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AND ZONING FOR THE AGING BABY-BOOMERS**
Outline of Presentation
Rocky Mountain Land Use Institute

MARCH 8, 2002



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80 New Scotland Avenue
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Patricia E. Salkin, Esq.
Associate Dean and Director

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Outline

Considerations in Land Use Planning and Zoning for the Aging Baby-Boomers

Prof. Patricia E. Salkin
Albany Law School
Moderator
Rocky Mountain Land Use Institute
Friday, March 8, 2002

I. Introduction

A. By 2030 there will be more people over age 65 than under age 15 in the United States, and in that same year, when “baby boomers” are reaching their 85th birthday, the elderly will constitute approximately 20% of the United States population. It is estimated that there are more than 34 million seniors and that the 65 years and older population grows at a rate of 1,600 people per day.¹

B. This outline focuses on what local governments should be considering to best plan for and accommodate a growing aging population. Rather than focusing on various types of “assisted living” arrangements such as assisted living facilities, nursing homes, skilled nursing facilities, congregate care living facilities, intermediate care facilities, community residential care facilities, and continuing care retirement communities, this outline suggests planning and zoning techniques that could be employed to ensure a senior friendly community. These tools, techniques and considerations include: zoning density, relationship to transportation infrastructure, planned unit developments, recreational uses and floating zones. Accessory dwelling units will not be covered as this is the focus of another panelist’s presentation.

II. Planning for an Aging Community

A. The Comprehensive Plan. Planning for the aging population has to begin with the local comprehensive plan. As states modernize their planning and zoning enabling acts and provide guidance to communities developing their comprehensive plans, senior housing and services should be one of the enumerated items to be addressed.

B. Transportation Planning. The location of public transportation infrastructure is an important consideration in selecting the appropriate locations of senior housing since transportation is a prerequisite to ensuring senior independence.² Mobility planning, including walking trails and sidewalks are an important complement to the siting and design of senior housing projects. Municipal design standards must ensure that these trails and sidewalks are wide enough for seniors to enjoy (e.g., taking into consideration use of walkers, wheelchairs and other mobility assistance devices). Designating senior housing projects along public transportation corridors will also assist in achieving an independent-enabled environment for seniors. Metropolitan Planning Organizations and other regional planning agencies can be helpful in identifying these locations.

¹See, Victoria M. de Lisle, “Senior Housing: Zoning for the Future,” 12 APR Prob. & Prop. 33 (1998).

²Larry Polivka, “In Florida the Future is Now: Aging Issues and Policies in the 1990s,” 18 Fla. St. U. L. Rev. 401 at 425-6 (1991).

C. Affordability. Many seniors live on fixed incomes. Some municipalities have planned for the affordable housing needs of their senior population by providing that at least 20% of housing units constructed in a "Housing for the Elderly District" consist of middle income units (see, Zoning Ordinance, Town of Bedford, NY 1991). The Town of Smithtown, NY provides in its zoning ordinance that in its retirement community district, dwellings, "...shall be made available at a cost to the tenants below prevailing rental costs in the Town..." (Smithtown Code sec. 322-49 1990). Mixed-use housing districts for seniors can help address affordability as well.

D. Other considerations in identifying appropriate locations include reasonable access to hospital and medical services, shopping, banking facilities, drug stores, religious, cultural and recreational facilities and personal services.

III. Zoning for an Aging Community

At the outset, local zoning ordinances must be reviewed with an eye towards updating the definition section in the area of senior housing. In fact, many zoning ordinances fail to address and/or define senior housing terms and concepts. Zoning codes must be modernized to facilitate and integrate senior housing options.³

A. Senior Zoning Districts

1. Municipalities have created a variety of senior housing districts with minimum age requirements. Examples of senior focused zoning districts include:

- a. senior citizens housing district
 - example is Town of Warwick, NY
 - i. often restricted to persons over the age of 55 years (or at least of the spouses must be 55)
 - ii. various types of housing may be allowed in the district (two-family, townhouses, apartments, congregate housing, etc)
 - iii. types of ancillary services desired include: cafeteria, self-service laundry, lounge, game room, recreation room, exercise or multi-purpose room, workshop, library, sauna/spa whirlpool, first aid clinic, social services office, 24 hour security, guest accommodations
- b. golden age housing zone
 - example is Village of Massapequa Park, NY
 - i. affordable owner-occupied housing for individuals and couples where at least one person is 62 years or older
 - ii. board has discretion to, among other things, require covenants and restrictions of owner selection criteria, eligible income criteria, sale and resale restrictions
 - iii. priority is given first to Village residents, then to residents of the school district and then to residents of the Town within which the Village is located
- c. Retirement community districts
 - example is the Town of Huntington, NY
 - i. consists of multiple residences designed to provide living and dining accommodations for seniors

³See, Victoria M. de Lisle, "Senior Housing: Zoning for the Future," 12 APR Prob. & Prop. 33 (1998).

- ii. accommodations include social, health care or other supportive services and facilities

Size and distance limitations may also be appropriate for senior housing complexes, and courts have upheld these even where the same restrictions did not apply to other housing located in the same zone.⁴ When dealing with single family detached housing, consider lot size and length of driveways and sidewalks (would seniors want to manicure large lawns and shovel long driveways and sidewalks).

2. Floating zones. Municipalities may choose to authorize senior housing districts through the designation of floating zones. (See, e.g., Local Law No. 1 of 1992 of the Town of Warwick, NY; Zoning Ordinance, Town of North Greenbush, NY sec. 197-79(1991)). Such designation allows the Town Board to permit, on a case by case basis, senior housing that satisfies the need for such developments in locations where they will not detract from surrounding land uses.⁵

3. Shared living residences usually accommodate three to ten unrelated seniors living together in the same dwelling unit. Typically, these dwellings are owned by a community based organization. While many jurisdictions do not have laws and regulations governing this type of senior living arrangement, the federal Fair Housing Act is likely to apply.

B. Planned Unit Development District (PUD). Since many elderly seniors either choose not to drive at certain times or in certain conditions, or are simply unable to hold a driver's license, planned unit development districts that encompass housing, shopping, professional offices and personal services within walking distance can be very desirable. The ease of navigating the urban environment must be recreated when placing senior housing in the suburban fringes. Without a PUD, suburban senior housing risks isolation.

C. Elder Cottages. Defined as a "separate, detached, temporary one-family dwelling, accessory to a one or two family dwelling on a lot..."⁶ The Town of Ithaca, NY allows for the placement of elder cottages in residential districts as accessory uses subject to a variety of use, dimensional and locational requirements. (see, Local Law No.5 of 1994). Typically the elder cottages have minimum age criteria. In some cases, elder cottages will be required to be removed upon termination of a special permit (conditions no longer exist) (See, Zoning Ordinance, Town of Wawayanda, sec. 5.20(1991)).

D. Site Plan Review and Other Design Criteria. There are a host of considerations in the area of site plan criteria. What follows are some of the more common issues.

1. Parking Requirements. Municipalities can often lessen the typically parking requirements for senior housing units as more often than not, they are one car or no car per unit tenants.

2. Sidewalk Design. Flat, smooth surfaces are typically preferable to brick, stone and other textured design. This will minimize safety hazards.

⁴See, for example, *Apfelbaum v Town of Clarkstown*, 428 N.Y.S.2d 387 (N.Y. Sup. Ct. 1980) where the court upheld the restrictions as a reasonable exercise of the police power to zone for the public health and welfare of the elderly.

⁵See also, Menkin, "Comment: Senior Citizen Overlay Districts and Assisted Living Facilities: Different but the Same," 21 Pace L. Rev. 481 (2001).

⁶Brar & Holohan, *Housing Alternatives for an Aging Population: Options for Reform* (Government Law Center of Albany Law School, 1999) citing, Radow, "Housing Alternatives and Financial Considerations for Independent Living," 66 N.Y. St. B.J. 38, 39 (1994).

3. Lighting. Well lit walkways and entrances are essential for safety.
4. Landscaping. Low cut shrubs by windows and doors, if landscaped at all are preferable for security purposes. Gardens, and particularly community garden areas may be desirable.

E. Special Use Permit

1. Some municipalities allow for multi-family dwellings for the elderly by special use permit in all zoning districts. (See, e.g., Local Law No. 9 of 1998 of the Town of Carmel, NY). In the Town of Carmel, for example, this is defined as a building containing three or more dwelling units all of which are occupied exclusively by persons 55 years of age or older and the spouse of any such person.

2. Special use permits are needed with various zoning for senior housing techniques to best insure that the regulations are achieving the intended results. It is common to condition many special use permits for senior dwelling units on renewal of the special use permit upon a showing that the applicable age restrictions are still in use for the particular unit(s).

F. Variances. Caselaw has held the Americans with Disabilities Act (ADA) applicable to planning and zoning decisionmaking. It would be a reasonable accommodation (and required) under the ADA to allow for ramps and other therapeutic/necessary alterations to allow building and site design to accommodate the needs of the aging population.⁷

IV. Role of State Government

A recent report issued by the Aging Law & Policy Program of the Government Law Center of Albany Law School offers the following suggestions for state governments:

- Provide low cost, education, training and technical assistance for localities on alternative senior housing;
- Develop a statewide land use policy for senior housing;
- Create a task force to determine where specific senior housing alternatives should be located;
- Include senior housing alternatives as an element of the comprehensive plan;
- Remove barriers to manufactured housing;
- Authorize shared living residences as "family units" for zoning purposes; and
- Statutorily authorize the use of accessory dwelling units.⁸

V. Conclusion

Local governments have a long way to go in planning for the housing needs of graying population. It is time to take a proactive look at the available housing stock for seniors, consideration price, size and location, and to incorporate the projected needs into comprehensive land use plans. This outline provides an introductory checklist of the many issues, tools and strategies for ensuring decent and affordable housing for senior citizens.

⁷See, William H. Grogan, "The Tension Between Local Zoning and the Development of Elderly Housing: Analyzing the Use of the Fair Housing Act and the Americans with Disabilities Act to Override Zoning Decisions," 33 Suffolk U.L. Rev. 317 (2000).

⁸Brar & Holohan, Housing Alternatives for an Aging Population: Options for Reform (Government Law Center of Albany Law School, 1999)