

# Building Codes Get Smarter

by Edward T. McMahon

In his book, *The Death of Common Sense*, Philip K. Howard tells the story of Nobel Prize Winner, Mother Teresa's effort in 1989 to restore two abandoned buildings in the South Bronx as a shelter for homeless men. Mayor Ed Koch had offered to sell the abandoned buildings for one dollar each and Mother Teresa's order of nuns had set aside \$500,000 for the restoration. The proposed homeless shelter would be (literally) a godsend for the neighborhood, but as it turned out, charity was no match for the law.

Despite the fact that the nuns had taken a vow of poverty and always washed dishes and clothing by hand, they were told New York City's building code required clothes washers and dishwashers. Even more significantly, they were also told each building would need an elevator – adding \$200,000 to the renovation costs.

The nuns politely pointed out that they couldn't afford the elevators, and that walking up a flight of stairs was not, after all, a big problem. What's more, there were nearly one million buildings in New York City without elevators – and homeless people probably wouldn't mind living in almost any of them. The nuns were told there could be no exceptions. The law could not be waived even if the requirements made no sense.

After spending almost two years struggling to get the homeless shelter underway, the Sisters of Charity gave up. Not unreasonably, they concluded that their limited funds would be better spent elsewhere.

No one deliberately set out to foil Mother Teresa's plan for the homeless shelter. It was the law. Like most regulations, New York City's building code was well intended, but in some ways it made the perfect the enemy of the good. The inflexible requirements of the building

code had dictated either a model home or no home at all.

Andres Duany, the Miami architect who helped found the Congress for New Urbanism says stories like this result from the "tyranny of specialization." Each legal requirement – building codes, subdivision regulations, safety standards, environmental regulations – is looked at independently without regard to the whole picture or to common sense.

"WHEN WELL-MEANING REGULATIONS AND REQUIREMENTS ACTUALLY BECOME OBSTACLES TO GOOD PROJECTS, IT IS IMPERATIVE THAT WE TAKE A STEP BACK AND CHANGE THE RULES THAT NEED TO BE CHANGED!"

— Maryland Governor  
Parris Glendening, June 12, 2000

Local codes and regulations often act as impediments to smart growth, urban revitalization, and livable communities. Developers who would protect the environment or restore a historic building are often stymied by inflexible regulations.

Suppose you were interested in opening a bookstore, an antique shop, or other small business in a vacant downtown building. The typical building code would require you to bring all three floors of the building up to current code, even if you only intended to occupy the first floor of the building. The added expense of rehabilitating three floors instead of just one would discourage most investors.

Thankfully, this "by the book" approach to development is slowly changing. Several states, including Indiana, New Jersey, and Maryland have adopted

legislation designed to encourage the rehabilitation and reuse of existing buildings. While these laws differ in their specifics, they all share a recognition that while older buildings need to meet standards for safety and accessibility (just as new buildings do), they can be evaluated and regulated differently.

Before 1988, the Indiana Building Code presented a formidable challenge to the rehabilitation and reuse of historic buildings. Few old buildings could withstand the visual and financial impact of enclosed steel fire stairs, sprinkler systems, or other modern code requirements.

In 1988, however, Indiana adopted the Indiana Building Rehabilitation Standard (IBRS). While not widely known, this building code gave new life to hundreds of historic buildings throughout Indiana. The IBRS is a performance-based method for evaluating an existing building to ensure adequate fire and life safety without full compliance to the criteria for new construction. It gives developers the opportunity to work with fire marshals and other local officials to incorporate alternative ways of meeting safety standards into their project plans.

Likewise, the New Jersey Rehabilitation Subcode has reduced building rehabilitation costs by as much as 50 percent – generating a dramatic rise in historic preservation and downtown revitalization projects. In 1998, the first year of the new Subcode, historic rehabilitation projects totaled \$510 million, a 40 percent increase over the previous year. In 1999, rehabilitation totaled almost \$600 million, a 60 percent increase from 1997.

According to New Jersey newspaper editor Ben Forest, "Until the new rules went into effect, the costs, construction constraints, and unpredictable application of building standards were huge obstacles to upgrading old buildings." For builders and investors, the rehabilitation of a historic building was often fraught with

delays and financial risk. In New Jersey, state law required the entire building to be brought up to new building standards if the cost of the renovation exceeded 50 percent of the structure's value.

The new Subcode has abolished this 50 percent rule and introduced other changes that make the code more flexible and user friendly. Now older buildings being fixed up are not automatically required to meet all modern standards. For example, a property owner would no longer be required to remove all the transoms (small, hinged windows found above doors in many older buildings) if there were a sprinkler system. Jersey City construction official, Michael Reagan says, "This is an excellent new code. The old system penalized people for doing rehabilitation."

New Jersey's approach has received national attention. In 1999, Maryland – already known for its pioneering efforts to curb sprawl and protect open space – used the New Jersey Subcode as a model for its own "Smart Codes" legislation. Maryland Governor Parris Glendening, speaking at a Smart Codes conference noted that, "Smart growth can not work if people can not build, if people can not reuse, if people can not redevelop. Yes, our buildings must be safe, accessible, and fit the historic character of their surroundings, but some requirements are counterproductive."

According to National Trust for Historic Preservation policy analyst, Elizabeth Pianca, the Maryland code encourages rehabilitation and reuse of existing buildings in at least three ways:

- It integrates the ten codes that govern construction work on existing buildings into one document;
- It clearly separates rehabilitation requirements from those for new construction; and
- It sets up easy-to-understand, graduated-scale code requirements.

Unlike New Jersey, Maryland does not have a mandatory set of statewide codes. Each local jurisdiction adopts its own building, fire safety, and other codes which makes implementing the new code challenging. To address this

problem, Maryland offers incentives to counties that adopt the new model state code.

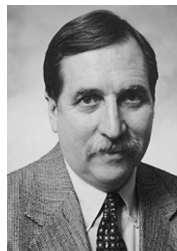
In addition to the states, a number of local governments are also changing their building codes to ease requirements for rehabilitating older structures. For example, Shawnee, Oklahoma recently adopted a new set of building codes modeled after the New Jersey subcode. City building inspector, Mike Cox said, "We have a lot of buildings in need of repair. This is an excellent tool for people to use because it relaxes requirements for existing structures built prior to 1987, taking into account the code that it was built under."

#### SUMMING UP:

Inflexible regulations are a huge impediment to better development. This is not to say that communities don't need zoning, building codes, subdivision regulations, or environmental regulations. Rather, it simply means that we need to take a more holistic, common sense approach to codes and regulations. According to legal philosopher Ronald Dworkin, "rules dictate results, come what may." On the other hand "principles allow us to think."

Communities wanting to foster conservation subdivisions, mixed-use development, or historic rehabilitation should review their codes and regulations to make sure they permit the kind of projects that reflect their community's principles. As a friend once said, "it is difficult to make chocolate cake with a recipe for beef stew." In other words, if our comprehensive plans call for one thing, but our codes and regulations require us to do something else, the end result will leave both builders and the community confused and frustrated. ♦

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## Handicapped Accessibility

Preserving older buildings that serve the public (such as theaters, restaurants, inns, retail shops, and office buildings) requires compliance with the federal Americans With Disabilities Act and with state regulations designed to ensure handicapped access. Both the federal law and state regulations include special provisions that often allow for alternative ways of meeting accessibility requirements in historic structures. These alternatives are designed to ensure that the historic character of the building is respected, while still providing for adequate handicapped access. For example, secondary entrances may be allowed in lieu of providing handicapped access at the principal entrance; short stretches of steeper access ramps may be acceptable; and a single public rest room may be provided. For more information, contact your state historic preservation office.

### Code Wars

As a growing number of states and communities have started to look at ways of achieving the goal of more cost-effective rehab of older buildings, a battle of sorts has erupted over approaches to achieving this goal. To briefly summarize:

In 1995, the U.S. Dept. of Housing & Urban Development contracted with the National Association of Homebuilder's Research Center to develop "Nationally Applicable Recommended Rehabilitation Provisions" (NARRP). These would serve as a model for state and local building rehab codes. Many parts of the New Jersey Rehabilitation Subcode were used in developing the NARRP. The NAHB Research Center, in 1999, also prepared a detailed case study providing a side-by-side comparison of traditional rehab codes versus NARRP. The case study found that NARRP resulted in more cost-effective rehabilitation.

Meanwhile, instead of endorsing the NARRP approach, the International Code Council (ICC), representing the major building code organizations, has begun work on its own "International Code for Existing Buildings." The ICC code is scheduled for completion by late 2002.

To follow these developments online, you can read the full text of the NARRP at: [www.huduser.org/publications/destech/narrp.html](http://www.huduser.org/publications/destech/narrp.html). The NAHB case study can be downloaded at: [www.pathnet.org/publications/rehabpr.html](http://www.pathnet.org/publications/rehabpr.html). The ICC approach is summarized in the organization's March 2001 newsletter, available at: [www.intlcode.org/newsletter/](http://www.intlcode.org/newsletter/)