

ZONING PRACTICE

JANUARY 2022



AMERICAN PLANNING ASSOCIATION

➡ ISSUE NUMBER 1

PRACTICE RACIAL EQUITY



Ending Zoning's Racist Legacy

By Jennifer M. Raitt

In the summer of 2020 following the murder of George Floyd, my daughter opened a discussion about systemic racism and asked me questions which became personal and pointed. *She asked what my professional role was in relation to systemic racism.* My daughter's question put me on a journey of dismantling my work. During my career, I reflected, I had in fact developed and implemented policies and zoning laws that impact where people live, where people work, where people play, and where people could enjoy a strong quality of life, or not. I asked myself who benefited from and who was harmed by policies I promoted. My role, advantages, and privilege in the system felt clear which made me want to dig deeper.

The discussion with my daughter prompted me to consider the roots of urban planning in the U.S., which made me wonder more broadly: *Are planners engaged in a collective silence about our origin story? How can we continue to work together to address the harmful impact and undue burdens of zoning and land use planning on people of color?* This article will introduce readers to the history of zoning practice and contemporary planning in the United States, highlight federal policies and programs that had a direct impact on racial segregation, and discuss new equitable zoning policies and practices.

PLANNING AND RACE FOUNDATIONS

When I was an undergraduate student, white teachers taught me urban planning, geography, and American studies. I read literature written by white people. White people provided me with their perspectives. My professors taught us that while some planners were powerful and influential, many had power but were rarely influential. My notes from one class included, "the field can be very frustrating... Planners are basically advisors with little or no power." As a student, I wondered how planners could influence those with power and advise and build capacity to empower others. My class notes continued, "planning emerged largely as a response to urbanization and the problems it brought." Land-use planning and zoning laws were born to wrangle the potential for human chaos. Early planners determined that separating uses and creating community order would create a new peace. That "chaos" and resulting "peace" initially meant dividing specific races and classes of people, locating multifamily dwellings away from single-family dwellings, and ensuring toxic industries were far from residential uses.

As I continued exploring the history of planning and zoning, I ventured into the vault in my office which holds many older planning documents and materials telling the story of the early days of planning in the community

where I work, a suburb in Greater Boston. In one large box, I discovered documents from the early 1900s that included proceedings from the American City Planning Institute, National Conference on City Planning, and International Federation for Town and Country Planning and Garden Cities convening of town, city, and regional planners in New York City in 1925. Some of the documents were revealing, showing a pattern of our community following national trends and new rules. Meeting notes and correspondence showed interest in conformity to strict zoning standards and dimensional regulations, and those who joined the town's first planning board sought out the best practices of the time.

In the early 1900s, communities in the U.S. were responding to population growth, coupled with industrialization, addressing overcrowding, congestion, and disease. This was a tall order for most communities. White, upper-middle class people were the social reformers who urged communities to consider the benefits of open space while also promoting separation of uses and people. The underbelly of what contemporary planners might tag as *sprawl* was intended to address population density, separate industry from people, and separate people, by race and ethnicity. The roots of planning also had a hand in influencing major

infrastructure and transformational projects for nearly a century. The location of water and sewer lines, streetcar lines, and later highways all played a role in separating and segregating people.

New York passed the nation's first comprehensive zoning ordinance in 1916 in response to the unregulated development of tall buildings and industrial uses encroaching upon wealthy residential neighborhoods. The perception that negative uses would ruin wealthy neighborhoods gave rise to using methods to prevent what were then viewed as "incompatible" uses. Separating uses was a racially motivated exercise directed at separating people of different races and ethnicities. Communities hired prominent early planning professionals to create legally defensible racial zoning plans intended to segregate Black residential areas, particularly as The Great Migration of Blacks moving from rural communities in the South to larger cities in the North and West continued. Districting ordinances and racial zoning plans were foundational for early zoning decisions, setting precedent for years to come.

A series of Supreme Court cases shaped the future of racially discriminatory zoning. *Buchanan v. Warley*, a landmark case from 1917, deemed municipal racial zoning ordinances unconstitutional. These ordinances, which sought to prohibit Black people in Louisville, Kentucky, from purchasing property in neighborhoods with white majorities was in violation of the 14th amendment (*Buchanan v. Warley*, 245 U.S. 60). However, this ruling was far from the last word. Following the ruling, President Woodrow Wilson, who played a historically significant role in limiting the rights of Black people, designed a national committee to create a model zoning law. Wilson appointed several segregationists to the committee. By 1924, the committee released a highly influential zoning model for states to amend or adopt whole cloth: the State Standard Zoning Enabling Act.

The Supreme Court "Euclid" case allowed communities to adopt zoning to "see that the right sort of buildings are put in appropriate places and the wrong sort excluded from inappropriate places,"

thereby legally allowing the segregation of land uses, and by extension *people*, in neighborhoods and cities (*Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365). This important decision allowed municipalities to use race-neutral language to achieve the racially motivated goals that precipitated the *Buchanan v. Warley* case. Zoning laws continued to be used to enforce segregation but were publicly promoted as a tool to protect and enhance property values. Zoning laws were a demonstration of government power to socially engineer exclusion.

This foundational early planning work ultimately shaped public policies to contain Black residential expansion. Many communities continued to enforce explicit racial zoning in defiance of court rulings until 1951, when they were again ruled unconstitutional. Racial covenants could not be enforced by courts, but there was still a long way to go until the sale, lease, or renting of property was free from discrimination and ultimately banned in the late 1960s. By then, exclusionary zoning began to proliferate.

It is important to note that the phrase *exclusionary zoning* has different meanings in different contexts. The original meaning refers to practices, such as explicit racial zoning, that are clearly illegal under federal and state law. However, most contemporary discussions of exclusionary zoning focus on facially race-neutral zoning provisions that are presumably legal under state zoning enabling laws. These provisions, such as inclusionary housing requirements that could never be triggered due to other zoning provisions that essentially ban larger developments, appear harmless but in fact result in de facto segregation. The exclusionary zoning that this author encourages contemporary planners to undo is a legal practice that prevents households with lower incomes, which are disproportionately composed of Black, Indigenous, and people of color (BIPOC), from living in wealthy and middle-class neighborhoods across the U.S.

This leads me back to my original questions. What was the original purpose of zoning, and how much of that legacy remains today? Zoning was about conditioning and restricting, balancing values of private

property and public good. Zoning is one of a community's police powers. A technical and legal framework that governs everyday life. Zoning is inherently political, and planners serve in more than an advisory role in the scheme of zoning.

FUELED BY THE FEDS

Federal dollars significantly shaped the modern American landscape. By the 1930s, federal policy and finance caught up with racialized zoning and land use to drive residential segregation. In 1933, the Home Owners' Refinancing Act, also known as the Home Owners' Loan Act, aimed to jump-start a sluggish market, address foreclosures, and increase housing construction. The Home Owners Loan Corporation (HOLC) was established and eventually generated residential security maps that drew lines around and rated each neighborhood in larger metropolitan areas across the U.S. The rating scale was from A to D, with A being an area of preferred investment and D being the riskiest. The ratings were largely based on race and the segregated geography established by racialized zoning. One of the eight criteria that comprised a higher grade was if deed and zoning restrictions were in place to sufficiently protect a neighborhood from social groups and incompatible land uses. The HOLC maps led to the term *redlining* since a neighborhood that netted a D grade was outlined in red. The Veterans Administration and the Federal Housing Administration (FHA) utilized the HOLC map classifications to determine credit worthiness.

We can still see the consequences of these maps and decisions; where the HOLC map boundaries were drawn, racial segregation, low homeownership rates, and low home values abound. The maps channeled investment that subsequently led to areas of disinvestment. The federal government and the private sector perpetuated and maintained this system of decades. Even today, non-bank lenders have continued this pattern of investment.

Following years of establishing districts and zoning laws and ordinances, the 1940s and 1950s saw updates to comprehensive plans from the 1920s. While communities



FHA financing for the Levittown suburban housing development required homes only to be sold to whites.

developed plans that continued patterns of segregation, the federal government began deploying programs and policies that furthered segregation and limited who had access to improved neighborhoods and communities. Some of those programs developed out of New Deal policies (public housing, redlining, suburban racial covenants); the GI Bill (home loan guaranty, FHA underwriting standards); urban renewal; the Housing Act; and the Federal Highway Act. Ultimately, a cocktail of money and a new regulatory scheme solidified a segregated landscape. Federal dollars flowed toward urban renewal projects and highway expansion. Redlining became more insidious in the form of discriminatory lending and blockbusting. Lastly, zoning laws reinforced exclusion with even more restrictive residential development rules, which effectively maintained the status quo.

The 1960s brought about the promise of social transformation and new legal tools to challenge exclusionary zoning and practices via the Fair Housing Act and Civil Rights Act.

These acts, as well as other federal actions, prohibited discrimination but also tied these laws to funding that communities received, creating a duty to comply.

The Civil Rights Act of 1964 provides protection against discrimination based on race, color, or national origin in any federally funded program or activity. The Fair Housing Act prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex, or national origin. The act was amended in 1988 to add disability and familial status to the list of protected classes. Additionally, Section 504 of the Rehabilitation Act of 1973 expanded protected classes to provide protection against discrimination for people with disabilities in any federally funded program or activity. The Americans with Disabilities Act (ADA) expanded protections against discrimination for persons with disabilities provided in Section 504 to include any state or local services, programs, or activities.

Two acts specifically addressed discrimination based on age: The Age Discrimination

Act of 1975 expanded protected classes to provide protection against discrimination based on age in any federally funded program or activity. And the Housing for Older Persons Act of 1995 provided an exemption from the Fair Housing Act for senior housing communities based on specific criteria.

From its inception in 1968, the Fair Housing Act (i.e., Title VIII of the Civil Rights Act) not only prohibited discrimination in housing-related activities and transactions but also imposed a duty to affirmatively further fair housing (AFFH). The AFFH is a framework for local governments, states, and public housing authorities—which are considered participating jurisdictions for federal funding—to take meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination. AFFH means taking meaningful actions, including combating discrimination, addressing significant disparities in housing needs and in access to opportunity, and establishing and maintaining compliance with civil rights and fair housing laws. For communities receiving federal funds, the duty to meet fair housing extends to all program participants’ activities and programs relating to housing and development. Meaningful actions are expected to achieve a material positive change, such as a zoning amendment aimed at providing more housing choices for protected classes.

The Fair Housing Act has its limitations. Notably, federal fair housing law does not prohibit class-based discrimination. Some states have addressed this independent of the federal government, like Massachusetts which has anti-discrimination laws that broaden those protected classes to include income source, specifically people who receive housing assistance. Without these added protections, there is a loophole for discrimination against people with lower incomes in need of better housing and mobility options (Hannah-Jones 2015). The Village of Arlington Heights v. Metropolitan Housing Development Corp. Supreme Court decision in 1977 asserted that exclusionary zoning is not unconstitutional. While not de jure segregation, exclusionary zoning policies



The Birwood Wall is a 6-foot high wall constructed in 1941 in Detroit to separate a new whites-only housing subdivision from an existing redlined Black neighborhood. Community activists have since reclaimed portions of the wall for murals and public art.

contribute to the same patterns of segregation as pre-*Buchanan v. Warley*. Class-based discrimination tends to have a disparate impact on BIPOC communities, compounding the racial discrimination of the past (Chen 2015). In other words, the class-based discrimination embodied in today's exclusionary zoning is, in its outcome, de facto racial discrimination.

Despite these legal options that could be used to challenge exclusionary zoning and practices, parallel problems emerged. Communities were becoming unaffordable and exclusive, while displacement, eviction, and housing instability became pervasive. This is the discriminatory effect and impact of exclusionary policies and practices. Black people lost generations of equity, which whites gained due to racially discriminatory practices, as well as private, restrictive covenants and deeds. The origins of zoning and planning informs the present: a bifurcated social geography. How can today's planners

untangle a web of government-sanctioned public policies combined with opportunity-driven private decisions that led to exclusionary outcomes? What should reform and progress look like today?

ADDRESSING AND UNDOING HARMS

Years of exclusionary laws and practice have a consequence. Some places across the U.S. have limited to no racial and ethnic diversity and are older and slow to grow and accept new residential development, which forces renters to bear the brunt of housing cost burdens. The underlying zoning practices have overinflated land values and created high-cost regions. A desire to change can be saddled with lack of political will, limited staff or volunteer capacity or financial resources, and limited courage to face the driving hail of the status quo and racism. Housing discrimination, the lack of understanding of fair access to housing as a civil right, and inability to understand

and apply fair housing laws from the 1960s persists.

Fifty plus years after the passage of the Fair Housing Act, the summer of 2020 brought renewed energy and urgency for addressing systemic racism and undoing harms. The conversation with my daughter prompted many other questions, including: *What was I doing, or could I do differently to be anti-racist? How do I ensure that all voices are heard and part of creating solutions?*

As planners our body of work should include intentionally making room for and creating belonging for all. Planners may make statements about inclusivity and equity and simultaneously create a plan and create a process of amending zoning. Moving to action is important for planners. A plan should not stay on a shelf. But the urgency of today requires thoughtfulness as we elevate plans and move beyond amending zoning. While zoning is but one critical element in the puzzle, it is just that, one element.

Planners are part of systems that can create and enable equity. Planners have a responsibility to create equitable places. These places are ones that foster inclusion, acknowledge and challenge bias and systems that reinforce racism. Planners must intentionally intervene with institutions and structures that continue to perpetuate racial inequities, implement policy change at multiple levels and across multiple sectors to drive larger systemic change, utilize tools to explicitly integrate racial equity into all operations, and align decisions with racial equity goals and clear, measurable outcomes.

When planners thread equity into plans and policies, not just zoning, it means asking more questions before proposing or implementing policy change. Using an equity orientation helps planners to ask and answer a range of important questions. For example, how was procedural equity applied to include and center people who have been historically excluded from planning processes in the planning, implementation, and evaluation of proposals and projects? When civic and community resources and investments are being debated as part of a proposal or project, how is distributional equity considered such that racially

disparate outcomes are not created by a decision? Finally, as noted earlier in this piece, Black people were harmed by past decisions which led to loss of generations of equity; therefore, when evaluating proposals and policies today, considering how a decision will lead to transgenerational equity rather than result in unfair burden on future generations is also critical.

Countering the historical failures of planning and zoning requires the profession to shift in thinking, methods, training, and practice. It also requires funding and resources. The U.S. Department of Housing and Urban Development (HUD) Sustainable Communities Program funded local and regional jurisdictions for studies, plans, and projects that aimed to advance equity while also encouraging collaborative alignment across federal agencies focused on the environment, housing, and transportation. Sustainable Communities helped spur regional fair housing and equity assessments. The program in part led to the Department of Justice and HUD renewing their commitment to fair housing. HUD went so far as to issue a final rule that require recipients of community development and other federal funds needing to AFFH via special assessments and planning to remove barriers to housing. The assessments may have also led to the local planning and zoning work aimed at undoing exclusionary practices and laws. Unfortunately, the program, funding, and momentum was cut short, as many of the gains from this program were frozen or retracted by the Trump administration.

Despite the fear and feuding, not every jurisdiction gave up on the mission to center equity in all policies. There are renewed efforts that point toward a potential framework for anti-racist zoning and land use. This section is intended to outline first steps in what could be a years-long process of change.

EMERGING STRATEGIES IN BOSTON AND LOUISVILLE

The cities of Boston and Louisville have stepped up to begin incorporating fair housing and equity in future zoning ordinances and bylaws. In Boston, applicants of new residential and mixed-use projects

under review by the city will be required to describe how their project will not harm area residents who have historically been discriminated against. The project narrative will incorporate and analyze these data while also assessing the potential risk of displacement due to racial and economic changes that the project may stimulate and determining the project impact on area rental prices. The city will utilize an AFFH assessment tool in its development review process to identify potential effects a project might have on a neighborhood. The tool emerged from the city's Assessment of Fair Housing process started during the Sustainable Communities program. Project applicants will need to describe any measures that will be used to achieve AFFH goals. The city's zoning code includes a list of process and market measures that are aligned with a project size and scope to make it easier for applicants to choose from options that help achieve the city's AFFH goals (Text Amendment No. 446). The code provides additional measures that applicants must also include and achieve when proposing projects in neighborhoods where there is a high risk of displacement or where there is a history of segregation and exclusion.

Project applicants can choose from measures, such as increasing project density to provide more units that are affordable to protected classes, exceeding affordability requirements by creating new housing units for households who make lower incomes, exceeding accessibility requirements for providing more residential units that are ADA accessible, matching or exceeding the percentage of units to accommodate larger households in alignment with the availability of such units in a surrounding neighborhood, and partnering with a nonprofit affordable housing developer to achieve affordability and affirmative marketing and outreach goals. When passing this zoning amendment and new set of requirements, the city empowered a Boston Interagency Fair Housing Development Committee with helping to ensure compliance of the new code. Both the new zoning and the new administrative practice demonstrate how a city can show

commitment to fair housing and a renewed, equitable process with improved equity outcomes aligned with an equity plan.

In Louisville, the city is facilitating a planning process aimed at undoing past harms which includes updates to its land development code. The city's efforts identified clear goals and have begun to yield results. For example, the city committed to goals of creating mixed- and diverse housing options, centering environmental justice, and revamping administrative procedures and practices to be more user-friendly and inclusive. The new housing options include allowing accessory dwelling units, allowing two-family homes to be built throughout the city, and providing more flexible design options for adaptive reuse and infill development.

Like Boston, Louisville aims to codify new rules and amend administrative processes and practices. In Louisville, planners assessed the public notification process for city-held public hearings and new projects and identified barriers to participation. Historically, residents who rent their homes did not receive meeting or hearing notices or information about projects. BIPOC households and households with low- to moderate-income were found to be disproportionately impacted by this lack of notice and inability to participate. The city now sends notices to any current resident regardless of tenure.

The Louisville process demonstrates how the community thought broadly about equity. The planning process identified additional barriers that disproportionately impact BIPOC communities, and which need to be addressed to fully advance equity in the city. The plan points to the need to remove highways that divide and have historically hurt BIPOC communities. The location of industrial uses is also described as a harm to neighborhoods with households who make low- to moderate-incomes. Further, the plan notes that some prohibited uses in the city's regulatory framework have a negative effect on BIPOC communities, including prohibiting clotheslines, above-ground pools, window air conditioning units, outdoor play equipment, parking spaces for

commercial vehicles on private property, and basketball hoops. While a planner or a neighborhood association might consider these types of restrictions to be good for aesthetics or design, they have the consequence of creating limitations that disproportionately harm marginalized people and lower-income households.

LOOKING AHEAD

While both examples illustrate that amending zoning or making text amendments to a municipal code are prerequisites to breaking established and embedded practices of racism and exclusion, these measures are clearly not enough to unpack the complicated history of planning and zoning in towns and cities throughout the U.S. This is a complex topic that requires difficult conversations and community dialogue, the courage to face the history of our communities, and a desire to work collaboratively to undo harm. While zoning amendments may immediately help to demonstrate progress in planning, honest questions should be asked by practitioners and scrutinized by the community to identify who benefits and who is excluded in the short-and long-term. Also critical is consideration of the administrative and process components that catalyze planning projects, decisions, and amendments.

Communities lacking the resources of a city like Boston might not be able to move as quickly but can still start the work. It can begin with reviewing existing plans and zoning to determine if inequitable outcomes are the result of zoning requirements. A fair housing analysis can pinpoint the need for different types of housing, or where de facto segregation through zoning continues. Communities can begin the zoning code and map amendment process based on these analyses. Discretionary review processes can be amended to help achieve these goals. Sustained outreach and input from BIPOC communities and households who make lower incomes could help to further evaluate the effectiveness of any zoning amendment in relation to achieving equity goals.

CONCLUSION

As planners, we should ask more questions and take action to acknowledge our history, and work past our fears of change. This must include amending status-quo zoning to increase housing affordability and availability, codifying equity and engagement practices, funding and practicing deeper engagement with communities, and working regionally to address longer-term issues that stretch beyond one community's borders. Additionally, broader efforts targeted at combating racist rhetoric and coded language, and creating transparent and accountable structures for decision-making, are critical to addressing historic and contemporary injustices.

ABOUT THE AUTHOR

Jennifer M. Raitt is an award-winning planner with expertise in housing, community development, transportation, environmental, and land use planning. She serves on many local and state boards and is a frequent presenter and trainer on a range of topics, including affordable housing policy and fair housing laws. She also serves as an elected Town Meeting Member of Brookline, Massachusetts. Jennifer currently serves as director of planning and community development for the Town of Arlington, Massachusetts.

REFERENCES

- Chen, Yvette. 2015. "Despite Disparate Impact Ruling, U.S. Far From Fair Housing." *The Century Foundation*, June 25. bit.ly/3xPOsgz
- Hannah-Jones, Nikole. 2015. "Living Apart: How the Government Betrayed a Landmark Civil Rights Law." *ProPublica*, June 25. bit.ly/3xGalRP
- Louisville-Jefferson County (Kentucky) Metro Government. 2021. "Equity Review of the Land Development Code." bit.ly/3dbrRIG

Cover: Shannon McGee / Flickr
(CC BY-SA 2.0)

VOL. 39, NO. 1

The American Planning Association will lead the way to equitable, thriving communities by creating unique insights, as well as innovative and practical approaches that enable the planning community to anticipate and successfully adapt to the needs of a rapidly changing world.

Zoning Practice (ISSN 1548-0135) is a monthly publication of the American Planning Association. Joel Albizo, FASAE, CAE, Chief Executive Officer; Petra Hurtado, PhD, Research Director; Joseph DeAngelis, AICP, and David Morley, AICP, Editors.

Subscriptions are available for \$95 (U.S.) and \$120 (foreign). Missing and damaged print issues: Contact APA Customer Service (312-431-9100 or subscriptions@planning.org) within 90 days of the publication date.

©2022 by the American Planning Association, 205 N. Michigan Ave., Suite 1200, Chicago, IL 60601-5927; planning.org.

All rights reserved. No part of this publication may be reproduced or utilized in any form or by any means without permission in writing from APA.

Printed on recycled paper, including 50-70% recycled fiber and 10% postconsumer waste.



American Planning Association

Creating Great Communities for All

ZONING PRACTICE

AMERICAN PLANNING ASSOCIATION

205 N. Michigan Ave.
Suite 1200
Chicago, IL 60601-5927



HAS YOUR COMMUNITY
COMMITTED TO ENDING
ZONING'S RACIST LEGACY?

