re prospective residents
- When to start education campaign
  - Generally advantage to take initiative

# STRATEGIES TO ADDRESS NIMBYISM

- Build support from other groups
  - Business community
  - Religious community
  - Social service agencies
  - Schools
  - Fair housing organizations
- Plan for media
  - Proactive campaign *or* how to react if contacted

# LEGAL TOOLS TO BUILD AFFORDABLE HOUSING

- Disparate Impact Claims
- “Affirmatively Furthering Fair Housing” Claims
- Reasonable Accommodation Requests
- NC State Fair Housing Act Claims

# FEDERAL FAIR HOUSING ACT

- Goal: increasing housing choice & opportunity
- Non-discrimination
  - Race
  - Color
  - Religion
  - National origin
  - Sex/gender
  - Disability
  - Familial status
- Ending segregation based on all protected classes
  - “Affirmatively Furthering Fair Housing”



# DISPARATE IMPACT/ DISCRIMINATORY EFFECTS

- Neutral rule that has *effect* of discriminating against protected class is prohibited even without showing of intent to discriminate
- Examples:
  - Use of zoning to restrict subsidized housing to specific areas, adversely affecting protected class
  - Residency preferences where effect perpetuates segregation
  - Restrictions on group homes that result in adverse effect to people w disabilities

# *INCLUSIVE COMMUNITIES PROJECT CASE*

- Alleged Texas' LIHTC program encouraged projects in African-American neighborhoods in Dallas and away from white suburban areas
- Supreme Court:
  - Disparate impact theory “permits plaintiffs to counteract unconscious prejudices and disguised animus.”
  - FHA prohibits “zoning laws and other housing restrictions that function unfairly to exclude minorities from certain neighborhoods without any sufficient justification.”
  - FHA prohibits “municipalities from enforcing arbitrary and, in practice, discriminatory ordinances barring the construction of certain types of housing units” to “prevent segregated housing patterns that might otherwise result...”

# AFFH: HUD OBLIGATIONS

- Administer programs “in a manner affirmatively to further the policies” of the Fair Housing Act
  - 42 U.S.C. § 3608(e)(5)
- Do “more than simply refrain from discriminating;” must also “assist in ending discrimination & segregation”
  - *NAACP v. Sec. of HUD*, 817 F.2d 149 (1st Cir. 1987)

# AFFH: GRANTEE OBLIGATIONS

- CDBG grants “shall be made only if the grantee certifies” that
  - “the grant will be conducted and administered in conformity with” the FHA
  - “the grantee will affirmatively further fair housing”
    - 42 U.S.C. § 5304(b)(2)
- Also applies to HOME, ESG, HOPWA, NSP funds
- Applies to PHAs
- Applies to subgrantees/subrecipients

# HUD'S AFFH REGULATION

- Final rule issued July 16, 2015
  - 80 Fed. Reg. 136, pp. 42272 - 42371
- HUD's Fair Housing and other Goals:
  - Increase transparency w/ public involvement & link to public investment plans
  - Reduce segregation
  - Eliminate racially & ethnically concentrated areas of poverty
  - Address disproportionate housing needs
  - Encourage regional approaches

# NEW AFFH DEFINITION

“taking proactive steps beyond simply combating discrimination to foster more inclusive communities and access to community assets for all persons protected by the FHA. More specifically, it means taking steps to proactively address significant disparities in access to community assets, to overcome segregated living patterns and support and promote integrated communities, to end racially and ethnically concentrated areas of poverty, and to foster and maintain compliance with civil rights and fair housing laws.”

# CHANGES W/ AFFH REG.

- AI → Assessment of Fair Housing (AFH)
- AFH uses HUD-supplied data
- AFH submitted to HUD
  - 270 days b/4 year prior to ConPlan
- HUD has 60 days to notify of non-acceptance
  - Acceptance ≠ met AFFH req't
- Incorporate FH goals into planning
  - ConPlan, PHA Plan, Annual Action Plan, Capital Fund Plan
- Req'd every 5 yrs (every year for PHAs)

# AFFH REG:

## DATA TO BE PROVIDED BY HUD

- Demographics of community
- Patterns of integration & segregation
- Racially & ethnically concentrated areas of poverty (RCAP/ECAP)
- Disparities in access to community assets & stressors
  - schools, jobs, transportation, recreation, social services, safe streets, health hazard exposure
- Disproportionate housing needs based on protected classes
  - housing cost burdens, overcrowding, substandard housing



# AFFH REG: AFH ELEMENTS

- Summary of FH issues & capacity to address
  - Incl. FH enforcement & outreach capacity
- Analysis of data
  - HUD provided + can add own from community
- Assessments of determinants of FH issues
  - Using HUD-supplied “Assessment Tool”
- ID of FH priorities & general goals
  - Justify prioritization
- Summary of community participation

# CASE STUDY: *ADC V. WESTCHESTER*

- County received > \$52 million from 2000-06
  - Certified that they were AFFHing
- County AI did not ID any impediments based on race, color, national origin & did not mention housing discrimination or segregation
- County Response
  - Race is not required to be considered
  - Income is a better proxy than race for determining needs

# CASE STUDY: *ADC V. WESTCHESTER*: COURT RULINGS

- FHA goal = end discrimination & segregation
- Must consider race in AI & AFFH
- AFFH is not “mere boilerplate formality”
- Must take “appropriate” actions & maintain records
- Westchester made > 1,000 “false or fraudulent” certifications
  - “Utterly failed” to meet obligations
- Need to consider where affordable housing is placed

# *ADC V. WESTCHESTER:* SETTLEMENT AGREEMENT

- County to develop 750 affordable units
  - 660 in predominantly white cities
    - <3% African American and <7% Latino
- Conduct new AI to comply w/ Planning Guide
- Return \$30 million to HUD
- Supply additional \$30 million for integrative units
- Pay \$7.5 to ADC/\$2.5 million atty's fees & costs
- HUD has withheld additional \$\$ from County for failure to comply
- County has spent huge amounts of time and money addressing deficiencies

# REASONABLE ACCOMMODATIONS

- Changes in “rules, policies, practices, or services when ... necessary to afford ... equal opportunity to use & enjoy” a dwelling
- Can require proof of covered disability
- Change must be related to disability
- Can be requested at any time
- Not “reasonable” if “undue burden” on housing provider or “fundamental alteration” of provision of housing

# REASONABLE ACCOMMODATION AND ZONING

- FHA mandates that zoning officials “change, waive, or make exceptions in their zoning rules to afford people with disabilities the same opportunity to housing as those who are without disabilities.”

- *Hovsons Inc. v. Township of Brick*, 89 F.3d 1096,  
1104 (3d Cir. 1996)

# REASONABLE ACCOMMODATIONS: EXAMPLES

- Allow nursing home to operate in mixed residential zone
- Waive minimum side yard requirement
- Variance to allow facility for people with disabilities in commercial/industrial district
- Allow 8-person home (vs. 6-person)
- Exception to dispersion requirement



# NC FAIR HOUSING ACT

- Has all protected classes from federal FHA plus...
- Adds affordable housing as a protected class for land-use decisions
  - It is unlawful “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.”
  - Exception if decision based on limiting high concentrations of affordable housing.
    - § 41A-4(g)



# NC FAIR HOUSING ACT: WHAT IT MEANS

- Government bodies involved in land-use planning and regulation **cannot refuse approval or otherwise discriminate** against proposals **because they include affordable housing.**
- Covers decisions by zoning boards, planning boards, county commissions and municipal councils
- Probably also covers municipal utilities, highway & other transportation planning, and soil & water districts

# CASE STUDY: PINEHURST, NC

- Developer proposed 56-unit LIHTC property for seniors
- Obtained option for land
- Rec'd initial approval from NC HFA
- Needed amendment to zoning map
- Village staff recommended approval
- Village Council stopped project when they learned it was affordable housing

# CASE STUDY: PINEHURST, NC

- Administrative complaint filed with NC HRC
- Alleged discrimination based on race & affordable housing provision
  - Race = disparate impact theory
- Negotiated settlement
  - Village to amend zoning map & cooperate w/ proposal
  - Payment of > \$90K damages + attorney's fees
- Developers re-applied to HFA & approved in 2015 round

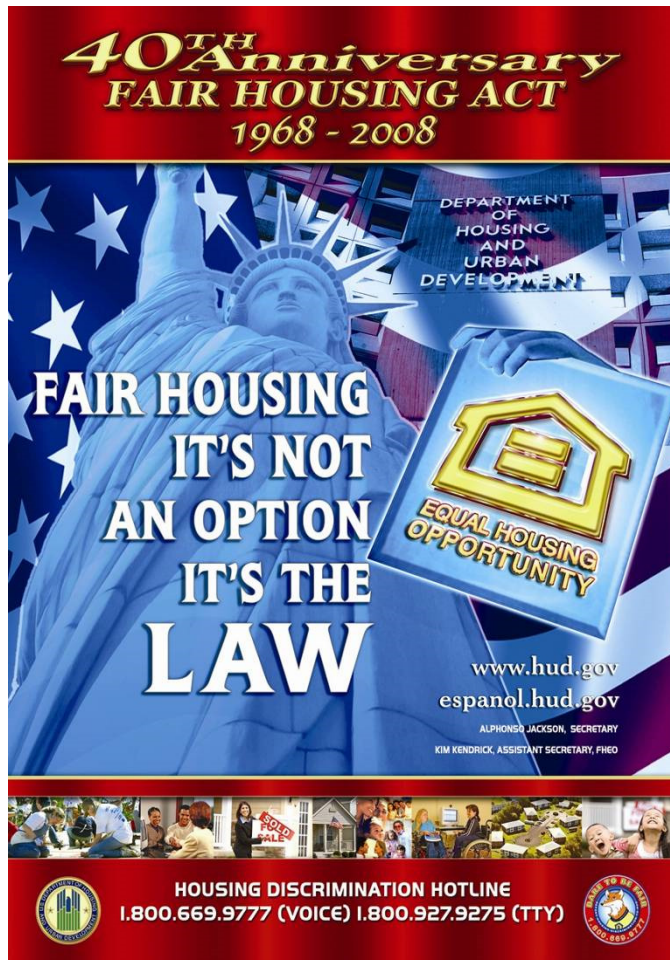
# FAIR HOUSING APPLIES TO ZONING DECISIONS AND PRACTICES

- FHA prohibits a broad range of activities, including restrictive zoning
- Zoning Boards, municipalities, and other gov't entities that take actions in violation of FHA will be liable

# RESOURCES

- Tim Iglesias, “Managing Local Opposition to Affordable Housing: A New Approach to NIMBY,”
  - <http://www.bazelon.org/LinkClick.aspx?fileticket=FZBvjKqK9hw%3D&tabid=241>
- Housing Alliance of Pennsylvania, “Addressing Community Opposition to Affordable Housing Development: A Fair Housing Toolkit,”
  - <http://www.housingalliancepa.org/sites/default/files/resources/56-A%20Fair%20Housing%20Toolkit%20-%20HAPA%202004.pdf>
- NLIHC, “Generating Support for Affordable Rental Housing,”
  - [http://nlihc.org/sites/default/files/Sec2.11\\_Generating-Support\\_2015.pdf](http://nlihc.org/sites/default/files/Sec2.11_Generating-Support_2015.pdf)
- Non-Profit Association of Northern California, “The Original NPH Toolkit,”
  - <http://nonprofithousing.org/resources/the-original-nph-toolkit/>

# QUESTIONS?



- Fair Housing Project
  - Legal Aid of North Carolina
    - (855) 797-FAIR
    - (855) 797-3247
  - [www.fairhousingnc.org](http://www.fairhousingnc.org)
- This seminar provides general information. For legal advice, please consult an attorney.