

Changes to increase the predictability of the regulatory process

Overview

Many cities, towns, and counties seek to preserve some degree of flexibility in their zoning and land use policies to allow them to account for specific site conditions or community goals.



While a measure of flexibility can be helpful, an overreliance on discretionary approval processes – such as requiring zoning variances or special use permits for all or nearly all new development – can lead to a reduction in the supply of new housing by deterring developers from submitting proposals for needed development. This is especially problematic in jurisdictions where the duration of the regulatory approvals process is lengthy or unpredictable, and the outcomes uncertain. An unpredictable development process may cause developers to pursue projects in other communities, where they can be better assured of the requirements, the associated costs, and the timeframe in which it will be completed, or hold off undertaking projects until the

potential reward is much higher. To avoid missed opportunities to increase housing supply, local jurisdictions should seek to ensure the greatest degree of predictability and transparency possible. This means establishing rules that allow for desired development to occur as of right, without necessarily seeking a variance or special use permit, and providing developers with a clear understanding of the information they will need to provide to obtain regulatory approval and what they can expect from local agencies and departments.

Approach

In this section, we discuss several ways that cities and counties can improve the predictability of the regulatory process. When considering any of these approaches, however, local jurisdictions may also want to assess internal operations under current practices. Are staffing levels sufficient to allow efficient and optimal processing? Are additional trainings needed to ensure consistent interpretation of policies and requirements? Do the agencies and departments involved in the process work in coordination or isolation? Through one-on-one meetings and roundtable discussions with local staff and department heads, cities can determine whether any existing parts of the process can be adjusted to achieve better results.

Land use policies

One of the most important ways to improve the predictability of the development process is to reduce the share of development proposals required to obtain a zoning variance, special use permit, or other discretionary approval. Project types that are designated by the local zoning code as “as-of-right” developments can be approved by local administrators without discretionary reviews (as long as they comply with current zoning rules and community development plans). Without this designation, developers must seek waivers, variances, or rezoning approvals – all of which trigger a discretionary review. Public hearings and legislative review by the local land use authority or board of zoning appeals take time and introduce uncertainty into the development process. Through amendments to the underlying zoning code, municipalities can retain control and deliver the housing the community has already decided it wants while reducing the need for individual development proposals to seek discretionary exceptions to the zoning codes related to density, building height, unit size, and parking minimums that create unpredictability and keep new housing from being built.

Some jurisdictions use the discretionary approvals process as leverage for requiring that a share of new development be affordable. In these jurisdictions, it would be advantageous to adopt a formal affordability requirement or incentive package at the same time that zoning codes are changed to allow higher density or additional building types as-of-right to ensure that the jurisdiction can continue to obtain the desired level of affordability. (See Housing Policy Library Section on [Establishing Incentives or Requirements for Affordable Housing](#).) Where affordability requirements or incentives are not permitted by state law or are not politically feasible, jurisdictions should nevertheless seek to make clear to owners and developers the standards for granting discretionary approvals so that the process is as transparent and predictable as possible.

Working with developers

In addition to reducing reliance on discretionary approvals, communities can pursue strategies designed to increase predictability in the regulatory process through improved communication with developers. Relatively low-cost steps could include publishing a flowchart that describes the regulatory process for common project types to more “high touch” interventions like assigning a single point of contact to each application. For example:

- **Publish flowcharts and other process materials** – Developers need to prepare and adhere to a project budget, and will benefit from having a clear picture of the steps required to receive necessary approvals and the anticipated timeline to complete the process. To ensure applicants understand the requirements, local departments of planning and permitting can publish flowcharts that show all steps in the regulatory process, including the responsible party and end result of each stage of review. Communities can also prepare checklists with the requirements for various types of projects and approvals – including applicable permits and associated fees. A requirement that such a checklist to be submitted with the application can serve to ensure a complete submission. To promote accountability, some cities and counties also publish target timeframes for various tasks, and then periodically report on whether actual performance meets those deadlines.
- **Create an online portal** – Online portals and other web-based applications allow clients to track where they are in the permitting process by entering an applicant ID or permit number or other log-in information. This system promotes transparency by providing real-time updates on the progress of an application. When combined with estimates of the time required for each phase of the process, developers can more easily determine if they are “stuck” at a particular point and follow up with the relevant office. Online portals also generally offer other functions, such as allowing

developers or property owners to apply for and receive permits for simple or relatively minor projects, schedule appointments with planning staff, or pay fees.

- **Assign a development ombudsman or single point of contact**—Even under the best conditions, the regulatory review process can be lengthy and complicated. It can be difficult for applicants to know who to contact with any questions. However, Jurisdictions can assign an ombudsman or single point of contact to help each application to overcome this obstacle, removing uncertainty about where to go to get answers about the status of their application.

Before determining which approach (or approaches) to implement, local officials should consider inviting feedback from staff involved in the regulatory process and developers of different sizes and levels of experience. Insights from these groups can help to clarify where opportunities exist to improve current practice, and which changes would yield the most benefits.

Other considerations

- *Affordable housing development and NIMBYism* – This description primarily addresses ways that an unpredictable regulatory process can deter market-rate development. However, subjecting projects to multiple discretionary actions can be especially problematic for supportive housing for people experiencing homelessness and other dedicated affordable housing developments. In many communities, these projects draw extra scrutiny from neighbors who may have concerns about impacts on their property values or personal safety and will use the discretionary approvals process as a way to stop the project from proceeding.

Examples

- The **City of Boston's** comprehensive housing plan, [Housing a Changing City: Boston 2030](#), includes a goal of stimulating greater housing production throughout the city, including through reforms to residential zoning. As part of this process, the city would “create more as-of-right support” for new development. Specifically, the plan proposes zoning changes to allow residential development on an as-of-right basis around selected transit centers as well as on an infill basis on vacant lots.
- The Development Services Department in **Austin, TX** offers a variety of [resources](#) to build public understanding of the development process. For example, the city provides flowcharts for several common processes, including development and subdivision review, as well as technical checklists that can be used as reference tools. A series of online training videos covers topics such as an introduction to land development services, the laws that govern land development in Austin, and how to complete various applications. The city also has a public online permit tracker that allows visitors to see building permits by status, including when the application was

received and if and when the permit was issued. In addition to these web-based resources, through its Development Assistance Center, Austin provides a one-stop shop for all development consulting and permitting services.

Related resources

Implementation

- [Bending the Cost Curve: Solutions to Expand the Supply of Affordable Rentals](#), Urban Land Institute (2014) – This report reviews the factors that drive project cost and then presents a series of recommended actions to help address those costs and facilitate the creation of affordable rental housing.
- [Development Process Efficiency: Cutting Through the Red Tape](#), National Association of Home Builders (November 2015) – This comprehensive report lists a variety of strategies being implemented in jurisdictions across the country to increase efficiency in the approvals process.
- [Smart Codes, Smart Process Checklist](#), National Association of Home Builders (January 2017) – This detailed checklist highlights opportunities to improve the efficiency of the development review and approval process.

Local example

- [Predictable Permitting](#), Washington DC – This page describes Department of Consumer and Regulatory Affairs initiatives to promote predictable permitting – including an enhanced permit intake process that includes a plan submission checklist to ensure the application is complete; a regulatory review program that provides an “express lane” for small residential projects, and structural self-certification.

See also:

[Reductions in impact fees and exactions](#)

[Increases in the supply of buildable land by expanding growth boundaries](#)

[Zoning changes to facilitate the use of lower-cost housing types](#)