

'Snob zoning' is racial housing segregation by another name

The Washington Post, by Elizabeth Winkler, September 25, 2017, 10:46 AM

It's no secret that Americans live in divided spaces. The country's cities and suburbs are segregated by race and socioeconomic status. These divides are often assumed to be a result of economics — as poor and rich families alike pick neighborhoods they can afford — and of personal choice, as Americans seek to live near people with whom they have more in common.

There's a more sinister force at work, however. In many places, economic and racial segregation goes beyond market forces or personal choices. That segregation is buttressed by local laws and ordinances that effectively exclude or discourage poor and working-class people from moving into certain communities, keeping those areas primarily the domain of the white and wealthy.

Across the country, American communities employ "snob zoning" policies that forbid builders from constructing apartment buildings or impose minimum residential lot requirements. They are often presented as driven by concerns that building smaller units could change the character of a community. Some ordinances even exclude modest single-family homes in the name of preserving a neighborhood's "aesthetic uniformity." Such rules effectively impose a price floor for the cost of housing, making it impossible for people who live below a certain means to afford them, a recent [report](#) by the Century Foundation explains.

The policies are widespread in cities and suburbs across the country, the result of a century of social engineering by federal and local governments. But a survey by the Brookings Institution found they are particularly popular in the Northeast and Midwest. Towns with the most stringent rules tend to have lower density and be wealthier than those with less regulation, according to researchers at the Wharton School at the University of Pennsylvania.

The laws do not specifically mention race, but because African Americans and Latinos have on average far less wealth and income than white people, the laws do tend to drive people of color out and keep neighborhoods more uniformly white. That's in keeping with the racist history of "snob zoning."

As Richard Rothstein, a research associate at the Economic Policy Institute and the author of "The Color of Law," explained, many of these rules cropped up in the 20th century just as court rulings made it more difficult to enact explicitly racist housing policies. In 1917's *Buchanan v. Warley*, the Supreme Court held unanimously that a city ordinance prohibiting the sale of property to blacks in white-majority neighborhoods in Louisville, violated the 14th Amendment. Government-instituted racial zoning policies were thus declared unconstitutional (a ruling later codified in the Fair Housing Act of 1968).

In the wake of that Supreme Court decision, a flood of communities rushed to adopt zoning ordinances. In 1916, only eight cities in the country had zoning ordinances. By 1936, 1,246 cities had put such ordinances on the books.

Many were motivated by economic or safety concerns — ensuring that a factory cannot pop up in the middle of a residential neighborhood, for example. But as the report explains,

exclusionary zoning went far beyond this "to the point where it effectively would designate the economic wherewithal of the families living in each residential neighborhood."

The policies often achieve the same results as racial zoning rules. When 250 African Americans moved to Milpitas, Calif., in 1954 to work at an auto plant, the town adopted an ordinance permitting the banning of apartment buildings.

While courts struck down racial zoning policies, exclusionary economic zoning has been upheld. In the 1926 case of *Euclid v. Ambler*, the Supreme Court declared an apartment can be a "mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district."

In 1959, the village of Arlington Heights, a Chicago suburb, barred the construction of multifamily units. The case was taken to the Supreme Court, which held that the ordinance was constitutional, saying it saw no evidence of racial motivation in the city council's decision. "Yet they clearly passed the ordinance in response to the racial motivations of residents," Rothstein said.

Further challenges, brought in the 1970s, continued to fail — with a few exceptions. The cases that succeeded did so by attacking exclusionary zoning as a threat to the liberty and property rights of landowners and as an injustice to those of modest means. In 1970, in *Appeal of Girsch*, the Pennsylvania Supreme Court ruled in favor of the property rights of landowners, invalidating an ordinance that prevented the construction of apartments. In 1975, the New Jersey Supreme Court ruled in *Southern Burlington County NAACP v. Mount Laurel* that zoning laws that have the effect of excluding low-income families violate the state constitution.

Yet in most of the country, it remains constitutional to exclude people from neighborhoods on the basis of income. There is no class-based version of the Fair Housing Act — that is, no federal legislation that says economic exclusion is improper. George Romney, President Richard Nixon's secretary of housing and urban development and former governor of Michigan, came close: His program, Open Communities, proposed withholding federal infrastructure aid to jurisdictions that excluded the poor and minorities. Nixon killed the program.

"Housing remains the major unfinished business of the civil rights movement," Rothstein said.

Increasingly, low-income whites are affected, too. Since 2000, there has been a 145 percent increase in whites living in neighborhoods of concentrated poverty.

Richard Kahlenberg, a senior fellow at the Century Foundation and author of the report, wants an "Economic Fair Housing Act" that ends exclusionary zoning. "Just as it is illegal to discriminate in housing based on race, it should be illegal for municipalities to employ exclusionary zoning policies ... that discriminate based on income," he said in the report.

This doesn't mean market forces wouldn't still cause discrimination, he said, but government policies should not add to that. At the very least, Kahlenberg proposes municipalities engaging in exclusionary zoning should suffer a penalty — for instance, by being denied infrastructure funds (as Romney proposed), or limiting the tax deduction homeowners in such areas can take for mortgage interest.

Economists across the policy spectrum say exclusionary zoning contributes to the housing affordability crisis. Excessive regulations distort markets, artificially raising rents and house prices. Joseph Gyourko, a conservative economist at the Wharton School, has found these policies have pushed real house prices 56 percent above real construction costs.

Exclusionary zoning also creates a troubling cycle: Where people live determines many other aspects of their lives — access to transportation, good jobs, decent health care and, most critically, good schools. They make it more likely that children in poor neighborhoods will only be able to afford those same neighborhoods when they grow up.

In wealthy Bethesda, Md., for example, there is one pediatrician for every 400 children. In Southeast Washington, there is one for every 3,700 children. Commutes to and from high-poverty neighborhoods can take up to two hours, cutting into the time parents spend with children after work. And 75 percent of American children attend their neighborhood school — meaning zoning rules affect the quality of their education, economic opportunity and earning power later in life. Middle-class schools are 22 times as likely to be high achieving as schools in high-poverty neighborhoods. By fourth grade, low-income students in high-poverty schools are already two years behind low-income students in low-poverty schools on national assessments in math.

As the urban scholar David Rusk put it in a [report on public schools](#), "Housing policy is school policy."

A few states, including New Jersey, Massachusetts, Maryland and California, have adopted "inclusionary zoning" policies. These mandate that developers make a portion of new housing units affordable for low-income residents. In exchange, developers receive a "density bonus" that allows them to develop more high-profit units than the area is zoned for. Eleven percent of Americans now live in areas with inclusionary zoning policies.

Opening up neighborhoods to low-income families has improved student achievement. Maryland's Montgomery County, which adopted inclusionary zoning in 1974, is exemplary: Between 2001 and 2007, low-income students attending good schools cut the math achievement gap with their middle-class peers in half, according to [research](#) by Heather Schwartz of the RAND Corporation.

But inclusionary and exclusionary zoning still exist simultaneously, with counties adopting broad policies of exclusion coupled with small efforts to be inclusive. "It's like we skipped a step," said Kahlenberg. "In employment, first we outlawed discrimination, then we took affirmative action steps. But in housing, we skipped over making exclusionary zoning illegal. I want to go after that fundamentally discriminatory policy."

Kahlenberg isn't holding his breath for an economic fair housing act. Indeed, it would be an unlikely piece of legislation under a president who built his name in luxury real estate. But for lawmakers who are serious about addressing inequality, there is a lot to like in the proposal: It appeals to liberal principles of justice and equity, as well as conservative arguments about liberty, property rights and excessive government regulation. State legislation is more likely in the short term. California, where the housing affordability crisis is particularly acute, is ripe for a fair housing act.

"The nation is more divided than it's been in a long time," Kahlenberg said. "We need to find ways to bring people of different backgrounds together."