

Rethinking zoning

By: Joe Nathanson April 28, 2023



With Earth Day 2023 having just passed, it brings to mind how we are dealing with the Earth – more specifically, how we are making use of our land resources. How we use land and how we control the use of land have been contentious matters over the years.

Introduction of Zoning Laws

The application of zoning, the use of laws by units of local government that govern how real property can and cannot be used, first took hold in the late 19th century. But it was early in 20th century America, as cities were growing much larger and industrialization was leaving a greater footprint in urban areas, that zoning laws became widespread across the nation.

It was understandable that homeowners would want to protect themselves and their property values from noxious uses, whether industrial plants belching steam and ash or unpleasant emissions from uses such as slaughterhouses and tanneries. Municipal zoning ordinances were used to segregate such industrial uses from residential districts, as well as to regulate the bulk and height of structures, set parameters for density and more.

Dark Side to Zoning

But in the early part of the 20th century, a number of American cities were also using zoning laws to segregate residential areas on the basis of race and class. Baltimore City had an ugly place in the early history of zoning. In December 1910, the Baltimore City Council passed a residential segregation scheme that was implemented on a block-by-block basis.

The city's Druid Hill area had already existed as a de facto all-black neighborhood, but some white Baltimoreans in nearby neighborhoods called for more rigorous segregation, and the city obliged.

Residential segregation on the basis of race was declared unconstitutional when in 1917 the U.S. Supreme Court struck down a Louisville, Kentucky, ordinance, ruling in *Buchanan v. Warley* that race-based zoning was a violation of the Fourteenth Amendment to the U.S. Constitution.

Zoning Ruled Constitutional

Zoning itself was thought to be unconstitutional by some who saw it as unjustly limiting one's use of property, effectively taking private property without due compensation. The matter came to a head when the Ambler Realty Company filed suit against the Village of Euclid,

Ohio. The village had zoned land held by Ambler for residential use, whereas Ambler had hoped to gain more by leasing its land to industrial users.

Ambler argued that the Euclid zoning ordinance violated the Fourteenth Amendment, claiming that the law effectively diminished its property values. In 1926 in the case *Euclid v. Ambler*, the U.S. Supreme Court ruled that the village's zoning ordinances were constitutional, holding that zoning designed to prevent nuisances was a proper exercise of the state regulatory police power.

Reforming zoning

Today, many communities are revisiting their zoning policies in response to changing societal needs. Transform Baltimore, the new zoning ordinance adopted in 2017 after several years of study and debate, was the city's effort to modernize its approach to managing local development.

According to the city's website, "It is intended to simplify and streamline development review; provide an easy to understand set of rules; and create a more modern code that fosters growth and development, while maintaining the character of Baltimore's neighborhoods."

But "maintaining the character of neighborhoods" can itself become a thorny issue. That sentiment is often cited by individuals and communities that would resist any changes to their existing residential setting. An example of that dynamic is unfolding not far from Baltimore. In Arlington County, Virginia, across the Potomac River from the nation's capital, the county commissioners last month voted unanimously to make a change in their zoning code to accommodate what is referred to as the "missing middle" of the housing market. The commissioners are trying to address the housing affordability crisis in an area where the median priced home recently sold for \$650,000; the median single-family residence would be about double that.

The new Arlington zoning allows for the construction of as many as four — in some cases six — units on sites that had for decades been reserved for single-family homes. Predictably, the zoning change has resulted in a lawsuit as residents opposed to the change of their suburban neighborhoods cite the prospect of crowded schools, clogged streets and utility systems, parking challenges and the loss of trees.

A leading advocate for the zoning change, a pastor at a local church, was quoted as saying the lawsuit was "a predictable play out of the NIMBY playbook," those initials standing for "Not In My Backyard."

Once again it will be a matter for the courts to decide how we use land here on Earth.

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