

# **Won't You Be My Neighbor: Breaking the Barriers to Creating Affordable Housing**

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# Mission- Driven Development

**New York Land Opportunity Program  
November 10, 2016**

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11/16/2016



# Joint-Venture Development

- What to build and how:
  - Market Rate/Affordable
  - Non-Profit Developer/For-Profit Developer
  - Commercial and/or Community Space
  - (Do you have deed restrictions?)

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# Attorney General / Court Approval

## Section 511 of NY NPCL (NY RCL Section 12)

- Demonstrate consideration is fair, reasonable and in the best interest of the Mission-Driven Organization
  - If the organization has debts how they will be repaid
- Must have an appraisal
- Must have evidence of value of consideration if the consideration is not cash
- Must demonstrate the certainty that the consideration will be received by the Organization.
- Must be approved by Directors and Members (if any)

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## Why Joint Venture?

- **For the Mission-Driven Organization:**  
There may be:
  - Inadequate experience
  - Inadequate capital
  - Lack of staff
- Developer entity may facilitate:
  - Access to financing
  - Financial strength / ability to provide guaranties
  - Increase production and results
  - Skill building

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# Overview of Critical Joint Venture Issues

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## Management Issues

- Roles and responsibilities – decision making
- Term of agreement
- Financial and design specifics of project
- Selection of professionals
  - (HPD Pre-Qualified List (PQL) of Owner’s Representatives)
  - LISC NYC’s technical assistance program
- Development Agreement(s)
- Confidentiality, competition and liability
- Dispute resolution
- Exit strategies

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## Financial Issues

- Pre-development financing
- Capital contributions and percentage of interest
- Developer's fees split
- Cash flow split
- Guarantees



## Operational Issues

- Property/Asset Management
- Marketing, tenant selection and tax credit compliance
- Tenant services, if applicable
- Leasing of commercial space or community space, if applicable
- Condominium Structure/Master Lease



## Year 15 Exit

- Not-for-profit right of first refusal
- Extended Use requirements after the Compliance Period



## Guarantees

### Lender Guarantees

- Completion Guaranty
- Payment and Non-Recourse and Carve-Out Guaranty
- Hazardous Material Guaranty and Indemnification Agreement

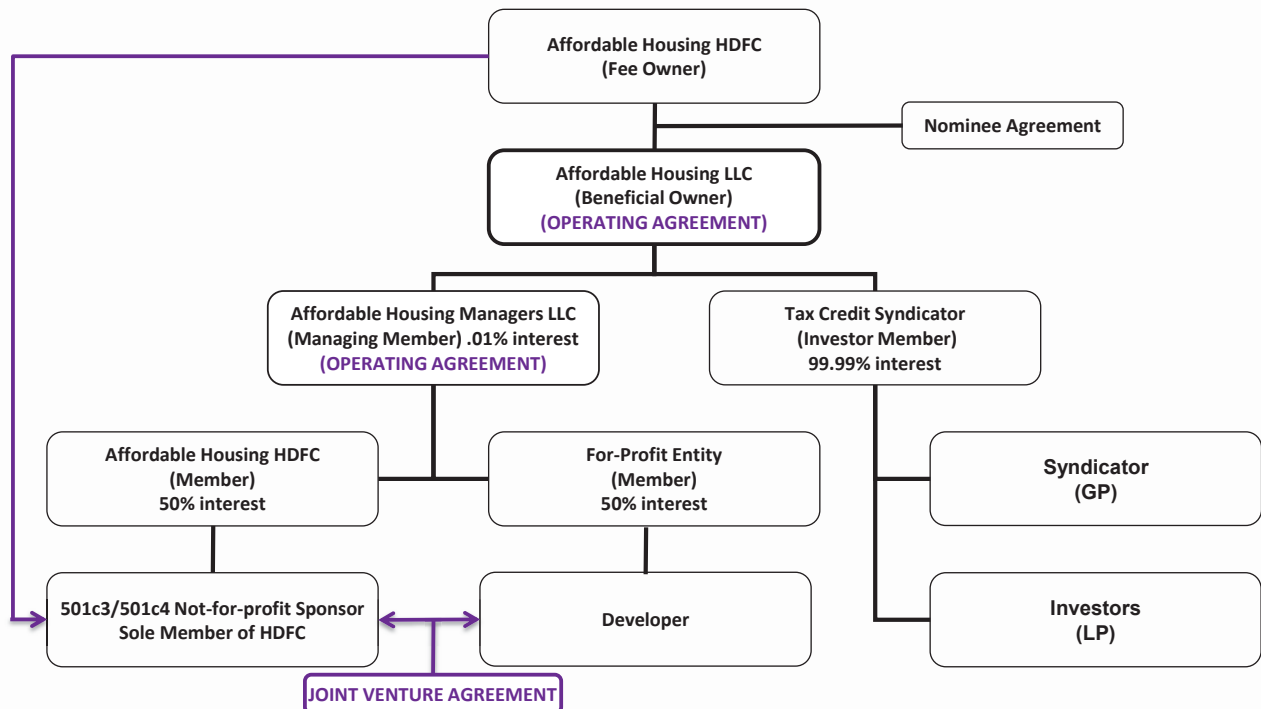


# Guarantees cont...

## Tax Credit Syndicator Guarantees

- Completion Guaranty
- Operating Deficit Guaranty
- Tax Credit Compliance Guaranty

# GH Sample Nominee Structure





### Jason Labate

Senior Associate, Goldstein Hall PLLC

**Jason Labate** practices in the areas of faith-based development, not-for-profit law, affordable housing and community development, banking and finance, and general real estate law. Jason represents a wide range of for-profit, not-for-profit and public organizations in various corporate, tax-exemption and real estate matters. Jason graduated cum laude from Brooklyn Law School with a focus on economic empowerment and community development and was a Sparer Public Interest Fellow. He participated in Brooklyn Law School's Community Development Clinic, where he advised local groups on not-for-profit corporate formation, corporate governance, and tax issues. Jason has an MPA from NYU's Wagner School of Public Service and a BA from the University of Chicago with Honors in Public Policy.



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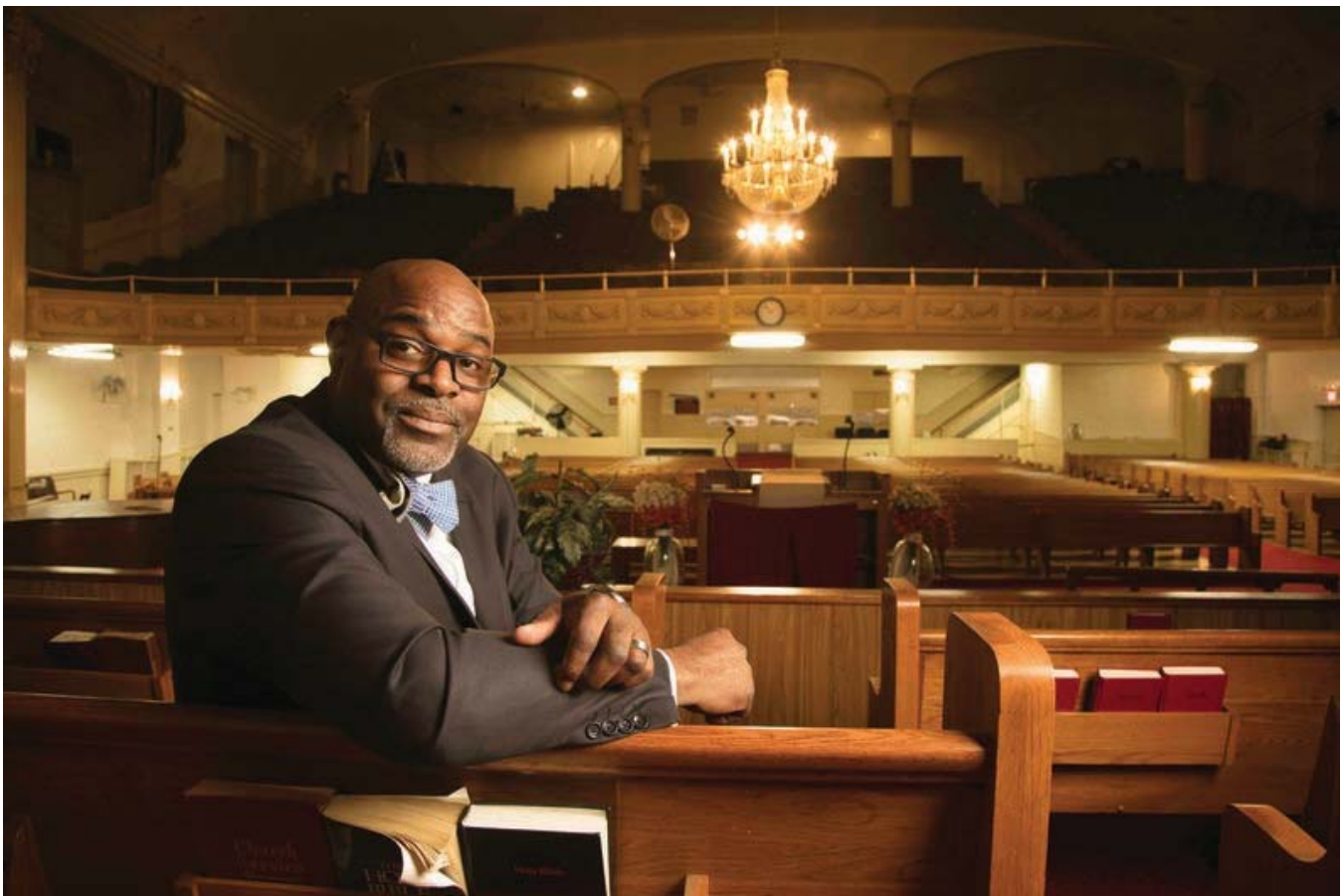


# CRAIN'S NEW YORK BUSINESS

March 18, 2019 12:00 AM

## Houses of worship grappling with Harlem's development boom

Peter S. Green



Rev. Harper sees little hope of saving his church's building, but he's determined to leverage the property to fulfill its mission.

The Rev. Darnell Harper stood in the darkened theater that for nearly 70 years has been the home of his Harlem church, the New Covenant Temple, and stretched a finger to the heavens. More specifically, to a mottled plaster ceiling marked with

water stains and pocked with holes. "We've repaired the roof four or five times already, and the same thing happens," Harper said. "It is definitely a building that is breaking down."

Like dozens of church leaders across Upper Manhattan, Harper is wrestling with an earthly dilemma: As Harlem real estate values skyrocket, shrinking congregations and crumbling buildings are putting tremendous financial pressure on local churches. Do they stay, sell or look for some middle path to cash in on their newly valuable property while preserving their missions of faith and community service?

The 70-member congregation at New Covenant Temple fills only a few pews in the orchestra section of what was once the Washington Theater, a 1,432-seat vaudeville stage and cinema at West 149th Street and Amsterdam Avenue. It was built in 1910 and designed by Thomas Lamb, architect for about 50 New York theaters in the early 20th century. Filling the orchestra and the balcony with worshipers, Harper said, "is not within my growth plans."

### **New demands**

Harlem's population ballooned from 109,000 in 2000 to 143,500 in 2016 as its demographics shifted from 77% black to 57% black. During the same period, local church attendance plunged—and developers came calling.

"Churches need to find ways to persist without having the income they used to have," says Jason Labate, a lawyer with Goldstein Hall, which specializes in low-income housing development and has worked with a number of Harlem churches. "They are asset-rich and cash-poor, and they are frequently trying to leverage that asset into some space that's not falling down around them."

Churches were a vital part of Harlem's emergence as the cradle of African-American culture, anchoring the black community to the neighborhood, which runs roughly from West 110th Street to West 155th Street. "They were more than just places of worship," said Michael Henry Adams, a self-taught neighborhood historian and a vocal advocate for its architectural preservation. "The churches were a major element of the metamorphosis of Harlem. They were a combination of employment agency, settlement house, dating service and credit union.

"Today there's not a church in Harlem that isn't more valuable as a stack of condos."

Simon McGown, a real estate broker and architect, has counted about 350 properties owned by houses of worship from West 96th Street to West 155th Street, encompassing some 5 million square feet of development rights. "That's 5,600 two-bedroom apartments," McGown said. Throughout Manhattan, Borough President Gale Brewer's office logged 913 parcels classified as religious facilities, plus 106 that were sold between 2013 and 2018. Some 650 of those buildings are neither protected landmarks nor in historic districts, and 196 are in neighborhoods zoned for mid- to high-density housing, making them prime prospects for development.

In central Harlem, only 22% of buildings are landmarked or in preservation districts, compared with 77% of Greenwich Village.

The increasing scarcity of developable land in Manhattan has led more builders to look at churches, many of which own not only their sanctuary but also adjacent empty lots and residential buildings. And the property has been surging in value: The average price of land in Harlem has nearly tripled from \$85 per buildable square foot in 2010 to \$237 last year, still a bargain compared with the \$634 for Manhattan as a whole, according to real estate firm Cushman & Wakefield.

"There are a lot of predatory developers out there looking to take advantage of churches," said McGown, whose firm, Koinonia Advisors, helps churches secure the full value of their property in a deal that works for them. "Most pastors go to seminary," he said. "They don't get any training in this at all."

One successful development has been the Church of the Master at West 122nd Street and Morningside Avenue. In 2008 the Presbyterian congregation tore down its collapsing 1893 Victorian home, renovated an adjoining building and leased the ground under the former church to a developer, who built apartments. The congregation hired an attorney, an architect and a construction manager to assist. "The developers were not necessarily looking out for our interest, but we had people on our side who were," said church elder Rory Scott, who helped oversee the undertaking.

The ground lease was the key, Scott said: "That was the main factor in our success, because the land became a continuous source of income." With that money, the church sustains itself and its social programs, despite a shrinking and aging congregation.

"Ground leases are the gold standard," Labate said. When churches sell their land or become partners with developers, "there's a risk that the developer will go bankrupt, that the general contractor will walk off or that there's not enough money to deliver what was promised."

Sales of churches need to be reviewed by both the state Supreme Court and the state attorney general's charities bureau. Labate credited Assistant Attorney General Linda Heinberg with working to ensure churches avoid "steeplejacking"—unscrupulous ministers or developers taking advantage of naive church leaders.

Still, Harlem is rife with examples of churches that have lost their sanctuary—and even their entire congregation—through development deals gone wrong.

St. Stephen Community African Methodist Episcopal Church, at West 116th Street and Frederick Douglass Boulevard, has been locked in an eight-year legal dispute with developers over an unfinished church space.

"The ceiling collapsed, the sound system is not wired properly, the stadium seating uses the wrong gauge steel, the steps are uneven, the sewage system runs under the church and odors keep emanating, and the air conditioning is broken," said the Rev. C. Carlton Woodward, the church's spiritual leader. His congregation has shrunk from 400 members to 55. About 30 people have been showing up for Sunday services. Meanwhile, the 72 condo units built by the developers in the 2005 deal were sold for as much as \$1.2 million each.

The church does own two storefronts in the new development, but legal bills and the declining membership mean Woodward might sell those spaces to keep his ministry alive. "No one really understands what we went through," he said. "We were one of the first in Harlem" to redevelop. "I just didn't know too much at the beginning."

Pastor Tyrone Holmes and his mother, the Rev. Shirley Sutton, saw their small evangelical church on East 125th Street disappear after a failed 2006 venture. The pastors had transferred the church's deed to developers Saadia and Maria Shapiro, who went bankrupt. The property passed through several hands before a 75-unit apartment building was constructed on the site. In 2014, after 54 years, the church closed and its congregants dispersed, but it did receive \$1 million in a settlement with the developers.

On East 118th Street, a small Spanish-language Pentecostal church sold to developers for \$132,000 and promises of a new sanctuary. But arguments over the site and the addition of new investors have left the church waiting three years while services are held in a Lexington Avenue storefront. The 50-foot-wide lot the church sits on and the adjoining 24-foot-wide parsonage are slated to be replaced with a 30-unit market-rate apartment building including a sanctuary and a residence for the pastor. Developer Guido Subotovsky said construction will start this summer.

Subotovsky also is nearing completion of an 11-story luxury condo tower and a new sanctuary at the site of the St. Luke's Baptist Church at Morningside Avenue and West 123rd Street.

"Churches are not typically in the real estate business," he said. "You have to be sensitive to the fact that it is not just financial; it's emotional for the church. And they only have one shot at it."

### **Growing pains**

After the sanctuary ceiling fell at the Metropolitan Community United Methodist Church on East 126th Street, trustees agreed to sell the property to save the church. But some parishioners and trustees said the pastor, the Rev. Richard Hayes, has gone far beyond what they agreed to, applying for a permit to tear down the sanctuary and parish house and replace them with a new building for worship and the church's social programs. The developer, Subotovsky, plans to build apartments on the church site.

Neighbors have joined church members in seeking to halt the demolition. They say the church, built in 1871, has valuable air rights and property surrounding it that could be sold and developed to save the original structure.

But Hayes, who is a professor at Hofstra University's business school, said the congregation approved the sale, noting it would cost \$7 million to \$10 million to fix the church buildings, where maintenance has been deferred for more than half a century. "Is it good stewardship to pour millions of dollars into a building?" he asked.

Besides, Hayes said, the congregation is too small to support such a large house of worship. Only tearing it down will allow the church to continue its mission. "The goal is to build a new facility that enables us to do new and enhanced ministries," he said.

Adams, the historian and preservation advocate, has been organizing parishioners opposed to tearing down the church. His solution is for the city to designate churches as landmarks and then allow them to sell air rights to more than just immediate neighbors. That formula was used in the recent Midtown East rezoning and in 1998, when Broadway theaters were allowed to transfer air rights to nearby office-tower projects.

"I don't think I'm a magician who can change people's hearts from being tempted by love of money," Adams said. "But I hope I can change the dynamic, where it's love of money from another source—and not so destructive."

Back at New Covenant, Harper said he doesn't believe he can save the church's building, but he is sanguine about saving its mission. He'd like to lease the land under the church to a developer of affordable housing who would build rental apartments, ground-floor commercial space and a sanctuary for about 300 worshipers. That would guarantee the church remains active in Harlem, even as gentrification pushes out many longtime residents.

"Things are already in motion for Harlem to change," he said. "You can't hold it back."

Inline Play

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**Source URL:** <https://www.crainsnewyork.com/features/houses-worship-grappling-harlems-development-boom>

## **Goldstein Hall PLLC Secures Major Victory for Episcopal Churches across New York**

### *NYS Supreme Court Agrees It Must Respect Diocesan Hierarchy in Decisions about Episcopal Church Property*

**New York, NY** – October 18, 2019 – Goldstein Hall PLLC successfully secured a motion for summary judgment on behalf of St. James Episcopal Church and a major victory for episcopal churches across New York.

2520 Jerome LLC, represented by Herrick Feinstein LLC, sought to force the sale of Episcopal Church-owned property despite the Bishop and Standing Committee rejecting the contract for sale.

However, the Hon. Judge Ruben Franco of the Supreme Court State of New York Bronx County agreed with St. James Episcopal Church that the Court must respect Diocesan hierarchy with respect to decisions made regarding Episcopal Church property.

Specifically, the Court agreed that an individual Episcopalian parish “does not own [its] property; it is held in trust for the benefit of the Episcopal Diocese,” and, as a result, the “court cannot substitute its judgment for that of the Diocese Canons, the Episcopal Church Canons and the Guidelines.”

This case underlined that that “although this court has the power to direct specific performance in an appropriate case ... the judiciary may not interfere in disputes concerning matters of religious doctrine and practice,” thereby agreeing that—in the specific dispute involving the Episcopal Church—the sale of a parish’s property is an ecclesiastical matter to be decided by the Diocese and not the State.

“We are thrilled to see the Court respect religious hierarchies and their role in making decisions about church property, and we hope that future disputes involving the Episcopal Church are avoided as result of this clear-eyed decision,” said Brian J. Markowitz, partner and head of Goldstein Hall’s Litigation practice.

St. James Episcopal Church’s defense team in *2520 Jerome LLC vs. The Corporation of the Rector, Churchwardens, and Vestrymen of Saint James Episcopal Church* consists of Goldstein Hall Partner Brian J. Markowitz and Associate Daniel Goldenberg.

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#### **About Goldstein Hall PLLC**

Goldstein Hall PLLC is a full-service real estate law firm with a concentration in affordable housing and community development. A certified Benefit Corporation (B-Corp.), we are committed to empowering our clients to build strong organizations and communities by forming smart, focused and responsive partnerships between our clients and our attorneys. To learn more, visit [www.goldsteinhall.com](http://www.goldsteinhall.com).

# New York Land Opportunity Program

## Technical Assistance

The New York Land Opportunity Program (NYLOP) is a first-of-its kind LISC NYC program that helps mission-driven organizations with limited real estate experience to partner with experienced developers to develop new affordable housing on their underutilized land. Five churches were selected for the first pilot cohort through a competitive application process in August 2017 ([read the coverage in the \*Wall Street Journal\*](#)):

- **Community Church** in Murray Hill, Manhattan
- **Shiloh Church of Christ** in Harlem, Manhattan
- **St. John's Global Ministry of the Kingdom**, near downtown Jamaica, Queens
- **St. Luke's Episcopal Church**, in Williamsbridge, Bronx
- **Wakefield Grace United Methodist Church** in Wakefield, Bronx

The cohort received extensive technical assistance from LISC NYC, including pro-bono architectural, legal, and financial modeling assistance. Upon receiving nine months of intensive support, four churches finalized and issued Request for Proposals (RFPs) to identify experienced developer partners. Each church received multiple responses to their RFP and to date, three churches have signed agreements with their chosen developer partner.

Through NYLOP, these churches will remain in their communities, while working with their developer partners to build hundreds of new units of affordable housing and community space so that they can continue offering programs that address the needs of youth, seniors and those struggling with hunger, poverty and homelessness in their neighborhoods.



## **Workshops:**

In fall/winter 2016, LISC NYC offered four NYLOP technical assistance workshops in Brooklyn, Queens, Bronx and Manhattan, reaching over 300 participants. These workshops covered: (1) what it takes to develop affordable housing through a joint venture partnership; (2) case studies of successful joint venture partnerships to develop affordable housing; (3) resources for development and long-term stewardship of affordable housing; and (4) an overview of LISC NYC's NYLOP technical assistance program.

[Click here to view content from the NYLOP workshops that were offered in fall 2016/ winter 2017.](#)

## **Thanks to our Partners!**

NYLOP is a LISC NYC partnership with the **NYC Department of Housing Preservation and Development** and the **Mayor's Community Affairs Unit**.

This program is made possible through the generous support of **Booth Ferris Foundation**, along with **BankUnited, Deutsche Bank, M&T Bank, and Santander Bank**.

Special thanks to our technical assistance partners: **Goldstein Hall** and **Edelman Sultan Knox Wood / Architects**.

## **NYLOP In the News:**

- Religious leaders try to keep the faith when developing church properties ([Crain's](#))
- New York Churches to Get Help in Navigating Real-Estate Development ([The Wall Street Journal](#))

- Blessed Homes: Old churches and underutilized properties finding new use as affordable housing ([Affordable Housing Finance Magazine](#))
- Housing on Holy Land ([NY Daily News](#))
- Churches and non-profits get help navigating real estate deals ([NY1 News](#))
- LISC will partner with nonprofits to help them develop affordable housing ([Curbed](#))
- Churches to develop properties for affordable housing ([News 12](#))
- LISC NYC interview on faith-based development ([BronxTalk](#))
- Nonprofit helps 5 churches develop affordable housing, community spaces ([Metro](#))
- Jamaica church among those selected to participate in program to develop affordable housing ([Ons.com](#))
- Churches to Get Help Building Affordable *Housing* ([City Land](#))

**For more information:**

Please contact LISC Senior Community Development Officer Grace Chung at [gchung@lisc.org](mailto:gchung@lisc.org).

# IDENTIFYING FAIR HOUSING OBSTACLES

## FAIR HOUSING LAWS

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The Fair Housing laws establish the right of all persons to access housing devoid of discriminatory practices related to status. Title VIII of the Civil Rights Act of 1968 along with the Fair Housing Amendments of 1988, (together known as the Fair Housing Act), New York State Human Rights Law (NYS Executive Law Article 15, Section 296 et. seq.), and Westchester County Local Law No. 4-2008 establish protected classes under those laws.

- Title VI of the Civil Rights Act of 1964 - prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.
- Title VIII of the Civil Rights Act of 1968 along with the Fair Housing Amendments of 1988, (together known as the Fair Housing Act).

Under the combined Federal, State, and local Westchester laws, the following classes are considered protected:

- Race
- Religion
- Ethnicity
- National Origin
- Gender
- Age
- Source of Income
- Disability
- Marital Status
- Sexual Orientation
- Being a family with children under 18 years of age
- Citizenship or alienage status
- Victims of domestic violence, sexual abuse or stalking

While affordable housing is not specifically identified in the Civil Rights Acts listed above, affordable Housing becomes a Fair Housing issue when it is shown that a lack of Affordable Housing is preventing integration- or that the concentration of Affordable Housing is encouraging segregation or when protected classes are shown to be disparately impacted by the lack/concentration of affordable housing.

## ZONING STRATEGIES FOR AFFORDABLE HOUSING

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### **Traditional Zoning Techniques**

Historically, local governments used their state-delegated zoning authority to create zoning districts that limited permitted uses to one or only a few choices, such as single family, multifamily, commercial, office, retail, manufacturing, and industrial. In most communities, the majority of the land was zoned for single family housing on individual lots of various sizes, creating neighborhoods from which other land uses, like multi-family housing, were excluded. In addition, communities were developed based on market demands which dictated not only the type of development but the costs for land as well as the sales/rental prices.

Slowly, zoning practice changed gradually allowing more uses in some zones, leading municipalities to adopt a variety of innovative zoning techniques to provide for different development types and housing for a variety of incomes. Described below are the various zoning techniques being employed within many communities to further the development of different housing types as well as affordable dwelling units.

### **Mandatory Inclusionary Zoning Ordinance**

See enclosed Model Inclusionary Zoning Law Provisions

#### Local Examples of Mandatory Zoning

The Village of Scarsdale's mandatory affordable housing regulations requires that within all residential developments over five units created by subdivision or site plan approval, the number of required Fair and Affordable Housing (FAH) units would be calculated according to the schedule below:

<b><u>Development Size (including FAH units)</u></b>	<b><u>Required FAH Units</u></b>
5-9 multifamily units	1
10-14 single or multifamily units	1
15-24 single or multifamily units	2
25-34 single or multifamily units	3
35-44 single or multifamily units	4

Larchmont also has a mandatory inclusionary affordable housing zoning ordinance. The required affordable housing unit component applies to all residential developments of 10 or more units, including developments in single-family districts as well as multi-family districts. In residential developments of five to nine units, at least one FAH unit is required.

The Town of Mamaroneck's mandatory inclusionary affordable housing zoning regulations applies to all residential developments of 5 or more units, including developments in single-family districts as well as multi-family districts. In residential developments of five to fourteen units, at least one FAH unit is required.

The City of White Plains recently adopted mandatory inclusionary zoning which applies to all multi-family and mixed use developments of 10 units or more including conversions of non-residential to residential uses, and substantial renovations of vacant residential structures. Developments with 10-14 total units require 1 affordable unit at 60% average median income (AMI). Developments with 15 or more units require 12% of those units at 80% AMI and the remaining 8% divided as follows: 80% of those units designated for 60% AMI and 20% designated for 50% AMI.

### **Other Innovative Zoning Techniques**

Local governments in New York have broad authority to create new zoning and regulatory standards to promote "the most appropriate use of the land." The laws that delegate them the power to regulate land use are to be broadly interpreted. The courts have generously interpreted statutory law to give local governments the power to invent regulatory solutions for new and critical land use problems.

#### *Bonus or Incentive Zoning Laws:*

Bonus density zoning, for example, was first used in the Town of Lewisboro, in the early 1970s. The Town board gave a developer additional dwelling units for his market-rate project to incentivize him to provide some affordable units. There was no express legal authority to do this. The town used its implied authority to create this zoning technique and apply it to a single project. Later, the state legislature amended town, village, and city law to make it clear that all local governments can use density bonuses to create affordable housing.

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State law allows for a community to provide density bonuses or incentives that adjust the permissible population density, area, height, open space, use, or other provisions of a zoning local law for a specific purpose authorized by the municipality. The purpose of the system of incentive, or bonus, zoning is meant to provide an amenity or benefit that advances the municipality's specific physical, cultural and social policies. This includes housing for low to moderate income populations. This technique can be used to incentivize large-scale developers to provide a percentage of their projects as affordable homes, or to provide incentives for smaller-scale developments to provide any type of affordability that the community wishes to encourage.

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<sup>1</sup> N.Y. TOWN LAW § 261-b (McKinney 2004); N.Y. GEN. CITY LAW § 81-d (McKinney 2004); N.Y. VILLAGE LAW § 7-703 (McKinney 2004).

### Local Examples of Incentive/Bonus Zoning

The Town of Lewisboro's affordable housing regulations is an example of a voluntary inclusionary bonus zoning. It provides developers of housing projects more density in their multi-family zoning districts if they chose to build affordable housing as a percentage of the development.

Village of Ossining's affordable housing law is a mandatory inclusionary bonus zoning law. It requires a developer of 6 or more units in all zoning districts to provide 10% affordable housing in exchange for a 10% density bonus. It also provides an additional 5% density for units designated for 60% AMI.

The Village of Tarrytown's law is a mandatory inclusionary bonus zoning law and requires all residential developments of 10 or more units created by subdivision or site plan, 10% of the total number of units must be created as affordable units. In residential developments of five to nine units, at least one affordable unit shall be created or the developer must make a payment in-lieu of providing the unit. The Village's law allows for a density bonus or waiver of use, area, volume, bulk, land and building requirements as authorized by State law.

In the Village of Mamaroneck several zoning districts encourage the creation of below-market rate housing through the use of a floor area bonus, including the RM-1, RM-2, RM-3, C-1, and C-2. The floor area ratio (FAR) is the relationship between the total amount of usable floor area that a building has, or has been permitted for the building, and the total area of the lot on which the building stands. This ratio is determined by dividing the total, or gross, floor area of the building by the gross area of the lot. The regulations for the below-market rate housing, allowing for bonus provisions to increase the number of units or floor space devoted to housing are according to the following schedule:

<b><u>Zoning District</u></b>	<b><u>Bonus</u></b>
C-1	0.2 FAR bonus
C-2	0.5 FAR bonus
RM-1	20% unit bonus
RM-2	20% unit bonus
RM-3	20% unit bonus

For each additional market-rate unit produced because of the bonus provision, one comparable below-market-rate unit must be provided. In all cases, 50% of the total number of additional units provided by these bonus provisions must be reserved for below-market-rate families, defined as families whose aggregate annual income does not exceed 80% of the actual Westchester County median income.

*Clustered Subdivisions:* State law allows local legislative bodies to encourage or require developers to cluster lots or the homes permitted under the existing zoning law on a small portion of the site to encourage open space preservation on the part of the parcel. Local cluster laws can allow duplexes, townhouses, or garden apartments on lots located in single-family zones. These types of housing can be built more affordably than large-lot single family homes because the per unit cost of water, sewer, roads, sidewalks, etc. are reduced.

#### Local Examples of Clustered Subdivisions

Many communities have clustered subdivisions already within their zoning codes. These zoning regulations are typically found as a Planned Residential Development “PRD” or a Planned Unit Development “PUD”. Communities with these provisions include the Village of Mamaroneck, Village of Portchester, Village of Mount Kisco, and the Town of Greenburgh.

*Special Use Permits:* Various types of affordable housing can be allowed by special permits where increased densities or different types of development are desired. The local legislative body amends the zoning to allow one or more types of affordable homes to be built and specifies, in that amendment, the performance standards that such housing must meet. The planning board can be given the authority to issue such special permits, or that authority can be retained by another legislative body. This practice has been followed for decades by municipalities as a method of allowing desired land uses to be added to districts where those uses can be made compatible with their surroundings.

- A special permit could be created to allow individual parcel owners to work with a developer and propose a scattered site, affordable housing program for their parcels.
- A special permit could be created for smaller affordable housing projects that need and can support requests for parking relief, set back requirements, height limits, or any other zoning requirement that inhibits the development of an appropriately-scaled affordable housing development.
- It could also be used to permit larger affordable housing projects with possibly greater impact on surrounding areas and include the performance standards that projects would have to meet to win approval. This latter permit could include permission to construct mixed-use projects appropriate, for example, in existing commercial districts.

#### Local Examples of Special Permits

The Town of Eastchester allows for the development of senior housing with a requirement that 15% of the total units must be affordable through a special permit process in its General Business district.

The Town of New Castle allows for a special permit process in four single family residential districts (R-2A, R-1A, R-1/2A, R-1/4A) to permit multi-family use with a minimum lot size that is 100 times the minimum lot size for a single-family dwelling.

The basic density allowance for multi-family use within the R-2A, R-1A, and R-1/2A, as follows:

**Minimum Gross Lot Area Requirement Per Dwelling Unit by Zoning District (square feet)**

<b>Dwelling Unit Size</b>	<b>R-1/2A</b>	<b>R-1A</b>	<b>R-2A</b>
Efficiency (studio) apartment	7,500	15,000	30,000
1-bedroom apartment	11,250	22,500	45,000
2-bedroom apartment	15,000	30,000	60,000
3-bedroom apartment	18,750	37,500	75,000
4-bedroom apartment	22,500	45,000	90,000
1-family detached dwelling	22,500	45,000	90,000

Various density bonuses are permitted beyond the basic density for features such as senior citizen apartments, related off-site infrastructure improvements, recreation facilities, land dedication or additional affordable housing units. For example, a 200-acre lot in the R-2A district could yield a total of 252 one-bedroom units, including 58 affordable units, assuming 30% of the base density lots are affordable.

Pound Ridge also developed a multi-family special permit process. In the Town's three residential districts (R-3A, R-2A, and R-1A), multi-family use is allowed with the granting of a special permit from the Town Board. The Town Board may allow additional units in these districts if at least 15% of all units in the development are affordable.

*Overlay/Floating Zones:* Affordable housing developments can be permitted by amending the zoning code to provide for a special affordable housing use zone which is then applied to designated parcels upon application of their owners or by action of the local legislature, when opportunities to develop affordable housing appear. This second step in the overlay/floating zoning process results in the amendment of the zoning map to redistrict the subject parcels and permit the new use.<sup>2</sup>

- This technique—the overlay/floating zone—could be used, for example, to allow duplexes to be built in any single family district when the developer commits to making one of the units an affordable rental unit.
- It could also be used to allow a larger scale garden apartment complex to be built in a single-family zone if the developer owns enough land to buffer the complex from the neighboring homes and agrees to landscaping and other amenities.

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<sup>2</sup> In *Rodgers v Village of Tarrytown* [N.Y. 1951] 96 N.E.2d 731, municipalities in New York learned that they have the authority to create novel zoning devices such as the floating zone to achieve the most appropriate use of land.



### Local Examples of Overlay/Floating Zones

The Village of Sleepy Hollow adopted an Affordable Senior Housing zoning overlay, which allows by special permit senior affordable housing within the R-5, R-6, and C-2 zoning districts. The overlay provides for 100% of the units to be affordable.

The Town of Somers has three Multifamily Residence districts (MFR H, MFR-BP, and MFR-DH) that are floating zones which are eligible to be applied to lots in specific hamlet areas with Town Board approval. The MFR-BP district was added to the Town zoning map in 2015 and the MFR-DH district was adopted in 2016. The MFR-BP district is approximately 16 acres and was mapped for Hidden Meadows, a development of 45 townhomes and 8 one-bedroom apartments which is currently under construction. The MFR-DH district was applied to one approximately 26-acre site and the Town is currently reviewing a plan for a 65-unit townhome development for that site. The Town also has a Designed Residential Development (DRD) overlay district which permits multifamily on 500 or more acres in the R120, R80, and R40 districts with Town Board approval.

The Village of Mamaroneck has a Transit Oriented Development overlay where it overlay allows for an overall expansion of the development for the inclusion of below-market rate units, without the requirement of a special permit. In addition, the zoning code outlines separate regulations for floor area bonuses, allowing up to a maximum floor area ratio of 1.5 provided that the development includes additional amenities or monetary contributions, such as a full-service grocery store, provision of green building elements, and/or payment into a Neighborhood Stabilization Fund.

*Generic Environmental Impact Statements:* When any of these techniques is used to encourage affordable housing, a generic environmental impact statement can be prepared that identifies negative environmental impacts and provides for their mitigation.<sup>3</sup> When this happens, it is possible that developers of individual projects will not be required to prepare lengthy and costly environmental impact studies. This alone can provide a powerful incentive for developers to concentrate their projects in designated development areas, because it can expedite the development review process significantly.

### Local Examples of GEIS

Through the GEIS process, the City of New Rochelle, approved a new zoning plan covering 279 acres in the City's downtown. The zoning creates the possibility for new development of up to 12 million square feet of new construction, including 6,370 residential units. Having determined and analyzed the impacts in the GEIS, it allows for an extremely streamlined approval process based on development

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<sup>3</sup> See N.Y. COMP. CODES R. & REGS. Tit. 6, § 617.10 (2004).

that was contemplated throughout the planning and GEIS process to take place within the 279 acres.

*Accessory Apartments and ECHO Cottages:* Local governments may amend the provisions of their single-family zoning districts to allow existing home owners to add a subordinate independent living unit either within the existing footprint (accessory apartments) or as a free standing, subordinate cottage on site.

#### Local Examples of Accessory Apartments

Towns of Lewisboro, Pound Ridge, Ossining, and New Castle all have accessory apartment provisions in their zoning code. The provisions all apply to single family districts within their communities.

*Mixed Use Zoning:* For a while, the trend in zoning was to separate residential uses from commercial uses. However, there has been a reversal of this trend to allow for residential uses within commercial districts. Besides providing a more vibrant and walkable community, allowing residential uses within a commercial district, also provides an opportunity to create smaller more affordable apartments than what would be built in residential districts. This scenario also helps those that have limited transportation options to obtain goods and other services by being able to walk.

#### Local Examples of Mixed Use Zoning

The Village of Croton-on-Hudson developed the Harmon Overlay Mixed Use District, a commercial gateway district near the Metro-North Railroad station, to permit mixed-use buildings with an additional story and floor area ratio.

The Town of Lewisboro allows mixed use zoning within the CC-20, SU, RB, and GB Districts. The zoning allows dwelling units on floors above permitted principal nonresidential buildings; and provides a bonus density of 50% when the applicant proposes at least 1/3 of the additional density units as middle income or FAH units.

The City of Peekskill also provides mixed use zoning in a few of its commercial districts. Zones C-2, C-3, and C-4 permit residences above a ground floor commercial or retail use. Each mixed-use district has different objectives and varies in types of residential units, density, and heights.

FEATURED STORIES

# U.S. Faith Communities Are Tackling the Housing Crisis

Churches, mosques, and synagogues across the country are trying to develop low-cost housing



Charlotte West [Follow](#)  
Jan 8 · 6 min read ★

The ribbon-cutting ceremony for Harvest Homes with Pastor Michael Eaddy, Mayor Emanuel, NHP Foundation CEO Dick Burns, and various community members. Courtesy of NHP Foundation. Photo: Roosevelt Holloman, Essential Photography.



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**F**ast-growing metropolises such as Chicago, Denver, and Seattle are all feeling the affordable housing crunch. As large property holders, communities of faith are helping to fill the gap at a time when land for affordable housing development comes at a premium in cities across the country.

When Sarah Anderson moved out of her mother's house and into her first apartment on Chicago's West Side, she turned to her congregation, the People's Church of the Harvest, for help. Anderson's new apartment is one of 36 units that make up Harvest Homes, which was the first new housing development built in the neighborhood in the past 15 years.

Harvest Homes offers two-, three-, and four-bedroom apartments to families with annual household incomes between \$22,000 and \$60,000. It was developed in a partnership between not-for-profit real estate organization NHP Foundation and the People's Community Development Association of Chicago, the independent community development arm of the People's Church.

"I was pastor in a community that had not had new affordable housing, in a sizable quantity, in some time. So there was a great need for it. As a matter of responding to that need, we began to pursue an affordable housing mission," says Pastor Michael Eaddy.



Pastor Michael Eaddy's church. Photos by Roosevelt Holloman/Essential Photography.

Eaddy's congregation acquired 32 city lots through the 1990s and initially constructed its church building on eight of them in 2000. In 2011, the church began its first affordable housing development on the remaining land; the first residents moved into Harvest Homes in 2016. Through its community development association, the church also offers other tenants and community members services such as an after-school program, financial literacy classes, first-time homebuyer education, and food distribution programs.

While Harvest Homes' apartments are available to any qualified community member, Anderson said she found out about the program through the church. Her apartment is within walking distance of both the church and her eight-year-old daughter Navayah's school. After living with family members, she's happy to have her own home. "I'm the first resident to be living here in this apartment that's been built from the ground up," Anderson says. "It's a very good feeling to be in your own space after living with a lot [of other] people. I love where I'm living."

Jamie Smarr, who oversees joint-venture partnerships between the NHP foundation and other nonprofit organizations, says that communities of faith have a long history in the affordable housing space. In the 1960s, the U.S. Department of Housing and Urban Development encouraged the development of senior housing through the 202 Program. Many churches, by organizing as a nonprofit, oversaw the development of affordable senior housing projects until the program was phased out in the late 1980s. Some existing senior housing stock came out of the 202 Program.

"Recently, a lot more faith-based organizations are beginning to rekindle this idea," Smarr says.

He says many churches are facing declining attendance and are looking for new ways to engage with the local community. According to Smarr, some churches, mosques, and synagogues are repurposing unused land, and others are razing existing buildings and rebuilding new structures that include a church, with the rest dedicated to housing.

Nathan Hunt, director of economic justice at the Interfaith Alliance of Colorado, adds that many churches want to be part of solutions that address the root causes of problems, such as a lack of affordable housing, in their neighborhoods. "Communities of faith have as part of their mission and identity a call to serve the community, and that's often framed in terms of loving their neighbors," he says.

Faith communities of all religious backgrounds often look at their land as an asset that they have been given to steward. According to Hunt, land costs are often around 20 percent of an affordable housing deal. "Congregations can play a big role in helping to take a good chunk of that cost out of the process or just make sure that land falls into the hands of responsible developers who are going to build equity and inclusion into their properties," he says.

There are several different models that faith-based organizations can pursue, such as tiny home villages, permanent supportive housing, permanent affordable housing for low-income families, and owner-occupied homes, which often involve community land trusts. Some churches have converted existing buildings into housing, while others will sell their property to developers of affordable housing at below-market rates.

In Denver, Hunt has worked with dozens of churches that have expressed interest in providing their land for affordable housing. While there are no national statistics available, the Interfaith Alliance estimates that there are nearly 5,000 acres of unused church-owned land in the greater Denver metropolitan area.

In neighboring Aurora, the Second Chance Center, a nonprofit working with formerly incarcerated individuals, has partnered with Elevation Christian Church to build a 50-unit permanent supported housing project, which will also provide additional services such as mental health care. The project will provide housing to former prisoners,



Harvest Homes in Chicago (left) and Arbora Court in Seattle (right). Photos courtesy of Jim Scholz/NHP Foundation (left) and Bellwether Housing.

disabled individuals, and people who have experienced chronic homelessness. After a protracted battle with local authorities over zoning issues, the partners will break ground in January.

Seattle is another city experiencing growing pains where the faith community has been actively involved in addressing the city's affordable housing shortage. The city's first tiny home village is hosted on church land, and several other congregations have dedicated land to affordable housing options.

University Christian Church (UCC), for instance, sold a plot in Seattle's University District to Bellwether Housing, a nonprofit developer, at below-market rates with the stipulation that it be dedicated to low-income housing. Bellwether purchased the land, which was appraised at \$6.8 million in 2013, from UCC for \$4.8 million. Arbora Court, a seven-story, 133-unit building, moved in its first tenants in April 2018. Forty units are dedicated to people coming out of homelessness, and the remaining units serve households earning less than \$60,000 for a family of four.



Photo courtesy of Bellwether Housing

Lisa Smith recently moved into Arbora Court on a Section 8 voucher, which subsidizes rent for low-income families. Because her spouse has a criminal record, they had previously been unable to rent from Bellwether. But in 2017, Seattle became the first city in the United States to ban the use of criminal history when considering rental applications. Access to affordable housing has helped Smith, who was formerly homeless, maintain sobriety and go back to school. "We're on the seventh floor. We have a great view. And there's a community here with people here interacting, and the kids are playing together," she says.

While there is no panacea for the affordable housing crisis facing cities across the country, faith-based organizations as large landholders, as well as engaged neighbors, have proven to be reliable partners for developers and municipal governments. The People's Church of the Harvest in Chicago is in the process of applying for low-income tax credits for its latest affordable housing project, which it hopes to launch next year.

Pastor Eaddy says the church's track record with Harvest Homes has given them a chance to both meet a pressing need in their community and influence the City of Chicago's five-year housing plan. "We're constantly being asked to come to the table, because the city sees that they can't do it alone. They know that they must work with partners to make it happen," he says.

443 claps





WRITTEN BY

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## NEWS

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## AFFORDABLE HOUSING FINANCE

## 6 Must-Haves for Faith-Based Development Partnerships

The NHP Foundation's Richard Burns outlines the keys for success.

By [Richard F. Burns](#)

Religious institutions are among the country's largest owners of useable land. But simply owning land doesn't in itself qualify a church or synagogue to enter into an agreement to build housing. There are several factors developers and investors should look at before they take a "leap of faith."



Richard F. Burns

The NHP Foundation (NHFP) has successfully completed two such deals, Roundtree Residences in Washington, D.C., in 2014 and Harvest Homes Apartments, a newly constructed 36-unit family development, in Chicago's East Garfield Park neighborhood in 2017. Harvest Homes is the realization of a plan initiated by the People's Community Development Association of Chicago in partnership with NHFP as part of a low-income housing tax credit (LIHTC) deal. Other faith-based development partnerships are in the planning stages.

There are six must-haves for for strong faith-based housing.

### 1. An independent, accurate property valuation

You have found a faith-based organization with property that appears suitable for building housing. Before any partner enters into a development deal, they should engage the services of an independent appraiser to determine the value of the property and a zoning expert to determine the buildable square footage, including commercial space (a community center or church expansion) as well as air rights. Faith-based organizations will want to realize the full value of their assets, and appraisals need to be part of the due diligence for any real estate transaction. In our experience, we also recommend each party retain its own counsel to assess zoning regulations and determine what is most appropriate to be built at a faith-based site. Amassing this data ahead of time puts both partners in a good position to negotiate a fair and equitable deal.

### 2. Experienced and trustworthy industry experts

Now is the time for a developer to work with their religious partner and assemble a team of good-faith actors who will respect the religious institution and make sure the deal is a sound one for the developer. The first step for some is to retain an experienced development consultant who can size up the faith-based organization's needs and bring together the necessary expertise, including:

- **Legal counsel** trained in municipal and state real estate law and with a track record of previous deals.
- **Accountant** with high-level experience in tax law pertinent to faith-based housing.
- **Builder** suited to the project. Whether a congregation is land rich and cash poor or very well capitalized, the builder can budget and plan accordingly to realize the partners' vision.

· **Financial partner** with a strong background in affordable housing. Experienced developers have a host of healthy options for financial support, including banks with strong community-lending programs to service affordable or market-rate housing deals.

### 3. Clear understanding of state and municipal assistance options

State and municipal agencies offer guidance and help safeguard the investment. Developers can leverage existing relationships with state and local entities to facilitate the process for faith-based groups. As of today, few jurisdictions offer the resources of the New York Governor's Office of Faith-Based Community Development Services to provide navigation through the state-funding process, but sound advice can be obtained from city housing authorities and entities such as departments of housing preservation and development. These agencies provide guidance as well as funding.

### 4. Knowledge of the potential pitfalls

**Deficient due diligence:** Research and know the property and the community inside out. No one wants a surprise as construction is about to begin.

**Short-term thinking:** A project has to have longevity in order to succeed. The most well-developed projects have an appointed committee of responsible individuals, including but not solely the top church or synagogue leader who may not be with the project from start to finish.

**Changing tax law:** Tax code is extremely complicated, and it pays to stay up-to-date on changes such as avoiding the creation of UBTI (unrelated business taxable income). There are tripwires related to some very complicated rules about what nonprofits can and can't do in order to make money. As well, the current 9% and 4% LIHTC qualifications require constant vigilance to be certain that projects qualify.

### 5. Communication with all parties

The importance of buy-in from a congregation to undertake a housing initiative is critical to its success. If affordable housing is being built, this includes helping congregants understand housing lotteries and other forces at work that will determine who will live in the units.

There are other groups to bring into the process as well. Developers need to work closely with faith-based organizations to include community voices in the discussion through city council and other meetings. Some neighborhoods will likely protest if a Civil War-era church is facing demolition, for example.

Some communities also view new construction as unwanted gentrification so partners need to paint a clear picture of what the construction will do to the neighborhood character and how it aims to strike a healthy balance. As well, communities need to be made aware of the day-to-day disruption that construction may bring and will want to hear what the team will do to mitigate that.

Another constituency that must be factored in is the governing body of the religious institution, like the Catholic Diocese, for example. Those seeking to build affordable housing or to sell off their property must have approval from those in authority, if applicable. As well, in New York and other states, the attorney general's office must approve all faith-based deals.

Partnerships seeking to build affordable or market-rate housing should also be in touch with their local municipal department of development. These departments can help churches and synagogues with usages and rezoning often necessary to realize their vision.

### 6. A realistic and beneficial vision for the property

Often there have been changes in law or zoning in the years since a church began the path toward building. These changes can affect a final decision.

For some, the decision to sell their land makes the most sense. For others, a fully affordable complex best meets their needs. And for still others, a hybrid will work. This may be a new mixed-use development, including condominiums and retail space, as well as market-rate units all within the same complex. A good development partner will help a congregation answer questions like: Will congregants be able to live in the units? How will the tax structure benefit or harm the co-owners? A faith leader may start the process with one vision and come to realize a very different and hopefully most beneficial one, at the end.



The nation's religious institutions have a unique opportunity to combine their inherent mission to provide for others along with property ownership, ultimately producing housing that will make a difference in people's lives. And thoughtful, experienced developers can turn these opportunities into reality.

The best faith-based housing outcomes are borne of knowledgeable, respectful, and experienced teams. Successfully assembling these joint ventures is the key to a smooth, productive process for religious institutions and their constituencies moving forward.

It is our hope that developers and investors will seek out ventures with churches, mosques, synagogues, and other faith-based organizations to create successful housing through equitable partnerships that benefit the organizations, the community, and society at large.


## ABOUT THE AUTHOR



**Richard F. Burns**

Richard Burns is president and CEO of The NHP Foundation, a leading nonprofit real estate organization dedicated to preserving and creating service-enriched affordable housing.

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