

Regulatory and Permitting Subcommittee

Policy Options – last updated 12/23/24

Policy Name	Description	Implementation
<p>Policy 1</p> <p>Expedited State Permitting, enable for affordable housing projects</p>	<ul style="list-style-type: none"> <li>· <b>DeIDOT Expedited Review.</b> Local governments can request expedited review for affordable housing.</li> <li>· <b>DeIDOT “pay for review” process.</b> Affordable housing projects can take advantage of this program.</li> <li>· <b>DeIDOT Transportation Improvement Districts.</b> Affordable housing projects can be directed to TIDs to take advantage of expedited process. <a href="#">Transportation Improvement Districts - Delaware Department of Transportation</a></li> <li>· <b>Conservation District Expedited Review.</b> Request that affordable housing projects be able to take advantage of “pay for review” process for stormwater permits.</li> </ul>	<p>Carrot</p> <p>DeIDOT and local governments, administrative; Conservation Districts administrative</p>
<p><b>Support and Alignment</b></p>	<p>APA Housing Supply Accelerator: supports expedited DeIDOT reviews and TIDs.</p> <p>S. Kelly comment (12/12)- I would like to charge DeIDOT with creating a “best practices for affordable housing approvals” whitepaper. I believe it would be helpful to put the action item with DeIDOT to offer ways they believe the process can be improved, rather than us the other way around. If the administrator of the approval process has a seat at the table for the process improvement, there is an enhanced level of accountability to see it become successful.</p>	
<p><b>Dissenting Opinion(s)</b></p>	<p>Jon Horner- We need housing production at all levels. The goal of this taskforce is 120% of AMI and below. We should be focusing on expediting all levels of housing production. We are in a housing crisis and product needs to come to market - period - end of story. We need to figure out a pathway for projects to get to final approval quicker than they currently do where in NCC and Sussex that process can take over 3 years in many instances for final approvals.</p>	

	<p>S. Laws to S. Kelly comment: Successfully expediting reviews and approvals is a shared responsibility, DelDOT expedites the reviews within the agreed upon timeframe, but it's the developer team's responsibility to submit quality plans timely. Consultants who are more familiar with DelDOT processes and regulatory requirements are better able to navigate to approvals more efficiently.</p> <p>In-meeting notes: would be helpful to see a map/timeline of the process that shows DelDOT and other approvals (e.g., stormwater).</p> <p>Reasons for delays differ by county.</p> <p>NCC willing to look at flow/process to improve - coordinate with state agencies; have one flow that is similar in each county.</p> <p>Single source permitting via liaison/coordinator.</p> <p>Out of state developers don't know how to navigate.</p> <p>PLUS - 2 months to get comments and have a public hearing.</p>
<b>Comments/Notes</b>	<ul style="list-style-type: none"> <li>· Susanne Laws: have an ombudsman to guide affordable housing applicants through the DelDOT process ("one-stop shop").</li> <li>· DAHC &amp; HBAD: Suggests that local governments create a streamlined permitting process.</li> </ul> <p>Michele: suggest better coordination between counties, cities, municipalities, ie Millsboro city and Millsboro county, Georgetown city and Georgetown county.</p>

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<p>Policy 2</p> <p>Enable Ready in Six Programs for Affordable Housing Projects</p>	<ul style="list-style-type: none"> <li>· <b>Site Readiness Fund.</b> Funding for planning and infrastructure to make a site “shovel ready.” Add affordable housing to the list of project types that can apply for these funds. <a href="#">Site Readiness Fund - Division of Small Business - State of Delaware</a></li> <li>· <b>Transportation Infrastructure Investment Fund.</b> Funding for transportation infrastructure to make a site “shovel ready.” Add affordable housing to the list of project types that can apply for these funds. <a href="#">TIIF - Delaware Department of Transportation</a></li> </ul>	<p>Carrot</p> <p>Legislature must add affordable housing to list of projects eligible for both funds. Legislature must budget additional funds for these projects. Site Readiness is administered by Division of Small Business. TIIF is administered by DelDOT.</p>
<p><b>Support and Alignment</b></p>	<p>APA Housing Supply Accelerator: State incentives don't need a huge amount of funding to be successful, especially for infill and redevelopment. Suggests additional incentives for infill and redevelopment in Investment Levels 1 and 2.</p> <p>Construction Subcommittee: has discussed potential recommendation to add affordable housing to eligibility for Site Readiness fund.</p>	
<p><b>Dissenting Opinion(s)</b></p>	<p>Susanne Laws: The TIIF program is focused on economic development, and the creation of a significant number of direct, quality, permanent, full-time jobs. As currently written it is not a good fit for affordable housing projects, since residential projects are excluded. A separate incentive program is needed, with performance measures and reporting requirements customized for affordable housing.</p>	
<p><b>Comments/Notes</b></p>	<p>Sean Kelly: does not agree with Suzanne, housing creates jobs. S. Kelly comment (12/12). I stand by my comment, but perhaps Suzanne is correct that the Legislative directive is not written correctly. It should be updated. Housing = Jobs.</p> <p>Idea, OSPC: Fund and implement Delaware Workforce Housing Program, SS1 for SB22</p> <p>Michele: more transparency for the costs of development. Public things that developers need to “pay their fair share” (whatever that means). But developers do pay, the public needs to understand how</p>	

developers are charged, what they are charged, how fees are calculated. Just read any editorial, gist is that “developers are just out for themselves and to make money off of poor people”.

Policy Name	Description	Implementation
Policy 3 Zoning Reform	<p><b>Change residential zoning</b> to allow for smaller lot sizes, greater density, more housing types, and streamlined by-right approval process for housing. Transparency, certainty, speed to market.</p> <p>Examples: Kent County – parking minimum reduction; New Castle County – Redevelopment Ordinance; both – ADU ordinances.</p>	<p>Carrot</p> <p>Incentivize and assist local governments to reform their zoning ordinances; OR</p> <p>Stick</p> <p>State mandates zoning reform, preempting local government authority. Legislative action required.</p>

**Support and Alignment**

- APA Housing Supply Accelerator: require zoning ordinance updates every 10 years in concert with comprehensive plan update; need more density; need by-right to overcome NIMBYs, prohibit public hearings in Levels 1 and 2; remove barriers to housing production in State and local regulations. Note that the City Managers Association supports these recommendations.
- APA Housing Supply Accelerator: recommends model codes be prepared to assist local governments, and also suggests State grant funding and technical assistance for local governments to complete comp plans and zoning reforms.
- DAHC & HBAD: supports requiring a list of options for local governments to select during comprehensive plan and zoning implementation. Also supports performance measures and benchmarks for performance to be reviewed every 2 years. Suggests consequences for non-compliance.

**Manufactured Housing Subcommittee: allow manufactured housing on permanent foundation in all residential zoning districts**

- Jon Horner - Public hearings for by rights projects serve no public good. They slow housing production, lead to dissension, increase costs, decrease efficiency and lead to decisions and rulings inconsistent with law and zoning due to public pressure. If a project meets the zoning code for its zoning it should be approved administratively. Land owners have constitutional rights to their land - the general public does not have a constitutional right to be heard on the by rights land use application of a project.
- Jon Horner - There is a significant difference between permitted density and buildable density. In certain counties, lot size minimums, height restrictions, bulk standards, set backs, parking requirements, etc. create a large delta between what is permitted and what is buildable. Density reduces housing costs, prevents sprawl, leads to the production of diverse housing products and is widely seen as a major solution to the housing affordability crisis.
- Jon Horner - The state needs to mandate the land use reforms as the local governments will cater to NIMBYs and not enact meaningful reforms without a mandate to do so. I believe this mandate should come in the form of a mandatory update to the comprehensive plan for each county and municipality to ensure they provide a sufficient quantity of land zoned for by rights residential housing with sufficient density to meet the demands. Those updates should similarly reduce minimum lot sizes and take a deep look at other standards such as setbacks, height restrictions and other factors that limit buildable density. Land use has been left to the counties and municipalities for decades and the result has been a massive shortage of high density residential zoned land and a long and uncertain approval process.

<p><b>Dissenting Opinion(s)</b></p>	<ul style="list-style-type: none"> <li>· Char (NCC), Sarah Keifer (Kent), and Kevin Spence DLLG: Allow local governments to chose how to reform zoning regulations, do not support State mandates or preemption. Char (NCC) incentivize local governments to implement zoning regulations.</li> <li>· Char (NCC): local governments need to have public hearings to engage with their communities on certain issues. Consider hearings for countywide policies</li> </ul>
<p><b>Comments/Notes</b></p>	<ul style="list-style-type: none"> <li>· Idea (unattributed): Prohibit discretionary public hearings for affordable housing in Strategies levels 1 and 2.</li> <li>· Idea, Caitlin/DSHA: Model State legislation after Utah legislation that provides options for local governments to comply with mandate to reform zoning and land use regulations.</li> <li>· Question, OSPC: If zoning reform is mandated by the State, how will it be enforced? Local governments will have to implement regardless.</li> <li>· Idea (unattributed): Funding for technical assistance with comprehensive plan implementation and zoning implementation.</li> </ul> <p>Michele: combatting NIMBYism: <a href="https://nlihc.org/resource/house-financial-services-committee-votes-move-several-housing-bills-forward-full">https://nlihc.org/resource/house-financial-services-committee-votes-move-several-housing-bills-forward-full</a></p> <p><a href="https://upforgrowth.org/news_insights/up-for-growth-action-applauds-formation-of-bipartisan-yimby-caucus-to-address-nationwide-housing-crisis/">https://upforgrowth.org/news_insights/up-for-growth-action-applauds-formation-of-bipartisan-yimby-caucus-to-address-nationwide-housing-crisis/</a></p> <p>One example of how zoning changes are being made: <a href="https://beyondchron.org/cambridge-passes-citywide-affordable-housing-overlay-a-new-national-model/">https://beyondchron.org/cambridge-passes-citywide-affordable-housing-overlay-a-new-national-model/</a></p> <ul style="list-style-type: none"> <li>· Manufactured Housing Subcommittee Recommendation 1: permit manufactured housing in all residential zoning districts with water and sewer.</li> <li>· Manufactured Housing Subcommittee Recommendation 2: permit manufactured housing in all residential zoning districts AND provide architectural design guideline oversight process to ensure compatibility with surrounding homes.</li> </ul>

- Question for MH subcommittee from Michele: beyond looking at mfg housing with HUD building codes, can we not consider tiny/small homes in the same philosophy, just that Tiny/small homes use a different building code? You can fit more tinys on a parcel than mfg homes, at a fraction of the cost. There are no ordinances that directly address tiny/small homes and tiny house communities/villages.

#### Notes - HUD code versus building code

SCK: Common Ideas for changes to municipal planning and zoning, enacted at State level:

- In residential districts served by sewer and water, a municipality cannot require more than one parking space per dwelling unit. However, it may require 1.5 spaces for multiunit dwellings in areas without sewer and water if existing other parking isn't sufficient.

- Municipalities must allow duplexes where single family units are allowed.

Municipalities must permit multiunit dwellings with up to four units in areas of the town served by sewer and water, unless the town requires more units to be built.

- Requiring towns to subject accessory dwelling unit (ADUs) to same standards of review as single-family homes and prohibiting towns from making the criteria for detached ADUs stricter than for single family homes.

- In residential districts served by sewer and water, bylaws shall establish building and lot standards to allow five or more units per acre; no dimensional

standard for multiunit dwellings can be more restrictive than those for singlefamily dwellings.

· Legalize Single Stair multifamily

State overlay for levels 1 and 2 - allow higher densities - code doesn't allow overlays currently; form-based codes also not allowed currently

• In residential districts served by sewer and water, affordable housing may add

additional units up to 40% of the density and may add an additional floor or

not.

• Municipalities may define what areas are “served by municipal sewer and

water infrastructure” for purposes of these changes.

• Requires that specific information be submitted to the Delaware State Housing Authority when municipalities adopt new zoning bylaws or update bylaws, including uploading bylaws and zoning districts a State database.

• Municipalities to give their administrative officer authority to approve minor

subdivisions and decide if a hearing is required for minor subdivisions.

• Clarifies existing law that the character of the area cannot be appealed in

decisions on certain types of housing. Other elements of the decision may be

appealed.

• Establishes “by right zoning” which requires an appropriate municipal panel to

provide reasons for adjusting dimensional requirements in permit decisions on

housing.



• Requires additional detail in the housing element of regional plans and municipal plans. The regional plan shall include an estimate of the total housing investments needed and specific actions to address housing.

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<p>Policy 4</p> <p>Surplus State owned lands to be made available for affordable housing</p>	<p><b>Review State owned lands</b> to determine if there are any lands that can be considered “surplus” that could be used for affordable housing. Determine a process to evaluate and transfer to entity responsible for developing affordable housing.</p>	<p>State agencies to review their real property holdings and identify any lands that should, or could, be considered surplus. Some other entity to be charged with evaluating the suitability of such lands for affordable housing, and vetting affordable housing developers. Surplus Property Commission or the Legislature would be responsible for transferring the land.</p>
<p><b>Support and Alignment</b></p>	<p>SCK: This aligns with creative affordable housing production programs such as Housing Opportunities of Montgomery Co, MD. State owned land can be controlled via long term lease to maintain affordability provisions while private markets build and finance.</p>	
<p><b>Dissenting Opinion(s)</b></p>		
<p><b>Comments/Notes</b></p>	<p>Michele: also consider allowing nonconforming parcels to develop tiny house communities/villages. Also more infill.</p> <p>Michele: what happens to the homes that go to sheriff sale for delinquent taxes, that go back to the council since no one at auction purchased them? Can these be considered parcels to develop for rentals/affordable housing/tiny houses?</p>	

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<p>Policy 5</p> <p>Update Comprehensive Plan Requirements for Housing</p>	<p><b>Enhance requirements for housing elements in local comprehensive plans.</b> Ensure local plans have accurate and up to date housing data from HNA, and that implementation and zoning reforms are supported by data and goals in local comprehensive plans.</p>	<p>Carrot and Stick</p> <p>OSPC can work with DSHA administratively to implement this as local government comp plans are due for updates. This can be a certification item if over 2,000 population. OR</p> <p>Stick</p> <p>Legislation to add more specific requirements for housing elements in local comprehensive plans.</p>
<p><b>Support and Alignment</b></p>	<p>DAHC &amp; HBAD: support requiring a list of options for local governments to select during comprehensive plan and zoning implementation. Also support performance measures and benchmarks for performance to be reviewed every 2 years. Suggests consequences for non-compliance.</p>	
<p><b>Dissenting Opinion(s)</b></p>		
<p><b>Comments/Notes</b></p>	<p>Comment, OSPC: Comprehensive plans are on a 10-year update cycle, and most are not due for update until late 2020s or early 2030s. This will take time to fully implement. A recent review of local comp plans indicates that most plans have accurate data, policies that support affordable housing, and good ideas for implementation. Not all local governments have had the resources, time, or interest in implementation to date. Some have: see examples from NCC, Kent and Sussex.</p> <p>Comment, DSHA: despite many local plans mentioning policies to support affordable housing, nothing requires jurisdictions to change zoning/regulations to implement those policies. The narrative portion of a plan can say anything, but only the zoning map has the force of law. DSHA, through the PLUS process, has no way to raise certification issues unless there is a blatant fair housing violation.</p> <p>Idea (unattributed): Funding for technical assistance with comprehensive plan implementation and zoning implementation.</p>	

Michele: give priority in comp plan to developers that will develop affordable housing where it is needed, and support alternative housing types/missing middle, to include tiny/small houses.

In-meeting notes - comp plan should state what the needs are, are there adequate areas for development

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<p>Policy 6</p> <p>State and Local Tax and Fee Abatements for Affordable Housing projects</p>	<p><b>Abate property tax, school tax, building permit fees for affordable housing projects</b></p>	<p>Carrot</p> <p>Local governments and school districts would have to develop programs to enable the tax abatements. Subject to local and school district funding to offset lost revenue.</p>
<p><b>Support and Alignment</b></p>	<p>SCK: Fully support. Have to lower the cost to build. This is one of the primary avenues the State has to do so. State cannot control hard cost inputs like lumber. POSSIBLY SHIFT TO FINANCE/DEVELOPMENT</p>	
<p><b>Dissenting Opinion(s)</b></p>		
<p><b>Comments/Notes</b></p>	<p>DAHC &amp; HBAD: Suggests that local governments create a streamlined permitting process.</p> <p><b>Michele: what about reducing impact fees when developing affordable housing?</b></p>	

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<p>Policy 7</p> <p>Building Codes / Redevelopment Codes that are supportive of affordable housing</p>	<ul style="list-style-type: none"> <li>· <b>Establish a redevelopment code</b> that is less onerous and costly for the developers who are renovating existing structures. This would be helpful for downtown revitalization and also for garden apartments and other older units to keep them in the stock.</li> <li>· <b>Establish a statewide building code</b> to provide consistency for development community.</li> </ul>	<p>Carrot</p> <p>Local governments adopt a standard building code; OR</p> <p>Stick</p> <p>Legislation to mandate all local governments adopt a Statewide building code.</p>
<p><b>Support and Alignment</b></p>	<p>APA Housing Supply Accelerator: encourages adoption of most current building codes ASAP</p>	
<p><b>Dissenting Opinion(s)</b></p>		
<p><b>Comments/Notes</b></p>	<p>Michele: address tiny house building codes/redev codes in support of affordable housing. Also update codes to current IRC, we are currently building to IRC 2018</p> <p>Michele: put more emphasis on Opportunity zones and downtown dev districts for mixed use (micro apts on floors above ground...ground level for business, above floors for living units). Consider ADUs on properties owned by a business so that the business can provide their workers housing.</p> <p>Allow residential code to apply to small multifamily projects</p>	

Policy Name	Description	Implementation
Policy 8  Standardized Definition of Affordable Housing	<b>Establish a definition and eligibility standards for “Affordable Housing” that can be used for all programs.</b>	Neither Carrot or Stick  Consensus or legislative?  Embed in program regulations?
<b>Support and Alignment</b>	DAHC & HBAD: Suggests 80% AMI and below renters and up to 120% AMI for homeownership. Would like to be partners in the dialog.  DAHC & HBAD: Long term affordability agreements(via deed restriction and/or regulatory agreement), 30 years for rentals and 10 years for home ownership.	
<b>Dissenting Opinion(s)</b>		
<b>Comments/Notes</b>		

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<p>Policy 9</p> <p>Master Plans for Affordable Housing</p>	<p><b>Work with local governments, State agencies and others to pre-plan housing sites to be shovel ready.</b></p> <p><a href="#">master-plan-guide.pdf</a></p>	<p>Carrot</p> <p>Partnership between State, local governments, infrastructure and utility providers.</p>
<p><b>Support and Alignment</b></p>	<p>APA Housing Supply Accelerator: Supports master planning for affordable housing.</p>	
<p><b>Dissenting Opinion(s)</b></p>		
<p><b>Comments/Notes</b></p>	<p>S. Laws: Suggest overlaying affordable housing needs GIS layer with available (e.g., not in ag pres) open parcels, include TID GIS layer</p> <p>Michele: many municipalities in US have preapproved designs for housing, which cuts almost a year off of development. Here is an example: <a href="https://www.cnu.org/publicsquare/2024/02/07/cities-moving-ahead-pre-approved-house-plans">https://www.cnu.org/publicsquare/2024/02/07/cities-moving-ahead-pre-approved-house-plans</a></p>	

**11/21/2024 Task Force Meeting, additional notes:**

APA HSA: decrease transfer taxes for affordable housing; increase transfer tax on more expensive homes.

Char: comments to support redevelopment ordinance. Need resources to help smaller jurisdictions with templates of ordinances. Counties can help the local governments. Josh says maybe APA can help with models. Char suggests that local elected officials can speak at other local meetings. Don't take public hearings away from communities

Jon Horner: he thinks public hearings are awful in by-right projects. The opposite of Char. Need to make more by-right without public hearings. Developers will not put themselves in front of the firing squad due to NIMBYs. Go further, make zoning by right in all Investment Levels. He suggested that Level 4 should not be 2du/acres; maybe it is 2 acre or 5 acre lots in Level 4 in Sussex.

Sean: definition of affordable housing. Is there a definition in APA or in the TID process. Josh – no definition. Suzanne, TIDs – the local government defines what is the affordable housing and the land use.



Mike: public hearings are bad. We need to re-think this for all housing. Keep in mind that the comp plans and zoning ordinances go through public hearings, so why have one at subdivision stage. NCC have a PC public hearing for by-right projects, but there is no vote but sometimes there are recommendations. 2. Worry about these conversations that we are only talking about affordable housing; hardly anyone can afford housing. We need more housing across the board. Make it a mix.

Michele: definitions, there are 5 nationwide. This is a floating definition. Public hearings – those who attend the hearings are not the ones who need the housing. How do we reach the working people who need the housing. The workers, we need to be able to live where we work, ADU ordinances. Review non-conforming lots. Affordable + market rate developers are the same developers; help all developers build “starter homes.”

Michele other comments: from 1st meeting, why are we considering home ownership for AMIs 0 to 30%? Should we consider rent to own, build to own, lease options, etc for this population? Maybe have to refer this to finance committee.

Michele: Develop apprenticeship or certification to create local small scale developers.... That's all they focus on is affordable housing. Similar design as Jumpstart Wilmington, Jumpstart Sussex, but they only focus on affordable housing, for all aspects of development, finding property, clearing property, rehab, renovations, etc.

Char: starter homes/pocket neighborhoods. HUD grants, the AMI is not accurate, it is too high have a HUD grant to study. Michele comments: starter homes/pocket neighborhoods/cluster communities.... All great for tiny house villages that are affordable.

Brian: First Time Home Buyer Program, average sales price is over \$400k!

Lisa Rice, advocate, question: do we have to pick a group, other states have housing that is available to everyone, . Need deadline for the Olmstead act to have housing for those who are disabled. Need to bring federal funding. Work on regional planning, zoning is the barrier, include all towns and counties and DeIDOT (this is a version of Master Plan). Business expansion and creation, housing as economic development.

Becca Cotto: YWCA Delaware, she supports Sonya's recommendations. Creating jobs for Delawareans, does not want out of state labor. Increase the wages of Delaware.

Michele: here is an article that is a good summary of 5 “fixes” for the housing shortage (quick read):  
<https://www.marketplace.org/2024/11/08/housing-shortage-homes-apartments-affordable-housing-strategies-zoning/>