1996

Essay: The Challenge of Providing Adequate Housing for the Elderly...Along with Everyone Else

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ESSAY: THE CHALLENGE OF PROVIDING ADEQUATE HOUSING FOR THE ELDERLY . . . ALONG WITH EVERYONE ELSE

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With the "graying" of the baby-boomer generation, the United States is on the verge of an unprecedented demographic revolution that will see the proportion of elderly increase to twenty percent of our population by the year 2050.[2] This fundamental change in the composition of our people will create strains throughout society, not the least of which will be our inability to accommodate the housing needs of an aging population within our existing patterns of land use and development. Because the majority of the elderly desire to "age in place," this strain will be greatest in the suburbs, which will face the largest percentage growth in elderly residents with a housing stock least suited to their needs.

As awareness of the need to provide appropriate housing for the elderly in the suburbs grows, there are increasingly loud calls for these communities to examine how they should change their land use plans and zoning codes to prepare for the demands created by this fundamental demographic change. This essay argues that while such a reexamination is certainly worthwhile, it should not be focused *solely* on the needs of the elderly, but rather, should look more broadly at how the typical suburban land use regime fails to satisfy the housing needs of a much broader spectrum of Americans.

The rapid increase in the number of elderly we are witnessing would place a strain on any society in the form of escalating demands on publicly-funded retirement programs, health care providers, and social welfare institutions. In contemporary American society, these demands are exacerbated because the

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[2]At the beginning of this century, only one in every twenty-five Americans—a total of 3.1 million persons—could be classified as "elderly," i.e., aged sixty-five or over. By 1994, dramatic improvements in hygiene, medicine, safety, economic well-being, and personal health habits, combined with a declining birthrate, had increased the proportion of the elderly to one in every eight. The Census Bureau now predicts that, starting in 2010, the aging "baby boom" generation will rapidly swell the number of elderly Americans from today's 35 million to 80 million—one in every five Americans—by the middle of the coming century. Further, the longer life expectancies of today's sixty and seventy year-olds will result in a doubling of the number of Americans aged eighty-five or over in the next twenty-four years, from 3.5 million in 1996 to more than 7 million in 2020. United States Department of Commerce Economics and Statistics Administration, Bureau of the Census, *Sixty-Five Plus in the United States,* STAT. BRIEF (May 1995).

growth in our elderly population had been accompanied by several significant changes in our social structure. The most basic of these changes has occurred in the structure of our families and communities. Just a few decades ago, the vast majority of our citizens were part of traditional nuclear and extended families residing in relatively stable communities, an arrangement that offered numerous advantages to the elderly. Because families moved infrequently, the elderly were usually surrounded by relatives, friends, and familiar institutions (churches, clubs, organizations) that provided both the increasing levels of assistance often required during the aging process and opportunities for the elderly to feel they were still a useful and needed part of their community. Women largely remained in the home, so they were available to serve as caregivers to elderly relatives who were no longer able to live independently, and families were larger, which meant that there were more adult children to assist in the care of elderly parents.

By contrast, today, and for the foreseeable future, increasing numbers of elderly face the last years of their lives in relative isolation. Some never have married, or have been widowed or divorced without remarrying,[3] but even where a couple remains married into old age and has two or more children, it is not unusual to find that either the children (because of employment requirements or a spouse) or the parents (because of retirement choices) have moved away. And even if parents and adult children all remain "at home," the increasing transience of our communities means that a large number of relatives and friends probably have not. Since, at any given time, only about five percent of the elderly are in institutional facilities such as nursing homes,[4] the vast majority of elderly remain in their homes during the aging process, described as "aging in place." The result is that ever-increasing numbers of today's—and tomorrow's—elderly find that they must face the demands of aging with far less assistance from family and friends than was enjoyed by previous generations.

Further, due to the dramatic growth of suburban communities in the decades following World War II, the fastest growing segment of the elderly are those "aging in place" in the suburbs: increasing from twenty-six percent of all elderly in 1960 to fifty-seven percent in 1990.[5] But these suburban communities, which were planned and zoned to accommodate the needs of families with

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[3]In 1993, for example, among the noninstitutionalized elderly population, thirty-two percent of women and thirteen percent of men aged sixty-five to seventy-four lived alone, while the corresponding percentages for those over eighty-five years old were fifty-seven percent for women and twenty-nine percent for men. *Id.; see generally* Senate Select Committee on Aging, *Aging America: Trends and Projections* (U.S. Government Printing Office 1991).

[4]Deborah A. Howe, *Community Planning in an Aging Society, in* EXPANDING HOUSING CHOICES FOR OLDER PEOPLE: AN AARP WHITE HOUSE CONFERENCE ON AGING MINI-CONFERENCE 14 (1995).

[5]*Id.; see generally* S. M. Golant, *The Metropolitization and Suburbanization of the U.S. Elderly Population: 1970-1988,* 30 GERONTOLOGIST 80 (1990).

children, typically are characterized by features—strict segregation of land uses, single-family homes as the predominant or exclusive housing type, total reliance on the automobile for transport—which make them inhospitable to the needs of the elderly.[6]

A nationwide telephone survey of the housing preferences of those over age fifty-five, conducted by the American Association of Retired Persons (AARP) in 1992,[7] illustrates the problems suburban communities can pose to housing the elderly. The survey, as expected, revealed that eighty-five percent of the elderly would prefer to stay in their homes, but the respondents noted that the costs of taxes, utilities, and living expenses' combined with concerns about needing assistance with outdoor maintenance, minor home repairs, housekeeping, and transportation, made shared housing arrangements the next most popular alternative. Such shared housing arrangements would, preferably, be safe and affordable, provide access to transit, and offer significant opportunities for social interaction. Unfortunately, few suburban communities today have either land use plans or zoning ordinances that encourage the development of the shared housing arrangements that many of the elderly anticipate they will require.

Planning for an aging population was exhaustively discussed at a 1995 national conference, "Expanding Housing Choices for Older People," sponsored by AARP with support from The White House Conference on Aging. While the conferees acknowledged that the differences among communities barred a "one plan fits all" approach to the problem, there was consensus on the types of issues that should be addressed in any planning process that attempts to focus on the needs of the elderly,[8] and on the variety of substantive actions that would be required.

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[6]For a critical examination of traditional suburban development in the United States, see PETER CALTHORPE, THE NEXT AMERICAN METROPOLIS: ECOLOGY, COMMUNITY, AND THE AMERICAN DREAM (1993).

[7]Jeanne Cooper, *Older People Prefer 'Aging in Place'; Survey Finds Seniors Staying in Own Homes as Long as Possible*, WASH. POST, Aug. 14, 1993, at E11.

[8]The conferees agreed that the community should first determine: the number of individuals over sixty-five, seventy-five, and eighty-five; the patterns of household composition among these age groups; the nature of the housing stock for each age group; the nature and levels of income and assets for each group; and their gender and ethnic composition. The relationship among housing, transportation and access to needed services is also critical. What is the match between housing supply and need? What types of housing are currently available in the community, and at what prices? Is the relationship among existing housing, other land uses and the ability to provide transit one that will enhance the mobility of the elderly and their access to needed services? Does the current land use plan explicitly provide for assisted housing for the elderly? If so, how appropriate are the locations in relation to neighboring land uses and access to transit and other services? Finally, process issues also need to be addressed. What needs to be done to insure that the elderly are actively involved in the planning effort? How can a community consensus be formed to support a focus on the needs of the elderly in the planning process?

The substantive consensus was illustrated by the paper presented by Deborah Howe,[9] a professor of planning at Portland State University. Professor Howe suggested that four principles—diversity of housing, "linkages," attention to detail, and flexibility—should underlie any community's efforts to plan for an aging population. The plan should first recognize the need for a diversity of housing alternatives—including apartments, townhouses, small and large single-family residences, manufactured homes, and condominiums—offered at differing levels of cost. Preferably, such a diversity of housing choices will be available throughout the community, rather than being concentrated in particular areas, to enable the elderly to make changes in housing without unduly disrupting existing social and service relationships.

Professor Howe explains that "linkages" refers to the need to recognize that a community is "available" to its residents only to the extent that accessible links exist from one place to another. If an accessible link is missing—for example, adequate sidewalks between housing for the elderly and a nearby park—then a portion of the community is totally unavailable to those who require the link, in this case, the elderly who no longer are able to drive. Similarly, a busy intersection with a too-short "Walk" cycle on the pedestrian traffic signal, may sever a needed link for even the most nimble of the elderly.

The failure to pay attention to detail at a level normally absent from the planning process can also have serious repercussions for the elderly, Professor Howe notes. In the illustration above, for example, merely providing sidewalks may not be enough. If the plan does not provide for sufficient shade through tree plantings, the sidewalk may become unusable to the elderly on hot sunny days. Similarly, a failure to include sidewalk maintenance as a planning goal may render the link impassable to elderly for whom cracks pose an unacceptable safety hazard. As another example, planning must consider such details as the implications for sign regulations of the normal decline in visual acuity that accompanies aging: lettering on signs may have to be larger and signs located more conspicuously if they are to be useful to the elderly.

Finally, the need for flexibility in the plan addresses ways in which the community may adapt to the changing needs of an aging population. Howe suggests that plans adopt a long-term perspective that will enable planners and policymakers to anticipate natural demographic changes. For example, public schools could be sited and designed with the idea that over a period of several decades they might be adaptively reused as a senior center or housing for the elderly, or even re-converted from these uses back to their original function as a school.

While Professor Howe states her "four principles" in the context of addressing the housing and "availability" needs of the elderly, they are equally applicable to the needs of other age-groups in society. This point did not go unrecognized in the Conference. Another paper discusses how the Metropo-

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[9] *See* sources cited *supra* note 3.

litan Council[10] of the Twin Cities' recent revision of its "Regional Blueprint" policy guide, addresses the needs of the elderly by simultaneously addressing the needs of all age groups.[11]

In preparing the guide, the staff discovered that there was great interest in "lifecycle communities," which would meet the needs of a more diverse population. Further, they found that neighborhoods and communities that met various criteria defined as "good for older people" turned out to be good for *everyone*; i.e., neighborhoods that really meet the needs of children have many of the same characteristics of neighborhoods that meet the needs of the aging.

The staff first identified the following as important features of communities that meet the needs of all age groups: (1) safety and shelter (housing accessibility for all groups and safety from crime and accidents); (2) companionship and privacy (the ability to visit with friends and relatives as much, or as little) as one wishes; (3) accessibility (ready access to essential services, shopping, houses of worship and social events); (4) stimulation (availability of cultural, sports, entertainment or recreational opportunities); (5) confidence, competence and control (having freedom of choice, being familiar with the options, and confidence in one's ability to make choices); (6) sense of belonging (a feeling of being "at home" due to social connections and/or history and long association); and (7) sense of well-being (includes having a sense of purpose, feeling useful to others, and knowing that help is nearby in a time of need).

The staff next assessed the municipalities in the region to see if "lifecycle" communities existed currently. Not unsurprisingly, they found that existing communities fell far short. As previously noted, the typical suburban land-use pattern of segregated uses meant that many neighborhoods would have to be retrofitted in order to achieve a variety of housing choices and provide housing in proximity to shopping, services, and recreation. While a greater variety of housing stock is available in older communities, and this housing is in closer proximity to shopping, etc., many of these areas are viewed as problematic due to crime and other social ills. Interestingly, the staff found that no municipality belonging to the Council, not even Minneapolis or St. Paul, is built at a density that would support mass transit without significant subsidies.

Despite these difficulties, the staff did identify three specific strategies that should be explored and also described "sources of positive momentum" and some of the most common barriers to success. The first of the three strategies is to improve land use patterns. In older communities, this may be accomplished by plans that: (1) call for higher residential density, especially surrounding proposed transit hubs and/or transit corridors; and (2) maintain

[10]The Council encompasses a metropolitan region that includes the cities of Minneapolis and St. Paul along with 185 other municipalities in seven contiguous counties.

[11]Hal Freshley, *Planning in an Aging Society: Examples from the Twin Cities, in* EXPANDING HOUSING CHOICES FOR OLDER PEOPLE: AN AARP WHITE HOUSE CONFERENCE ON AGING MINI-CONFERENCE 27 (1995).

small retail and commercial areas in older neighborhoods. The staff also noted the importance of timing and planning efforts that seek to reshape local development to coincide with the political opportunity presented when a significant proportion of the population is "graying" and thus aware, appreciative, and politically supportive of planning for a growing elderly population. In newer communities, including growing suburbs, the land use goal should be to build for the certainty that the proportion of elderly in our society is increasing. Because "lifecycle" communities serve all age groups, visual presentations of neighborhood-based planning that incorporates neo-traditional design, mixed-use development, and accessibility to transit, can be very effective. These are designs that people find to be extremely attractive alternatives to the traditional pattern of segregating single-family homes on large lots.

The second strategy is to help people stay in familiar surroundings, maintaining a sense of community. In both old and new communities, a major component of such a strategy is focusing on ways to provide needed services to the elderly as they age in place, rather than requiring that people move to a new location each time they require an increased level of services. The staff report does not minimize the challenge this task poses: the ideal program would be extremely flexible, affordable and client-oriented, but achieving these goals, while assuring quality, safety, and reliability, is difficult. In older communities, which will be the locale of the largest number of elderly for the next ten to fifteen years, the goal is to keep them safe and attractive and to retain existing commercial and shopping areas in the neighborhoods. Traditional neighborhood planning tools can be effective here, including storefront revitalization programs, identifying and reducing government regulations and procedures that impede or slow redevelopment and reinvestment, and working with the media and community groups to present a more positive image of the neighborhood. In newer communities and growing suburbs, a sense of community can be fostered for the elderly by developing community and senior centers that will serve the needs of the elderly by providing: opportunity for companionship; access to education and training; a link to services available in the community; and assistance with transportation.

The third strategy is to increase the stock of appropriate housing for the elderly. The staff recommends that both old and new communities should actively promote the concept of appropriate housing for the elderly, since merely increasing awareness of the issue will likely have a positive effect in both the housing market and the political arena as more decisionmakers recognize the extent of the need. Older communities need to maintain their existing housing stocks, which offer a variety of options to the elderly. These communities should consider policies that will encourage re-investment for elderly housing, including tax or other financial incentives for home purchase or rehabilitation and marketing the unique amenities of older neighborhoods. Newer communities and growing suburbs, which may not yet be feeling the demographic imperative of an aging population, should still plan to allow a percentage of their land area for smaller residential units, including "affordable" units, built in proximity to commercial and service areas. While not included in the staff report, my own work in this area suggests that newer communities may also want to allow for planned unit developments featuring

a variety of housing types—from townhouses and condominiums, through apartment buildings with communal facilities, to a skilled nursing facility—and some on-site service and retail establishments, that will allow the elderly to age in place over a twenty to thirty year period during which they remain within the "neighborhood" even though they require housing in settings that can provide increasingly higher levels of personal and health-care services.

The role that planning can play in meeting the housing needs of the elderly is inherently limited by the fact that planning is prospective and relies on other governmental tools, primarily zoning and building codes, eminent domain, tax policies, and government expenditures, to implement the policies contained in the plan. For government to do something today about providing greater housing opportunities for the elderly, or to implement tomorrow's plans, requires the use of one or more of those tools.

Although tax policies and government expenditures are quite effective policy implementation tools, particularly for federal and state government, in today's political and economic climate it is unlikely that local governments will use these tools to address the issue of housing for the elderly because of their fiscal implications. On the other hand, zoning codes directly address housing issues while minimizing fiscal concerns.

Zoning codes can either promote or discourage "lifecycle" communities. Unfortunately, as previously noted, zoning codes, particularly those in post-World War II suburbs that restrict residential districts to single-family homes on relatively large lots with no service or commercial uses permitted nearby, pose major problems for the development of affordable housing for all age groups because they effectively bar the development of new, or retrofitted, housing types that meet the needs of the elderly and other groups with special needs and relatively limited resources.

To the extent that zoning and building codes encourage higher densities and a broader variety of housing types, including housing that can provide services and other amenities required by the elderly and families with children, they support the development of "lifecycle" communities. Higher densities are important because they both increase housing affordability and provide the population base needed to support public transit systems which serve as a needed alternative to the use of automobiles. The development of a greater variety of housing types also positively effects housing affordability while making it more feasible for the elderly to age in place within a given community. Below, I discuss how zoning codes need to be changed to support the creation of more affordable housing for the elderly and other groups in both existing and future development.

In a nutshell, current zoning codes need to be changed so as to encourage the creation of a greater variety of affordable housing for all age groups both through new development in existing neighborhoods and the retrofitting of existing housing. Unfortunately, traditional zoning regulations insure that the bulk of a community's residential districts will be strictly limited to single-family homes. Where other housing types are permitted, they tend to be

segregated from the bulk of the traditional single-family homes in the community.[12]

While getting still-developing communities to use their zoning regulations to provide, prospectively, for an adequate supply of affordable housing for the elderly and others is difficult, in and of itself, it will be even more difficult to insure that such housing does not isolate either the elderly or those most in need of affordable housing. Too often, affordable housing has been created by permitting relatively high density development, such as townhouses and apartments, only in certain districts. But this all too easily can lead to isolation of the elderly, or others in need of affordable housing, in districts which feature higher density development exclusively. Further, density is only part of the answer. To create a "lifecycle" community that works for all age groups, zoning should permit a mix of residential and commercial uses, at varying densities, linked to recreational, cultural, social and educational institutions that are accessible by transportation modes in addition to the automobile.

In addition to changing zoning codes so as to encourage the construction, and integration into single-family districts, of such types of more affordable housing as townhouses and garden apartments, the attendees at the White House Conference identified three types of retrofitting that would have immediate positive effects on housing affordability and availability: accessory apartments; Elderly Cottage Housing Opportunity (ECHO) housing; and group shared housing.

Accessory apartments—separate rental units that are created by the "subdivision" of existing single-family homes—are not a new phenomenon. Many such units—often called "mother-in-law" apartments or suites—have been created illegally (without zoning or building approvals) for the reason suggested by their name, and are often tolerated by local officials so long as they aren't offered for rent on the market when they are no longer needed for their original purpose.

Most current zoning codes prohibit the creation of such apartments, despite the fact that they can both increase the ability of the elderly to age in place and create affordable housing opportunities for persons and families in other age groups. The accessory apartment is not only a source of rental income, offsetting the financial demands of maintaining a home on a fixed income, but

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[12]The legality of this treatment of multi-family housing can readily be traced to Justice Sutherland's opinion in Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926), the landmark case upholding the constitutionality of zoning. Sutherland's opinion strongly supports zoning that excludes apartment buildings (i.e., multi-family housing) from single-family zones, stating that "in such sections[,] very often the apartment house is a mere parasite, constructed in order to take advantage of the open space and attractive surroundings created by the residential character of the district." *Id.* at 394. He concludes that "apartment houses, which in a different environment would be not only unobjectionable but highly desirable, come very near to being nuisances." *Id.* at 395. For an exhaustive discussion of the *Euclid* case, including several suggestions as to what might have convinced Justice Sutherland's of the evils of parasitic apartment houses, see ZONING AND THE AMERICAN DREAM: PROMISES STILL TO KEEP (Charles Haar & Jerrold Kayden eds., 1989).

can also provide increased personal security and companionship. Further, if needed, the accessory apartment can also help address the elderly owners' need for personal or housekeeping services, since the owners can offer a reduced rent in return for the tenant's providing needed services. Such accessory units can then, of course, address the housing needs of other groups, including single-parent families and others with modest incomes.

Elderly Cottage Housing Opportunity, are small, self-contained housing units, temporarily placed in the side or rear yard of an existing single-family home, that allow an adult child to provide affordable housing and services for an elderly parent or relative, who, in turn, maintains a significant degree of privacy and autonomy. While new to most Americans, this is a housing type that has long been used by the Amish. Most zoning codes, by prohibiting the erection of more than one dwelling unit on a single-family lot and/or prohibiting the use of manufactured housing units, effectively bar the use of ECHO housing.

Group shared housing, better known as group homes, allow a number of unrelated elderly persons to live together as a housekeeping unit. Depending on the age and degree of disability of the residents, such housing may or may not include on-site services by trained staff. Again, the same technique could provide more affordable housing for other age groups as well.

These shared living arrangements are often deterred by local zoning since it is common for zoning codes to limit the number of unrelated persons who may live together to between three and five individuals, a numerical limit that may deter group housing for the elderly and others because a greater number than that permitted under the code is required to make the arrangement affordable. Although the United States Supreme Court upheld such limits in *Village of Belle Terre v. Boroas*,[13] an increasing number of state courts have struck down such restrictions on the internal composition of households that constitute "functional families."[14]

Other zoning codes permit group homes, which typically are occupied by persons with mental or physical disabilities, but subject them to occupancy requirements (a limitation of six to eight persons is common) or various siting restrictions, such as dispersion requirements. While some of these restrictions were enacted in good faith to assure the social integration of group home residents, others represent unlawful attempts to exclude group homes altogether. As a result of these unlawful exclusionary efforts, the federal government prohibited discrimination against group homes for the handicapped in the Fair Housing Amendments Act of 1988 (FHAA).[15]

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[13]416 U.S. 1 (1974).

[14]*See, e.g.*: City of Santa Barbara v. Adamson, 610 P.2d 436 (Cal. 1980); City of Fayetteville v. Taylor, 353 S.E.2d 28 (Ga. 1987); Charter Township of Delta v. Dinolfo, 351 N.W.2d 831 (Mich. 1984); Borough of Glassboro v. Vallorosi, 568 A.2d 888 (N.J. 1990); Baer v. Town of Brookhaven, 537 N.E.2d 619 (N.Y. 1989); Appeal of Summers, 551 A.2d 1134 (Pa. 1988).

[15]42 U.S.C. § 3601 *et seq.* (West, 1996).

Where the residents of a group home are frail or disabled elderly, which brings them within the FHAA's definition of handicapped, it becomes almost impossible for a local government to enforce a discriminatory zoning ordinance to exclude the home. Although a full discussion of the import of the FHAA in the context of group homes for the elderly is beyond the scope of this essay, the AARP's Public Policy Institute has published a full discussion of the issue.[16]

While the FHAA prohibits zoning restrictions on group homes for elderly who are sufficiently impaired to come within its protection, it does not address shared housing for the fully competent in any age group or accessory apartments and ECHO housing. Increasing housing opportunities for the elderly and others through these techniques will require nothing less than amending current zoning to permit such uses, subject to the minimum regulation possible to insure safety. If possible, special permitting procedures should be avoided in favor of permitting such uses as-of-right subject to well-drafted restrictions that effectively address such issues as occupant safety and the privacy of neighboring homes. While such proposals will, undoubtedly, be controversial—largely because homeowners will fear that property values will decline in the wake of such changes—employing the political skills discussed earlier in the planning context can, if the timing is right, overcome the initial negative reaction to these proposals for change.[17]

Communities can use other techniques in existing neighborhoods, besides zoning changes that allow for the retrofitting of existing housing, to increase housing opportunities for the elderly. Professor Howe[18] advocates zoning changes that would allow duplexes or triplexes as infill housing on vacant lots in single-family districts. She argues that design guidelines could insure visual compatibility with the existing housing stock, while the increased density would assure greater affordability plus increase opportunities for companionship. She also recommends that existing commercial areas in residential districts be rezoned to allow for the creation of apartments on upper floors in existing buildings and to require such apartments in new commercial construction along transit routes.

Finally, it seems fittingly ironic that a culture as youth-obsessed as ours faces a demographic future in which those over sixty-five will outnumber those under fourteen for the first time in our history. Irony aside, we are ill-prepared to deal with this new reality on several counts, not the least of which is the failure of our patterns of land use and development to accommodate the changed housing needs of an aging population. Primary among these needs is

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[16]Stephanie Edelstein, *Fair Housing Laws and Group Residences for Frail Older Persons,* AARP Public Policy Institute Discussion Paper No. 9508 (Apr. 1995).

[17]A good source of information on the experiences of communities that permit accessory apartments can be found in Patrick H. Hare, *Isolation Zoning in Single-Family Suburbs, in* EXPANDING HOUSING CHOICES FOR OLDER PEOPLE: AN AARP WHITE HOUSE CONFERENCE ON AGING MINI-CONFERENCE 107 (1995).

[18]*See* sources cited *supra* note 3.

the stated desire of the elderly to be able to "age in place." To meet this need, America's suburban communities in particular will need to re-think their reliance on exclusive single-family zoning and begin planning and zoning for an increasingly large number of the elderly. Despite understandable concerns about maintaining housing values, this may well prove to be politically achievable simply because the very demographic changes that create the need will create a growing constituency in favor of the changes needed to meet that need. Moreover, by making our neighborhoods more friendly to the elderly, we will simultaneously make them friendlier to all other age groups as well.