

Federal & State Law Regarding Housing Discrimination

Group Housing in Alpharetta & Senior Housing in Kennesaw

Presented by Group 11

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Growth Management Law 2007

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OVERVIEW

- Overview of Federal Housing Discrimination Laws – Jacki Green
- Group Housing (Case Study: Alpharetta's Effort To Change Their Group Home Zoning Definition) - *Kristen Radde-Gallwitz*
- Fair Housing Act and Senior Housing – *Christina Gulas*
- Creating a Senior Housing Ordinance for Kennesaw – *Dorothy Morallos*
- Planning & Zoning for Senior Housing in Kennesaw – *Mike Morton*

Federal Laws and Guidelines for Regulating Group Housing

- Civil Rights Act of 1866
 - 42 U.S.C. §1982
- Fourteenth Amendment of US Constitution 1868
 - Reconstruction Amendment
- Federal Fair Housing Act of 1968
 - 42 U.S.C. §§3601 – 3619
 - Amended in 1988 to add Handicap Protection

The Federal Fair Housing Act

● Purpose

- § 3601 – *“It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.”*

● What you can't do.

● What you can do.

What You *Can't* Do

● §3604

- Can't refuse to sell or rent after the making of a bona fide offer or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status or national origin.
 - Note handicap was added in 1988.
- Can't discriminate in the terms or conditions or privileges of sale or in the provision of services based on
- Can't be discriminatory in your advertising based on
- Can't say that property is unavailable when it is.
- Can't try and get people to live somewhere else because that is where a certain demographic lives.

What You Can Do

- § 3603(b) – Exceptions
 - Any single family house sold or rented by an owner provided that:
 - The owner does not own more than three such single family houses at one time;
 - Only applies to one sale every 24 month period if owner wasn't living in that unit.
 - After December 31, 1969, can't use any advertising to sell the house – but can use attorneys to perfect title.
 - If the owner lives in the house or apartment building, the owner can discriminate all he or she wants.
 - Limited to houses/apartments with no more than four units.
 - Rationale: Can't force people to live with people they don't want to.

Who Is Protected Under The Fair Housing Act?

- Specific Protection against discrimination is enumerated in the Act for the following protected classes:
 - Race, Color
 - Religion
 - Sex
 - Familial Status
 - Handicap
- Some states offer enhanced protection for marital status and sexual orientation.
- Who is not protected?
 - Elderly
 - Recovering drug addicts
 - Released and/or rehabilitated criminals
 - Sex offenders/ Child molesters

What are the Standards?

- Discriminatory *Effect* is sufficient to make out a prima facie case under the FHA. *Soules v. United States Department of Housing and Urban Development*, 967 F.2d 817 (2d Cir. 1992)
- Prima Facie Case
 - Plaintiff must show that they are a member of a protected class.
 - That they applied for and were qualified to rent or purchase housing.
 - That they were rejected although the housing remained available.
- When the prima facie case has been made out there is a presumption that the defendant's motivation was discriminatory, shifting the burden to the defendant to prove a non-discriminatory reason.
 - Then the plaintiff shows that the proffered reason is a pretext masking discrimination.
- HUD has no enforcement powers, so suits must be brought by private individuals.

Federal Case Law

- Exclusionary Zoning, Equal Protection & the FHA
 - *Village of Belle Terre v. Boraas* 416 U.S. 1 (1974)
 - Unrelated college kids. Court said it was okay to set maximum occupancy requirements as long as they were rationally related to a legitimate interests relating to density, traffic and quiet open spaces for family. College kids lose.
 - *Arlington Heights v. Metropolitan Housing Dev. Corp.*(1977)
 - Closed the door on exclusionary zoning on equal protection grounds.
 - The Court commented on the FHA here too, refusing to adopt a per se rule that once a discriminatory effect is shown, a violation of the FHA is necessarily established.
 - But see, *City of Cleburne v. Cleburne Living Center* (1985)
 - Utilized Equal Protection to invalidate a city ordinance that required a center for the mentally disabled to obtain a special use permit.

Federal Fair Housing Case Law

- *City of Edmonds v. Oxford House, Inc.* 514 U.S. 725 (1995)
 - Supreme Ct. held that the City's maximum occupancy restriction wasn't an occupancy limit within the meaning of the FHA. The city could use the maximum occupancy limits but only if they were designed to protect health and safety, not to foster a family environment.
 - Didn't hold that a facially neutral code provision that excludes group homes from single family areas was unlawful or whether allowing the group homes in other areas constitutes a "reasonable accommodation."

Georgia Fair Housing Case Law

- *Elliott v. City of Athens, Ga.* 960 F.2d 975 (1992)
 - Any exemptions contained in the FHA are to be construed narrowly. Here, specifically 3607(b)(1) which states,
 - “Nothing in this subchapter limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.”
 - Congress did not intend that every zoning restriction based on maximum occupancy would necessarily be unreasonable and therefore not exempt under the FHA merely because restriction has some disparate impact upon handicapped persons.
 - FHA challenge.
- *Macon Association for Retarded Citizens v. Macon-Bibb County Planning and Zoning Commission*, 314 S.E. 2d 218(1984)
 - Plaintiff requested that municipality amend its comprehensive land development resolution to permit group homes in areas where such usages were otherwise prohibited.

Georgia Fair Housing Case

Law (2)

- GA Supreme Court upheld the city's ordinance holding that limiting occupancy to five adults with maximum of two surrogate parents in single-family zoning district did not constitute unconstitutional discrimination against mentally retarded individuals.
- Equal protection challenge.
- *Anderson v. City of Alpharetta, Ga.* 737 F.2d 1530 (1984)
 - FHA cause of action – 42 U.S.C. § 3608(d)
 - The City of Alpharetta was accused of “foot dragging” in the development of low-income public housing.
 - District Court granted defendants motion to dismiss on a 12(b)(6) failure to state a cause of action for which relief can be granted and the Appellate Court affirmed.
- *U.S. v. Habersham Properties, Inc.* 319 F. Supp.2d 1366 (2003)
 - District Ct articulated the standard for what constitutes a pattern or practice of discrimination under the FHA.

Georgia Fair Housing Case Law (3)

- Must show it was the defendant's standard operating procedure, the regular rather than the unusual practice, and isolated, accidental or sporadic instances were insufficient to establish a pattern or practice of discrimination.

- *Hallmark Developers Inc. v. Fulton County, Ga* 386 F.Supp.2d 1369 (2005)

- Reiterated that discriminatory motive is not necessary, but held that there was insufficient evidence of the disparate impact on minority residents.

- Conclusion

- Recent Georgia case law has tightened up the standard on what will constitute a discriminatory effect for purposes of recovery under the FHA.

Alpharetta Sought to Revise Their Code In Order To Prevent More Group Homes From Being Established.

- Calls from concerned citizens wanting to know about higher than normal traffic going to and from neighboring houses.
- In a short period of time requests for eight new group home business permits.
- Alpharetta's Community Development Department told that Alpharetta was "being sought out due to its liberal group home requirements."

Alpharetta's Definition Of Group Home.

- licensed by the state to provide food lodging and other living assistance to not more than 8 individuals (not including caregivers) who are non-dangerously mentally ill, chemically dependent or part of another similar group.

Other Key Alpharetta Code Definitions

- A family is not more than 3 unrelated persons living as a single nonprofit house keeping unit.
- Congregate Housing licensed by the state, 24-hour per day care provides training, supervision, rehabilitation, or other treatment they need, but which for any reason cannot be furnished in a person's own home. Ex. Nursing homes, assisted living.

Who lives in group homes?

- Adults with developmental disabilities.
- Adults that benefit from this relatively independent home setting. The adults may have disabilities stemming from Down Syndrome, Fragile X, Autism and Cerebral Palsy.



<http://www.enablega.org/index.htm>

Who lives in group homes?

- Children in the custody of the state.
- Finding foster homes is particularly a problem for sibling pairs or older kids under the care of the Department of Family and Children Services (DFCS).



Seniors Wishing To Live In Groups

- When people are older they may not want to live alone, and may not have family members to live with, and may want to have a licensed caregiver around to benefit everyone.



Elegant Living

<http://www.elegantlivingpch.com/home.html>

Alpharetta's Proposed Definition Changes

- “4 or fewer persons excluding the resident owner”
- “or no more than 6 persons including the resident owner . . . in which the resident owner, . . . (serves) as the primary caregiver to the residents.”

Alpharetta Article I Section 1.4.2 4/2/07

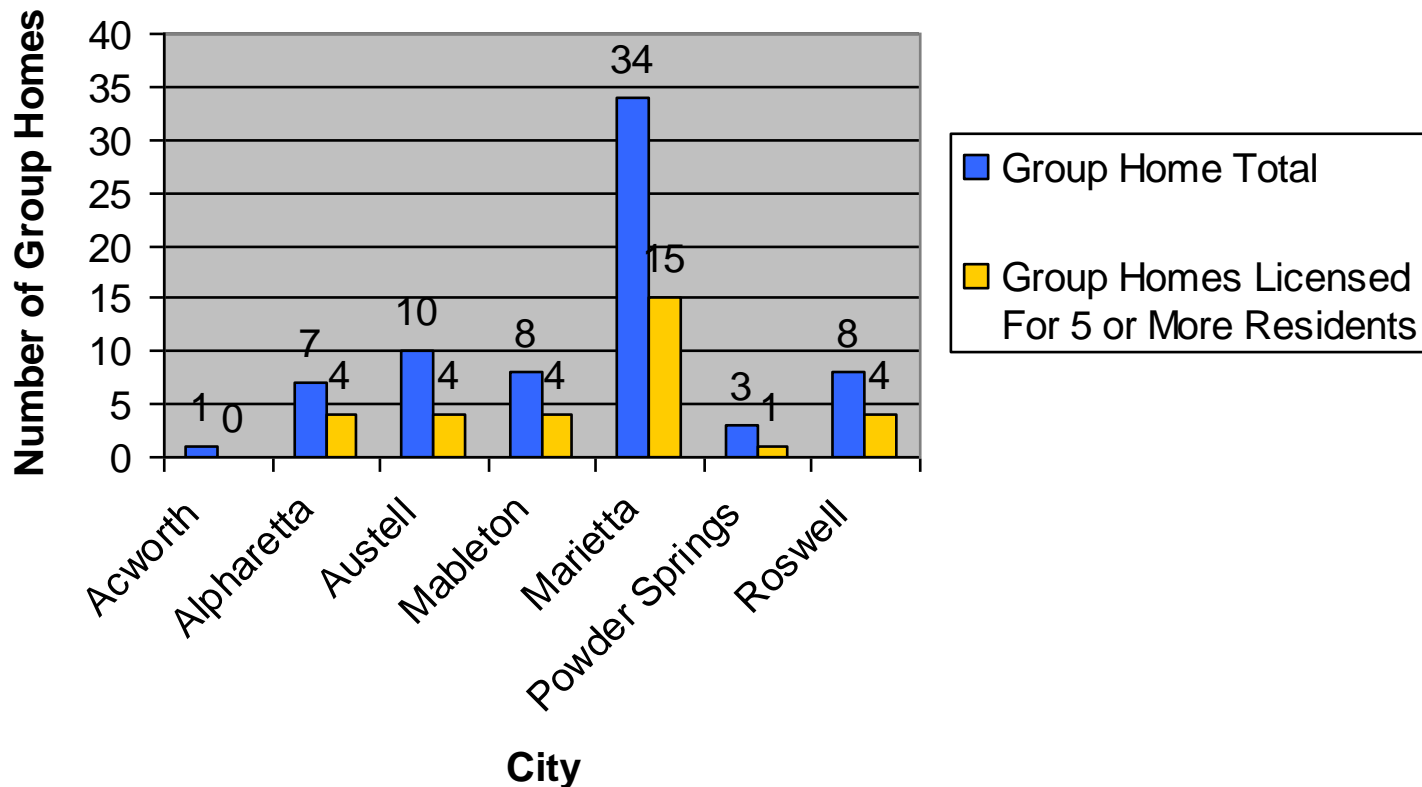
City or County	Type of Living Arrangement	Care Provided	Maximum # of Unrelated Residents	Are caregivers required to be owners of the building to not be counted as residents	Zones Where Homes Can Be Located Without Special Permission	Zones Where Use is Permitted with Special Permission	Date Amended
Cobb	Family	Basic	4 (previously 6)	No	All Residential	Not available	2/27/207
	Group Home	Licensed to provide food, shelter, and other living assistance	4 (no definition prior to 2/27/07)	No, and explicitly excludes all resident staff from being counted as residents.	Not Available	Not Available	2/27/07
Roswell	Family	Basic	2	No	All Residential	N/A	N/A
	Personal Care Home	Must provide adults with one of the following personal care tasks: bathing, "toileting", grooming, shaving, dental care, dressing, or eating.	No max.	No	PUD only	No	N/A

Where Are Group Homes In Alpharetta Allowed?

- Ag, RE, R, R-22, R-15, R-12, R-10 as an Accessory Use In practice a Home Occupancy License
- In CUP, but called Special Care Home.
- These zoning districts are not changed by the definition change.

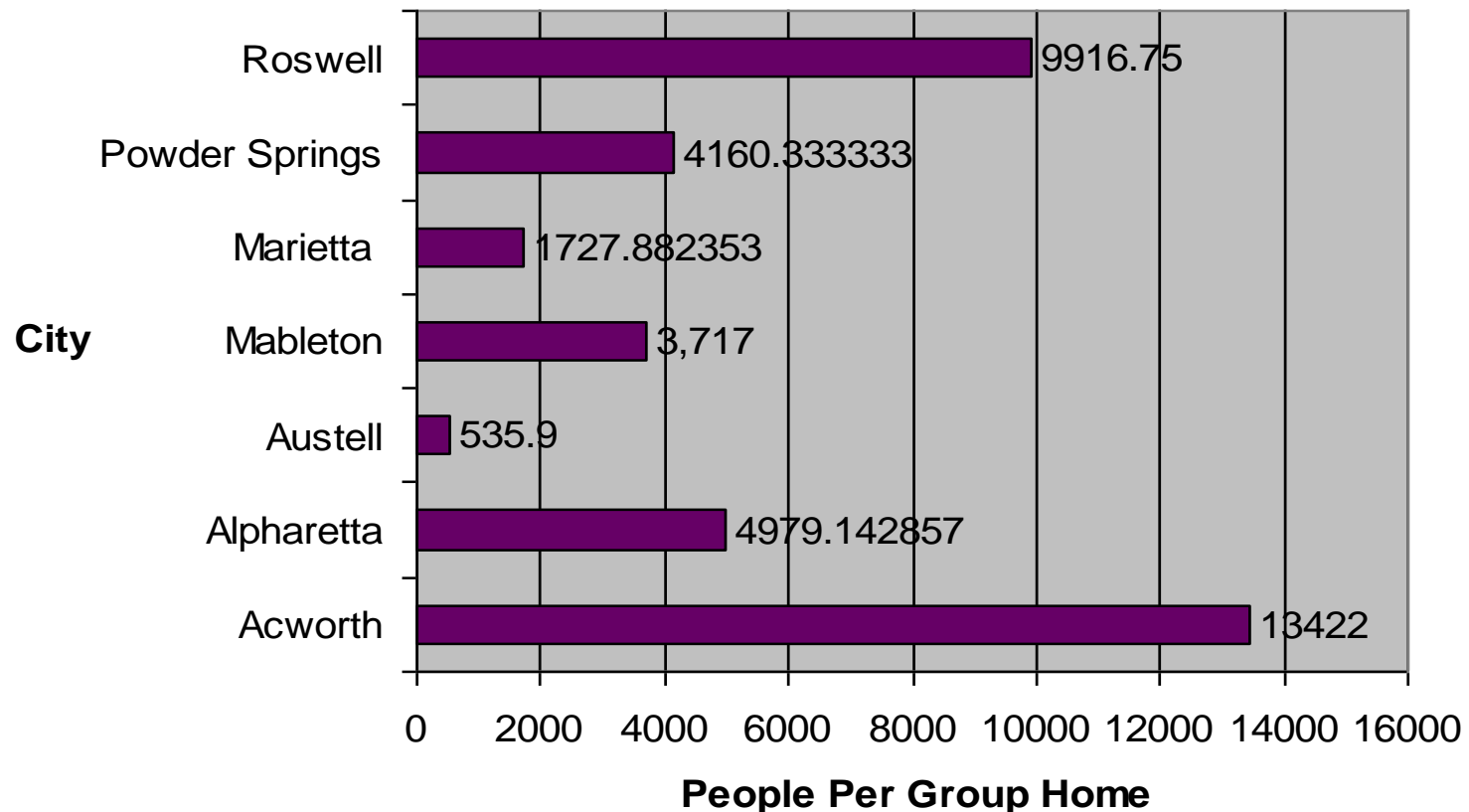
How Many Group Homes Are There?

Group Homes Alpharetta and Some of Its Surrounding Cities.



Does Alpharetta Really Have A Disproportionate Share of Group Homes?

People Per Group Home Using 2000 Census .



Where Alpharetta is Currently

- March 29th we were told by the planning director that the vote on the new definition would occur April 23th. The vote actually occurred April 2nd, and was passed unanimously by the city council.
- All but one of the group home applicants have been hung up on variances needed for adding more bedrooms or parking. The other application is still pending.

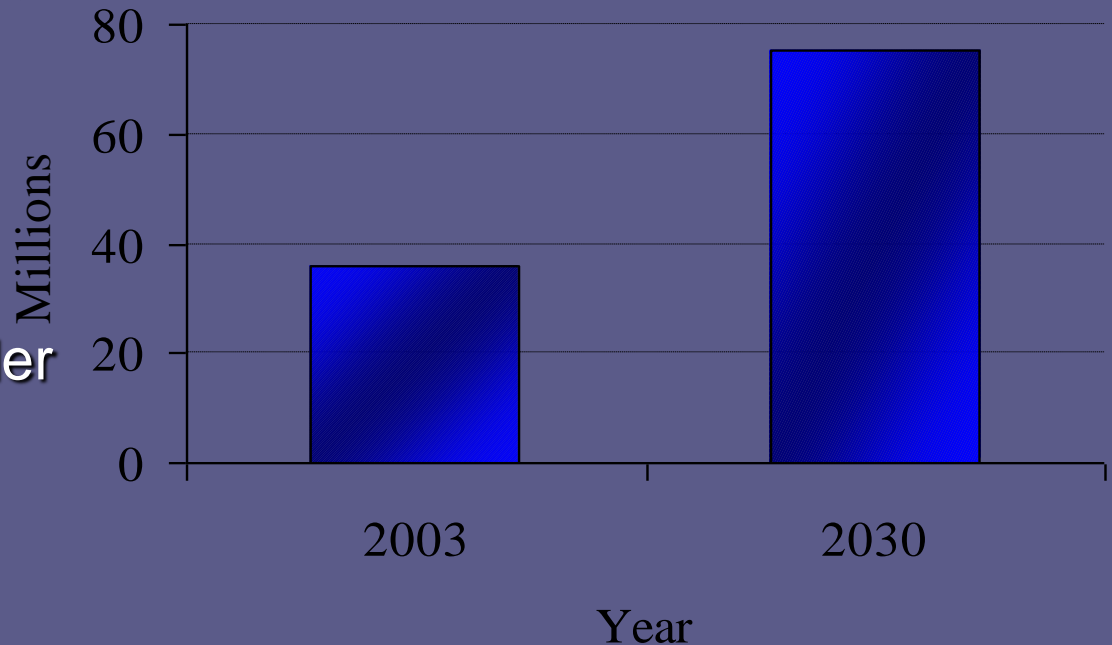
Recommendations

- At the very least strike out the language that stipulates that the primary care giver must be the “resident owner”.
- The “resident owner” language effectively halts most group homes from being established in Alpharetta.

America is Getting Older

- In 2003
 - 35.9 million older adults
 - 12.4 % of the population
- By 2030
 - 75.1 million older adults
 - 20% of population

Population of Older Adults in the US



http://www.aoa.gov/prof/Statistics/2004Pop/Stterr2004_files/sheet004.asp

<http://wonder.cdc.gov/WONDER/help/populations/population-projections/PressTab5.xls>

Are We Ready?

- Older Adults Need
 - Accessible Housing close to services & amenities
 - Transportation alternatives
 - Special housing features to accommodate disabilities



The Fair Housing Act and Seniors

- It is unlawful:
 - “[t]o refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, handicap or national origin.”

Housing for Older Persons (HFOP) Exemption

- CAN sell or rent to persons based on familial status (i.e. exclude families with children) if you qualify as HFOP.
- CANNOT discriminate based on race, color, national origin, religion, sex, or handicap.

What Qualifies as HFOP?

- Housing provided under state/federal programs that HUD determines is “specifically designed and operated to assist elderly persons.”
- Intended for and solely occupied by persons 62 years and older
- Has at least 80% 55 and older

Noncompliance

- *US v. Resurrection Community, Inc.*
 - Discouraging prospective residents with wheelchairs
 - Required submission to medical assessment
- *Cason v. Rochester Housing Authority*
 - “Independent Living” a criteria for admission.

Design & Construction Mandates

- (i) the public use and common use portions of such dwellings are **readily accessible** to and usable by handicapped persons;
- (ii) all the doors designed to **allow passage** into and within all premises within such dwellings are **sufficiently wide** to allow passage by handicapped persons in wheelchairs; and
- (iii) all premises within such dwellings contain the following features of adaptive design:
 - (I) an **accessible route** into and through the dwelling;
 - (II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - (III) reinforcements in bathroom walls to allow later **installation of grab bars**; and
 - (IV) usable kitchens and bathrooms such that an individual in a **wheelchair can maneuver** about the space.

Noncompliance

Wheelchair Accessible?



Making a Change

- Senior Living Zoning Districts
 - Cobb County Residential Senior Living District (RSL).
 - Snellville Residential Housing for Older Persons District (R-HOP)



EasyLiving
Home



- **Easy Access:** a step-free entrance into the main floor
- **Easy Use:** a bedroom, kitchen, wheelchair-friendly bathroom and entertaining area all on the main floor
- **Easy Passage:** every interior door on the main floor provides a minimum of 32 inches of clear passage

Testimonials

- “I used to have to turn sideways to get my walker through the door at my old home. Now I go through the wider doorways with ease. It’s just so much more convenient, like night and day. It would have cost us more than \$30,000 to renovate our previous home for the same access that our EasyLiving Homecm has – and the basic features didn’t cost us anything extra.”
- **Earl and Joanne Gray, Woodberry subdivision, Snellville**
Builder: Wendt Builders Inc.

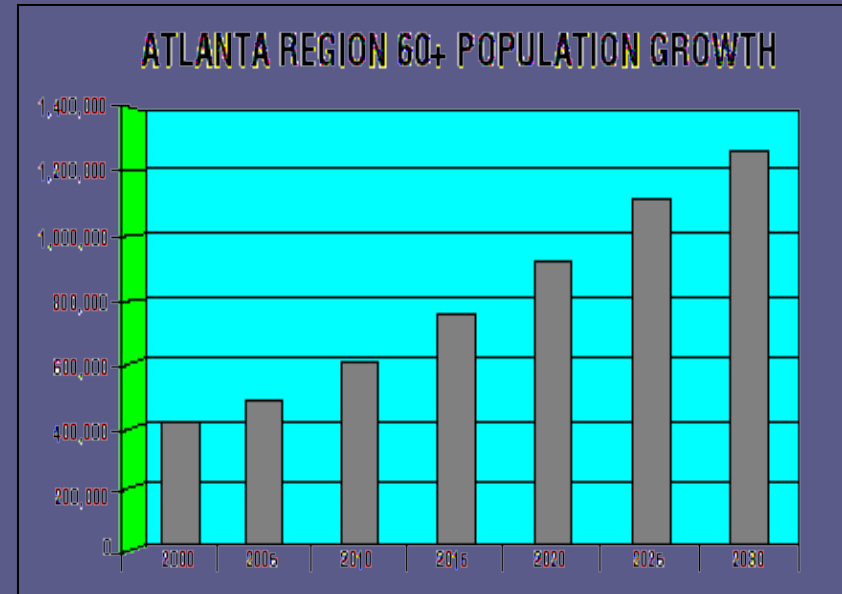


Testimonials

- “I didn’t know this was an EasyLiving Home when we bought it. When we began to move in, I realized the doors were wider than usual and it made the move so much easier. Everyone that comes to visit comments on the doors and how convenient they are. I love it!
- **Wanda Sessums, Cottonfield subdivision,
Covington**
Builder: DuBois Construction Co

Aging in Metropolitan Atlanta

- Between 1990 and 2000, the 65 and older population in the region increased by 30 percent (Source: ARC)
- By 2030, 1 in 5 residents in metro Atlanta will be over age 60. (Source: ARC)



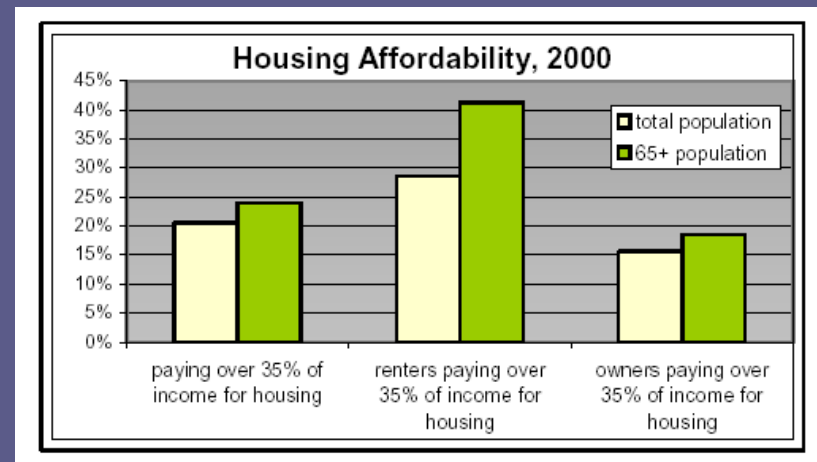
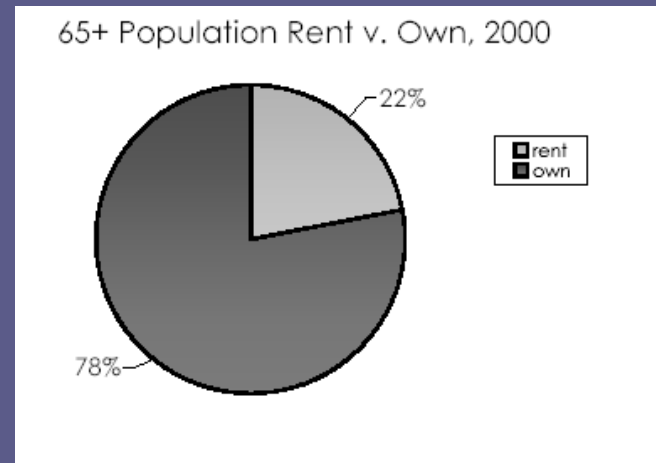
Source: ARC

Housing Options for the Elderly

- Several basic types of housing made available to senior-citizens:
 - Remaining in place
 - Other types of independent living
 - Assisted living
 - Nursing homes
 - Hospitals
 - Retirement communities

Senior Housing Challenges in Metro Atlanta

- Most seniors want to stay in place
- 33% of the 65+ population have lived in their current residence since 1970 (ARC)
- Older adults are living in older homes
- Housing Affordability



Source ARC

Aging in the City of Kennesaw

- Between 2000 and 2025 the population of Kennesaw residents aged 65 and over will increase from 5.81% to 6.1% -- an increase of 2,710 seniors



Kennesaw's Existing Senior Housing and Needs

- Goals: housing that has appeal to retirees, such as:
 - low-maintenance loft condominiums in downtown Kennesaw or
 - detached single-story units in a senior-oriented residential community
- Currently Kennesaw only has 4 units of multi-family senior housing

Creating a Senior Housing Ordinance for Kennesaw

- Research on previous zoning ordinances that have been non-compliant with the FHA and similar laws protecting fair housing.
- Research on other Georgia local government ordinances for suggestions
- Recommendations for model design standards, location specifications, and incentives for senior housing

Past Abuses of Senior Housing Zoning Ordinances: Unequal Treatment

- Can occur even with no direct evidence
- Proven by comparing treatment between two housing developments—where the difference between them is race, national origin, or other protected classification of residents, there may be evidence of unequal treatment
- Strategies
 - More stringent regulations for LULUs
 - Restrictive density requirements

Past Abuses of Senior Zoning Ordinances: Disparate Impact

- Occurs when policy, rule, law, or practice such as a local ordinance does not look or sound discriminatory, yet impact can disproportionately harm a group
- One strategy is “spacing ordinance”
 - Has effect of limiting amount of senior housing
 - *Zimmer and United States of America v. Moon Township (W.D. Pa. 1990)*

Past Abuses of Senior Zoning Ordinances: Disability Discrimination

- “Reasonable accommodations” mandate
 - Under Federal and State fair housing laws requires local governments to modify zoning regulations in order to afford equal housing opportunities for those with disabilities
 - Limitation of application
 - When changes present undue financial/administrative burden on local government and community or
 - Changes will fundamentally change zoning ordinance

Cases of Failing to Provide Reasonable Accommodations

- *Hovsons, Inc. v. Township of Brick* (3d Cir. 1996)
 - Brick Township, NJ refused to permit a nursing home to operate in a mixed residential zone
- *Oxford House, Inc. v. Town of Babylon* (E.D.N.Y. 1993)
 - Babylon refused to waive zoning laws that restrictively defined family by limiting the number of unrelated persons who may live together

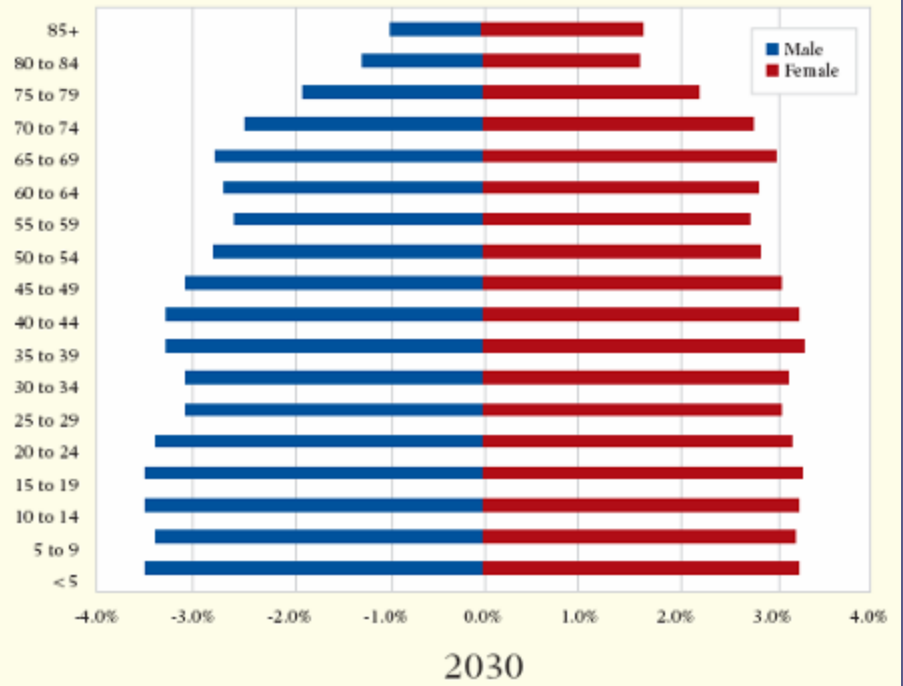
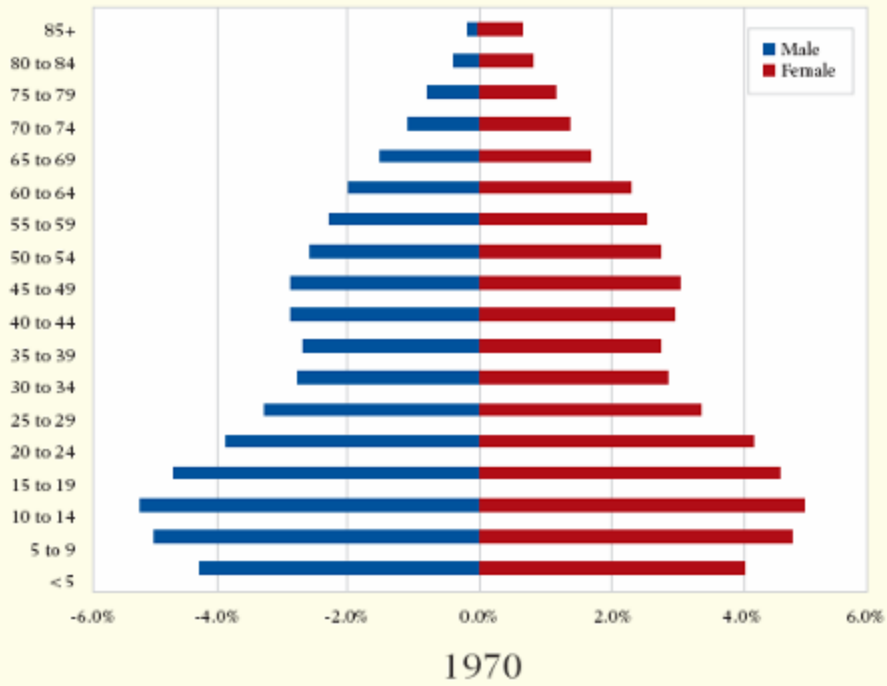
Using Community Involvement to Delay or Hinder Development of Senior Housing

- Public hearings and forums should be used to gain input for the ordinance or code, but should not be used to bias
- Political Officials can also bias housing ordinances
 - *United States v. City of Pooler, Georgia* (S.D. Ga.)
 - Pooler opposed the construction of low-income tax credit rental housing for seniors

**Old people are coming.
Are you prepared?**



Figure 1. Projected Growth in Elderly Population



Source: U.S. Census

The senior population in Cobb County is expected to triple over the next 25 years



The Atlanta region expects its senior population to double.

Two Approaches To House Senior Residents

1. Develop a new zoning classification for senior housing developments.
 - design
 - location
 - programming
 - age restrictions
2. Enact policies and programs throughout the community that will attract seniors and improve life for all of Kennesaw's citizens.

Existing Local Senior Residential Zoning

- Age-restricted (55 and older)
- Deed restrictions
- Typical zoning restrictions on height, bulk, density, and setback
- Parking requirements
- Design standards
- Location on or near arterial roads
- Proximity to services
- Pedestrian access to roadways and adjacent properties.

Other Requirements

- Common activity areas
- An affordable housing requirement



“Older adults...want to live near their families,”

“Surprisingly, very few adults say they would move to be close to other people their age, yet much of the housing that is being built for older adults is age-restricted”

--Mysterious ARC draft report

Source: Atlanta Journal-Constitution

“There's legitimate concern that Cobb's new ordinance could lead to affluent ‘geezer ghettos’ that hinder the more ambitious goal of creating housing opportunities for those of varying ages, incomes, races and backgrounds to live side by side, if they choose.”

-- May 26, 2005 AJC editorial





Communities That Promote Independence

- Transportation options
- Diverse housing stock
- Comprehensive planning
- Integration of services

Source: *Livable Communities*, ARC



Five Key Components To Aging In Place

- Choice
- Flexibility
- Entrepreneurship
- Mixed Generations
- Smart Growth

Source: Aging in Place Toolkit



Planning and Zoning

Traditional zoning has been hostile to the idea of aging in place:

- automobile-centered
- housing segregated from services
- a limited range of housing types
- typically forbid any occupancy other than single-family



Freedom of Choice:

Remain in a home they can no longer maintain

or

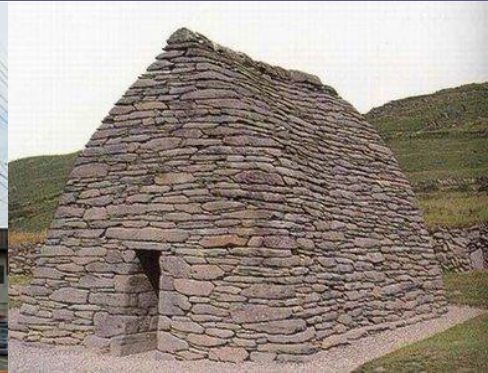
Move from the community altogether



Diversify the Housing Stock

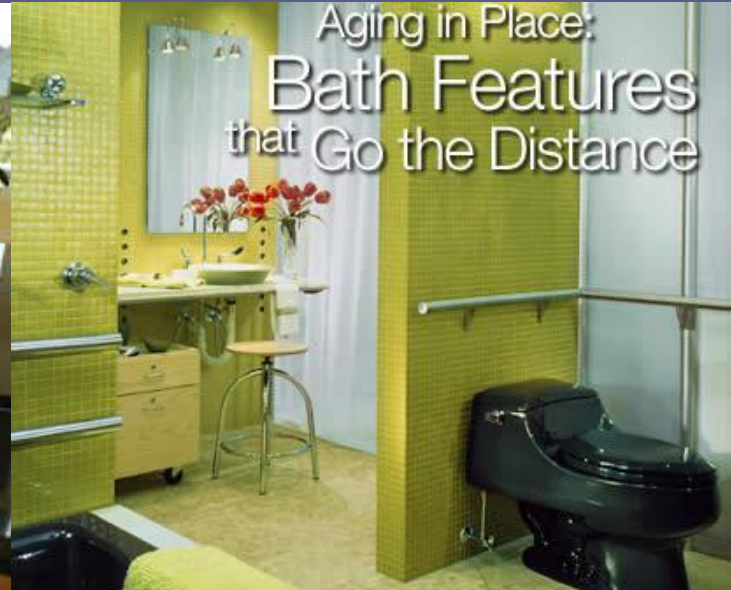
Achieve mixed uses, types, densities, and costs

- Senior Housing Ordinance
- Accessory buildings
- “Cottage” zoning
- Low Income Housing Tax Credits
- HUD Section 202 Senior Housing Grants



How can we Help Seniors Remain In Their Homes?

Improve housing affordability, variety, and accessibility



Improve Affordability

- Senior homestead exemptions
- Create property tax caps
- Property tax deferrals and postponements
- Property tax assistance and credits
- Deferred payment loan programs
- Reverse mortgages
- Protections against predatory lending

Source: Atlanta Regional Commission

Incorporate Accessibility Standards In New Construction

● **The Easy Living Home program**
a voluntary set of guidelines and a certification.

- Easy Access
- Easy Passage
- Easy Use



Walkability

- Pedestrian-friendly design
- Mixed-use zoning
- Convenient, accessible public transit



Pedestrian Friendly Design



- Wide sidewalks
- Bicycle lanes to separate bike traffic
- Medians in multilane streets to provide refuge at crossings
- Narrower streets
- Tree plantings between the roadway and the sidewalk
- On-street parking
- Manageable curb cuts at crosswalks
- Clear signage
- Extended crossing signal timings
- Crosswalks at all intersections
- Small corner radii



Housing Location

- close to services and other resources
- close to public transit



THANK YOU



QUESTIONS?