AGING IN PLACE, HOUSING, AND THE LAW

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"Aging in place" refers to the desire of older people to stay in their own homes and communities in spite of encroaching infirmities, and it is an increasingly important aspect of public policy. This movement has gained impetus from the Supreme Court's decision in Olmstead v. L.C.*, which requires states to make community-integrated support programs more widely available for persons with disabilities. The aging in place movement, however, is hindered by the general unavailability of accessible and supportive housing. Legislation, such as the Fair Housing Amendments Act, which*

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applies only to multi-unit housing, has been the subject of weak implementation and homebuilders have generally resisted its extension to single family housing. In order to age in place, older people often have to modify their environment to accommodate their changing abilities. The challenges of finding age-friendly housing in their communities or of retrofitting existing homes, can present frail older people with an all-or-nothing decision. This acts to funnel them towards institutional settings, such as nursing homes, in spite of their contrary desires. To make aging in place a reality for older people, Professor Pynoos in his Ann F. Baum Memorial Lecture on Elder Law, argues that new policies are needed to provide help modifying existing housing, mandate the creation of housing based on principles of universal design, and provide a range of housing types in communities.

I. Introduction

"Aging in place" is a phenomenon, a preference, and an increasingly important aspect of public policy.[1] The term refers to the desire of older people to live in their own housing and communities as long as possible.[2] Policies that promote aging in place are based on the premise that there are social and financial benefits to programs that support the desire of older people, especially those who are frail, to live in their own homes and apartments located in familiar neighborhoods and communities.[3] These policies face a number of barriers, including inaccessible and unsupportive housing, which hinder aging in place, pushing frail older people towards less desirable and more restrictive settings, such as nursing homes. The challenges for the future are to create policies that better link housing with services, modify existing housing to accommodate aging in place, create new types of housing based on principles of universal design, and provide a range of housing options in age-friendly or "livable" communities.

II. Why Aging in Place Is Important

Aging in place has gained momentum in conjunction with the aging of the American population. The 2000 Census indicated that 12.4% of the American population is over sixty-five years-old,[4] and

1. Jon Pynoos & Christy M. Nishita, *Aging in Place*, *in* 1 LESSONS ON AGING FROM THREE NATIONS 185, 185 (Sara Carmel et al. eds., 2007).
2. *Id.*
3. *Id.*
4. U.S. Census Bureau, United States—Fact Sheet (2000), http://factfinder.census.gov/servlet/ACSSAFFFacts?_submenuId=factsheet_1&sse=on (click on tab for "2000") (last visited Apr. 4, 2008).

predictions are that nearly one in five Americans will be over sixty-five in 2030.[5] The changing needs of seventy-five million baby boomers born between 1946 and 1964 will impact the communities in which they live.[6] This impact will be amplified because of the relationship between aging and geography. Because they are living longer than previous generations and in more spread-out, suburban regions, baby boomers will be living with chronic conditions requiring changes in their physical environments.[7] With appropriate planning and adaptations, these conditions can be accommodated in the places where they currently reside.

The home plays a crucial role in the lives of older adults. A source of identity is cultivated from living in one place for an extended period of time, and the home becomes a place to which older adults have deep-seated ties with family members and close friends. Its location is often near familiar shops, restaurants, and health services. Attachment to place is a reflection of the emotional, cultural, and spiritual connection between a person and their environment.[8] The home is more than a physical structure. Among older adults, housing satisfaction is related to the identity of the home as a harbor of family traditions.[9] For some older widows, leaving the home in which they lived with their husbands may be associated with leaving that relationship behind.[10]

Aging in place remains a very strong desire of older people. For example, in an AARP survey from 2000, more than 80% of respondents aged forty-five and over agreed with the statement: "What I'd really like to do is stay in my current residence for as long as possible."[11] Such a strong attachment to place is understandable when

5. WAN HE ET AL., U.S. CENSUS BUREAU, 65+ IN THE UNITED STATES: 2005, at 12–13 (2005), *available at* http://www.census.gov/prod/2006pubs/p23-209.pdf.

6. The Boomer Initiative, About the Boomer Initiative, http://www.babyboomers.com/about.htm (last visited Apr. 4, 2008).

7. Patricia A. Moore, *Experiencing Universal Design*, *in* UNIVERSAL DESIGN HANDBOOK 2.1, 2.3 (Wolfgang F.E. Preiser ed., 2001).

8. Dena Shenk et al., *Older Women's Attachments to Their Home and Possessions*, 18 J. AGING STUD. 157, 159–60 (2004).

9. *Id.*

10. *Id.* at 163–64.

11. AARP, FIXING TO STAY: A NATIONAL SURVEY OF HOUSING AND HOME MODIFICATION ISSUES 24 (2000) [hereinafter AARP, FIXING TO STAY].

length of tenure is taken into account; in 1996, 65% of elderly homeowners had lived in the same home for more than thirty years.[12]

Concern about the ability of older adults to age in place is driven by the prevalence of disability in the group and the associated need for housing linked with supportive services. For example, approximately 3.2% of persons aged sixty-five to seventy-four and 9.4% of persons aged seventy-five and over need help with at least one activity of daily living (for example, ambulation, bathing, feeding, eating, and toileting), while 6.6% of those aged sixty-five to seventy-four and 18.6% of those seventy-five and over need assistance with instrumental activities of daily living (such as, shopping, cooking, cleaning).[13] Just as telling in terms of the physical environment, 31.2% of older people have trouble climbing a flight of stairs and 31.8% have difficulty walking a quarter of a mile.[14] The ability of older people to carry out these and other life activities is affected by features in the environment, such as hazards that may put them at risk of injury. The presence of both sufficient space and physical supports make it easier for care givers to provide assistance. Ideally, all housing would be accessible, adaptable, and supportive.

III. Barriers to Aging in Place

Although older adults express a strong desire for continuity in their living arrangements, they often live in physically unsupportive environments disconnected from needed services. Instead of facilitating older people's ability to grow old safely, independently, and with dignity, many settings have themselves become a source of the problem. The overwhelming majority of housing in which older people live has been developed for independent residents.[15] These dwelling units have been referred to as "Peter Pan" housing, designed for per-

12. AARP, SENIOR HOUSING STUDY: SURVEY OF AMERICANS AGE 50 AND OLDER 20 (1996).

13. PATRICIA F. ADAMS ET AL., U.S. DEP'T HEALTH & HUMAN SERVS., SUMMARY HEALTH STATISTICS FOR THE U.S. POPULATION: NATIONAL HEALTH INTERVIEW SURVEY, 2005, at 18 tbl.5 (2005), http://198.246.98.21/nchs/data/series/sr_10/sr10_233.pdf.

14. ERICA STEINMETZ, AMERICANS WITH DISABILITIES: 2002: HOUSEHOLD ECONOMIC STUDIES 6, 17 tbl.2 (2006), http://www.census.gov/prod/2006pubs/p70-107.pdf.

15. *See*, *e.g.*, AARP, FIXING TO STAY, *supra* note 11, at 14 (showing nearly four-fifths of people aged fifty-five and older live in a single-family detached home).

sons who will never grow up and never grow old.[16] Such housing frequently includes barriers such as outside steps, inside stairs, and unsafe bathrooms.[17]

A. Lack of Home Modifications

Approximately one million older people with health and mobility problems have unmet needs for supportive features in their dwelling units.[18] Older adults with mobility and functionality limitations report the three greatest unmet needs in their homes are handrails/grab bars, ramps, and easy-access bathrooms.[19] The absence of such features may lead older adults to unnecessarily restrict activities, decrease their personal safety, increase their dependence on others, and put themselves at future risk of needing higher levels of care and institutionalization.

For older people, falls can be a serious outcome of home hazards and a lack of supportive features.[20] Among older adults living in a community dwelling, approximately one-third of persons aged sixty-five and over experience a fall each year.[21] Over three-quarters of these falls occur in and around the home, with the majority happening inside.[22] Estimates are that 30–50% of falls are related to environmental problems,[23] and such falls are a serious public health problem.

16. *See*, *e.g.*, RACHEL G. BRATT ET AL., A RIGHT TO HOUSING 283 (2006).

17. AARP, FIXING TO STAY, *supra* note 11, at 29. Elderly survey participants named difficulty bathing, and problems ascending and descending stairs amongst the top ways in which getting around their homes is troublesome. *Id.*

18. Pynoos & Nishita, *supra* note 1, at 187.

19. U.S. DEP'T OF HOUS. & URBAN DEV., U.S. DEP'T OF COMMERCE, SUPPLEMENT TO THE AMERICAN HOUSING SURVEY FOR THE UNITED STATES 90 tbl.2-15 (2001), *available at* http://www.census.gov/prod/2001pubs/h151-95-1.pdf.

20. *See* CTRS. FOR DISEASE CONTROL & PREVENTION, U.S. DEP'T OF HEALTH & HUMAN SERVS., WHAT YOU CAN DO TO PREVENT FALLS 2 (2008), http://www.cdc.gov/ncipc/pubres/toolkit/Falls_Toolkit/DesktopPDF/English/brochure_Eng_desktop.pdf.

21. Centers for Disease Control and Prevention, Falls Among Older Adults: An Overview, http://www.cdc.gov/ncipc/factsheets/adultfalls.htm (last visited Apr. 4, 2008) [hereinafter CDC Falls Overview].

22. *See* CARVER COUNTY CMTY. HEALTH SERVS., UNINTENTIONAL INJURY: 2004–2008 ASSESSMENT 119 (2008), *available at* http://www.co.carver.mn.us/departments/PH/docs/Unintentional_Injury.pdf.

23. *See* NEW SOUTH WALES HEALTH DEP'T, PREVENTING INJURIES FROM FALLS IN OLDER PEOPLE 4 (2001), *available at* http://www.health.nsw.gov.au/pubs/p/pdf/prevent_falls_old.pdf.

They often result in severe psychological and physical consequences, and lead to costly hospitalizations and increased medical care.[24]

Why don't older people who need home modifications have them? Older people report that a variety of factors prevent modifications, including: inability to make changes themselves, inability to afford changes, mistrust of contractors, lack of necessary expertise to make adaptations, and having no one to perform the installation.[25] Policy makers and health care providers, as well as professionals in housing, occupational therapy, and long-term care, can help address older people's desire to age in place in practical terms.[26] They can assess home environments, make recommendations, and provide home modifications that allow aging in place to occur more safely.[27] However, an older person's failure to make home modifications may be as much psychological as practical. An older person may not want to make changes that alter the memories and continuities with his or her past.[28] For a widow, even changing features in the house that a husband set up may be traumatic.[29]

Beyond personal reasons, funding is very restrictive. Medicare and Medicaid pay for some medically necessary assistive devices but very few home modifications.[30] Although there are a variety of potential funding sources, such as HUD Community Development Block Grants, Older Americans Act Title III, or Medicaid Waivers, many gaps exist in geographic coverage.[31] Moreover, there is a preference for homeowners over renters.[32] The need to patch together funds from a variety of sources presents a problem for frail older people as programs differ in terms of eligibility requirements, the amount spent per client, and the types of modifications that can be made.[33] Overall,

24. *See* CDC Falls Overview, *supra* note 21.
25. *See* AARP, FIXING TO STAY, *supra* note 11, at 46–48.
26. Gavin Andrews et al., *Geographical Gerontology: The Constitution of a Discipline*, 65 SOC. SCI. & MED. 151, 162 (2007).
27. *Id.* at 162–63.
28. Stephen Golant, *Conceptualizing Time and Behavior in Environmental Gerontology: A Pair of Old Issues Deserving New Thought*, 43 GERONTOLOGIST 638, 639–40 (2003).
29. Shenk, *supra* note 8, at 160.
30. *See* U.S. Dep't of Health & Human Servs., Types of Long Term Care, http://www.medicare.gov/LongTermCare/static/HomeCare.asp?dest=NAV%7CTypes%7CTypes%7CHomeCare (last visited Apr. 4, 2008).
31. *See* Robert Pear, *Rates Are Rising on Politics that Cover Gaps in Medicare*, N.Y. TIMES, Dec. 20, 1995, at A1.
32. *See* AARP, FIXING TO STAY, *supra* note 11, at 16.
33. *Id.* at 32–33.

programs operate with relatively small budgets that are insufficient to meet the costs of older people's necessary home modifications.[34] Many communities, especially those in suburban areas, do not offer home modifications as a public program at all.[35]

B. Unsupportive Environments in Subsidized Housing

The problems associated with the housing environment even extend to government-subsidized housing. By the late 1990s, many older residents who in the early years of the programs had moved into public and Section 202 subsidized housing for the elderly were in their late seventies and eighties.[36] In some Section 202 buildings, the average resident age is over eighty.[37] A study of Section 202 housing reported that 22.3% of residents were frail in 1999, an increase from 13% in 1988.[38] Initially developed for independent older adults, this form of housing only requires that a minimum of 5% of the units be adapted with features like roll-in showers for residents with mobility problems and 2% of the units be adapted with strobe lights or sound enunciators to warn persons with vision or hearing problems that a fire alarm has gone off.[39] Therefore, even though these complexes were designed to meet basic accessibility codes for subsidized housing, many do not have enough adapted units for the growing number of persons with disabilities who live in them and are on waiting lists.

Subsidized housing is also often poorly equipped for caregiving and service delivery. Older people aging in place need appropriate environmental supports for themselves as well as for caregivers providing assistance.[40] For example, it is often helpful to have enough space for a caregiver to help an older person get in and out of a

34. *Id.* at 40. Of those surveyed, only 1% of respondents reported that a "community service agency" covered the cost of the home modification. *Id.*

35. *Id.* at 40 tbl.16.

36. *See* LEONARD F. HEUMANN ET AL., AARP, THE 1999 SURVEY OF SECTION 202 ELDERLY HOUSING 17–18 (2001).

37. *Id.* at 17.

38. *Id.* at 18, 23, 23 tbl.14.

39. KESSLER MCGUINNESS ASSOCS., ACHIEVING ACCESS AND FUNCTION IN AFFORDABLE HOUSING IN MASSACHUSETTS—PART ONE: A DEVELOPER'S OVERVIEW 11 (2006), *available at* http://www.cedac.org/pdf/DevelopersDesignOverview.pdf. *See generally* Rehabilitation Act of 1973, Pub. L. No. 93-112, § 504, 87 Stat. 355 (codified as amended at 29 U.S.C. §§ 701–794 (2006)) (commonly referred to as "Section 504").

40. *See generally* HEUMANN ET AL., *supra* note 36, at 67 (noting the third most frequent response for rejecting subsidized housing is that the unit is too small).

shower or tub, which is next to impossible in most conventional bathrooms including those in the nonadapted, subsidized-housing units.[41] Moreover, older people aging in subsidized housing who have become frail increasingly have caregivers spend time with them, including some who sleep on couches in what are often small studio units that were never intended for more than one person.[42] These caregivers, who are sometimes family members, provide personal assistance for tasks such as preparing meals, ambulating, bathing, and shopping.[43] This trend has become prevalent enough that the Department of Housing and Urban Development (HUD) now has a policy requiring any such person's income be factored into the cost of rent for subsidy determinations.[44] On a larger scale, the ability to provide services for groups of older people in Section 202 is often hindered by the lack of common space for congregate dining, services, socializing, and other activities.[45] The lack of appropriate space, both within units and in the complex itself, seriously limits the ability of such housing to adapt to a residential population that needs greater assistance over time.

C. Institutional Bias Against Funding for In-Home Long-Term Care Services

As noted above, aging in place for frail older persons often requires a variety of home care services. Unfortunately, the health and long-term care system is biased towards care outside the home. For example, Medicaid spent $67 billion on long-term care in 2000, 75% of which paid for nursing home and institutional care.[46] While nursing home care has become a form of entitlement,[47] community-based care services are generally not available. Medicaid does not pay for the full range of home care services needed by most people who are functionally dependent.[48] Consequently, it has been easier for older people in need of long-term care to become eligible for Medicaid pay-

41. *See id.*
42. *See id.*
43. *See id.* at 50.
44. *See id.* at 63.
45. *See id.* at 16.
46. Joshua M. Wiener et al., *Home and Community-Based Services in Seven States*, 23 HEALTH CARE FINANCING REV. 89, 90 (2002).
47. *Id.* at 93.
48. *Id.*

ments by entering a nursing home.[49] One of the exceptions is the Medicaid Waiver program, which provides a range of services to nursing-home-eligible older people living in the community, including an option for environmental modifications.[50] Medicaid Waivers, however, are unavailable in many areas as the program has capped both the number of participants and amount of allowable expenditures.[51]

IV. A New Impetus for Aging in Place: The *Olmstead* Decision

Keeping older adults in their communities has received a new emphasis as a result of the 1999 Supreme Court decision, *Olmstead v. L.C.*[52] *Olmstead* requires states to provide services in the "most integrated setting appropriate" for the needs of persons with disabilities.[53] The historical antecedents of *Olmstead* are found in the philosophy of the 1960s Civil Rights movement that persons with disabilities should be integrated into the community and offered the same opportunities as persons without disabilities.[54] This core belief includes the right to live in the home of one's choice in the community.[55] The subsequent adoption of laws, such as the Rehabilitation Act of 1973,[56] the Americans with Disabilities Act (ADA),[57] and the Fair Housing Amendments Act (FHAA),[58] contributed to the development of greater accessibility and variety of housing available to those needing support services.

In *Olmstead*, two women with mental health problems were forced to live in institutions despite their preference to live, and their

49. *Id.* at 98 (discussing eligibility requirements under Medicaid).
50. *Id.* at 102.
51. *Id.* at 108 (discussing the cost containment methods used by states to control home and community-based services).
52. 527 U.S. 581 (1999).
53. *Id.* at 592.
54. Loretta Williams, *Long Term Care After* Olmstead v. L.C.: *Will the Potential of the ADA's Integration Mandate Be Achieved?*, 17 J. CONTEMP. HEALTH L. & POL'Y 205, 207 (2000).
55. *See generally id.* at 207–09 (discussing the ADA goal of protection against discrimination and segregation).
56. Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355 (codified as amended at 29 U.S.C. §§ 701–794 (2006)).
57. Americans with Disabilities Act of 1990, Pub. L. No. 100-336, 104 Stat. 327 (codified as amended at 42 U.S.C. §§ 12101–12209 (2006)).
58. Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619 (codified as amended at 28 U.S.C. §§ 2341–2412, 42 U.S.C. §§ 3601–3619 (2006)).

treatment professionals' belief that they could be appropriately served, in the community.[59] The Supreme Court rejected the state of Georgia's contention that it had only a specified number of slots for community-based care.[60] The Court held that under the ADA persons with disabilities should not be required to live in institutions to ensure their mental and physical supportive needs are met.[61] States were encouraged to develop plans to administer long-term care programs and services in the most integrated setting appropriate.[62] The Presidential New Freedom Initiative of 2001 and Real Choice System Change grants awarded every year thereafter have encouraged states to develop an infrastructure to enable the delivery of high-quality care in the community.[63] These grants have supported the shift of public long-term care funds from programs such as Medicaid toward community-based options.[64] Grants have also been issued to develop flexible financing systems that allow individuals to transition from institutional to community-based settings.[65]

Preference and choice are key issues both in the decision to stay in one's home and in the transition of persons out of institutional settings. A key desire of individuals and their families is to have a range of options and adequate information about each option.[66] For people transitioning to institutionalized settings, the gold standard is that no assumptions be made about a person's preferences or capacity to leave a facility because of health or functional limitations.[67] Even persons who have been residing in a nursing facility for a long period of time should be offered the opportunity to transition out of the facility through asking direct questions about their preferences.[68] This option should be given to older nursing home residents who were placed in long-term facilities because of limited intermediate-care options fol-

59. Olmstead v. L.C., 527 U.S. 581, 581 (1999).
60. *Id.* at 601–02.
61. *Id.* at 604–06.
62. *Id.* at 605–06.
63. *See* WAYNE L. ANDERSON ET AL., U.S. DEP'T OF HEALTH & HUMAN SERVS., REAL CHOICE SYSTEMS CHANGE GRANT PROGRAM 23–61 (2006).
64. *See id.*
65. *See id.*
66. Rosalie A. Kane, *Providing Structured Opportunities for Nursing Home Residents to Choose Community Care*, 56 J. AM. GERIATRICS SOC'Y 163, 164 (2008).
67. *See generally* Christy M. Nishita et al., *Transitioning Residents from Nursing Facilities to Community Living: Who Wants to Leave?*, 56 J. AM. GERIATRICS SOC'Y 1, 1–2 (2008) (discussing a study that examined nursing facility residents' perspectives on transitioning out of their nursing facilities).
68. *Id.* at 7.

lowing deterioration in functional status as a result of a fall, stroke, or illness. If a patient's functional capacities improve, long-term institutionalization may no longer be appropriate or desired.

The ability to choose one's home in the community is an important exercise of one's personal freedom.[69] However, the lack of affordable, accessible housing with supportive services remains a barrier to effectively serving people with disabilities in community-based settings.[70] In particular, long-stay nursing facility residents have often lost their homes because of Medicaid requirements to spend down income and assets.[71] Therefore, these people need assistance in finding affordable, supportive housing in the community.[72] Experience to date, however, indicates that long waiting lists and low vacancy rates for subsidized housing limit the ability of transition candidates to locate affordable and accessible places to live. Waits of up to three years or more for entry into Section 202 housing are common.[73] In Section 8 and other public housing programs, there is a large gap between applicants on waiting lists and available housing units.[74] Even when they are able to obtain a Section 8 voucher, older persons often have difficulty finding units that meet their cost and quality requirements as well as their needs for accessibility.[75]

As states develop plans to comply with *Olmstead*, there will be an increase in the demand for community-based housing. Many local zoning codes and land use practices, however, restrict the development of housing that could meet their special needs.[76] For example,

69. Elizabeth Palley & Phillip A. Rozario, *The Application of the* Olmstead *Decision on Housing and Elder Care*, 49 J. GERONTOLOGICAL SOC. WORK 81, 83 (2007).

70. WENDY FOX-GRANGE ET AL., STATE HEALTH POLICY LEADERSHIP, THE STATE'S RESPONSE TO THE *OLMSTEAD* DECISION: HOW ARE THE STATES COMPLYING? 8 (2003).

71. Edward C. Norton, *Elderly Assets*, *Medicaid Policy*, *and Spend-Down in Nursing Homes*, 41 REV. INCOME & WEALTH 309, 310 (1995).

72. BUREAU OF PRIMARY HEALTH CARE, U.S. DEP'T HEALTH & HUMAN SERVS., HOMELESS AND ELDERLY: UNDERSTANDING THE SPECIAL HEALTH CARE NEEDS OF ELDERLY PERSONS WHO ARE HOMELESS 12 (2006), http://ftp.hrsa.gov/bphe/docs/2003pals/2003-03.pdf; *see also* FOX-GRANGE ET AL., *supra* note 70, at 8. One agency recommended improving the reporting of accessible housing to the elderly, hence, improving the elderly's finding of affordable housing. *Id.*

73. HEUMANN ET AL., *supra* note 36, at 17–18.

74. John J. Ammann, *Housing Out the Poor*, 19 ST. LOUIS U. PUB. L. REV. 309, 311–12 (2000).

75. Kevin M. Cremin, Note, *The Transition to Section 8 Housing: Will the Elderly Be Left Behind?*, 18 YALE L. & POL'Y REV. 405, 409–13 (2000).

76. SARA PRATT & MICHAEL ALLEN, HOUS. ALLIANCE OF PA., ADDRESSING COMMUNITY OPPOSITION TO AFFORDABLE HOUSING DEVELOPMENT 13–16 (2004).

these codes and practices often limit the maximum number of unrelated persons who can live together in residential neighborhoods.[77] This limitation operates to restrict sororities and fraternities, but also impacts group and personal care homes.[78] Ordinances often require that group homes or other congregate homes be located at specific distances from each other, thereby limiting the number that can operate in a particular neighborhood.[79] The Fair Housing Act (FHA) gives developers and operators of housing for people with disabilities the right to sue jurisdictions that block the creation of such housing.[80] Under the "reasonable accommodation" requirement of the FHA, officials are mandated to make exceptions in zoning rules to allow persons with disabilities an equal access to housing.[81] Nevertheless, developers of special needs housing often face an uphill battle in gaining the support of the community. Residents often exhibit NIMBY (Not in My Back Yard) attitudes stemming from fears that such housing will lower property values, appear unattractive, or increase noise, traffic, and parking problems.[82] Less vocalized attitudes can include negative sentiments towards older and disabled people.[83]

V. Promising Policies to Promote Aging in Place

Policies which effectively promote aging in place need to solve the problems associated with housing, support services, and long-term care. Therefore a multipronged strategy is needed to overcome funding, organizational, and regulatory barriers.

A. Making Subsidized Housing More Supportive

Over the last twenty years there have been a number of policies that promoted aging in place in government-subsidized housing. For example, HUD created an Assisted Living conversion program on a demonstration basis to retrofit Section 202 housing to better meet the needs of very frail older persons, including those with early stage

77. *Id.* at 59.
78. *Id.*
79. *Id.*
80. Fair Housing Act of 1968, Pub. L. No. 90-284, 82 Stat. 8 (codified as amended at 42 U.S.C. §§ 3601–3619 (2006)); PRATT & ALLEN, *supra* note 76, at 230.
81. *See* 42 U.S.C. § 3604(f)(3)(B); *see also* PRATT & ALLEN, *supra* note 76, at 15.
82. *See* PRATT & ALLEN, *supra* note 76, at 7–12.
83. *See id*. at 9.

Alzheimer's disease.[84] In spite of residents' growing need for more service-focused supportive environments, HUD still views its mission as "bricks and mortar."[85] It has been unwilling to fund services on a sustained basis, relegating that responsibility to other departments such as Health and Human Services.[86] In line with that philosophy, HUD let lapse a highly successful Congregate Housing Services Program that had added case management, meals, and in-home services for frail tenants.[87] Advocates for better linkages between housing and services, however, have been successful in convincing Congress to approve over three-thousand HUD-funded service coordinators to subsidized housing projects for the elderly, built under programs such as Section 202, to help arrange or facilitate services and activities for residents.[88]

B. Improving the Fair Housing Amendments Act

Accessibility is a key factor in the ability of older people to navigate their community and utilize their home environment.[89] A landmark bill which addresses accessibility is the Fair Housing Amendments Act of 1988 (FHAA).[90] Building on the 1968 Architectural Barriers Act[91] and the Rehabilitation Act of 1973,[92] it can be seen as the residential counterpart to the ADA, a much more well-known law that applies principals and standards of accessibility to public buildings and spaces. The FHAA is especially important because it encom-

84. *See* U.S. Dep't of Housing & Urban Dev., Assisted-Living Conversion Program (ALCP), http://www.hud.gov/offices/hsg/mfh/progdesc/alcp.cfm (last visited Apr. 4, 2008).

85. *See* Sandra J. Newman, *Housing Policy and Home-Based Care*, *in* HOME-BASED CARE FOR A NEW CENTURY 185, 190 (Daniel M. Fox & Carol Raphael eds., 1997).

86. *See id.* at 190–92; *see also* U.S. Dep't of Housing & Urban Dev., Supportive Services Funding and Partners, http://www.hud.gov/offices/hsg/mfh/alcp/suppserv.cfm (last visited Apr. 4, 2008).

87. *See* COMM'N ON AFFORDABLE HOUS. & HEALTH, A QUIET CRISIS IN AMERICA 48 (2002).

88. Newman, *supra* note 85, at 192.

89. *See* Christy M. Nishita et al., *Promoting Basic Accessibility in the Home*, 18 J. DISABILITY POL'Y STUD. 1, 2 (2007).

90. Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619 (codified as amended at 28 U.S.C. §§ 2341–2412, 42 U.S.C. §§ 3601–3619 (2006)).

91. Architectural Barriers Act of 1968, Pub. L. No. 90-480, 82 Stat. 718 (codified as amended at 42 U.S.C. §§ 4151–4157 (2006)).

92. Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355 (codified as amended at 29 U.S.C. §§ 701–794 (2006)).

passes private multi-unit housing.[93] As chronicled by Schwemm, the leading legal analyst of the FHAA, it extended the original 1968 FHA, which banned discrimination on the basis of race, color, religion, and national origin, to "handicapped" persons so they can live independently in the community.[94] The sections of the FHAA that apply directly to physical dwellings require seven basic accessibility features in new housing of four or more units and ensure the right of persons with disabilities to make "reasonable modification" to the premises.[95] The basic accessibility features include: an accessible route into and through the dwelling; light switches, electrical outlets, thermostats and other environmental controls in accessible locations; reinforcement in bathroom walls to allow subsequent installation of grab bars; kitchens and bathrooms that allow an individual in a wheelchair to maneuver; and accessible common areas.[96] These features apply to 100% of the units in complexes with a first occupancy date later than March 13, 1991.[97] The FHAA is powerful because it considers noncompliance to be a form of discrimination enforceable in court.[98]

The FHAA was initially passed without criteria defining how a physical space would ensure access to "handicapped" persons. In the years between 1988 and 1991, HUD developed the necessary guidelines after seeking input and expertise from various stakeholders.[99] The National Association of Home Builders (NAHB) actively sought to limit the scope of the guidelines by restricting them to such a level as to not significantly impact the cost of production.[100] The NAHB was aided in its efforts by the Mortgage Bankers Association, an organization with similar financial and real-estate interests.[101] In response, HUD sponsored a study to examine additional costs associ-

93. Fair Housing Amendments Act § 3604(f)(3)(C).

94. Robert G. Schwemm, *Barriers to Accessible Housing: Enforcement Issues in "Design and Construction" Cases Under the Fair Housing Act*, 40 U. RICH. L. REV. 753, 755–56 (2006).

95. Fair Housing Amendments Act § 3604(f)(3).

96. *Id.* § 3604(f)(3)(C)(iii).

97. *Id.* § 3604(f)(3)(C).

98. *Id.* § 3604(f)(3)(A)–(C).

99. Telephone Interview with Amber Spence, Fair Housing Information Specialist, Institute for Human Centered Design in Boston, Mass. (Jan. 24, 2008).

100. Edward Steinfeld & Scott M. Shea, *Fair Housing: Toward Universal Design in Multifamily Housing*, *in* UNIVERSAL DESIGN HANDBOOK, *supra* note 7, at 35.1, 35.6.

101. *Id.*

ated with implementing FHAA guidelines in new construction.[102] The study found an average cost increase of 0.34% (range: 0.07%–0.85%), a nominal amount that could be offset by careful considerations of other aspects of the project.[103] However, the damage had been done, and the opposition successfully watered down the guidelines, which to this day are criticized for guaranteeing only minimal access.[104] As noted by Schwemm, Congress did not intend to impose "unreasonable requirements" or produce a "standard of total accessibility" as prescribed in the ADA.[105] The FHAA guidelines are an improvement in comparison to the lack of regulations prior to the law. However, they do not even require such inexpensive features as grab bars. Given the aging population and increased knowledge concerning what features are effective, it would seem an appropriate time to again evaluate the required features of the FHAA.

Not only are the accessibility features limited, but, according to Schwemm, the implementation of the FHAA has encountered many problems.[106] He points out that "while the precise degree of noncompliance with the FHAA's 'design and construction' requirements is hard to pin down, it is clearly substantial."[107] For example, many architects and local code-enforcement officials do know how to comply with the law.[108] Steinfeld and Shea have identified the most recurrent violations in newly constructed projects as: inaccessible common facilities (laundry, garbage, and mailbox areas); lack of adequate, accessible parking; lack of adequate clearance at kitchen and bathroom fixtures for wheelchair usage; steep curb ramps; and patio door thresholds that are too high.[109] Even after almost twenty years, a common tendency among architects and builders is to follow the more publicly targeted ADA guidelines, unaware that multi-unit housing

102. OFFICE OF POLICY DEV. & RESEARCH, U.S. DEP'T OF HOUS. & URBAN DEV., COST OF ACCESSIBLE HOUSING 1 (1993).
103. *See id.* at 30.
104. *See* Steinfeld & Shea, *supra* note 100, at 35.8 (noting that the opposition of the NAHB forced a compromise of the regulations).
105. *See* Schwemm, *supra* note 94, at 759.
106. *See id.* at 771.
107. *Id.* at 754.
108. *See id.* at 771–72.
109. Steinfeld & Shea, *supra* note 100, at 35.3.

falls under the jurisdiction of the FHAA.[110] Complicating this even further, some state and local codes supersede the FHAA.[111]

Timing is an important issue in HUD enforcement of guideline violations. If a complaint is filed with a local HUD agency within a year of a violation then the investigation is free of charge.[112] After one year the individual must absorb the costs and fees of litigation.[113] If an administrative law judge determines that a violation has occurred, then the judge can levy fines, award monetary damages to the plaintiff, or chose to define a remedy plan to be implemented by the parties at fault.[114] Additionally, potential plaintiffs need to conform to differing statutes of limitation. Courts in Maryland, Montana, and New York have ruled in favor of the continuing violation theory while other state courts have ruled that the nature of each situation should determine exactly when the statute of limitations begins to run.[115] Lack of consistent rulings therefore complicates enforcement of the law.

Moreover, improvements to existing structures fall on the shoulders of individuals who must not only identify problems and seek corrective action, but in some cases must pay for the modifications themselves.[116] The FHAA allows tenants to make "reasonable modifications" necessary for their full enjoyment of the premises in areas such as lobbies, entrances, common areas, and the interior of units in any multi-unit building regardless of when it was constructed or when the tenant became a resident.[117] This is especially important because the great majority of multi-unit housing was built prior to the enactment of the FHAA, and, therefore, likely does not meet its basic

110. *Id.*

111. *See* Schwemm, *supra* note 94, at 762–65 (noting that the FHAA does not invalidate state laws that impose the same requirements or standards).

112. Fair Housing Act, 42 U.S.C. § 3610(a)(1)(A)(i) (2006).

113. *See* 42 U.S.C. § 3612; Ronald I. Mirvis, Annotation, *Time for Bringing Private Civil Action for Discrimination in Housing Under § 810 and 812 of Fair Housing Act*, 62 A.L.R. FED. 267 (1983). Individuals may file a civil action in district court directly for Fair Housing Act violations. *Id.*

114. U.S. DEP'T OF HOUSING & URBAN DEV., U.S. DEP'T OF COMMERCE, FAIR HOUSING: EQUAL OPPORTUNITY FOR ALL 14 (2002).

115. Linda Stango, *Accessibility Services to Offer New Course*, ACCESS UPDATE NEWSLETTER (Accessibility Services, West Seneca, N.Y.), Fall 2007, http://www.accessibilty-services.com/category/newsletter/fall-2007/.

116. Fair Housing Amendments Act, 42 U.S.C. § 3604(f)(3) (2006).

117. *Id.*

requirements.[118] In general, under the FHAA, a tenant must pay for making structural modifications to his unit or a common area, such as a laundry room.[119] The housing provider has the right to ask that the modifications be done in a professional manner.[120] Housing providers may also ask that the modified unit be restored to its previous condition if the adaptations make the unit less marketable.[121] For example, a landlord may require that bathroom grab bars be removed, but not the invisible extra reinforcement inside the walls. Doorways that have been widened do not need to be narrowed, nor is a tenant required to return a common area to its previous condition.[122] If the housing unit receives *public* money from federal, state, or local government, the housing provider, such as a housing authority or Section 202 nonprofit sponsor, has the responsibility of paying for reasonable modifications.[123] It is difficult to ascertain to what extent such changes have been made and only a few enforcement cases have been reported in case law, perhaps because "modifications authorized by this provision must be made 'at the expense of the handicapped person.'"[124]

Reimbursement of costs for environmental modifications are not easily obtained from government programs, and not all tenants have the resources to pay for them.[125] According to Schwemm, the few cases in this area have focused on wheelchair ramps and related mobility devices to increase the accessibility of units.[126] Anecdotal evidence from the authors' experience suggests, however, that many older persons are hesitant to request landlord permission to make such changes, not only because of the costs, but also because of their concerns that acknowledgment of their disability might affect their tenancy. Similarly, there have been instances in which individuals decided not to file a complaint for fear of "stirring up" problems, an anxiety related to dynamics found in specific housing communities.[127]

118. U.S. DEP'T OF HOUS. & DEV., U.S. DEP'T OF COMMERCE, HOUSING COMPLETIONS 4 tbl.2 (1999), *available at* http://www.census.gov/prod/99pubs/c22-9903.pdf.
119. § 3604(f)(3)(A).
120. *Id.*
121. *Id.*
122. *Id.* § 3604(f)(c)(i)–(iii).
123. *See* Rehabilitation Act of 1973, 29 U.S.C. § 794 (2006).
124. Schwemm, *supra* note 94, at 756–57 n.19.
125. *Id.* at 799.
126. *Id.* at 757 n.19.
127. Telephone Interview with Amber Spence, *supra* note 99.

Several approaches could improve the effectiveness of the FHAA. Current guidelines target a narrow segment of the population—those who primarily exhibit mobility impairments.[128] Compliance on a project-by-project basis often results in piecemeal solutions instead of accessible buildings that are seamlessly connected to the community.[129] Goldsmith criticizes such top-down mandated requirements and argues that they fall far short of producing a finished product usable by all.[130] Moreover, when builders and designers become consumed with compliance, the spirit of the law sometimes gets lost in translation, and the gap between what is built and what is needed widens. For example, buildings have been constructed under the FHAA that have a zero step entrance at the front where someone can be picked-up or dropped-off, but that lack such accessibility in the rear where residents park.[131] Salmen suggests the development of performance criteria that shift away from prescriptive guidelines towards a focus on outcome and other measures ensuring that design features benefit users.[132] This would entail revisiting the effectiveness of original accessibility features, especially given changes in technology.

It is also important to address the funding of modifications irrespective of whether particular buildings were built after the FHAA or before it was implemented. There are too many buildings in which older people live that lack basic accessibility.[133] Although it might be unrealistic and unreasonable to bring such buildings into complete compliance with the FHAA, many older people are undeniably living in structures in which they have become virtual prisoners within their units, unable to safely leave or perform daily tasks because of missing supportive features.[134] The pent-up need for such change is indicated by the enormous demand for a $5 million accessibility fund for renters, which was included as part of a large, $2.1 billion California Housing and Emergency Shelter Trust Fund bond issue passed by

128. Selwyn Goldsmith, *The Bottom-Up Methodology of Universal Design*, *in* UNIVERSAL DESIGN HANDBOOK, *supra* note 7, at 25.1, 25.1–25.5.
129. *Id.* at 25.5.
130. *Id.* at 25.3.
131. Leslie C. Young & Rex J. Pace, *The Next-Generation on Universal Home*, *in* UNIVERSAL DESIGN HANDBOOK, *supra* note 7, at 34.1, 34.9–34.11.
132. John P.S. Salmen, *U.S. Accessibility Codes and Standards: Challenges for Universal Design*, *in* UNIVERSAL DESIGN HANDBOOK, *supra* note 7, at 12.1, 12.5.
133. Nishita et al., *supra* note 89, at 2–3.
134. *Id.*

voters in 2002.[135] Equally important is the expansion of home modifications in general. Perhaps the United States should follow the lead of Japan, which in preparation for a rapid increase in the number of older people, has implemented a national program to modify housing as part of its long-term care initiative.[136]

C. The Next Frontier: Single-Family Housing and Small Residential Complexes

While its implementation leaves much to be desired, the FHAA's major drawback is coverage. It leaves out three-quarters of the housing stock in which older Americans live: single-family housing, duplexes, and triplexes.[137] Two movements have formed to address this problem: visitability and universal design.

1. VISITABILITY

Visitability proposes accessibility features in single-family housing and small complexes, the last bastion of federally unregulated housing. As conceived by Eleanor Smith, a long time advocate for persons with disabilities who founded Concrete Change, visitability calls for a limited number of basic accessibility features in the entry and first floor of single-family housing.[138] Its primary purpose is to create housing that allows persons with mobility problems, especially wheelchair users, not only to live in accessible housing, but to access homes of nondisabled friends and family members.[139] In this context, it embodies a civil rights approach. Typical features sought include a zero step entrance, wide entry-door, and a full or half bath on the first floor.[140] Proponents argue that such features add very little cost to the construction of a new house, are easy to include, and are relatively simple to regulate.[141]

Visitability codes vary in the types of housing to which they apply and the methods that are employed to encourage implementation.

135. Carolina Reid, *State Housing Trust Funds: Meeting Local Affordable Housing Needs*, 17 COMMUNITY INVESTMENT 13, 14 (2005).

136. Satoshi Kose, *The Impact of Aging on Japanese Accessibility Design Standards*, *in* UNIVERSAL DESIGN HANDBOOK, *supra* note 7, at 17.1, 17.1–17.5.

137. Nishita et al., *supra* note 89, at 3.

138. *Id.* at 2–3.

139. *Id.* at 3 ("Proponents of visitability contend that equal access into all homes is a basic right of persons with disabilities.").

140. *Id.* at 2.

141. *Id.* at 11.

Some codes only apply to subsidized housing of specific types (city, state), while others cover the full range of new housing, including those that are privately financed.[142] Two basic tactics have been used by proponents to increase the number of visitable homes: mandates and voluntary programs. Mandatory approaches have often met with resistance from developers and builders who argue that they will increase the cost of housing and force buyers to purchase features they do not want.[143] Proponents of mandatory visitability codes argue that in fact they add almost no extra cost and can be built into almost any housing design.[144] As incentives to encourage visitability, some jurisdictions have been willing to speed up permit processing or even waive some of the fees associated with development.[145]

Smith's effort to promote visitability had its first success in 1992 in her home town of Atlanta, Georgia.[146] An ordinance was passed mandating features such as zero step entrances, interior doors with a minimum width of thirty-two inches, an accessible route inside the house, wall reinforcement, and controls placed in accessible locations, for homes receiving federal, state, or city financial benefits throughout the city.[147] As of 2008, about one thousand homes had been affected.[148] The city of Urbana, Illinois, passed an ordinance in 2000 that applies to new single-family dwellings as well as one-to-four-unit duplexes and triplexes subsidized by city funds.[149] It mandates the same basic features as Atlanta's ordinance and includes additional ones such as nonslip surfaces.[150] Because it is restricted to housing subsidized by the city,[151] only twenty-four homes have been impacted to date.[152] At the other extreme is Naperville, Illinois. The 2000 Census indicated that only 6.2% of the city's population were adults older than sixty-five;[153] half the proportion of older adults in the U.S. population as a

142. *Id.* at 5.
143. *Id.* at 3.
144. *Id.* at 11.
145. *Id.* at 12.
146. *Id.* at 9 tbl.1.
147. *Id.*
148. REHAB. ENG'G RES. CENT. ON UNIVERSAL DESIGN, EXISTING LOCAL VISITABLITY LAWS (2008), http://www.ap.buffalo.edu/idea/visitability/reports/existingcitylaws.htm.
149. Nishita et al., *supra* note 89, at 6 tbl.1.
150. *See id.*
151. Urbana, Ill., Ordinance 2000-09-105 (Sept. 10, 2000).
152. REHAB. ENG'G RES. CENT. ON UNIVERSAL DESIGN, *supra* note 148, at 1.
153. U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, 2000 CENSUS OF POPULATION AND HOUSING, SUMMARY POPULATION AND HOUSING

whole.[154] However, 36% of Naperville's residents were Baby Boomers who will potentially age in place.[155] Naperville adopted a broad mandatory policy encompassing all new housing, including privately financed homes, as a consequence of a Department of Justice investigation into FHAA violations in the city.[156] It is important to note, however, that because of opposition from builders who argued that an accessible entrance was infeasible in many sites, that aspect of the code was dropped as a mandatory requirement.[157]

As of 2007, visitability codes had been adopted in seventeen states and thirty-nine cities.[158] The great majority of the approximately 30,000 visitable homes built in conjunction with these codes appear to result from mandatory rather than voluntary programs.[159] To put this number into perspective, however, more than one-third of the visitable homes are located in one jurisdiction, Pima County, Arizona.[160] As a comparison, Great Britain's 1998 mandated national visitability program, which required a basic set of accessibility features in all residential homes, applies to approximately 150,000 homes built annually.[161] A federal bill mandating visitability, the Inclusive Home Design Act,[162] has never made it out of the Subcommittee on Housing and Community Opportunity because of opposition from builders. Consequently, there is a long way to go in increasing the number of accessible homes.

CHARACTERISTICS: ILLINOIS 128 (2002), *available at* http://www.census.gov/prod/cen2000/phc-1-15.pdf [hereinafter 2000 CENSUS OF ILLINOIS].

154. *See* U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, CENSUS 2000 PROFILE: U.S. SUMMARY 2 (2002), *available at* http://www.census.gov/prod/2002pubs/c2kprof00-us.pdf.

155. *See* 2000 CENSUS OF ILLINOIS, *supra* note 153, at 128.

156. *See* Nishita et al., *supra* note 89, at 9.

157. *See id.*

158. REHAB. ENG'G RES. CENT. ON UNIVERSAL DESIGN, *supra* note 148; REHAB. ENG'G RES. CENT. ON UNIVERSAL DESIGN, EXISTING STATE VISITABILITY LAWS (2008), http://www.ap.buffalo.edu/idea/visitability/reports/existingstatelaws.htm.

159. *See* REHAB. ENG'G RES. CENT. ON UNIVERSAL DESIGN, *supra* note 148.

160. Visitability, Pima County Update, http://www.visitability.org/PimaCo2006.html (last visited Apr. 4, 2008).

161. ANDREW KOCHERA, AARP, ACCESSIBILITY AND VISITABILITY FEATURES IN SINGLE FAMILY HOMES: A REVIEW OF STATE AND LOCAL ACTIVITY 25–26 app. B (2002); Rachel Kelly, *Doorsteps to Be Swept Away in New Rules for Builders*, TIMES (London), Dec. 5, 1997, at 5.

162. Inclusive Home Design Act of 2007, H.R. 2007, 110th Cong. § 1 (2007).

2. EXPANDING THE VISION: UNIVERSAL DESIGN

Universal design, a much broader concept that includes visitability, posits that environments and products should work for all persons, regardless of size, age, or ability.[163] In contrast to accessibility, which denotes a "special" approach to accommodate disabilities, universal design promotes a nonstigmatized inclusion of all people.[164] As applied to housing, universal design, like visitability, is based on the principles of social justice and equity for current owners, future occupants, and anyone who visits a home. While the initial costs may be somewhat greater than conventional housing or visitability (depending on the size of the house, its layout, and the terrain), the economics are such that universal design could ultimately reduce future expenditures resulting from necessary remodeling, retrofitting, and home modifications.[165]

At a minimum, universally designed housing would include the types of features enumerated in the FHAA (accessible entrances, hallways, bathrooms and kitchens; raised electrical outlets; and wall supports in bathrooms for installing grab bars).[166] Ideally, it would also extend such features to ensure accessibility of all entries, closets stacked on different floors to allow an elevator if needed, countertops installed at multiple heights, front loading appliances such as washer/dryers raised off the floor, grab bars in all bathrooms, nonslip surfaces, at least one roll-in shower, doors with either lever handles or automatic openers, and a "livable" first floor.[167] Above all, the design would be unobtrusive and invisible.[168]

Although universal design has made some headway, its impact has often been blunted. For example, in 2000, after much opposition from contractors and builders, Irvine, California's, City Council decided against a mandatory approach and instead recommended that builders use an educational brochure, listing thirty-three design features to market universal design to potential homebuyers.[169] Two

163. S. Iwarsson & A. Ståhl, *Accessibility, Usability, and Universal Design—Positioning and Definition of Concepts Describing Person—Environment Relationships*, 24 DISABILITY & REHABILITATION 57, 61 (2002).
164. *Id.* at 60–61.
165. *Id.* at 60–62.
166. Steinfeld & Shea, *supra* note 100, at 35.1–35.2.
167. *See id.*
168. *See id.*
169. Scott E. Kaminski et al., *The Viability of Voluntary Visitability: A Case Study of Irvine's Approach*, 17 J. DISABILITY POL'Y STUD. 49, 53 (2006).

years later, a report submitted to the City Council revealed minimal progress: in one new development only eight of seven hundred consumers chose to include any of the optional features.[170] Such outcomes have led some commentators to point out the weakness of voluntary programs and others to conclude that there is little consumer demand for universal design.[171] Despite this apparent lack of success, Kaminski found that builders in Irvine had begun including visitability features from the checklist, even in the absence of direct consumer requests, because wider doors, level entryways, and better circulation routes resulted in aesthetically preferable layouts.[172] In fact, a survey of people over age forty-five indicates that there is a strong desire for housing features such as a full bath on the first floor, a bedroom on the first floor, easily usable climate controls, nonslip flooring, and bathroom aids.[173] Although somewhat unique because of the control that the Irvine Corporation has over land development, Irvine's experience suggests that cooperation between universal design advocates and large developers combined with consumer education, may be an effective method of encouraging implementation of universal design in the absence of mandates.[174] The Irvine code became the basis for a state of California voluntary, model universal-design code, which localities have the option to adopt.[175] However, without a law requiring specific features, there is no standardization with which localities can comply. Hence, some advocates favor the mandated visitability codes combined with incentives to include optional universal design features.[176]

D. Elder-Friendly Communities: Increasing the Range of Housing Options

The ability to age in place depends not only on the features of individual homes, but also on the community at large. Aging in place is much more feasible in communities that are also accessible, supportive, and adaptable. Towards this end, a worldwide movement has

170. *Id.*
171. *Id.*
172. *Id.* at 54.
173. MATTHEW GREENWALD & ASSOCIATES, AARP, THESE FOUR WALLS: AMERICANS 45+ TALK ABOUT HOME AND COMMUNITY 15 (2003).
174. Kaminski et al., *supra* note 169, at 52–53.
175. *Id.* at 55.
176. *Id.*

been advocating for age-friendly and livable communities that benefit older persons with disabilities along with other age groups.[177] An "age-friendly community" refers to a place where older people are actively involved, valued, and supported with infrastructure and services that effectively accommodate their needs. Such communities would locate housing near stores, churches, and parks, fund programs to modify housing, maintain sidewalks, ensure adequate crossing times at intersections for older persons, and increase signage lighting and legibility.[178] Many components of age-friendly communities, such as mixed-use neighborhoods that are less automobile dependent, echo Smart Growth trends in the field of planning and land use.[179]

Age-friendly communities also provide a range of settings for older people. While staying at home may be ideal for most older people, in some situations physically supportive home environments and the provision of services may not be enough to meet the needs of other older adults. If individuals have severe health problems and associated disabilities, a threshold may be reached whereby relocation to a more service-enriched and physically supportive setting may be necessary.[180] This threshold can vary depending on the severity of the disability, the presence of cognitive problems, the need for continuous supervision, and the availability of caregivers.[181]

Despite a common public perception that older people live independently and then move permanently into a nursing home when faced with health and activity limitations, there is a range of alternative residential settings, such as apartments, congregate housing, and assisted living, that can meet the needs of older people. Other less conventional housing arrangements, such as small-group residences and accessory dwelling units (ADU), however, may offer seniors a compromise between staying at home and moving to larger scale settings.[182] For example, a Massachusetts-based organization, Elder

177. Dawn Alley et al., *Setting A Housing Context: Creating Elder-Friendly Communities*, 49 J. GERONTOLOGICAL SOC. WORK 1, 10–12 (2007).

178. *Id.* at 6.

179. *Id.* at 15 fig.1 (concluding that a need for elder-friendly communities exists and providing key resources).

180. *Id.* at 3 (describing the declining capacity of elderly and their need for support).

181. *Id.*

182. Phebe S. Liebig et al., *Zoning Accessory Dwelling Units and Family Caregiving: Issues, Trends, and Recommendations*, 18 J. AGING & SOC. POL'Y 155, 160–61 (2006).

Home Options, coordinates shared housing for frail seniors who cannot live alone but do not require twenty-four-hour care.[183] Such programs often utilize existing houses in residential neighborhoods to provide intimate care for three to six individuals, depending on the size of the house. Residents have their own room and follow their own schedule while sharing something few could afford on their own—rent. While intermediate housing and care options exist, their funding, development, and use must be expanded to create an abundant range of affordable options between living in individual homes and institutional care. ADUs, sometimes known as elder cottages or mother-in-law apartments, are detached units colocated on a parcel of land with a single-family unit.[184] They can provide a sense of privacy for an older person, while at the same time allowing close proximity to family members. ADUs can also be used for caregivers or function as a rental unit thereby offering additional income to the home owner who might barter assistance, such as driving or running errands, for reduced rent. ADUs are considered a form of infill development, which planners encourage because of such positive outcomes as increased density, increased affordable housing options, and maximum land use.[185]

Options such as shared housing and ADUs can expand supportive housing options for older people. They both, however, encounter zoning problems. Shared housing is often at odds with zoning that restricts the number of nonrelated occupants allowed in a dwelling unit.[186] Likewise, ADUs may not be allowed because of density restrictions.[187] Under such circumstances, variances or conditional-use permits might have to be obtained.[188] As with special-needs housing, however, neighbors often oppose shared housing and ADUs, believing that they will adversely affect property values, add to noise or traffic, and bring undesirable persons into the neighborhood.[189]

183. Alice Dembner, *For 4 Frail Seniors Group House Is Home*, BOSTON GLOBE, Oct. 3, 2007, at A1.

184. Liebig et al., *supra* note 182, at 162–63.

185. Caroline Cicero & Jon Pynoos, *Cities in the Aging Zone*, AGING TODAY, Jan.–Feb. 2008, at 7, 10.

186. *See* Liebig et al., *supra* note 182, at 158.

187. *See id.* at 164–66.

188. A variance is "[a] license or official authorization to depart from zoning law." BLACK'S LAW DICTIONARY 1588 (8th ed. 2004). A conditional-use permit is "[a] zoning board's authorization to use property in a way that is identified as a special exception in a zoning ordinance." *Id.* at 1434.

189. PRATT & ALLEN, *supra* note 76, at 7–12.

Moreover, requesting a variance or conditional-use permit can be expensive and time-consuming.[190] Planning departments can ameliorate this problem by adopting ADU-specific ordinances that allow shared housing or permit the legal development ADUs.[191]

An example of the translation of these concepts can be found in the revised Senior Housing Master Plan of Howard County, Maryland, which is intended to guide future development.[192] This initiative was motivated by the realization that housing supply was inadequate and ill-suited to meet the needs of an aging population.[193] The goal was to develop recommendations that would increase the diversity and appropriateness of housing, enabling long time residents to remain in Howard County.[194] The recommendations focused on access to services and the advantages of universal design.[195] The workgroup determined that current regulations encouraged the development of conventional single-family homes but were not sensitive to the preferences of older adults who might consider smaller, detached units to be more desirable, easier to maintain properties.[196] County zoning regulations were amended to mandate the inclusion of such universal design elements as the elimination of conventional thresholds, to facilitate access between spaces, stackable closets convenient for future elevator installation, and the use of low-maintenance finishes on exterior windows and doors in 100% of new age-restricted units.[197]

There are also opportunities to capitalize on buildings or neighborhoods populated by large concentrations of the elderly. Twenty-seven percent of older people live in a building or neighborhood where more than half of the residents are over sixty years-old.[198] Some of these neighborhoods are those in which a cohort of once-

190. Liebig et al., *supra* note 182, at 164.
191. *See supra* text accompanying notes 185–88.
192. DEP'T OF PLANNING & ZONING, HOWARD COUNTY, HOWARD COUNTY SENIOR HOUSING MASTER PLAN 3 (2004) [hereinafter HOWARD COUNTY SENIOR HOUSING MASTER PLAN].
193. *Id.* at 7.
194. *Id.* at 3–5.
195. Stephen Lafferty, *As Your County Gets Older . . . Planning for Senior Housing Needs in Howard County, Maryland*, *in* UNIVERSAL DESIGN AND VISITABILITY 69, 81–82 (Jack Nasar & Jennifer Evans-Cowley eds., 2007).
196. *See id.* at 86.
197. *See* HOWARD COUNTY SENIOR HOUSING MASTER PLAN, *supra* note 192, at 21.
198. Tamara Lewin, *Communities and Their Residents Age Gracefully*, N.Y. TIMES, July 21, 1991, at A1.

younger persons has aged in place.[199] Other population clusters of older adults include small, rural towns and urban areas from which there has been a large out-migration of younger people.[200] Most of these naturally occurring retirement communities (NORCs) were not intentionally planned for older people. However, they offer the opportunity to rebuild communities to ensure they are age-friendly by improving accessibility and adding such facilities as senior centers, home care services, appropriate transportation, outreach centers for isolated residents, and mutual helping networks. One way to think of such endeavors is as an aging overlay district in which an attempt is made to increase support for older persons in a broader age-integrated community.[201]

A multigenerational conceptualization of communities, even housing that integrates older adults, can add a broader dimension to aging in place. While age-specific housing has many benefits associated with increased security and mutual support among residents, it can be overly insular and isolating. Increased flexibility in the use of funds at the state and local levels would allow the creation of new models of housing that incorporate community spaces and provide access to services in the adjacent neighborhood. More integrative models of older-adult housing (such as service houses) in some European countries and a few locations in this country have specific benefits. They colocate restaurants, shops, day care, health clinics, and senior centers so that housing for older people is better connected to the community, provides services to older persons and younger persons with disabilities living in the adjacent neighborhood, and creates age-integrated housing.[202] Age-integrated housing can thus foster greater interaction between young and old and increase the vitality of the community.

Urban centers that offer mixed-use developments and NORCs may be age-friendly and meet instrumental needs of older people for activities such as banking, shopping, socializing, transportation, and

199. *See id.*
200. *Id.*
201. An overlay district is a zoning device used to create additional standards along geographical lines, leaving existing zoning districts in place but creating a stricter set of overlapping regulations. John P. Nolan, *Zoning and Land Use Planning*, 36 REAL ESTATE L.J. 351, 356 (2007).
202. *See generally* Alley et al., *supra* note 177, at 10–12, 13 (describing existing elder-friendly communities and coordinated age-and-disability-based community programs).

personal care. However, the majority of the increasing older population lives in the suburbs; the baby boomers were the first true suburban generation.[203] Across the country, 31% of the total suburban population is baby boomer, and the suburbs are aging more rapidly than the nation as a whole.[204] For example, in Illinois, the 2000 Census indicated that the Chicago suburbs of Arlington Heights, Evanston, Naperville, Oak Lawn, and Oak Park all had higher concentrations of baby boomers than the City of Chicago itself.[205]

Suburban communities differentiate themselves from their urban counterparts with specific land-use laws, zoning patterns, and regulations to meet their unique needs. Trends such as Smart Growth, infill development, and home modifications are recognized as important in central cities where little land remains undeveloped and where the housing stock may be older.[206] However, outlaying villages, towns, and cities will need to institute similar age-friendly features and laws to meet the changing needs of their residents in regards to housing, transportation, supportive services, and safe outdoor environments. Policies will need to accommodate people with varying levels of functional abilities and other specific needs of an aging population. While many communities may have considered themselves younger-family oriented in the past, the changing demographics require that they take a lifespan approach to serve their residents as they age.

V. Conclusion

Aging in place is an idea whose time has come. It is based on the preference of older people to stay in the familiar housing and communities in which they have long resided and with which they have formed strong attachments. There are existing building blocks for aging in place through current legislation, such as the Fair Housing Amendments Act, and the new impetus for aging in place created by the Supreme Court's *Olmstead* decision. To make aging in place a reality, however, major policy changes need to take place. The wide-

203. WILLIAM H. FREY, CTR. ON URBAN & METRO. POL'Y, BOOMERS AND SENIORS IN THE SUBURBS 8–9 (2003).

204. *Id.* at 8.

205. *See* 2000 CENSUS OF ILLINOIS, *supra* note 153, at 103, 109, 115, 127, 129.

206. *See generally* ASS'N OF BAY AREA GOV'TS, REGIONAL LIABILITY FOOTPRINT PROJECT: SHAPING THE FUTURE OF THE NINE-COUNTY BAY AREA 4 (2002) (discussing Smart Growth and infill development as a way to neutralize older inner-city areas).

spread availability of home modifications, and the construction of accessible and supportive housing needs to be ensured. Additionally, communities need to take advantage of existing resources such as naturally occurring retirement communities. Moreover, attention needs to be placed on developing age-friendly communities that better connect residents to health care, transportation, recreation, education, and other services. To accomplish these goals, a paradigm shift is needed in which our society embraces the concepts of inclusion and accessibility to the entire housing stock.