

INCLUSIONARY ZONING:
OPENING UP OPPORTUNITY-BASED HOUSING

by David Rusk¹
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Now approaching midnight, the final public hearing had been long, emotional, and heated. For the last half hour the nine county council members had been assailed by a succession of residents of Potomac, the wealthiest area of Montgomery County, Maryland.

The county's proposed law was branded "radical," "socialistic," even "communistic." "*Those people* have no right to live in *our* neighborhood," the Potomac bloc angrily declared.

The council president recognized a youngish woman, the evening's final witness.

"My name is Ms. Smith," she said quietly, "and I teach third grade at Potomac Elementary School. What I would like the county council to understand is that these previous speakers entrust *me* with the education of *their children* ... but they don't want me living in the neighborhood."

Bang! The council president brought down the gavel (as the story is told), called for the question, and the Moderately Priced Dwelling Unit (MPDU) law passed unanimously in 1973.

Enacting the nation's oldest (and still most productive) inclusionary zoning law had not been easy – even in liberal Montgomery County, a major suburb of Washington, DC. For six years Suburban Maryland Fair Housing, the League of Women Voters, a coalition of about thirty churches, and other "good government" groups had been campaigning for such a measure.

Advised that the county attorney thought inclusionary zoning was illegal, its advocates recruited the *pro bono* services of one of Washington's top law firms. They gained the critical votes only after an election in which progressive Democrats won all nine council seats and a former League of Women Voters president, Ida Mae Garrott, was elected council president.

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Councilman Norman Christeller undertook a personal crusade to enact the MPDU law.

Even after that vote, the MPDU law faced more hurdles. The county executive vetoed the bill as unconstitutional. The council overrode his veto unanimously. Some homebuilders threatened suit. “That’s certainly your right,” the county council, in effect, responded. “Of course, such a suit will cast a cloud over our entire zoning code, so while it’s being litigated, the county just won’t issue any new building permits.” The threatened suit went away.

The new law required that in every new subdivision, townhouse complex, or apartment development of fifty or more units, 15 percent of the units had to be affordable for households with incomes less than 65 percent of area median income.

Moreover, to offset builders’ potential losses for developing part of their property at less than its market potential, the county offered “density bonuses” that allowed up to 22 percent more housing units to be built.

And to assure that some of the “MPDUs” would be affordable for very low-income workers, the county directed the Housing Opportunities Commission (HOC), the county’s public housing authority to buy or rent one-third of the MPDUs.

MPDU: a Working Partnership

With the new, inclusionary “rules of the game” in hand, county staff developed a working partnership with private, for-profit homebuilders. “MPDU has been good for the county and good for the builders,” Eric Larson, the county’s MPDU administrator, observes, “and we have to give a lot of credit to the builders for making the program work.”

Since mid-1976 when the first MPDUs came on the market, for-profit homebuilders have delivered over 11,000 MPDUs as integral parts of market rate neighborhoods. HOC owns over 1,700 for-sale MPDUs and rents more than 1,500 units in multi-family buildings.

Architects and builders have become increasingly creative in blending MPDUs into the surrounding market rate housing – duplexes that look identical to \$500,000 homes across the street or four-plexes that are indistinguishable from million-dollar mansions next door – except for the additional front doors that will be noticed only by passers-by who know what to look for.

Police and social agencies report no patterns of problems from a neighborhood mix of 85 percent market rate (mostly upper-middle class), 10 percent “workforce” housing, and 5 percent “welfare-to-workforce” housing. An independent study found no adverse impact on the re-sale price of market-rate homes in mixed-income neighborhoods.

And, most importantly, within the nationally renowned Montgomery County Public Schools, most MPDU children prosper in overwhelmingly middle-class schools, achieving higher test scores, graduation rates, and college enrollment rates. Housing policy *is* school policy.

A National Movement

Following Montgomery County, Maryland’s lead, at least 132 cities, towns, and counties have enacted inclusionary zoning (IZ) ordinances. Some 13 million people (about 5 percent of the USA’s population) now live in communities where local government mandates mixed-income housing.

IZ jurisdictions range in population size from giant Fairfax County, Virginia (945,717) to the tiny Town of Isleton, California (818). Some 107 counties and municipalities in California have enacted IZ laws (about one-fifth of all local governments in that state), but there are other clusters of IZ communities in the Washington, DC and Boston regions (also high-cost housing markets).

In September 2003, Highland Park, a suburb of Chicago, passed the first IZ law in the Midwest; Madison, Wisconsin, adopted the Midwest’s second inclusionary ordinance in January, 2004. A new state law in Illinois now requires all 2,824 local governments to have at least 10 percent affordable housing. Communities falling short of that standard can get state approval for their compliance plan by enacting an IZ ordinance with a 15 percent set-aside.

Across the country, building industry opponents invariably threaten that if inclusionary requirements are “imposed” on them, they’ll just pull up stakes and move all their business to a neighboring town.

That’s pure “urban legend.” The threat sounds plausible, but it’s never happened. (At least, no community has ever repealed its IZ law faced with not the threat but that reality.) But if the opponents’ fear is that the first local law will be the proverbial “camel’s nose” under the regional “tent,” there is plenty of evidence for that result.

Municipal governments have adopted IZ laws in at least 32 counties. The 32 pioneers averaged only 17 percent of their counties' population at the time they adopted their area's first IZ law. However, additional neighbors have followed suit and a dozen county governments have enacted IZ laws covering unincorporated land so that, on average, IZ requirements now cover over half (54 percent) of the 32 counties' populations.

For example, Pleasanton was less than 5 percent of the population in California's Alameda County when it adopted its IZ ordinance in 1978. However, similar laws enacted by San Leandro (1980), Berkeley (1986), Livermore (1986), Emeryville (1990), Dublin (1996), Union City (2001), Fremont (2002) and Alameda County itself (2000) have raised IZ coverage to 55 percent of that East Bay county's population.

Tailoring IZ Laws To Fit Local Conditions

Each community tailors its ordinance to its own housing needs and building industry scale. The key issues are minimum project scale ("trigger point"), percentage of inclusionary units required ("set-aside"), income ceiling for eligible households, size of density bonus, and length of control period for re-sale prices or rents.

Inclusionary requirements are triggered by housing developments as low as a minimum of five units and as large as a minimum of 50 units. The most common threshold at which IZ is required is ten or more units.

Set-aside percentages for affordable housing range from as low as 5 percent to as high as 35 percent. Almost three-quarters of the communities require setting aside between 10 and 15 percent of the total units in eligible developments as affordable housing.

Maximum eligible income ceilings range from 30% AMI (area median income) to 120% AMI. (The federal Department of Housing and Urban Development provides annual AMI calculations for all metro areas.) Many communities apportion units among different income levels (for example, 25 percent of the units for less than 50% AMI, 50 percent of the units for between 51% and 80% AMI, and 25 percent of the units for between 81% and 120% AMI). (All those communities targeting 81%-120% AMI are in Northern and Southern California and the Boston area, with their sky-housing housing costs.)

One-fifth of all jurisdictions targets all or a portion of the units for very low income households (50% AMI). Reaching even lower on the income scale typically requires funneling public housing subsidies into the program through having the public housing authority purchase affordable units outright or using housing vouchers in rental properties.

Density bonuses are utilized by 95 percent of all IZ ordinances as a primary cost-offset for homebuilders, though other cost-offsets are also common. In California, 44 percent of IZ laws offer fast-track processing, 42 percent waive certain fees, 42 percent allow reduction of certain standards (like parking requirements), and 38 percent provide cash subsidies.

Re-sale price and rent control periods generally are quite long in order to maintain a stable, long-term inventory of affordable housing. Only 14 programs have control periods of only 10 or 15 years. Twenty (20) communities require a minimum 20-year control period; 47, a 30-year control period; seven, 40 to 45 years; 20, 50 to 55 years; five, 59 to 60 years; four, 99 years; and 23 require IZ housing to be permanently affordable.

The Bottom Line

Such choices should not just be picked out of the air. The most successful ordinances represent collaboration among local officials, affordable housing advocates, and progressive builders, running the numbers to find out what is fair to builders while meeting community needs. For-profit homebuilders produce over 95 percent of all new housing in America. An effective IZ policy must be fair to the builders' bottom line.

Inclusionary zoning can rarely be the total answer to filling a community's affordable housing gap. However, many other programs result in government agencies or private, non-profits building more affordable housing "on the affordable housing side of town." Inclusionary zoning creates genuine "opportunity-based housing" – access to growing suburban job centers and access to higher-quality schools.

The true bottom line, however, is the answer to a simple question of fairness raised by that Montgomery County school teacher back in 1973:

Isn't anyone good enough to work in a community good enough to live in that community?

[1,656 words]

Sources: All data have been compiled by the author from personal knowledge and various sources, including the Innovative Housing Institute (www.inhousing.org), PolicyLink (www.policylink.org), Business and Professional People in the Public Interest (www.bpichicago.org), and the Non-Profit Housing Association of Northern California (www.nonprofithousing.org). For further information on Montgomery County, read “Chapter 9: Montgomery County, Maryland: Mixing Up the Neighborhood” in the author’s *Inside Game/Outside Game*. Brookings Institution Press: Washington, DC (1999).