

Exclusionary zoning: Origins, Open Suburbs, and Contemporary Debates

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What is Exclusionary Zoning?

Definition: Local land use zoning practices that effectively bar low- and moderate-income households from finding adequate housing in a given jurisdiction.

- Does not look the same from place to place
- Not the only cause of high housing costs, nor the only impediment to meeting housing needs.
- Removal is a necessary, but by itself insufficient condition for providing adequate housing for all Americans.

Outline

1. Origins: realizing the exclusionary potential of land use zoning
2. Post WWII: exclusionary zoning as a suburban phenomenon
3. The equity-focused Open Suburbs movement
4. Limited victories of the 1960s and 1970s
5. Enter the Economists
6. Contemporary debates
7. Conclusions

Origins

- Land use zoning and its predecessors have always been used to accomplish social segregation: laundry laws, 5th Avenue retailers, and preventing tenement construction.
- Private covenants, as effective as they were, regarded as inadequate
- Racial zoning ruled unconstitutional in *Buchanan v. Warley* (1917), though it continued in some southern cities into the 1950s
- Land use zoning, however, could accomplish social segregation by separating housing types.
- Conventional wisdom held that multi-family should “exist only in the neighborhood of factory and business districts” (Benjamin Marsh, 1909). The US versus the European experience (Sonia Hirt, 2015)

Origins

- Cumulative zoning schemes: preserving single-family neighborhoods by allotting undesirable aspects of the modern city (traffic, pollution, places of immigrant and ethnic/racial minority residence) to more open zones.
- Other justifications such as aligning development with provision of services, but “The rank and file of the people are coming to look upon [zoning] as merely a matter of maintaining or increasing property values” (William Munro 1931)
- After *Buchanan v. Warley*, advocates had “to get the courts to see what we wish them to see ... we should all popularize the idea of preserving the value of a man’s house When you meet one of these judges tell him about it, so that when, by-and-by, a case comes before him as a judge, it will be entirely familiar to him” (Lawson Purdy, 1918).

Origins

- *Ambler v. Euclid* (1926): the lower court recognized the purpose of separating housing types was to keep “colored or certain foreign races” out of single-family areas, and that this practice ran afoul of *Buchanan v. Warley*
- Supreme Court tip-toed around the issue, not mentioning race, instead framing an apartment building in a single family neighborhood as a “pig in the parlor”
- Multi-family and other types of housing thereafter “subject to independent and less favorable treatment” despite identical function to single family home as places of residence (Daniel Mandelker 1971).

American Zoning: Separate but Equal?

- The “invasion” of a single-family area by “people of a lower social level” ... “Nearly all people like to feel that they are a part of a certain neighborhood. They like to keep such a neighborhood free from intrusion by those in other ranks of life.” (Harold Lewis, 1939)
- Multi- and single-family “mutually antagonistic” and separation continued a “natural trend toward a reasonable segregation of economic classes” (Robert Whitten 1921)
- Only “somewhere in the region [that] there must be adequate provision for *all* the types of uses which the community needs for habitation, recreation, and work” (Hubbard & Hubbard, 1929)
- Social segregation (via separation of housing types) not discrimination, but in the public interest.

A Suburban Phenomenon

- *Shelley v. Kramer* (1948): Supreme Court invalidates public enforcement of racial covenants.
- National Commission on Urban Problems (1969): prohibitions of multi-family and mobile homes, floor area requirements, large lot sizes, restrictions on number of bedrooms
- Average residential lot sizes in five suburban New York counties, for example, increased from 9,000 to 19,000 square feet between 1950 and 1957 as a result of zoning for larger lot sizes; by 1960s 99.2% of vacant residentially zoned land in the New York area zoned for single-family (National Commission on Urban Problems, 1969); high costs for multi-family land result (Babcock & Bosselman, 1973)

Heresthetics

- When there are uncontroversial (e.g. traffic, flooding) and controversial (e.g. lower-income people bring crime) beliefs informing a position (e.g. opposition to development), rational political actors choose to vocalize the former (Clingermayer 2004)
- Fiscal justification? “Zoning is a means by which a governmental body can plan for the future – it may not be used to deny the future. ... to avoid the increased responsibilities and economic burdens which time and natural growth invariably bring.” (PA Supreme Court, 1965)
- Evidence belying stated motivations – Schmidt and Paulsen (2009); Whittemore (2018).

Open Suburbs

- A reaction to the urban crisis. “... false assumption ... that because the problems of race and poverty are found in the ghettos ... the solutions to these problems must also be found there.” (Davidoff and Gold, 1970)
- Targeting exclusionary zoning would not solve the problem: “Since the Industrial Revolution began dumping rural families into big-city slums, housing planners have recognized that public subsidy is needed to enable working-class families to live decently.” (Davidoff and Gold 1971) But nor should anti-exclusionary efforts wait.
- Davidoff’s Suburban Action Institute: looking for suburban industrial job centers practicing exclusionary residential zoning in a metropolis with large low-income African-American population.

Frustrations & Victories

- *Belle Terre v. Boraas* (US Supreme Court, 1974)
- *Warth v. Seldin* (US Supreme Court, 1975)
- *Metropolitan Housing v. Arlington Heights* (US Supreme Court, 1977)

Fair Housing Act of 1968?

- *S. Burlington NAACP v. Mt. Laurel*: the public welfare “cannot be confined to the claimed good of the particular municipality” (NJ Supreme Court 1975); ‘fair share’ legislation
- Massachusetts Chapter 40B (1969)
- Inclusionary Zoning
- Reforms are not adequate, arguably backfire, but they do reflect dominant policy preferences in that they all leverage the market (Ed Goetz, 2019)

Enter the Economists

- For most of 20th century, economists saw zoning preventing the presumed problem of “the poor following the rich in a never-ending quest for a tax base” (Hamilton 1975) and the high-quality services that came with it.
- Contemporary economic scholarship recognizes that prevalent zoning practices redirect households to less desirable locations, often on the metropolitan fringe, creating costs in the form of new roads, new schools, and so on (Fischel, 1999; Glaeser, 2011).
- A binding constraint associated with lower housing output, lower production of multifamily and other affordable housing types in particular, increased home sizes, increased housing costs, and reduced homeownership rates (Chakraborty et al., 2010; Glaeser & Gyourko, 2002; Glaeser & Ward, 2006; Green, 1999; Ihlanfeldt, 2007; Malpezzi, 1996).

Enter the Economists

- Going mainstream: Paul Davidoff, originator of advocacy planning, had the leading voice in exclusionary zoning scholarship in the civil rights era. From 1990s onward replaced by that of an economist, perhaps Ed Glaeser (2011), a scholar of land use zoning most well-known for characterizing cities as hubs of creativity and economic growth.
- Pendall (2000), Rothwell and Massey (2009), and Massey (2009) all showed that metropolitan areas with more low-density zoning had higher levels of racial segregation; restrictive zoning also exacerbates income segregation (Lens & Monkkonen 2016)
- Reeves (2017) “opportunity hoarding.”

Enter the Economists

- Economists support de-regulation. Fischel (1999) would prefer to force governments to pay for reducing development rights, and elsewhere (2001) suggested home equity insurance as a means of enticing homeowners to accept denser housing.
- Glaeser (2011) would prefer to see a simple fee system replace zoning, along with constraints on historic preservation and other local prerogatives.
- Planners make do with what they can: “in the absence of significant government subsidies, attention has turned to use of the existing housing stock.” (Pollak 1994) Leveraging markets through different regulation; ending single-family zoning (Manville et al. 2020).

Contemporary Debates

- Instances when lower-density zoning might preserve affordable housing (Angotti 2016). An up-zoning can resemble “expulsive zoning” (Rabin 1989)
- Up-zoning will not produce adequate affordable housing, especially where it is most needed (Chakraborty 2020).

BUT:

- Up-zoning in middle to upper income areas can produce needed market-rate housing without causing displacement and reduce gentrification pressures (Wegmann 2020)
- Minneapolis paired a ban on single-family zoning with tenant protections and greater investment in affordable housing (Mogush & Worthington 2020)

Conclusions

- No other high-wealth country uses zoning like the US, if they even have the tools at all (e.g. single-family zoning), owing to US' unique and consistent identity among these countries as a multi-racial, multi-ethnic society of immigrants for centuries.
- The American way of zoning worsens racial, ethnic, and income segregation at the same time that it has failed to reduce congestion or protect the environment.
- Planners can assert the ethics of their profession within the exclusionary zoning debate, and dismantle exclusionary zoning within a multi-pronged effort to create “opportunity for *all* persons, regardless of their class or race, to live within a community” (Davidoff & Brooks 1976)

“Exclusionary zoning: Origins, Open Suburbs, and Contemporary Debates”
forthcoming in the *Journal of the American Planning Association*

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