

The Jerome N. Frank
Legal Services Organization

YALE LAW SCHOOL



September 29, 2020

VIA HAND DELIVERY AND
ELECTRONIC COPY

Mr. Robert Klee, Chair,
and Commission Members
Town Plan and Zoning Commission
Town of Woodbridge
11 Meetinghouse Lane
Woodbridge, CT 06525

Re: Application to Amend Woodbridge Zoning Regulations and Plan of Conservation and Development

Dear Chair Klee and Commission Members:

We represent 2 Orchard Road LLC (the "LLC"), owner of the 1.5 acre parcel at 2 Orchard Road in Woodbridge, and Open Communities Trust, LLC ("OCT"), which leases and has an option to purchase 2 Orchard Road from the LLC. The subject parcel is in Woodbridge's Residence District A Zone.

This letter and its attachments constitute a submission of an application for a zoning regulation amendment as well as an amendment to the Town's Plan of Conservation and Development ("POCD"), pursuant to General Statutes §§ 8-3(c) and 8-23(j). This application contains, in addition to the proposed amendments, extensive supporting material because (1) this application proposes a substantial change in the Zoning Regulations of the Town (the "Zoning Regulations"); (2) the proposal is based on several claims of illegality in the Town's existing Zoning Regulations; and therefore (3) we are providing the Commission, Town officials, and the Town Attorney with the legal and factual research that supports these claims and necessitates adoption of the proposed amendments.

The Zoning Regulations have unlawfully excluded multi-family and affordable housing from Woodbridge for decades. While this application proposes an immediate step to begin to remedy this illegality, the applicants propose that the Commission and the Town take two steps overall. First, the Commission must promptly approve this application to amend the Zoning Regulations and the Town's POCD to permit, in most of the Town's residential districts, multi-family housing with affordable units. This initial remedial measure will begin addressing the longstanding exclusion of multi-family and affordable housing and the POCD's failure to plan for housing opportunity in Woodbridge. After taking

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this first step, the Town must develop and adopt a plan for residential zoning and planning that will fully correct and remedy the Town's history of exclusionary land use policies and practices, by enacting zoning regulations and adopting other measures needed to prioritize, promote, and facilitate the development of affordable housing sufficient to meet the Town's "fair share" of the region's need for such housing.

With regard to the amendment to the Zoning Regulations, the application seeks to add a new § 3.4 allowing, subject only to the issuance of a Zoning Permit, in the Residence A, B, T3-C, T3-D, and T3-BB Districts, the construction of a multi-family structure so long as that structure meets the bulk and dimensional standards that currently apply to single-family homes and the multi-family use can be safely served with water supply and sewage disposal in accordance with applicable public health and building codes. An illustration of this concept for 2 Orchard Road is attached at Tab 4.

To utilize this multi-family option, the property owner must choose and commit to one of the options for affordability spelled out in the proposed amendment at Tab 2, at § 3.4.D. For the four-unit multi-family home the Applicants are planning for 2 Orchard Road, they will use the second affordability option. Thus, the three- bedroom unit and one of the two-bedroom units will be leased to families receiving rental assistance under the federal Section 8 program or the state's Rental Assistance Program, and these families are likely to be Black or Hispanic in view of the racial makeup of the recipients of the rental assistance programs in the surrounding region and the affirmative marketing that will be conducted pursuant to § 3.4.H.2.

OCT and the LLC are proposing a zoning regulation and POCD amendment because, as currently written, the Woodbridge Zoning Regulations, aided by portions of the POCD, effectively ban multi-family and affordable housing. As such, they violate (1) Connecticut's Zoning Enabling Act, General Statutes § 8-2; (2) the POCD requirements of General Statutes § 8-23; (3) the anti-segregation provision of the Connecticut Constitution; (4) the federal Fair Housing Act; and (5) the Connecticut Fair Housing Act. In fact, as demonstrated in detail in this package, Woodbridge has a long history of active resistance to zoning regulation amendments and development proposals that would allow multi-family and affordable housing in the Town.

The current zoning scheme is inconsistent with state law. General Statutes § 8-2 requires town zoning regulations to "encourage the development of housing opportunities, including opportunities for multifamily dwellings." However, as shown in Table 3.1 of the Woodbridge Zoning Regulations, "multi-family dwellings" are currently not permitted anywhere in the Town. In contrast, Table 3.1 shows that "single-family dwellings" are currently permitted in four Woodbridge zoning districts. "Two-family dwellings" are currently permitted only in two zoning districts that comprise just 21.5 acres, or 0.2 percent, of the Town's total land area of approximately 12,300 acres.

Moreover, as is well documented, single-family dwellings are generally not affordable for families of moderate income.ⁱ By illegally limiting the multi-family opportunities required by statute, the Town has

ⁱ Across the 15 municipalities in the South Central Region, single-family ownership costs are 31 percent more than two-family/multi-family ownership costs, and 67 percent more than two-family/multi-family renter costs. See Data Appendix, XXIII.

also limited affordability, and thereby excluded classes protected under state and federal law. Moreover, state law has always required zoning regulations to acknowledge regional needs. Over time, in response to local failure to meet these needs, General Statutes § 8-2 has evolved to include more forceful mandates, but notably, Woodbridge has never responded to the requirements of § 8-2 with a commensurate change to its Zoning Regulations.

Woodbridge's Zoning Regulations do contain an Affordable Housing District ("AHD"), but rather than representing at least a good faith effort to comply with state and federal housing laws, this provision only demonstrates the Town's noncompliance. A comprehensive review of town records indicates that this provision of the Zoning Regulations has not been used since its 1996 enactment. Indeed, the AHD appears to have been designed to ensure that it would never be used. The AHD allows only single-family detached housing and age-restricted housing, and contains unnecessary and exclusionary requirements not found in other zones, such as setbacks that are significantly greater; development plan requirements that are more substantial and burdensome; and parking space minimums that are inexplicably higher. Rather than "encourage the development of housing opportunities," the AHD erects insurmountable barriers to the development of housing that would serve families with children, people with disabilities, people of color and others in need of affordable housing in the region.

The Town of Woodbridge has itself recognized its lack of affordable housing. As noted in the Town's 2015-2025 POCD, current Woodbridge incomes are "highly concentrated in the top three categories of households earning \$100,000 or more each year. Conversely, far fewer Woodbridge households fall into low-to-moderate income categories." Moreover, "high housing costs pose affordability challenges," and "only 39 units or 1.1 percent of Woodbridge's housing stock is assisted" by a state or federal housing affordability program. Little has changed since the Town issued its current POCD. Today, the State credits Woodbridge with 43 units of assisted housing (1.24% of the Town's 3,478 housing units, using 2010 census figures) 30 of which are age-restricted units for seniors, meaning only 13 or 0.37% of the Town's housing units are counted as affordable by the State and available to families with children. *See* Data Appendix, VIII.

In authorizing towns to use the State's zoning power, Connecticut law has long required town zoning regulations to promote the creation of multi-family housing and housing affordable to low and moderate income families in the region. Yet, in virtually all of the residentially zoned areas of Woodbridge, the only housing permitted by the Zoning Regulations is single-family homes on lots of at least 1.5 acres (and in much of the land area, more than 2 acres); multi-family housing is simply not permitted in these areas. In the only part of the Town where housing other than single-family is permitted – two tiny zones making up 0.2% of the Town's land – structures of two housing units, but no more, are permitted. The AHD Regulation, despite its ostensible purpose, has failed to yield a single unit of affordable housing in the 24 years since its enactment.

The Zoning Regulations thus leave no realistic possibility for the development of multi-family or affordable housing as required by law and ensure that low and moderate income households will continue to be excluded from living in Woodbridge. Simply put, the Town of Woodbridge has not met its obligations under Connecticut law, or engaged in a good faith effort to do so. Further, because the impact of this exclusionary zoning scheme falls disproportionately on Black and Hispanic households, the Town's

regulations perpetuate segregation and have a discriminatory and illegal impact on Black and Hispanic residents of the region and the State. Thus, as explained in more detail in this package, the Town's current Zoning Regulations violate the Zoning Enabling Act, the Connecticut Constitution, and the federal and state fair housing statutes.

Similarly, the POCD violates General Statutes § 8-23 by failing to consider "the need for affordable housing," or to "make provision for the development of housing opportunities, including opportunities for multifamily dwellings . . . for all residents of the municipality and the planning region in which the municipality is located" or to "promote housing choice and economic diversity in housing, including housing for both low and moderate income households." We propose an amendment to align the POCD with the Town's obligations.

The Town's non-compliance with the foregoing legal requirements has been long-running and requires not merely a change of direction but meaningful remedial actions. In Woodbridge, the history of exclusion and racial segregation extends deep into the Town's past,ⁱⁱ and will require sustained reform to fully address. The Town, therefore, must not only take prompt action to amend its Zoning Regulations and POCD, beginning to bring the Town into alignment with the mandates of state and federal law, but **also** overhaul its residential zoning regulations and its planning policies and practices to ensure adherence to applicable law and remedial steps for the longer term. Other states and municipalities around the country have used a range of strategies to successfully support and approve the construction and occupancy of a spectrum of housing options, including affordable housing. To fully meet its legal and remedial obligations, Woodbridge must do so as well, and it should use a "fair share" approach.

To this end, Open Communities Alliance has conducted a fair share analysis for Connecticut, using the regions defined by the regional councils of governments for purposes of determining the need for low and moderate income housing, as General Statutes § 8-2 directs. The need is staggering. Even when considering only extremely low income households that are severely cost-burdened in regard to housing (*i.e.*, earning less than 30 percent of area median income and paying more than 50 percent of income toward housing), the region comprising the South Central Regional Council of Governments needs 25,889 units of housing. This need should be allocated among the towns in the region. We estimate that the share that may fairly be allocated to Woodbridge is 1,842 units of housing.

Given Woodbridge's obligation to provide housing opportunities for the region, the Town needs to develop an actionable plan to meet its fair share of the need for affordable housing. A meaningful version of this plan would include both a ten-year timeline for completing the realistic actions needed to enable the production of 542 units (corresponding to 20% of current housing units, based on more recent data

ⁱⁱ For instance, in 1970, Woodbridge was identified as one of the most homogeneous communities with the "most severely restricted" zoning. High "residential housing prices in 1977 were tending to increase those disparities" between Woodbridge and the State. Unlike its neighbors, Woodbridge did not have a "Black population large enough to report separately." CONN. COMM'N ON HUMAN RIGHTS & OPPORTUNITIES, A STUDY OF ZONING IN CONNECTICUT 83, 47-48, 34 (1978), *available at* <http://hdl.handle.net/11134/120002:229>. *See generally*, Woodbridge Zoning History, Introduction: Origin And Criticisms Of "Snob Zoning," *infra* at 14.

than the 2010 census numbers used by the State) and an overall twenty-year timeline for enabling production of the full number of needed units. 1,842 units is a conservative estimate, as it only addresses need as represented by very low-income households suffering immense housing cost burdens. These units should include two-bedroom and three-bedroom rental units, reflecting the fact that households with children make up a significant proportion of the population in need of affordable housing. *See Data Appendix, XXVIII.* Meeting its legal and remedial obligations will require Woodbridge to overhaul its residential zoning, beginning with the changes requested in this application, and to undertake additional planning and infrastructure development steps. This should be based on a plan to provide its fair share of regional housing opportunities.

The LLC and OCT ask that the Town and its land use agencies move expeditiously to enact these proposed amendments as required by law, and the urgency of the current moment.

Sincerely,



Erin Boggs, Esq.
Open Communities Alliance



Anika Singh Lemar, Esq.
Jerome N. Frank Legal Services Organization

Attachments

**APPLICATION OF 2 ORCHARD ROAD LLC AND
OPEN COMMUNITIES TRUST LLC FOR
AMENDMENT TO WOODBRIDGE ZONING
REGULATIONS AND PLAN OF CONSERVATION
AND DEVELOPMENT**

September 29, 2020

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Opportunity Housing Zoning Regulation Text Amendment

Section 3.4 OPPORTUNITY HOUSING

A. Purpose

The purpose of the Opportunity Housing zoning regulation is to remedy the Town of Woodbridge's prohibitions on multi-family and affordable residential development throughout most of the Town. This section amends the Town's Zoning Regulations to allow, within Woodbridge's Residential Districts A, B, T3-C, T3-D, and T3-BB, multiple-unit structures on lots currently restricted to single-family residential development, subject only to issuance of a Zoning Permit, as is required for single-family structures. The allowed multiple-unit structures must comply with all bulk and dimensional requirements for a single-family structure and must include affordable housing units as specified in Section D of this regulation.

B. Applicable Districts

Opportunity Housing shall be a permitted use, subject to issuance of a Zoning Permit, in the Residential Districts A, B, T3-C, T3-D, and T3-BB.

C. Definitions

As used in this section:

1. "Rental assistance" means rental assistance, whether tenant-based or project-based, provided pursuant to 42 U.S.C. § 1437f and corresponding federal regulations or General Statutes §§ 8-345, 8-346 and corresponding provisions of the Regulations of Connecticut State Agencies ("RCSA"), or successor programs.
2. "Deed-restricted" and "deed restrictions" means the restrictions are contained in a deed and shall apply for forty (40) years after initial occupancy.
3. "Administrators of rental assistance" means the Connecticut Department of Housing and any Connecticut public housing agency as defined in 42 U.S.C. § 1437a(b)(6), within thirty (30) miles from any boundary of the Town of Woodbridge, including any of their contractors.
4. "Median income" has the same meaning as provided in General Statutes § 8-30g(a)(7).
5. "Opportunity Housing" means a residential development that meets the requirements set forth in this section.

D. Affordability Options

Each Opportunity Housing development shall utilize at least one of the following affordability options:

1. At a minimum, the greater of one (1) unit or ten percent (10%) of the units shall be preserved for at least forty (40) years for sale or rental to a household earning sixty percent (60%) of the median income or less, utilizing the maximum household income, and maximum sale price or rental calculated in compliance with General Statutes § 8-30g and corresponding state regulations.
2. At a minimum, the greater of one (1) unit or thirty percent (30%) of the units shall be leased to households receiving rental assistance.
3. The development shall qualify as "assisted housing" as defined in General Statutes § 8-30g(a)(3) without relying solely on rental assistance.

E. Bulk Regulations

An Opportunity Housing structure or development shall be governed by the General Bulk Regulations set forth in Table 4.1 of these Regulations, provided, however, that limits on number of families, as set forth in the "RESIDENTIAL DENSITY" section of Table 4.1, shall not apply to Opportunity Housing structures or developments.

F. Opportunity Housing Exterior

An Opportunity Housing structure or development shall not have a flat roof. On any long side of such building, walls shall have more than one (1) plane.

G. Affordable Units To Be Comparable to Market-Rate Units

In Opportunity Housing, the affordable units, including any units leased to households receiving rental assistance, shall be at least comparable in size, number of bedrooms, exterior design, construction, and quality of materials to the market-rate units.

H. Affordability Plan

Any person seeking a permit for an Opportunity Housing development shall submit with its application an Affordability Plan, which shall include at least the following:

1. Designation of the person, entity or agency that will be responsible for the duration of any affordability restrictions, for the administration of the Affordability Plan and its compliance with the income limits and sale price or rental restrictions of the applicable affordability option chosen pursuant to subsection D, above.
2. An Affirmative Fair Housing Marketing Plan governing the sale or rental of all dwelling units, consistent with the requirements of General Statutes Chapter 127c,

§ 8-37ee and with the corresponding RCSA. For units to be leased to households receiving rental assistance, the Affirmative Fair Housing Marketing Plan shall be reasonably calculated to lease units to such households, including, but not limited to, advance notice to and consultation with administrators of rental assistance, provided that if any such unit has not been leased to such a household after diligent execution of the Affirmative Fair Housing Marketing Plan for a period of no less than two (2) months, the vacant unit may be leased to any household and the next available unit shall be offered for lease first to households with rental assistance as necessary to reach the required thirty percent (30%) proportion.

3. A sample calculation of the maximum sales prices or rents of the intended affordable dwelling units.
4. For an Opportunity Housing development proposed pursuant to option 1 in subsection D, above, a description of the projected sequence in which the affordable dwelling units will be built and offered for occupancy and the general location of such units within the proposed development. If a development is constructed in phases, each phase shall include at least the required percentage of affordable dwellings for that phase.
5. Deeds, restrictive covenants, lease provisions or site plan conditions that will govern the affordable dwelling units.

I. Rounding

For purposes of determining whether a building qualifies as Opportunity Housing, fractional units of 0.5 and above shall be rounded up. [Example: in determining the number of units comprising ten percent (10%) or thirty percent (30%) of a building, 0.5 units shall be counted as one (1) unit, 1.5 units shall be counted as two (2) units, and so on.]

J. Filing

The final deeds, restrictive covenants or lease provisions executed to comply with this Section shall be filed with the Zoning Enforcement Officer and with the Town Clerk prior to the issuance of any Zoning Permit.

Note re Additional Text Changes

Table 3.1 ("Allowed uses by Zone"): Revise to add Opportunity Housing as allowed use in Residential Districts A, B, T3-C, T3-D, and T3-BB.

Table 3.2 ("Required Floor Area for Primary Dwelling Units"): Delete.

Table 4.1: Delete cap on families per building in final row of table.

Plan of Conservation and Development Text Amendment

General Statutes § 8-23 conditions a municipality's eligibility for discretionary state funding on adoption of a POCD, which must be prepared or amended "at least once every ten years." A POCD's purpose "is to set forth the most desirable use of land and an overall plan for the town," operating on a "merely advisory" basis to provide "overall objectives" that will be implemented by specific zoning regulations.¹

The statute requires that planning commissions "shall consider" a series of issues when preparing a POCD, including "the need for affordable housing," the "state plan of conservation and development adopted pursuant to chapter 297" (General Statutes § 16a-24 et seq.), and "the regional plan of conservation and development adopted pursuant to section 8-35a."²

Other POCD requirements mimic language in § 8-2(a) regarding multi-family and affordable housing:

[The POCD] shall . . . make provision for the development of housing opportunities, **including opportunities for multifamily dwellings**, consistent with soil types, terrain and infrastructure capacity, for all residents of the municipality and the planning region in which the municipality is located, as designated by the Secretary of the Office of Policy and Management under section 16a-4a" and "**promote housing choice and economic diversity in housing, including housing for both low and moderate income households**, and encourage the development of housing which will meet the housing needs identified in the state's consolidated plan for housing and community development prepared pursuant to section 8-37t and in the housing component and the other components of the state plan of conservation and development prepared pursuant to chapter 297.³

Woodbridge's POCD does not currently meet the express requirements set forth in § 8-23. We propose the following revisions to bring it into minimal compliance with the requirements of state law.

Chapter 1, Housing and Demographics, Page 27: Add the following bullet under Section 2, "Near-term Action Agenda":

- Amend Zoning Regulations to allow, subject only to the issuance of a Zoning Permit, multi-family development in all residential zones by conversion of existing buildings or new construction, provided that all bulk requirements (height, setback, coverage, etc.) for the subject zone are met and the additional dwellings expand opportunities for low and moderate income households, including families with children.

¹ AvalonBay Cmty., Inc. v. Town of Orange, 775 A.2d 284, 298 (Conn. 2001).

² General Statutes § 8-23(d).

³ General Statutes § 8-23(e)(1) (emphasis added).

Future Land Use Plan, pp. 132-133: Add the following language:

- Under the heading, "Land Use Definitions," amend the third bullet, "Two-Family Residential" to read as follows (new language underlined):

Two-Family Residential: properties that are designated for residential uses with two-family residences, located primarily in the Village District area of Town, but also allowed in all residential districts when such residences expand opportunities for low and moderate income households, including families with children, and are constructed in compliance with the bulk regulations of the subject district.

- Add two new bullets between "Two-Family Residential" and "Elderly Assisted Residential" as follows:

Low Density Multi-Family Residential: properties that are designated for multi-family dwellings, located primarily in the Village District area of Town, but also in all residential districts when such residences expand opportunities for low and moderate income households, including families with children, and are in compliance with the bulk regulations of the subject district.

High Density Multi-Family Residential: properties that are designated for multi-family dwellings, located primarily in the Village District area of Town and which expand opportunities for low and moderate income households, including families with children, in the Town.

- Under the heading, "Future Land Use Plan Classifications," add at the very beginning the following new bullet:

Low Density Single-Family Residential: properties that are designated for low density Single-Family residences, and Two-Family Residential and Low Density Multi-Family Residences.

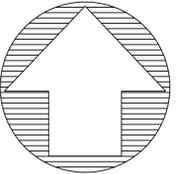
- Under the heading, "Future Land Use Plan Classifications," amend the bullet "Village Residential" to read as follows (new language underlined):

Village Residential: properties that are designated for moderate density residential uses, including single-family and two-family residences [and], in-law uses, and High Density Multi-Family Residential.

PROPOSED MULTI-FAMILY PLOT PLAN

CONCEPTUAL LAYOUT #1
 2 ORCHARD ROAD
 WOODBRIDGE, CONNECTICUT
 MAY 2020

NOTE:
 LAYOUT IS CONCEPTUAL ONLY AND IS BASED ON COMPILED INFORMATION AND A
 CURSORY REVIEW OF REGULATIONS. A SITE SURVEY AND THOROUGH REVIEW OF THE
 REGULATIONS MAY YIELD ADDITIONAL INFORMATION THAT MAY AFFECT THE
 LAYOUT. HARRY E. COLE & SON DOES NOT GUARANTEE
 THE DEPICTED LAYOUT.



NORTH

1"=20'

DESIGN CRITERIA:

- Percolation Rate: 10.1-20.0 Min/Inch
- Eight(8) Bedroom Multi-Family House
 - Unit A (1 Bedroom)
 - Unit B (2 Bedrooms)
 - Unit C (2 Bedrooms)
 - Unit D (3 Bedrooms)
- Required Effective Leaching Area (ELA)
 - Primary Area: 1,800 Sq. Ft.
 - Reserve Area: 1,800 Sq. Ft.
- Required Septic Tank Capacity: 2,500 Gal.
- Average Slope: 10.1% - 15%
- Depth to Restrictive Layer: 27 In. (Mottling - Pit # HH-3 & HH-4)
- Minimum Leaching System Spread (MLSS)
 - Hydraulic Factor: 24
 - Flow Factor: 4
 - Percolation Factor: 1.25
 - (HF 24)(FF 4)(PF 1.25) = 120 FL
 - 120 MLSS Required < --- MLSS Provided
- Proposed Primary Area:
 - 150 LF of GreenLeach GLF 21.62 Units
 - (150LF)(12.5 FV/LF) = 1,875 Sq. Ft.
 - 1,875 Sq. Ft. of Proposed ELA > 1,800 Sq. Ft. of Required ELA
- Proposed Reserve Area:
 - 150LF of GreenLeach GLF 21.62 Units
 - (150 LF)(12.5 FV/LF) = 1,875 Sq. Ft.
 - 1,875 Sq. Ft. of Proposed ELA > 1,800 Sq. Ft. of Required ELA

SOIL TEST DATA

Observation Pit Data:

Date: 12/19/19
 By: Trinkaus Engineering, LLC

Pit #HH-1
 0-4" Topsoil
 4-35" Orange Brown Fine Sandy Loam
 35-42" Light Brown Medium Compact Sandy Till
 Bar Probe to 49"(No Ledge) , Restrictive Layer @35"

Pit # HH-2
 0-5" Topsoil
 5-30" Orange Brown Fine Sandy Loam
 30-38" Light Brown Medium Compact Sandy Till
 Bar Probe to 48"(No Ledge) , Restrictive Layer @30"

Pit #HH-3
 0-5" Topsoil
 5-27" Orange Brown Fine Sandy Loam
 27-37" Grey Brown Medium Compact Sandy Till
 Bar Probe to 48"(No Ledge) , Restrictive Layer @27"

Pit #HH-4
 0-6" Topsoil
 6-27" Orange Brown Fine Sandy Loam
 27-39" Grey Brown Medium Compact Sandy Till
 Bar Probe to 48"(No Ledge) , Restrictive Layer @27"

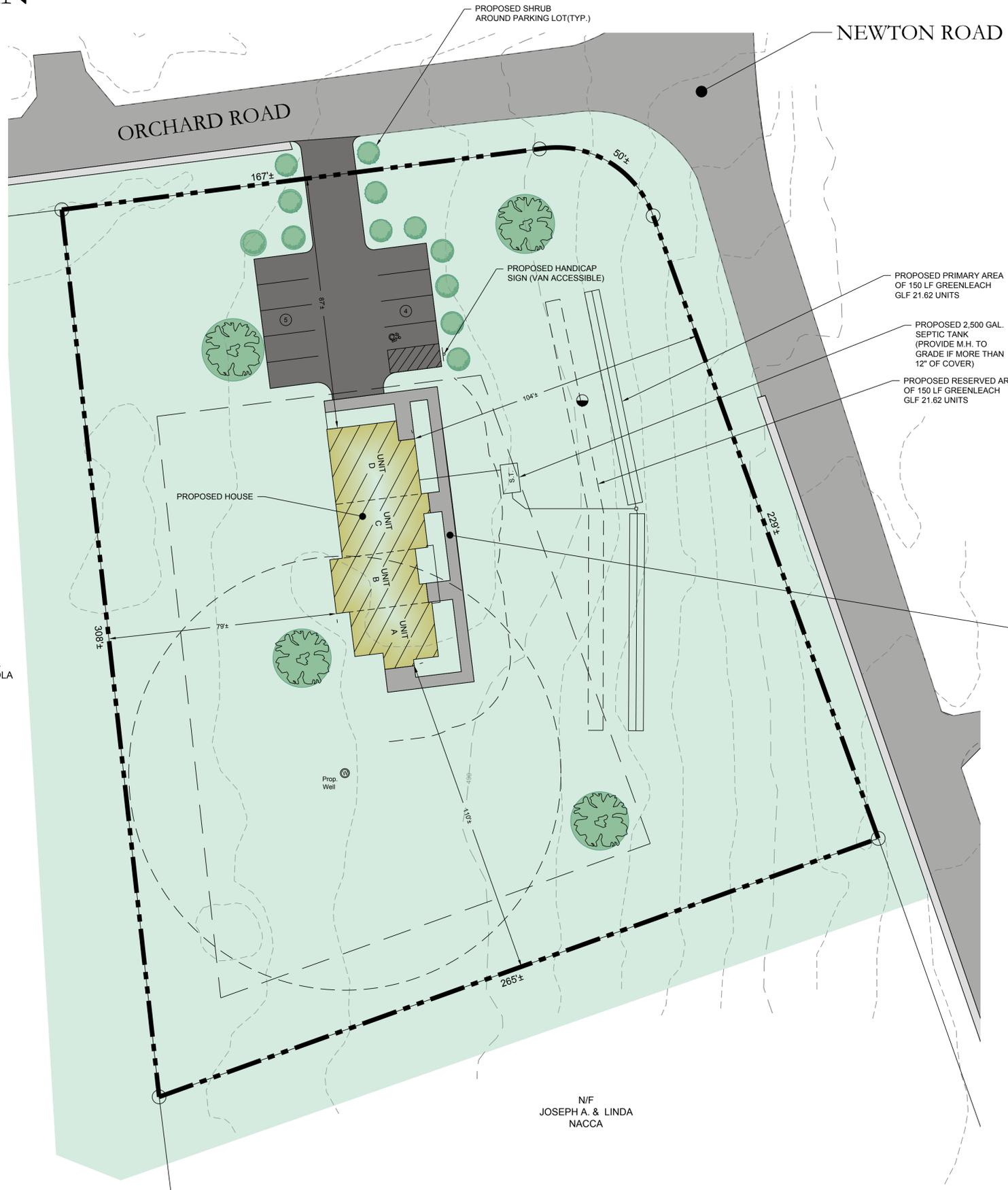
Percolation Test Data:

Date: 12/19/19
 By: Trinkaus Engineering, LLC

Perc. Test # P-1 @ 25" 20 Min/Inch

N/F
 SALVATORE &
 SABRINA COPPOLA

N/F
 JOSEPH A. & LINDA
 NACCA



PARCEL ZONED: A
 TOTAL AREA: 1.5 Acres

LOT & BUILDING REQUIREMENTS:

Item:	Required:	Proposed:
- Lot Area	65,000 Sq. Ft.	64,352± Sq. Ft.
- Lot Width	200'	446'±
- Front Yard	75'	87'±
- Side Yard	25'	110'±
- Rear Yard	25'	79'±
- Lot Coverage	15%	3.8%
- Building Height	2 1/2 stories	< 2 1/2 stories

cole
 HARRY E. COLE & SON
 engineering. surveying. planning.

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 P.O. Box 44
 Plantsville, CT 06479 - 0044
 Tel: (860) 628-4484
 Fax: (860) 620-0196
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DRAWING NAME: P:\Land Projects\1914\1914-001\1914-001-001\1914-001-001-001.dwg; PLOT DATE: May 15, 2020; Plotter: HPGLA; Plot Style: hplca.ctb; Plot Device: HPGLA; Plot Path: C:\Program Files\Autodesk\AutoCAD 2020\Plot\hplca.ctb

Date
3-12-20

Revision

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790 Farmington Avenue • Bldg #2 • Farmington, Connecticut 06032
(860) 409 - 7155 Fax (860) 409 - 7160

PROPOSED UNITS FOR:
2 ORCHARD ROAD
WOODBIDGE, CONNECTICUT

Revision

Checked By

Sheet No.
A1



EAST ELEVATION
SCALE: 1/4" = 1'-0"



WEST ELEVATION
SCALE: 1/4" = 1'-0"

© 2020 KEMPER ASSOCIATES ARCHITECTS, LLC
COPYRIGHT WARNING: FEDERAL COPYRIGHT PROTECTION
EXTENDS TO ORIGINAL AND MODIFIED DERIVATIVE PLANS,
AS APPLICABLE TO INTENTIONAL AND UNINTENTIONAL
INFRINGEMENT, AND PROVIDES FOR SPECIFIC STATUTORY
DAMAGES. BOTH CITY AND FEDERAL. THESE
ARCHITECTURAL WORKS ARE COPYRIGHTED AND PROTECTED
BY TITLE 17 OF THE U.S. STATE CODE AND REPRODUCTIONS
ARE STRICTLY PROHIBITED AND FORBIDDEN.

Date
 8-12-20

Revision

Kemper Associates Architects LLC
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NORTH ELEVATION
 SCALE: 1/4" = 1'-0"



SOUTH ELEVATION
 SCALE: 1/4" = 1'-0"

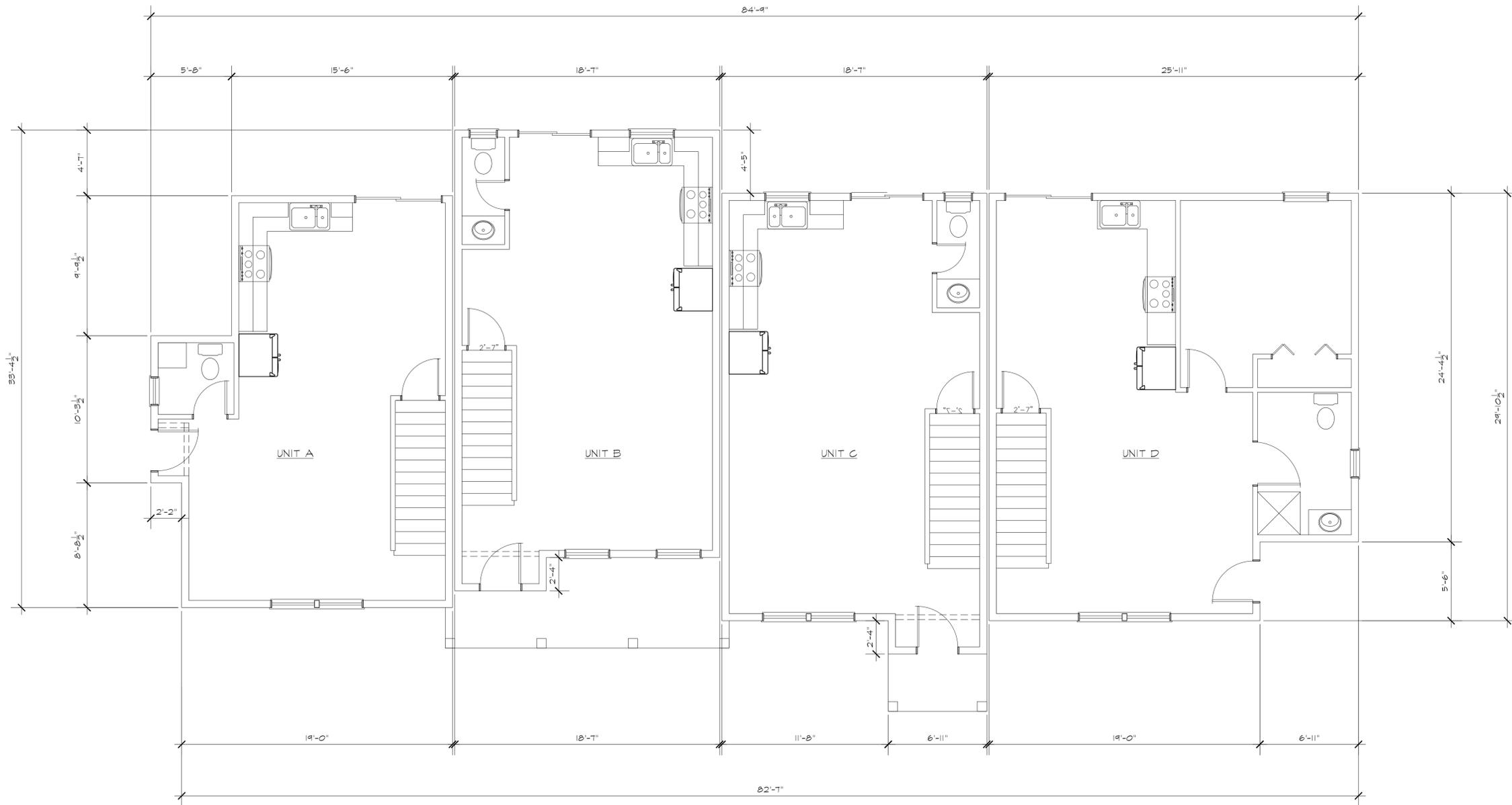
PROPOSED UNITS FOR:
 2 ORCHARD ROAD
 WOODBRIDGE, CONNECTICUT

Revision

Checked By

Sheet No.
 A2

© 2020 KEMPER ASSOCIATES ARCHITECTS, LLC
 COPYRIGHT WARNING: FEDERAL COPYRIGHT PROTECTION
 EXTENDS TO ORIGINAL AND MODIFIED DERIVATIVE PLANS,
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FIRST FLOOR PLAN
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Date
3-12-20

Revision

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(860) 409 - 7155 Fax (860) 409 - 7160

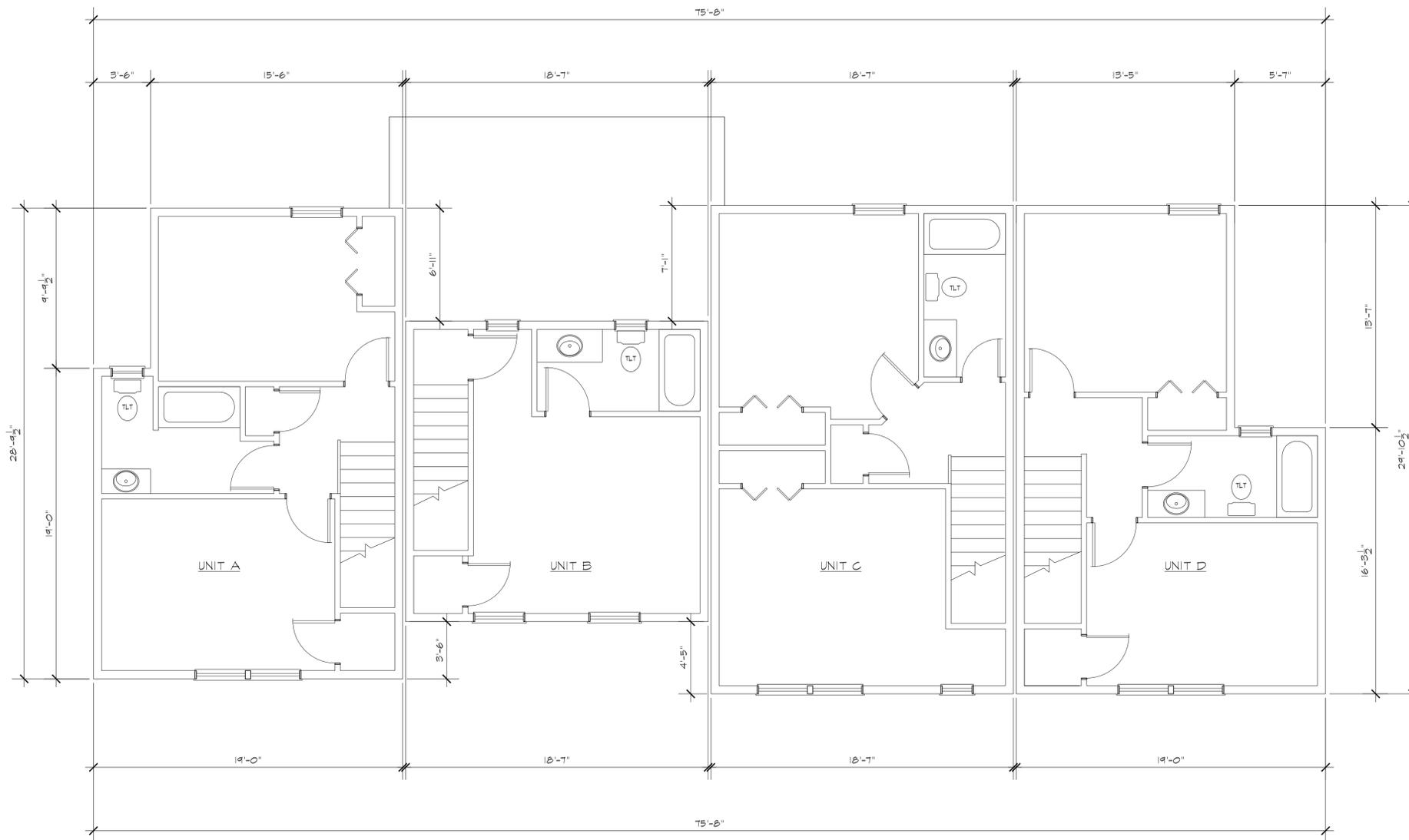
PROPOSED UNITS FOR:
2 ORCHARD ROAD
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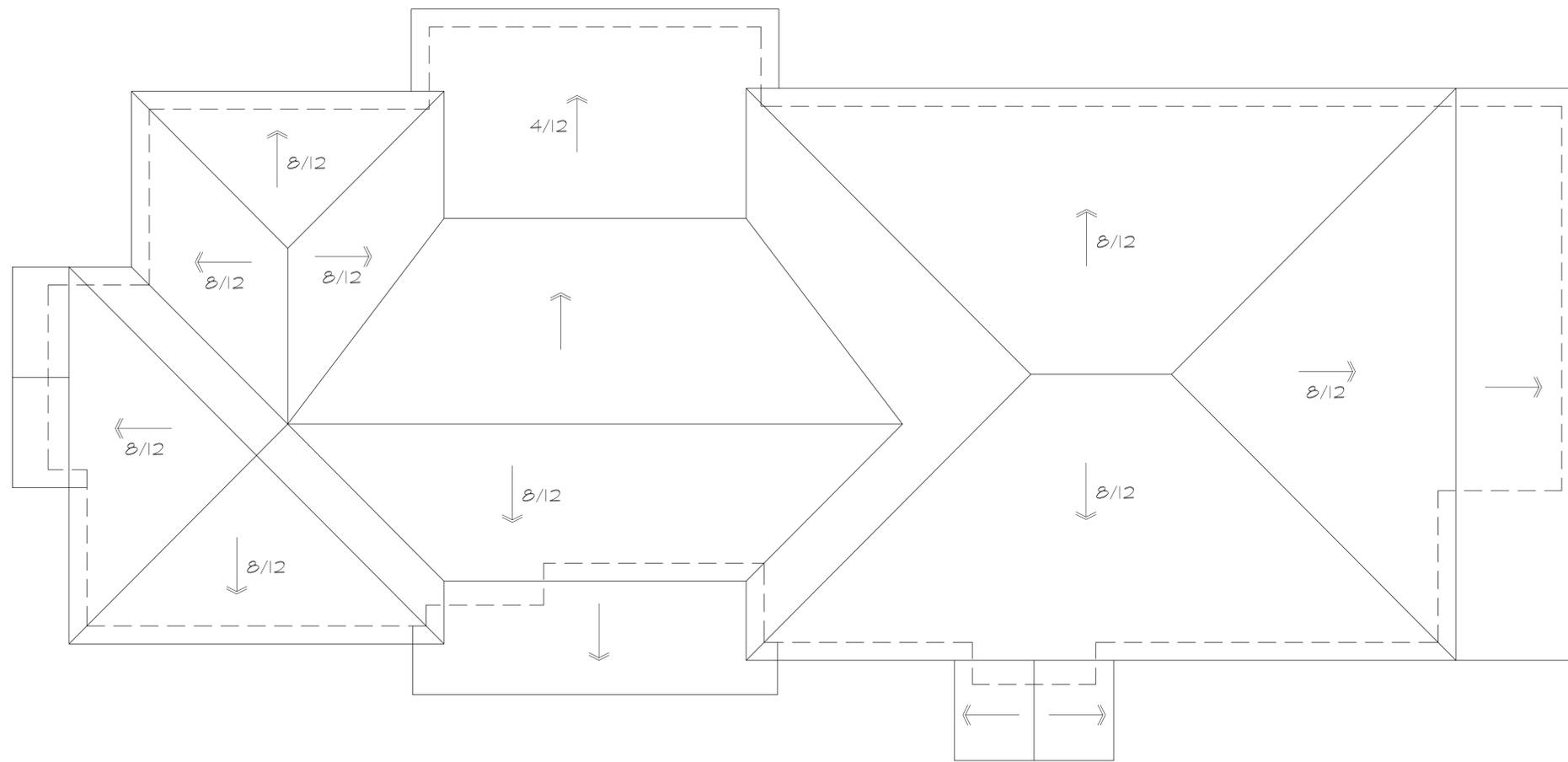
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ROOF PLAN
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Woodbridge Zoning History

I. Executive Summary

Since the 1960s, Woodbridge's legal obligations under state and federal law regarding zoning have undergone significant changes, including passage of the federal and state Fair Housing Acts and amendments to the State Zoning Enabling Act. Yet Woodbridge's exclusionary zoning regulations—which require large lot sizes, permit only single-family housing and very limited two-family housing, and ban multi-family housing entirely—have remained firmly fixed in place over decades. As the following historical analysis shows, the preservation of these zoning restrictions is not an accident of inertia. Rather, Woodbridge has been confronted time and time again with the region's need for affordable housing, with the State's mandates for municipal zoning commissions to promote affordable housing, and with specific opportunities to amend its Zoning Regulations accordingly. Each time, a pattern has repeated itself: the Town acknowledges the possibility of removing restrictions; then receives concerted backlash from residents concerned about property values, quality of life, and "the character" of Woodbridge; and ultimately abandons any significant changes, choosing to perpetuate exclusionary zoning rather than risk upsetting the most vocal anti-density residents.

This pattern includes six proposed zoning amendments, considered from 1981 to as recently as 2007, to allow multi-family housing in certain areas of Woodbridge—all six were either denied outright or withdrawn in response to opposition at public hearings. Aware that amendments to the State Zoning Enabling Act did require the Town to enact *some* zoning regulations regarding affordable housing, Woodbridge instead enacted in 1996 a nominal "Affordable Housing District" ("AHD") that introduced onerous additional requirements for developments while preserving the multi-family ban.

Confronted in 2004 with a regional report declaring a housing crisis and calling for municipalities to meet affordable housing needs, Woodbridge instead adopted a 2005-2015 POCD that did not recommend changes to residential districts. A preliminary draft of Woodbridge's 2015-2025 POCD did address affordability concerns and outlined potential steps to increase density, but the Town removed these provisions following public outcry at a Planning and Zoning Commission meeting on January 26, 2015, where Woodbridge citizens testified that any such measures would "degrad[e]," "deteriorate," and "destroy" Woodbridge.

During a 2015 to 2019 zoning regulation revision process, the Town considered a proposal to allow multi-family dwellings in some parts of the Village District. Once again, following significant public opposition (including racially coded warnings that any affordable rental units would draw in families from Hamden, New Haven, and West Haven seeking to access Woodbridge schools), those proposals were dropped from the adopted regulations.

Woodbridge thus enters the 2020s with longstanding exclusionary zoning mechanisms that Town officials have reconsidered and effectively reenacted repeatedly. Like the zoning restrictions themselves, the concerns raised to justify exclusion (school enrollment, traffic, property values, aesthetics, unique character of Woodbridge, a town of homeowners rather than

renters, etc.) have also remained the same, even in the face of clearer and clearer demands from state and regional officials that something needs to change.

II. Introduction: Origin And Criticisms Of "Snob Zoning"

From 1965 to the present, Woodbridge's population has grown from approximately 6,600 to 8,900 residents. This growth is drastically smaller than what was predicted in 1966, when population projections compiled by the Regional Planning Agency of South Central Connecticut estimated that "the population of Woodbridge will almost triple, going from a 1965 figure of 6,600 to 18,818 by the end of the century."⁴ These figures "startled an audience of more than 500 area leaders at a regional symposium" held by the Greater New Haven Chamber of Commerce for "the 15 cities and towns in South Central Connecticut."⁵ In Woodbridge, population growth was being driven not by "changes in birth rates," but by "net migration."⁶

Concerns about an influx of newcomers seemed to underlie the Town's zoning strategies: a 1960 report recommended setting aside part of the southeastern corner of town "for an economic development use," as otherwise "small lot residential building could mushroom."⁷ A 1976 "Community Diagnosis" of Woodbridge conducted by the Yale University School of Epidemiology and Public Health stated that following population growth from 1950 to 1970, "the natives no longer knew everyone in town and, although by any other standard [a minimum residential lot size of] 1.5 acres could hardly be considered over-crowdedness, some natives viewed this as high density living."⁸ The report also explained that Woodbridge's "land use policy (specifically 1.5 acre zoning) set an upper limit for the future population size of Woodbridge," noting that "Woodbridge has been criticized [for] 'snob zoning.'"⁹

One such critic was the Connecticut Civil Liberties Union, which in 1972 characterized "minimum lot size requirements, minimum floor area requirements," and "exclusion of apartment buildings either from entire towns or from residential districts" as "exclusionary or 'snob zoning' devices."¹⁰ The Connecticut Civil Liberties Union urged "suburban municipalities"

⁴ Walter Dudar, *Huge Population Rise by Year 2000 Facing City and Surrounding Towns*, NEW HAVEN EVENING REG. (Nov. 29, 1966), https://branford.advantage-preservation.com/viewer/?t=31171&i=t&by=1966&bdd=1960&d=01011878-12311980&fn=branford_scrapbooks_-_new_haven_evening_register_usa_connecticut_branford_19660101_english_77&df=71&dt=80.

⁵ *Id.* The gap between projected population growth and actual population growth was starker in Woodbridge (projected increase of 185% between 1965 and 2000, actual increase of 36% between 1965 and 2010) than in 12 out of 14 other municipalities in South Central Connecticut.

⁶ Alfred Fasulo et al., *Woodbridge: A Community Diagnosis*, 50-51 (May 1976).

⁷ WOODBRIDGE TOWN PLAN & ZONING COMM'N, PLANNING REPORT FOR WOODBRIDGE, CONNECTICUT (1960).

⁸ Fasulo et al., *supra* note 6 at 45.

⁹ *Id.* at 44, 35.

¹⁰ CONN. CIVIL LIBERTIES UNION, EXCLUSIONARY ZONING (1972), https://www.dropbox.com/sh/uyp9srslmrm7gzu/AAAuwUYx8BvfNd5TAIRizkFda/Box1?dl=0&preview=1-13-ExclusionaryZoning.pdf&subfolder_nav_tracking=1.

to instead "consider and accommodate their fair share of the needs of the citizens of the region of which they are a part for low and moderate income housing."¹¹

In the late 1970s, the Connecticut Commission on Human Rights and Opportunities ("CHRO") even considered initiating a state "enforcement effort against exclusionary zoning in selected target towns or cities in Connecticut."¹² A 1978 CHRO report, titled "A Study of Zoning in Connecticut," aimed to "enable the Commission and other interested parties to identify patterns of zoning and related demographic conditions that strongly suggest zoning may play a significant role in contributing to the small numbers of members of legally protected classes residing in those communities."¹³ Ultimately, the "hypothesis of this study" was that "zoning, as practiced by some of the towns and by the state as initiator of local zoning power, may deny fundamental rights of legal protection to classes discriminated against."¹⁴ Particularly, if a town has "employed controls which increase the cost of housing and restrict the availability of housing," thus "restrict[ing] their growth in population to almost entirely white and relatively affluent persons," the "conclusion arises that such towns may be employing zoning in an exclusionary manner."¹⁵

The CHRO report identified Woodbridge as among the towns with the most homogenous demographics and "most severely restricted" zoning.¹⁶ In 1970, Woodbridge was among the Connecticut towns with the lowest percentage of residents in poverty—just 3%, compared to 17.5% in New Haven and 7.4% in West Haven—and 52.7% of Woodbridge households were in the State's top quintile for income.¹⁷ Moreover, high "residential housing prices in 1977 were tending to increase those disparities" between Woodbridge and the State.¹⁸ Unlike Hamden, Milford, and Ansonia, Woodbridge did not have a "Black population large enough to report separately Black poverty status in 1970."¹⁹

The report also noted that "the most affluent communities in the state, Darien, New Canaan, Westport, Weston, Wilton, and Woodbridge, with medians [of annual income] above \$20,000, have made little effort to build assisted housing. Woodbridge and Weston have built no units."²⁰ Beyond the failure to build assisted housing, Woodbridge had zoning regulations "that prevent the construction of housing at a cost affordable by low and moderate income

¹¹ *Id.*

¹² U.S. DEP'T OF HOUS. & URB. DEV., STATE CIVIL RIGHTS AGENCY DEMONSTRATIONS OF STRATEGIES TO FIGHT HOUSING DISCRIMINATION, CASE STUDY: CONNECTICUT COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES 12 (1980), <https://www.huduser.gov/portal/Publications/pdf/HUD%20-%206035.pdf>.

¹³ CONN. COMM'N ON HUMAN RIGHTS & OPPORTUNITIES, A STUDY OF ZONING IN CONNECTICUT 1 (1978), available at <http://hdl.handle.net/11134/120002:229>.

¹⁴ *Id.* at 6.

¹⁵ *Id.*

¹⁶ *Id.* at 83.

¹⁷ *Id.* at 25, 33.

¹⁸ *Id.* at 47-48.

¹⁹ *Id.* at 34.

²⁰ *Id.* at 43.

residents."²¹ The CHRO identified several major "examples of provisions that are restrictive," including "exclusion of multi-family housing," defined as buildings "with 3 or more household units" (noting that "because these types of dwelling units are generally considered to be less expensive to construct, exclusion of these dwelling units will generally exclude low and moderate income households and minorities from the community because they cannot afford the more expensive types of dwelling units").²² In 1978 and in 2020, Woodbridge zoning ordinances prohibit multi-family housing in all districts.

Another major example cited by the CHRO was "large-lot zoning, usually defined as any minimum lot size over one-half acre per unit," which "increases the cost of housing in several ways."²³ As discussed below, the minimum lot size in Woodbridge's main residential zone has been at least 65,000 square feet, or 1.5 acres, since 1963. The report used such zoning practices to classify towns into three groups based on their zoning practices: "most severely restricted," "middle range of zoning restriction," and "least restricted" – Woodbridge was in the "most severely restricted" group.²⁴

Based on these findings, the CHRO had originally planned to initiate "an enforcement effort against exclusionary zoning in selected target towns or cities," first "seeking voluntary remedies to exclusionary zoning in the target jurisdictions but, where necessary, filing complaints to obtain the adoption of policies and procedures along the lines of the models to be proposed in the handbook [to be prepared by the CHRO] on affirmative zoning."²⁵ However, while the CHRO continued to view zoning restrictions such as Woodbridge's as forms of unlawful discrimination, the CHRO director ultimately declined to pursue enforcement litigation.²⁶

A HUD case study concluded that the CHRO's "zoning strategy failed to anticipate the two reasons later cited to explain why complaints and enforcement might not be particularly fruitful – the conservative judicial climate within the State and the undercutting impact that hostile citizen opinion can have on a litigation strategy."²⁷ In those years, the CHRO "was at times under serious attack in the State legislature," and those "political restraints, as well as the conservative judicial climate in the State, may also have been involved in the director's resistance to pursuing zoning litigation."²⁸

Nevertheless, in 1986 the CHRO again pointed to restrictions on multi-family housing as an exclusionary zoning practice, finding that "zoning regulations which make it unfeasible for developers to build multi-family dwellings in the suburbs have an adverse impact on many protected classes who can only afford to rent apartments. This is a form of discrimination. It is

²¹ *Id.* at 56.

²² *Id.* at 57, 64.

²³ *Id.* at 58.

²⁴ *Id.* at 83.

²⁵ U.S. DEP'T OF HOUS. & URB. DEV., *supra* note 12 at 12-13.

²⁶ *Id.* at 13.

²⁷ *Id.* at 40.

²⁸ *Id.* at 42.

also a leading cause of the lack of supply of housing units."²⁹ Given those findings, the CHRO made a recommendation to municipalities that "each municipality should zone a certain amount of land for the development of multi-family dwellings for low and moderate income families," in order to remediate the current "lack of rental units" and resulting "adverse impact on minorities and single heads of household."³⁰

Throughout the 1970s and 1980s, this state agency responsible for enforcing anti-discrimination laws had "assume[d] that within every community there should exist either available housing for low and moderate income households or the possibility of developing such housing."³¹ In 1991, that assumption became an express statewide legal mandate through amendments to the Connecticut Zoning Enabling Act.³² Yet as the following discussion demonstrates, the zoning practices identified as exclusionary in the 1970s still remain on the books in Woodbridge in 2020.

III. Evolution Of Woodbridge's Residential Zoning Districts

This section summarizes the long history of large-lot, single-family zoning in Woodbridge. After providing an overview of this general trend, this section discusses two moments when the potential to meaningfully open residential zones arose—the 1982 addition of two-family dwellings as permitted uses in Residence C and D, and the 1996 adoption of the AHD—but the Town ultimately maintained stringent density restrictions.

A. Overview Of Woodbridge's Zoning Districts

The "Zoning Ordinance for the Town of Woodbridge" first became effective on December 24, 1932.³³ As Yale Law School Professor Robert C. Ellickson has noted, Woodbridge was a pioneer within South Central Connecticut in "imposing binding large-lot requirements in the 1930s . . . by the 1950s, many other New Haven suburbs had joined the bandwagon."³⁴ The "nearly ubiquitous" Residence A District, which still covers most of the Town, originally had a minimum lot size of 20,000 square feet in 1932, which tripled to 60,000 square feet in 1938, then increased again to 65,000 square feet in 1963.³⁵

²⁹ CONN. COMM'N ON HUMAN RIGHTS & OPPORTUNITIES, HOUSING DISCRIMINATION AND OPPORTUNITIES IN THE STATE OF CONNECTICUT 48 (1986), https://www.dropbox.com/sh/uyp9srslmrm7gzu/AAAILR1m_rAg9qgSnonTrAlwa/Box2/2-05-HousingDiscriminationAndOpp.pdf?dl=0.

³⁰ *Id.* at 63.

³¹ CONN. COMM'N ON HUMAN RIGHTS & OPPORTUNITIES, *supra* note 13 at 7.

³² General Statutes § 8-2(a), *amended by* Public Acts 1991, No. 91-392.

³³ PLANNING & ZONING COMM'N, ZONING REGULATIONS FOR THE TOWN OF WOODBRIDGE 1 (2019) ("The Woodbridge Town Plan and Zoning Commission . . . hereby amends and codifies the 'Zoning Ordinance for the Town of Woodbridge,' which was effective December 24, 1932").

³⁴ Robert C. Ellickson, *Zoning and the Cost of Housing: Evidence from Silicon Valley, Greater New Haven, and Greater Austin*, 11 (Jan. 13, 2020), <https://ssrn.com/abstract=3472145>.

³⁵ *Id.* at 20.

This Residence A District remains largely unchanged: as in 1963, it still permits only single-family dwellings (no two-family or multi-family) and has a maximum building height of two and a half (2.5) stories and 35 feet, a minimum lot width and frontage of 200 feet, and a minimum livable floor area of 1,200 feet.³⁶ Any new Residence A lots created after November 1, 2001 that are "located fifty percent (50%) or more within a drinking water supply watershed," which covers roughly three-quarters of the district, must have a "minimum of two acres of Buildable Lot Area," up from 65,000 square feet.³⁷

In 1953, a "Pilot Plan" of Woodbridge's "Zoning and Town Plan Commission" (now known as the Town Plan and Zoning Commission, "PZC") noted that "Woodbridge has for some time had the strictest residential zoning in the area requiring, in most of the town, lots which are twice as large as the largest required in any adjacent town."³⁸ Then as now, "business [was] largely concentrated in the southeast corner, on Amity Road and Litchfield Turnpike near the Wilbur Cross Parkway," in contrast with "extensive areas" zoned solely for large-lot residential use.³⁹

A 1960 PZC report characterized the southeastern corner of Woodbridge, "often referred to as the 'flats,'" as an area that "was relegated to the small house lot," probably "due to the existence of small lots at the time of the preparation of the [original] zoning ordinance, the then existing notion of the noxious character of business and industry and the ease with which New Haven could be reached."⁴⁰ While most of the Town's land area and housing stock is located in the Residence A District, this southeastern corner has long included other small residential zones (Residence B, Residence BB, Residence C, and Residence D) and commercial zones: BI (Business and Industrial District), GB (General Business District), DEV-1 (Development District 1), and DEV-2 (Development District 2).⁴¹

Like the Residence A District, the requirements in the other residential zones have remained largely the same since 1963: the minimum lot sizes are still 15,000 square feet in Residence B, 9,375 square feet in Residence BB (now "T3-BB"), 5,000 square feet in Residence C (now "T3-C"), and 4,000 square feet in Residence D (now "T3-D").⁴² The minimum livable floor area in each is still 1,000 square feet, and the minimum lot width and frontage is still 100 feet in B, 75 feet in BB, 50 feet in C, and 40 feet in D.⁴³

³⁶ See, e.g., PLANNING & ZONING COMM'N, ZONING REGULATIONS FOR THE TOWN OF WOODBRIDGE (Jan. 1, 1963) (July 1975) (May 1989) (Sept. 15, 2014) (Dec. 26, 2018) (July 1, 2019).

³⁷ ZONING REGULATIONS FOR THE TOWN OF WOODBRIDGE, *supra* note 33 at 61; Ellickson, *supra* note 34 at 20 n.57.

³⁸ WOODBRIDGE ZONING & TOWN PLAN COMM'N, PILOT PLAN 1 (June 8, 1953).

³⁹ *Id.* at 2.

⁴⁰ WOODBRIDGE TOWN PLAN & ZONING COMM'N, PLANNING REPORT FOR WOODBRIDGE, CONNECTICUT 36 (1960).

⁴¹ See, e.g., TOWN OF WOODBRIDGE, ZONING MAP (1962).

⁴² See, e.g., ZONING REGULATIONS FOR THE TOWN OF WOODBRIDGE, *supra* note 33.

⁴³ *Id.*

B. 1982: Zoning Regulations Amended To Allow Two-Family Dwellings

Since 1982, Woodbridge has allowed two-family dwellings in the Residence C and D districts, which are now known as T3-C and T3-D. However, instead of adopting a proposed amendment that would have allowed for multiple dwellings per lot in limited circumstances, the PZC enacted a version that imposed a new ban on having more than one residential dwelling per lot (preventing, for example, a cluster of two-family dwellings).

In October 1982, the PZC discussed "the feasibility of amending the regulations to permit the establishment of a second dwelling in an existing one-family residence as a second unit for occupancy by and limited to a senior citizen" and reviewed "methods and regulatory language used by other communities."⁴⁴ In November 1982, the PZC then voted unanimously to amend the Zoning Regulations to include a new definition for "two-family dwelling" (a "single detached building containing two dwelling units") as a permitted use in Districts C and D.⁴⁵ The amendment adopted by the PZC also included a new provision on "Maximum Number of Dwellings per Lot," stating that "[n]o more than one building containing a Dwelling Unit or Units is permitted on a Lot."⁴⁶

The PZC had received, but did not adopt, an alternative amendment version that would have included an exemption for "Residential Multi-Building Developments," permitted by Special Permit and subject to conditions regarding city water, public sewers, sidewalks, minimum lot area, and minimum lot frontage.⁴⁷ Instead, in adopting the ban on multiple dwellings per lot, the PZC emphasized that "it has always been the intent, construction, and proper interpretation of the Woodbridge Zoning Regulations that only one-family per lot is permitted in Districts A, B, BB, C and D," framing the two-family amendment as a narrow way to "amend the Zoning Regulations" while still "reinforc[ing] such proper intent, construction, and interpretation."⁴⁸

C. 1988: Reaffirmed Ban On Multiple Dwellings Per Lot

In March 1988, the PZC received another application to allow "residential multi-building developments" by special permit, again provided that the development is "served by both city water and public sewers," has sidewalks "provided along all public roads," and conforms to the General Bulk Regulations," and to modify the definition of "dwelling, two family" from "a single *detached* building . . ." to "a single building containing two Dwelling Units."⁴⁹ The applicant had recently purchased five lots, each of which could currently be used for a solitary two-family house, but instead hoped to arrange those ten units in a multi-building development "using the middle portion of the property as 'open space.'"⁵⁰

⁴⁴ PLANNING & ZONING COMM'N, MEETING MINUTES (Oct. 18, 1982).

⁴⁵ *Id.* (Nov. 1, 1982).

⁴⁶ *Id.*

⁴⁷ PLANNING & ZONING COMM'N, Application of Oct. 1982.

⁴⁸ PLANNING & ZONING COMM'N, MEETING MINUTES (Nov. 1, 1982).

⁴⁹ PLANNING & ZONING COMM'N Application of Mar. 21, 1988.

⁵⁰ PLANNING & ZONING COMM'N, MEETING MINUTES (June 6, 1988).

At the June 1988 public hearing, no residents spoke in favor of the amendment, whereas several residents spoke in opposition.⁵¹ Residents cited concerns about "anything that makes it easier to have more people and traffic."⁵² Several residents also warned that the amendment could trigger broader, unwanted changes, making statements such as: "many towns have been totally ruined by condominiums;" the amendment would make it "entirely possible that there could be cluster housing in Woodbridge;" "this amendment would open the flood gates to cluster housing and condominiums;" and "this amendment would leave other parts of town vulnerable to condominiums or two family houses."⁵³ Beyond traffic, underlying some of these concerns was the view that "people who rent tend not to care as much about the upkeep of the property and it brings down the value of individually owned properties around the rental property."⁵⁴

The PZC discussed the requested amendment during three subsequent meetings.⁵⁵ On July 25, 1988, the PZC voted unanimously to deny the application, for reasons including the amendment's "errors of reference to appropriate sections of the Zoning Regulations," the use of new "terminology which is not defined," and the applicant's failure to present "evidence that appropriate use can not be made of property under current Zoning Regulations."⁵⁶

D. 1994 To 1996: Development Of Affordable Housing Regulations

In 1989, the General Assembly adopted the Affordable Housing Land Use Appeals Act to promote construction of low and moderate income units, creating a special appeals procedure for affordable housing applications in any municipality with fewer affordable units than the statute's bright line standard: 10% of local housing stock.⁵⁷ Woodbridge took notice of this new law, with the Town Counsel informing the PZC of "the requirement for towns to pass zoning regulations regarding affordable housing," explaining that "the first step for Woodbridge, as well as 142 other Connecticut municipalities, to meet the ten percent goal [established by the 1990 Affordable Housing Appeals Act] is to amend the zoning regulations."⁵⁸

Despite the statements of the Town Counsel, the steps actually taken by Woodbridge did not bring the Town any closer to compliance with state law. Throughout 1994, the PZC convened an "Affordable Housing Study Group" (the "Study Group") for a series of meetings to "work on a draft proposal for the amendment of the Zoning Regulations dealing with affordable housing."⁵⁹ The Study Group considered "questions of location, density and type of housing

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ PLANNING & ZONING COMM'N, MEETING MINUTES (June 23, 1988); (June 27, 1988); (July 25, 1988).

⁵⁶ PLANNING & ZONING COMM'N, MEETING MINUTES (July 25, 1988).

⁵⁷ General Statutes § 8-30g.

⁵⁸ PLANNING & ZONING COMM'N, MEETING MINUTES (Apr. 1, 1996).

⁵⁹ PLANNING & ZONING COMM'N, MEETING MINUTES (May 31, 1994).

units, setbacks, buffer areas, desirable open space set asides . . . as well as the influence of water and sanitary sewers and suitable locations for units to serve senior citizens."⁶⁰

By January 1996, the PZC had developed a proposed amendment for a new "Affordable Housing District."⁶¹ This initial amendment version contemplated the possibility of multi-family housing, with the section on "Sale, Resale and Rental Restrictions" noting that "single-family, multi-family, and elderly affordable housing units shall be restricted by title to preserve such use."⁶² In April 1996, the PZC noted "the need to adopt [an amendment] as soon as possible."⁶³ By July 1996, this language had disappeared.⁶⁴

In September 1996, the PZC voted unanimously to approve the version of the amendment without any authorization to develop multi-family housing with an effective date of October 1, 1996.⁶⁵ The approval resolution stated that "the Commission decided to undertake an amendment of the Zoning Regulations to comply with the requirements of the Connecticut General Statutes to enable 'Affordable Housing Facilities' to be built in Town." It also cited the PZC's consideration of "the need to provide facilities for various age and economic groups in Town" (not in the region) and the PZC's "desire to make affordable housing available to all segments of the Community."⁶⁶ While the resolution made reference to "sub-soil limitations . . . causing constraints on development of higher density," the PZC did not explain the extent of any such constraints or connect this concern to the continued ban on multi-family housing.⁶⁷

Other than minor typographical edits and wording changes, the AHD in Woodbridge's current zoning regulations remains the same as the version adopted in 1996. These "Affordable Housing District Developments" allow only for single-family detached housing and elderly housing.⁶⁸ Setback requirements are more onerous than in other residential districts: the special "affordable housing district setback" requires a moat-like setback around the entire development

⁶⁰ PLANNING & ZONING COMM'N, MEETING MINUTES (Mar. 21, 1994).

⁶¹ PLANNING & ZONING COMM'N, MEETING MINUTES (Jan. 16, 1996).

⁶² *Id.*

⁶³ PLANNING & ZONING COMM'N, MEETING MINUTES (Apr. 15, 1996).

⁶⁴ PLANNING & ZONING COMM'N, Draft Amendment of July 29, 1996.

⁶⁵ PLANNING & ZONING COMM'N, MEETING MINUTES (Sept. 16, 1996).

⁶⁶ *Id.*

⁶⁷ The resolution stated that "the Commission is aware of the severe sub-soil limitations peculiar to the soils in Town identified by the Connecticut Department of Agriculture as Woodbridge Soils causing constraints on development of higher density." *Id.* However, this point is either pretextual or misguided. "Woodbridge Soils" are not "peculiar" to the Town of Woodbridge, but rather designate a soil series found throughout Connecticut, Massachusetts, New Hampshire, New York, and Rhode Island. *See* UNITED STATES DEP'T OF AGRICULTURE, OFFICIAL SOIL SERIES DESCRIPTIONS – WOODBRIDGE SERIES (May 2016), https://soilseries.sc.egov.usda.gov/OSD_Docs/W/Woodbridge.html. Moreover, Woodbridge Soils only constitute a small percentage of the soils in the Town. *See* UNITED STATES DEP'T OF AGRICULTURE, PUBLISHED SOIL SURVEYS FOR CONNECTICUT, <https://www.nrcs.usda.gov/wps/portal/nrcs/surveylist/soils/survey/state/?stateId=CT>.

⁶⁸ ZONING REGULATIONS FOR THE TOWN OF WOODBRIDGE, *supra* note 33 at 4.

area.⁶⁹ Off-street parking requirements are also higher (2.5 spaces per single-family attached or detached dwelling unit) as are procedural requirements. Developers must receive PZC approval for a zone change, a special exception for an Affordable Housing District Development Plan, and a special exception for a site plan.⁷⁰

IV. 1981 To 2007: Six Multi-Family Amendments Fail To Pass

From 1981 to as recently as 2007, the PZC has received at least six applications for zoning amendments to allow multi-family housing in certain areas of Woodbridge – all six were either denied by the PZC or withdrawn in response to opposition at public hearings. Three of these applications came *after* the 1991 amendments to the State Zoning Enabling Act, which affirmatively required local zoning regulations to "encourage the development of housing opportunities, including opportunities for multifamily dwellings . . . for all residents of the municipality and the planning region in which the municipality is located."⁷¹ The applications from 1981, 1982, 1983, 1993, 1994, and 2007 represented a variety of approaches to provide such opportunities for multi-family dwellings, but all were met with similar strains of opposition: purported concerns about increased school enrollment, traffic, police and emergency service demand, as well as broader fears that any increased density would harm the "character" of the Town.

A. 1981: Proposed Amendment To Allow Multi-Family Housing In Districts C & D (Withdrawn)

The PZC received an October 1981 application "for a zoning amendment that would permit multi-family dwellings in Residence C and Residence D" by special permit, with a required minimum lot size of 40,000 square feet and a maximum building area of 35% lot coverage.⁷² The applicants emphasized that this amendment would only affect "a limited area, namely Residence C and D, which have water, sewer, utilities and close proximity to shopping and transportation."⁷³ In fact, only three total lots would comply with the proposed bulk regulations, which could potentially house a total of 100 people.⁷⁴ The applicants framed the proposal as responding to the fact that "a large class of citizens were being discriminated against as they could not live in Woodbridge, namely young marrieds and older residents who no longer wanted to keep their large homes."⁷⁵ During the public hearing, one resident spoke in favor of the application and seven spoke against.⁷⁶ Concerns raised included "traffic problems" and "the number of people in one room."⁷⁷ One resident "asked if the use would be limited to only residents of Woodbridge," saying "he did not see how the Town would be enhanced unless it was

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ General Statutes § 8-2(a), *amended by* Public Acts 1991, No. 91-392.

⁷² PLANNING & ZONING COMM'N, Application of October 5, 1981.

⁷³ PLANNING & ZONING COMM'N, MEETING MINUTES (Dec. 7, 1981).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

restricted to use by residents which he did not think could be done."⁷⁸ Another said "he had liked Woodbridge which was why he moved here, and before allowing multi-family many things should be considered," including "the impact on schools, fire department, police, traffic," and criticized the "applicant [of] not thinking of beautifying Woodbridge."⁷⁹

In a January 1982 meeting, the PZC discussed "several areas of concern," including the "definition of multi-family," whether there would be "allowance for open space," the "generality of language which could lead to various interpretations," and issues of "maintenance" and "exterior condition of buildings."⁸⁰ During the meeting, the applicants submitted a letter withdrawing the proposed amendment.⁸¹

B. 1982: Proposed Amendment To Allow Multi-Family Housing In Districts C & D (Denied)

In April 1982, the PZC received another application to amend the Zoning Regulations "to allow Multi-Family Dwellings in Residence C & Residence D Districts," this time with a maximum of six dwelling units (or eight elderly dwelling units) per building.⁸² The application included a "Feasibility Study" with monthly rent estimates for "Proposed Rental Homes for Elderly Citizens."⁸³ In reviewing the proposed amendment, the Regional Planning Agency of South Central Connecticut found "that the adoption of this amendment would provide housing for the elderly in only a limited area of Woodbridge," which "would be in the interest of not only the town of Woodbridge, but would materially assist in meeting regional housing needs."⁸⁴ A few months earlier, the PZC had discussed a housing survey conducted by the Commission on Aging, through which "a need had been shown for elderly housing" in the Town.⁸⁵

But this amendment to help meet regional housing needs was met with resistance during a June 1982 public hearing. Several residents raised concerns about traffic, while others expressed opposition "to any zone change in C & D area" and concerns that "there are no guarantees the use would be for residents of the town."⁸⁶ One resident argued that the amendment "will increase policemen and will add medical problems."⁸⁷ In July 1982, the PZC voted unanimously to deny the application.⁸⁸ In providing reasons for denial, the PZC stated that the amendment would: "provide for a large number of dwelling units to be built at one time and would impact greatly on the traffic patterns in a congested area;" allow lower minimum floor area requirements that were "undersized" and "insufficient" to "promote the health, safety, or

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ PLANNING & ZONING COMM'N, MEETING MINUTES (Jan. 25, 1982).

⁸¹ *Id.*

⁸² PLANNING & ZONING COMM'N, Application of April 5, 1982.

⁸³ *Id.*

⁸⁴ PLANNING & ZONING COMM'N, Letter of April 29, 1982.

⁸⁵ PLANNING & ZONING COMM'N, MEETING MINUTES (Jan. 25, 1982).

⁸⁶ PLANNING & ZONING COMM'N, MEETING MINUTES (June 7, 1982).

⁸⁷ *Id.*

⁸⁸ PLANNING & ZONING COMM'N, MEETING MINUTES (July 21, 1982).

general welfare of the occupants of the community;" and set "no limit upon the number of buildings which may be constructed on a parcel," an outcome "not in keeping with the character of the district."⁸⁹ The PZC also noted "that no property owners in the district who spoke at the public hearing spoke in favor of the application."⁹⁰

C. 1983: Proposed Amendment To Allow Multi-Family Housing And Accessory Apartments (Denied)

In July 1983, the PZC received an application to amend the Zoning Regulations to allow multi-family dwellings in Districts C, D, and GB (General Business) and accessory apartments in Districts A, B, BB, C, and D, both requiring a Special Permit.⁹¹ The proposed amendment also included restrictions regarding minimum lot size, density, maximum building area, minimum livable floor area per dwelling unit, parking requirements, and side yards.⁹²

During a September 1983 public hearing, no residents (other than the applicant) spoke in favor of the proposal.⁹³ One resident expressed that he "d[idn't] want any changes in zoning," while another said he "moved here because there was no multiple dwellings." Several residents expressed concern about "town services" being "stretched," including "added strain to [the] police force," in addition to a general increase in congestion. One resident said he "d[idn't] feel the need" for the housing enabled by the amendment, because he would "prefer single family" and "most elderly in town can afford to live here already." The applicant expressed his willingness to modify the proposal to only allow multi-family dwellings in District GB, and not in Districts C and D.⁹⁴

During an October 3, 1983 meeting, the PZC considered this "proposal to permit multi-family residences in a General Business Zone" and "expressed concern about the desirability of such a proposal," citing "traffic congestion and noise as possible detriments to a residential living environment."⁹⁵ The PZC also "noted that [the proposed accessory apartments] would not be restricted to the elderly," and categorized the amendment proposal overall as "overly broad and overly vague."⁹⁶

On October 24, 1983, the PZC voted unanimously to deny the application.⁹⁷ In doing so, the PZC characterized the proposal for "multi-family dwellings in the general business district zone" as "contrary to the Town Plan of Development" and "inconsistent with the character of the district."⁹⁸ The PZC cited concerns about "densely congested streets" that "would provide a

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ PLANNING & ZONING COMM'N, Application of July 11, 1983.

⁹² *Id.*

⁹³ PLANNING & ZONING COMM'N, MEETING MINUTES (Sept. 12, 1983).

⁹⁴ *Id.*

⁹⁵ PLANNING & ZONING COMM'N, MEETING MINUTES (Oct. 3, 1983).

⁹⁶ *Id.*

⁹⁷ PLANNING & ZONING COMM'N, MEETING MINUTES (Oct. 24, 1983).

⁹⁸ *Id.*

hazard to the health and general welfare," as well as the proposed amendment's lack of standards regarding "number of stories, number of families per building, yard and lot width requirements which this Commission deems to be items which require special standards for such [multi-family] dwelling units."⁹⁹ The PZC also noted that "no one at the public hearing spoke in favor of the application" and that the "amendment generally contains many technical deficiencies and drafting problems" and "vague and undefined terms and standards" which "preclude its adoption."¹⁰⁰

D. 1991: Acknowledgement Of Affordable Housing Mandate In State Statutes

The PZC did acknowledge that recent amendments to the State Zoning Enabling Act, approved in July 1991, required local zoning regulations to "encourage the development of housing opportunities, including opportunities for multifamily dwellings . . . for all residents of the municipality and the planning region in which the municipality is located."¹⁰¹ In September 1991, the PZC discussed "recently adopted amendments of the State enabling legislation pertaining to Planning and Zoning,"¹⁰² and in December 1991 the PZC specifically considered "recent amendments of the State Statutes pertaining to standards of development such as density, type of housing and the need for the provision of affordable housing for residents of the Town and the Region."¹⁰³

Moreover, the December 1991 meeting included discussion of "aspects of the Regional Plan [of Development, for the South Central Regional Council of Governments], now in preparation, which dealt, among other things, with a fair share allocation of affordable housing units for each town in the region."¹⁰⁴ In January 1992, the PZC "suggested that further study of the proposed draft be made," but the PZC does not appear to have undertaken any subsequent consideration of this plan (though as discussed above, the PZC did develop affordable housing regulations between 1994 and 1996).¹⁰⁵

In 1987, the South Central Regional Council of Governments ("SCRCOG") had contracted with Rutgers University to "estimate housing need for the region" and "distribute that need to 15 component municipalities," finding a "1986 affordability-based need" of "22,000 units for low-and very low-income households."¹⁰⁶ A draft Regional Plan of Development appears to have been approved by SCRCOG's Regional Planning Commission in 1992.¹⁰⁷ According to a 1994 analysis of regional housing planning in the early 1990s, "housing

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ General Statutes § 8-2(a), *amended by* Public Acts 1991, No. 91-392.

¹⁰² PLANNING & ZONING COMM'N, MEETING MINUTES (Sept. 16, 1991).

¹⁰³ PLANNING & ZONING COMM'N, MEETING MINUTES (Dec. 16, 1991).

¹⁰⁴ *Id.*

¹⁰⁵ PLANNING & ZONING COMM'N, MEETING MINUTES (Jan. 6, 1992).

¹⁰⁶ Robert W. Burchell, *Regional Housing Opportunities for Lower Income Households: A Resource Guide to Affordable Housing and Regional Mobility Strategies* 109-10 (1994).

¹⁰⁷ *Conn. Post Ltd. P'ship v. S. Cent. Conn. Reg'l. Council of Gov'ts.*, 758 A.2d 408, 412 n.9 (Conn. App. Ct. 2000).

allocation was not a priority in this area of Connecticut"— "local elected officials in the South Central [region] seem[ed] more willing to take their chances on being sued under the Connecticut Appeals Statute than to acknowledge a quantifiable number of affordable housing need that they must provide," and a SCRCOG staff member said "the momentum for and time of housing allocation [had] passed."¹⁰⁸

Indeed, when the PZC received requests for affordable housing amendments in 1993 and 1994, the reality of the new state mandate was not enough to overcome public opposition to increased housing opportunities.

E. 1993 And 1994: Proposed Amendments To Allow Affordable Multi-Family Housing (Withdrawn, Denied)

In September 1993, the PZC received an application for "an amendment to the Zoning Regulations . . . to allow affordable multi-family housing."¹⁰⁹ This amendment would have added multi-family dwellings as a permitted use in Districts C, D, and GB, and provided a special permit process for "planned residential developments" with a minimum of 20 percent of dwelling units deed-restricted as affordable housing—in Districts C, D, and GB, those units could be "multi-family elderly units," and in Districts A, B, BB, C, and D could be "single family," "two family," or "garden apartments."¹¹⁰ On November 1, 1993, the applicants' attorney made a presentation to the PZC, "citing pertinent sections of the General Statutes of Connecticut (8-2, 8-3, 8-30g)."¹¹¹ The PZC identified "many deficiencies" in the proposed amendment and gave the applicants "the opportunity to withdraw the application."¹¹²

In 1994, the applicants did reapply, requesting "a zone change of a property located at 330 Amity Road" and "other amendments of the Zoning Regulations to build affordable housing."¹¹³ Specifically, the applicants sought to build "120 three-bedroom family rental affordable dwelling units, no less than sixty of which will rent for less than 900 dollars per month" (an amount corresponding to 30% of the income of a household at 80% of Area Median Income) at 330 Amity Road and "35 units of Affordable Elderly Housing at 18 Hazel Terrace," and requested either "a special exemption or an amendment to the zoning regulations" in order to do so.¹¹⁴ The application included "two possible approaches to amend the zoning regulations which the Commission may choose to adopt."¹¹⁵

The applicants explained that "the project is aimed to families earning \$30,000 to \$40,000 per year," with "priority given to town firefighters, police, teachers, and employees, and then to Woodbridge residents." They also noted that "the town needs 200 such [affordable] units

¹⁰⁸ Burchell, *supra* note 106, at 111.

¹⁰⁹ PLANNING & ZONING COMM'N, Application of September 1, 1993.

¹¹⁰ *Id.*

¹¹¹ PLANNING & ZONING COMM'N, MEETING MINUTES (Nov. 1, 1993).

¹¹² PLANNING & ZONING COMM'N, MEETING MINUTES (Nov. 15, 1993).

¹¹³ PLANNING & ZONING COMM'N, MEETING MINUTES (May 16, 1994).

¹¹⁴ PLANNING & ZONING COMM'N, MEETING MINUTES (June 6, 1994).

¹¹⁵ *Id.*

before it can exempt itself from the Affordable Housing Appeals Act," which went into effect in 1990.¹¹⁶

During a June 1994 public hearing on the application, the PZC received "a petition consisting of approximately 179 residents who were in opposition to the Affordable Housing proposal."¹¹⁷ In public testimony, several residents voiced concerns that "serious" and "excessive" traffic would result from the development, and that "the school system would be overburdened with the additional students," potentially jeopardizing the "excellent education" currently available to their children.¹¹⁸ Many invoked their "quality of life" and "existing property values," warning that approval of the application "would set a bad precedent" and potentially "open up the area for development of higher density housing," an outcome perceived as "totally unacceptable."¹¹⁹

Others simply argued that "affordable housing was not needed," and the PZC Chairman said that Woodbridge's "plan of development . . . does not contain an affordable housing plan"¹²⁰ – despite the fact that state law had provided since 1988 that "in preparing such plan the [local planning] commission shall consider . . . the need for affordable housing,"¹²¹ and had provided since 1991 that "such plan [of development] shall also promote housing choice and economic diversity in housing, including housing for both low and moderate income households."¹²²

A *New Haven Register* Letter to the Editor describing the public hearing, titled "Hysteria Greeted Affordable Housing Plan in Woodbridge," characterized "the reaction of many Woodbridge residents to the very notion of affordable housing as downright alarming."¹²³ The author, who had been in attendance, recalled that "one irate resident rose to declare her certainty that affordable-housing residents would 'climb over a fence and hurt my children or steal my car,'" and that "only one speaker questioned [this] assertion."¹²⁴ The author said "the zoning laws in Woodbridge have so far succeeded only in keeping Woodbridge white," noting that in his "graduating class at Amity Senior High School, only four of the 274 students were black."¹²⁵ The letter also argued that "affordable housing will certainly mean an influx of black, Hispanic and other minority residents into our town and students into our schools," a result being opposed by "speakers at the hearing" calling for the PZC "not [to] disturb our zoning regulations."¹²⁶

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ General Statutes § 8-23, *amended by* Public Acts 1988, No. 88-13.

¹²² General Statutes § 8-2(a), *amended by* Public Acts 1991, No. 91-392.

¹²³ Michael Rader, *Hysteria Greeted Affordable Housing Plan in Woodbridge*, NEW HAVEN REG. (June 28, 1994).

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

The public hearing continued in July 1994, during which the applicants again noted "that Woodbridge had only 0.1% of its dwelling units as affordable housing, which does not meet the State requirements."¹²⁷ They framed their amendment request as a "first draft of affordable housing regulations," asking "the Commission to adopt a comprehensive affordable housing program that will bring the town into compliance with achieving the 10% affordable housing ratio in the town."¹²⁸ No residents spoke in favor of the application.¹²⁹

In August 1994, the PZC characterized the proposed amendments as "vague, confusing, inconsistent, and poorly drafted" regulations that "would not contribute to the orderly development of affordable housing in Woodbridge," voting unanimously to deny the application.¹³⁰

F. 2007: Proposed Amendment For Affordable Multi-Family Overlay In Residence A (Withdrawn)

In March 2007, the PZC considered an application from Triple R Developers, LLC "to amend the Woodbridge Zoning Regulations under Section 8-30g of the Connecticut General Statutes by adding a new section 3.11, Integrated Mixed Housing District which would be an overlay district for the Residence A District to allow, in addition to the existing uses, multifamily affordable housing."¹³¹ These amendments were "designed for applicability for a proposed affordable housing development on property of Triple R Developers, LLC located at 145 & 157 Peck Hill Road."¹³²

In parallel, the PZC faced pending litigation with Triple R Developers, which was appealing a subdivision denial on the same property¹³³—the PZC had voted unanimously to deny the subdivision application in July 2006.¹³⁴ During April and May 2007, Triple R Developers entered into discussion with the PZC, the PZC's consulting engineer, and Woodbridge Town Counsel "regarding a resolution of the pending appeal," arriving at a proposed settlement under which "the subdivision would be reduced from an original 11-lot subdivision to an 8-lot subdivision" and have "reduction of rear lots to two, different ingress and egress configurations," and "a reconfiguration of subdivision open space."¹³⁵ Notably, the settlement would also provide for "withdrawal for an application for affordable housing at those premises."¹³⁶ During a May 2007 open session of the proposed settlement, a Woodbridge resident reiterated his opposition to the affordable housing application's "overlay district in the residence A District," asking the PZC to oppose any such overlay because "the beauty of the Town of Woodbridge has been kept by the

¹²⁷ PLANNING & ZONING COMM'N, MEETING MINUTES (July 5, 1994).

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ PLANNING & ZONING COMM'N, MEETING MINUTES (Aug. 15, 1994).

¹³¹ PLANNING & ZONING COMM'N, MEETING MINUTES (Mar. 5, 2007).

¹³² *Id.*

¹³³ PLANNING & ZONING COMM'N, MEETING MINUTES (Apr. 9, 2007).

¹³⁴ PLANNING & ZONING COMM'N, MEETING MINUTES (July 3, 2006).

¹³⁵ PLANNING & ZONING COMM'N, MEETING MINUTES (May 1, 2007).

¹³⁶ *Id.*

enforcement of zoning regulations."¹³⁷ Ahead of a June 2007 PZC meeting to discuss a "Draft Motion for Approval of Settlement Proposal," Triple R Developers "submitted a letter of withdrawal of the application" for amendments to allow multi-family affordable housing.¹³⁸ On June 18, 2007, the PZC voted unanimously to approve a settlement allowing for the eight-lot subdivision.¹³⁹

V. Public Opposition To Other Density Increases

In addition to those six multi-family housing amendments, several other applications have generated similar opposition to any perceived increases in residential density.

A. 1996: Proposed Amendment To Allow Accessory Apartments (Denied)

For example, an August 1996 application requested an amendment to allow accessory apartments in Districts A, B, and BB, with "accessory apartment" defined as "a self-contained Dwelling Unit accessory and subordinate to a One-Family Dwelling."¹⁴⁰ The applicant stated that "nothing in the application affects density or traffic and parking," and that the amendment seeks "to retain the single family character in Woodbridge."¹⁴¹

Nevertheless, a public hearing elicited critical reactions from several residents, including the presentation of "a petition to the Commission in opposition to the application," which warned that "it would be difficult to monitor the apartments so that they did not become rental apartments at a later time."¹⁴² A resident separately stated that it could be "possible for the primary owner to move into the apartment and rent out the main residence to a large family which the citizens who own property would have to support with their taxes and provide education."¹⁴³ One resident said "the proposed square footage is excessive and would allow two families in two dwellings to live on one and one-half acres," adding that this would "end Woodbridge as we now know it."¹⁴⁴ Another felt "the proposed amendment would precipitate a change in the Town" and that "there is no protection for the Town."¹⁴⁵

In November 1996, the PZC voted unanimously to deny the application, citing its opinion that "the proposed amendment would disrupt safeguards for the protection and preservation of the character of what are essentially one-family residential districts," and potentially "result in the introduction of two-family residences into what have been designated as essentially one-family districts."¹⁴⁶

¹³⁷ *Id.*

¹³⁸ PLANNING & ZONING COMM'N, MEETING MINUTES (June 4, 2007).

¹³⁹ PLANNING & ZONING COMM'N, MEETING MINUTES (June 18, 2007).

¹⁴⁰ PLANNING & ZONING COMM'N, Application of August 1996.

¹⁴¹ PLANNING & ZONING COMM'N, MEETING MINUTES (Oct. 7, 1996).

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ PLANNING & ZONING COMM'N, MEETING MINUTES (Nov. 4, 1996).

B. 1999: Proposed Amendment To Allow For A 55+ Development In Development District 1 (Denied)

In April 1999, the PZC received an application for zoning amendments that would allow "a Planned Residential Care Development for the Elderly in Development District 1."¹⁴⁷ The applicants explained that existing regulations allowed developments "for individuals 62 years and older," and that "this proposal is for a facility to be for individuals 55 years and older."¹⁴⁸

One PZC member voiced "the concern" that "if the Commission enacts this legislation and somebody comes along and wants to just build your everyday condominium, the Commission would have to approve it."¹⁴⁹ Another PZC member disagreed, expressing that "we are going to be safe from opening the flood gates to development of any kind of condominium that anybody wants," because the proposal specifically "has to do with health facilities and is for the elderly."¹⁵⁰ But some residents shared the first PZC member's concerns about a slippery slope, characterizing the proposal as "a significant change to the zoning regulations" that would lead to "other complexes similar to this coming in."¹⁵¹ In June 1999, the concerned PZC member reiterated that "you don't want to open the Town up to condominium developments in the Development District 1 because it is not in the interest and/or the character of the Town of Woodbridge" – his motion to deny the application passed by a vote of three to one.¹⁵²

C. 2000: Proposed Amendment To Allow For A 62+ Development In Development District 1 (Denied)

In March 2000, the same applicants returned with a modified proposal, now restricted "for 62 years of age or older residents," which they said "complies with the current regulations."¹⁵³ Residents again spoke in opposition, remarking that "this is like commercial housing and it does not fit the character of the Town," that "there is a better use for the property," and that "traffic flow and safety is a concern."¹⁵⁴ The PZC determined that the proposed development's "relationship with an assisted living facility" was not sufficiently equivalent to a relationship with a nursing home, denying the application in April 2000 for being out of compliance with the present requirement that a Planned Residential Care Development for the Elderly abut a nursing home.¹⁵⁵

¹⁴⁷ PLANNING & ZONING COMM'N, MEETING MINUTES (Apr. 5, 1999).

¹⁴⁸ *Id.*

¹⁴⁹ PLANNING & ZONING COMM'N, MEETING MINUTES (May 17, 1999).

¹⁵⁰ *Id.*

¹⁵¹ PLANNING & ZONING COMM'N, MEETING MINUTES (May 3, 1999).

¹⁵² PLANNING & ZONING COMM'N, MEETING MINUTES (June 7, 1999).

¹⁵³ PLANNING & ZONING COMM'N, MEETING MINUTES (Mar. 6, 2000).

¹⁵⁴ *Id.*

¹⁵⁵ PLANNING & ZONING COMM'N, MEETING MINUTES (Apr. 3, 2000); PLANNING & ZONING COMM'N, MEETING MINUTES (Apr. 17, 2000).

During subsequent meetings, the PZC "expressed concern over recent attempts to introduce residential development in DEV-1 (Development District 1)."¹⁵⁶ In June 2000, the PZC voted six to one to amend the zoning regulations to remove altogether "planned residential care development[s] for the elderly" as a permitted use in DEV-1 (a use which was not reintroduced for several years).¹⁵⁷

D. 2008: Opposition To A Two-Family Development In Residence C

In 2008, the developer Iannini & Sons applied for a three-lot subdivision on an existing Landin Street lot of "15,000 sq. feet in area," where "each proposed lot would be 5,000 sq. feet in area, and would be occupied by a single building with two dwelling units for a total of six dwelling units in the subdivision."¹⁵⁸ This development, though eventually approved, elicited significant skepticism and criticism during a June 2008 public hearing. The applicants stressed "that the units are in compliance with the regulations of the Town of Woodbridge" and that there were already "single family and two family dwellings without garages on Landin Street."¹⁵⁹

However, the PZC Chairman "expressed concern over the visual massing from the three buildings on the street" and "questioned if the buildings were complementary and aesthetically compatible with the neighborhood."¹⁶⁰ Several residents also spoke to voice concerns, including "congestion of motor vehicles," "negative impact on the homes in the neighborhood," "negative impact to the property values," an "increased population," "aesthetic awkwardness," and that the new buildings that would "not blend in."¹⁶¹ Another concern was the potential for "8 to 10 more children in the school system if the project is built."¹⁶² One Landin Street resident said "he did not want to see three large buildings of such size erected across the street from his house."¹⁶³

Some comments indicated a stigma surrounding two-family buildings: one resident remarked that "he owns a two-family house, but after he realized the pride of the neighborhood people he would rather have a single-family home."¹⁶⁴ Others expressed that "they would rather see one or two single-family houses versus three two-family homes," and that "the current buildings in the neighborhood are 'homes'" – not the "houses" being proposed that "would make Woodbridge lose some" of its "certain type of sensitivity."¹⁶⁵ One Landin Street resident was careful to state that the neighborhood was "not opposed to new people or changes, but rather are opposed to changing the dynamics of the neighborhood for something that is commercial."¹⁶⁶

¹⁵⁶ PLANNING & ZONING COMM'N, MEETING MINUTES (June 5, 2000).

¹⁵⁷ *Id.*

¹⁵⁸ PLANNING & ZONING COMM'N, MEETING MINUTES (June 2, 2008).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

The developer responded that "they have done their homework; had the property surveyed, met the regulations, met with the Town Planner, and met the parking regulations," and that "he was taken aback by some of the comments."¹⁶⁷

VI. 1999 To 2005: Update Of The Town Plan Of Conservation And Development

While Woodbridge's Zoning Regulations provide the present restrictions on land use, the Town's POCD provides a long-term vision for the community and a short- and mid-term blueprint for development decisions. Woodbridge spent several years preparing its 2005-2015 POCD, during which the PZC encountered evidence of significant affordable housing needs in the region—but those needs never formed the focus of the POCD revision.

A. Woodbridge's First POCD Update Since 1974

State law requires each municipal planning commission to prepare a "plan of conservation and development for the municipality."¹⁶⁸ In 1988, the General Assembly amended this law to add a frequency provision, that "the commission shall review the plan of [conservation and] development at least once every ten years and shall adopt amendments . . . as the commission deems necessary to update the plan."¹⁶⁹ In 1999, the State gave this provision more teeth by requiring municipalities to explain any failure to review within applications for state development funding.¹⁷⁰

When that amendment was approved in June 1999, Woodbridge's most recent Plan of Development (for which the current term is POCD) dated back to 1974.¹⁷¹ In July 1999, Woodbridge's Town Planner stated during a PZC meeting "that the State statute provides a requirement that the Plan of Development be updated every ten years," and a new PZC Study Commission "indicated that they would meet to discuss updating the Plan of Development."¹⁷²

This effort accelerated in October 2001, when the PZC formed "three Town Plan Update Subcommittees" to take on particular issues: "the Business District, the Town Center, and the

¹⁶⁷ *Id.*

¹⁶⁸ General Statutes § 8-23(a)(1) (2019).

¹⁶⁹ General Statutes § 8-23, *amended by* Public Acts 1988, No. 88-13.

¹⁷⁰ General Statutes § 8-23, *amended by* Public Acts 1999, No. 99-117 ("on and after July 1, 2000, if a commission does not review the plan within said ten years, the chief elected official of the municipality shall submit a letter to the Secretary of the Office of Policy and Management and the Commissioners of Transportation and Economic and Community Development that explains why such review was not conducted. A copy of the letter shall be included in each application by the head of a municipal agency for funding for development of real property submitted to said secretary or commissioners until the plan is reviewed in accordance with this subsection").

¹⁷¹ PLANNING & ZONING COMM'N, MEETING MINUTES (Feb. 23, 1999); PLANNING & ZONING COMM'N, MEETING MINUTES (July 19, 1999).

¹⁷² *Id.* (July 19, 1999).

Residential District," which would focus on "Districts A and B."¹⁷³ These subcommittees held several dedicated meetings from January to July 2002.¹⁷⁴

B. Emphasis On Keeping Residential Districts As-Is

These subcommittee meetings did not address the State of Connecticut's statutory mandate for plans to "consider . . . the need for affordable housing."¹⁷⁵ However, they did address concerns previously raised by the public about new developments changing the character of the Town and straining the school system. For example, the "Sub-Committee Regarding the Mixed Residential/Business Districts of Woodbridge" recommended a "Design Review Committee" that would advise the PZC and "review all renovations and new commercial structures and multi-family facilities like Nursing Homes and Assisted Living Facilities," whereas "other residential dwellings would be exempt from review."¹⁷⁶ This final recommendation to the PZC specifically emphasized that "the Design Review Committee would not review single-family residences."¹⁷⁷ This subcommittee also recommended "encouraging development around [residential areas within DEV-1 and DEV-2] that increases the residential property values while increasing the tax base for the town and limiting development that adds new students to a school system that is already struggling to accommodate an increasing student enrollment."¹⁷⁸

The "Residential A and B District Sub-Committee" provided a July 2002 report to the PZC that "supported the recent changes to two-acre minimum in watersheds." In 2001, the PZC had adopted an amendment increasing the minimum lot size to two acres in any public supply watershed, covering about three-quarters of the land in the Residence A District.¹⁷⁹

C. PZC Criticism Of Regional Report On Affordable Housing Needs

In November 2002, the PZC did discuss "Affordable Housing issues," following a review of "draft Town Plan Update chapters" prepared by consultants—the content of those discussions is not recorded in PZC minutes.¹⁸⁰ A July 2003 meeting also included discussion of "identifying housing needs within the Town, and address[ing] how those needs may be accommodated."¹⁸¹ Yet in May 2004, as the PZC was reviewing a "Regional Housing Market Assessment Report," its comments (as described below) dismissed the responsibility of municipalities to provide for regional housing needs.¹⁸²

¹⁷³ PLANNING & ZONING COMM'N, MEETING MINUTES (Oct. 15, 2001).

¹⁷⁴ See, e.g., PLANNING & ZONING COMM'N, MEETING MINUTES (Jan. 22, 2002); PLANNING & ZONING COMM'N, MEETING MINUTES (July 22, 2002).

¹⁷⁵ General Statutes § 8-23, amended by Public Acts 1988, No. 88-13.

¹⁷⁶ PLANNING & ZONING COMM'N, MEETING MINUTES (Feb. 19, 2002).

¹⁷⁷ PLANNING & ZONING COMM'N, MEETING MINUTES (July 22, 2002).

¹⁷⁸ *Id.*

¹⁷⁹ Ellickson, *supra* note 34 at 20.

¹⁸⁰ PLANNING & ZONING COMM'N, MEETING MINUTES (Nov. 25, 2002).

¹⁸¹ PLANNING & ZONING COMM'N, MEETING MINUTES (July 21, 2003).

¹⁸² PLANNING & ZONING COMM'N, MEETING MINUTES (May 3, 2004).

The report was the work of the SCRCOG, a platform for cooperation between 15 municipalities, including Woodbridge. SCRCOG was developing a Regional Housing Marketing Assessment "to provide the basis for an amendment to the Regional Plan of Development."¹⁸³ The final report, adopted in June 2004, declared a "housing crisis," with "the need for affordable housing in the region [at] a critical point," and called for "an effective regional approach to this regional problem."¹⁸⁴ In reviewing a draft of this report, the PZC criticized it as presenting "conclusions that appear to be based on 'observations' rather than facts."¹⁸⁵ In comments shared with SCRCOG, the PZC said "it is not the [PZC's] opinion that 'housing is the problem' but rather the regional business climate . . . people with well paying jobs can purchase houses."¹⁸⁶ The PZC also questioned whether "needs of the homeless," including "social services, counseling, hospitalization, etc. can be remedied solely by providing affordable housing."¹⁸⁷

Two months later, the PZC "reaffirmed [the] inclusion" in the updated POCD of a recommendation for "a village district with mixed uses, but no apartments, for the BI and GB districts of town."¹⁸⁸ Many of the POCD update conversations had focused on establishing a Village District in the "mixed-use area of town near the Wilbur Cross Parkway,"¹⁸⁹ possibly reflecting the view expressed by one PZC member "that the Commission shouldn't do anything through the town plan that would be detrimental to residential areas of town."¹⁹⁰

VII. 2010 To 2015: Update Of The Town Plan Of Conservation And Development

As early as November 2010, the PZC began discussing updates to the POCD for 2015-2025.¹⁹¹ The updated POCD eventually approved in March 2015 did not include recommendations to encourage multi-family housing opportunities or low and moderate income housing opportunities – despite the fact that issues of density and affordability did arise during those years of discussion.

A. Preliminary Discussions Acknowledging Affordability Problems

For example, in February 2011, the PZC discussed updating the POCD and considered "the possibility of allowing high density housing developments on certain parcels outside of the Village District," noting the "encouragement in the State Plan of Conservation and Development for high density housing and the impact that may have on the Town Plan."¹⁹² In March 2012, the

¹⁸³ S. CENT. REG'L COUNCIL OF GOV'TS., REGIONAL HOUSING MARKET ASSESSMENT Preface (2004), http://SCRC.org/wp-content/uploads/reports/2004_Reg_Housing_Report.pdf.

¹⁸⁴ *Id.* at ES-1, ES-2.

¹⁸⁵ PLANNING & ZONING COMM'N, MEETING MINUTES (May 3, 2004).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ PLANNING & ZONING COMM'N, MEETING MINUTES (July 26, 2004).

¹⁸⁹ PLANNING & ZONING COMM'N, MEETING MINUTES (Feb. 24, 2003).

¹⁹⁰ PLANNING & ZONING COMM'N, MEETING MINUTES (Apr. 15, 2003).

¹⁹¹ PLANNING & ZONING COMM'N, MEETING MINUTES (Nov. 1, 2010).

¹⁹² PLANNING & ZONING COMM'N, MEETING MINUTES (Feb. 7, 2011).

PZC again noted that "the State Plan encourages *cluster housing*. Pros and cons of this type of development need to be analyzed," mentioning also that "senior housing and low-income housing plans need to be reviewed."¹⁹³ Minutes from a PZC work session in October 2012 state that "if the idea is to try to transform Woodbridge in certain ways to make it friendlier for people of all ages, especially those who are a little older and want to stay within the community, the only way to do this is by allowing smaller homes," and note that "zoning currently completely prohibits cluster housing."¹⁹⁴ By October 2013, the Town had hired consultants to assist with the POCD update, and the PZC directed them to consider "other ideas for development that might traditionally be considered 'taboo.'"¹⁹⁵

The consultants gave the PZC a presentation in January 2014 on demographics and housing trends, sharing that "single-family housing prices have remained the highest in the area by \$50,000 or more. Only 1.12% of Woodbridge units meet state affordability standards. 1 in 3 Woodbridge households and a majority of renters pay unaffordable housing prices (>30% of income)."¹⁹⁶ In a subsequent presentation, the consultants stated that "the distribution of households across income categories seen across Connecticut and the United States does not exist in Woodbridge. Instead, incomes are highly concentrated with the top three categories of households earning \$100,000 or more each year. Conversely, far fewer Woodbridge households fall into low-to-moderate income categories."¹⁹⁷ In that same presentation, the consultants discussed residential build out, with the framing that "everything is very much heavily influenced by District A, which the vast majority of town is zoned as" – but also with the "assum[ption] that the zoning regulations are going to stay basically the same in the near future."¹⁹⁸

As part of the POCD update process, the consultants conducted a town-wide survey to gauge preferences surrounding future development, and reported that "there seems to be fairly strong support for attracting younger families and doing some mixed-use development. There is a lot of desire for more information about affordable housing and what are the different options for people to consider going forward."¹⁹⁹ In July 2014, the consultants recommended that the PZC "explore different funding opportunities and programs where small towns can get some funding to support affordable homeownership. There would need to be an organization that is dedicated to it and has a strong mission and is able to devote itself full time to these opportunities."²⁰⁰

B. Public Criticism Of Draft Plan's Few Affordability And Density Provisions

¹⁹³ PLANNING & ZONING COMM'N, MEETING MINUTES (Mar. 5, 2012).

¹⁹⁴ PLANNING & ZONING COMM'N, MEETING MINUTES (Oct. 23, 2012).

¹⁹⁵ PLANNING & ZONING COMM'N, MEETING MINUTES (Oct. 30, 2013).

¹⁹⁶ PLANNING & ZONING COMM'N, MEETING MINUTES (Jan. 13, 2014).

¹⁹⁷ PLANNING & ZONING COMM'N, MEETING MINUTES (May 5, 2014).

¹⁹⁸ *Id.*

¹⁹⁹ PLANNING & ZONING COMM'N, MEETING MINUTES (July 7, 2014).

²⁰⁰ PLANNING & ZONING COMM'N, MEETING MINUTES (July 23, 2014).

Despite the consultant's recommendation, the draft POCD shared in advance of the January 26, 2015 public hearing included only a few recommendations regarding affordable housing (allowing accessory dwelling units that could be deed-restricted; extending the boundaries of the Village District, part of which would continue to allow two-family homes), as well as provisions for higher-density, age-restricted developments.²⁰¹ During the public hearing, even these limited recommendations elicited heavy criticism from several residents who warned of degradation, deterioration, and destruction of the Town. The PZC "got an earful" as residents reiterated "their concern that higher density [in one development] may lead to higher density in other parts of town."²⁰²

For example, a former PZC member stated that the recommendations regarding the "Woodbridge Village Zoning Regulations" would "jeopardize single family homes and makes all zoning degraded to Residential D," by allowing "2 and 3 family houses (with in-law apartments)."²⁰³ He characterized the POCD consultants as focused "on increasing density when there are already momentous traffic problems in the area" and "problems in town with rental homes."²⁰⁴ He called for a "major overhaul" of the proposal and "asked the Commission to act independently or it can lead to the destruction of town."²⁰⁵ Another former PZC member said "it appeared that the Commission's compass was off, and they needed to start over and listen to the expressions of concern about the plan."²⁰⁶ A third former PZC member, who had served from 2001 to 2009, "compared the proposed POCD to a Trojan Horse, using language as a springboard to change the zoning (the soul of the town) to 3 family housing" and accused the First Selectman of "hir[ing] a private attorney to draft language for a floating zone."²⁰⁷

A resident whose "family had lived in Woodbridge for over 115 years" said "that rezoning the existing single family District (BB) to multifamily" in the Village District "would deteriorate the area and add to traffic density."²⁰⁸ He commented that "the residents of the BB District maintain their single family homes, which used to be blue collar workers but are now white collar workers."²⁰⁹ Another resident who "had lived in New Jersey and watched it get developed" stressed that "he liked the Town the way it was" and "it would be a shame to change the zoning," stating that "the people in the flats deserve better than the expansion of two family housing in their neighborhoods."²¹⁰ The Chairman of the Economic Development Commission

²⁰¹ 2015-25 PLAN OF CONSERVATION AND DEVELOPMENT: DRAFT PLAN FOR REVIEW - REVISED NOVEMBER 17, 2014, <https://web.archive.org/web/20150626174414/https://woodbridgeplan.files.wordpress.com/2014/12/submitted-draft-pocd-11-18-web.pdf>.

²⁰² Bettina Thiel, *Residents Object to Proposed Plan of Development*, WOODBRIDGE TOWN NEWS (Feb. 26, 2015), <https://woodbridgetownnews.com/residents-object-proposed-plan-development/>.

²⁰³ PLANNING & ZONING COMM'N, MEETING MINUTES (Jan. 26, 2015).

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

responded to the comments "on the development of New Jersey" by saying "that New Jersey's municipalities are subject to different laws than in Connecticut (Ref: Mt. Laurel New Jersey Case) which requires every town to provide affordable housing."²¹¹

Many residents also expressed concerns about the draft POCD's recommendation to "pursue development proposals for age-restricted lifestyle housing on CCW [Country Club of Woodbridge] property, which may include higher density housing."²¹² One resident submitted a letter requesting deletion of this language, referencing a "petition signed by more than 300 concerned residents from a cross section of the town."²¹³ One "10 year resident of Town" said the proposed CCW development "would destroy his reasons for moving to Town."²¹⁴ A "lifelong resident of Town and former member of the Board of Education" was "bothered by the proposed changes for the CCW and the concept of cluster housing," characterizing the developer Toll Brothers as "house builders, not community builders."²¹⁵

A related recommendation in the draft Housing Action Plan section, to "adopt revisions to the Residence A zone to provide for active adult and open space conservation subdivision options," (thus enabling CCW development), similarly attracted criticism.²¹⁶ A "lifetime resident of town" and "former Chair of the Conservation Commission" expressed concern about "the proposed Zoning changes in the Residence A Zone, which could make many parcels open to change" and "be the 1st step towards fundamentally changing the character of Woodbridge."²¹⁷ She said "no one was moving to Woodbridge to have high density housing."²¹⁸ Another resident said those changes "would destroy the CCW," which he called "a jewel of open space and the gateway to upper Woodbridge," and "told the Commission it holds the life of Woodbridge in its hands, use it responsibly."²¹⁹ He also said "in this case the sale of homes in Woodbridge who wanted to move to the new housing at the CCW would be to young families," and "it is documented that residential development does not generate enough taxes."²²⁰

C. Adopted Plan's Elimination Of References To Affordability Problems And Solutions

Following the controversy and concerns on display during the public hearing, the PZC edited the POCD to eliminate several references to affordability concerns, the housing needs of

²¹¹ *Id.*

²¹² 2015-25 PLAN OF CONSERVATION AND DEVELOPMENT DRAFT, *supra* note 201.

²¹³ PLANNING & ZONING COMM'N, MEETING MINUTES (Jan. 26, 2015).

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ 2015-25 PLAN OF CONSERVATION AND DEVELOPMENT DRAFT, *supra* note 201.

²¹⁷ PLANNING & ZONING COMM'N, MEETING MINUTES (Jan. 26, 2015).

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

racial minorities and low and moderate income households, and steps to increase density.²²¹
Language deleted or replaced included.²²²

- **Language Deleted:** "Fewer black residents and members of other racial groups live in Woodbridge than elsewhere in the county or state." *Page 19, Housing and Demographics, "Woodbridge is diversifying, but remains fairly homogenous."*
- **Language Deleted:** "Among renters, a large majority of households earning less than \$50,000 are not able to find housing that meets this standard, and more than 4 in 10 households with incomes between \$50,000 and \$75,000 spend over 30% of their income on housing costs." *Page 24, Housing and Demographics, "High housing costs pose affordability challenges."*
- **Language Replaced:** "Overall, a majority of renters are unable to find affordable housing options. On the owner-occupied side of the housing market, three-quarters of low-to-moderate income households face similar challenges, as do nearly 40% of middle-income households. Even among higher-income groups, unaffordability remains a concern—a significant number of households with earnings of \$75,000 or more continue to face challenges in finding affordable ownership options in Woodbridge," was replaced with "High housing costs are more common among renters, a majority of whom pay over 30% of household income on rent and related housing expenses. A smaller proportion of homeowners (approximately 31%) face housing costs above this threshold." *Page 24, Housing and Demographics, "High housing costs pose affordability challenges."*
- **Language Replaced:** "Woodbridge's unique demographics and housing stock pose current and potential future obstacles to affordability among particular groups, including renters, older residents, and low-income homeowners," was replaced with ". . . obstacles to affordability among empty nesters." *Page 26, Housing and Demographics, "Existing policies can promote affordability."*
- **Language Replaced:** "Given the mismatch between large homes and smaller households, lifting existing zoning regulations prohibiting accessory housing uses could provide opportunities for rental housing for family members, as well as increasing the town's stock of affordable housing units via deed restrictions," was replaced with "Given Woodbridge's housing stock, in-law housing units could

²²¹ PLANNING & ZONING COMM'N, MEETING MINUTES (Feb. 23, 2015).

²²² The bullets, based on Meeting Minutes of February 23, 2015, reflect a comparison between the November 2014 draft Plan of Conservation and Development (<https://web.archive.org/web/20150626174414/https://woodbridgeplan.files.wordpress.com/2014/12/submitted-draft-pocd-11-18-web.pdf>) and the Plan of Conservation and Development adopted in March 2015 (<https://www.woodbridgect.org/DocumentCenter/View/214/Town-Plan-of-Conservation-and-Development-PDF?bidId=>).

provide opportunities for housing for family members." *Page 26, Housing and Demographics, "Existing policies can promote affordability."*

- **Language Deleted:** "The Affordable Housing District provisions of Woodbridge's zoning regulations provides a floating zone that allows for the designation and deed-restriction of affordable housing units (including attached or detached single family homes, as well as Elderly Affordable Housing), defined as housing costing 30% or less of the Town median income." *Page 26, Housing and Demographics, "Existing policies can promote affordability."* *Note: With the deletion of this bullet, there is now no mention of the AHD in the adopted POCD.*
- **Language Deleted:** "Adopt revisions to the Residence A zone to provide for active adult and open space conservation subdivision options." *Page 27, Housing Action Plan, "Near-Term Action Agenda."*
- **Language Replaced:** "Pursue development proposals for age-restricted lifestyle housing on Country Club of Woodbridge property, which may include higher density housing" replaced with "Consider usage on Country Club of Woodbridge property." *Page 27, Housing Action Plan, "Near-Term Action Agenda."*
- **Language Deleted:** "Develop supply of 55-plus housing options; Expand the Town's small inventory of age-restricted housing to provide older residents with more local housing options, for which there is a distinct need; Explore age-restriction options in Village zones." *Page 28, Housing Action Plan, "Mid-Term Action Agenda."*
- **Language Replaced:** "The Woodbridge Village area, often referred to locally as 'The Flats' or 'Amity', is the most densely built-up area of Woodbridge, and the neighborhood best suited to intensified development—such as new businesses and multifamily housing—over the next ten years and beyond," replaced with ". . . the neighborhood best suited to encourage development—such as new businesses and mixed use—over the next ten years and beyond." *Page 43, Village and Economic Development, "Woodbridge Village Conceptual Plan."* *Note the elimination of "multifamily housing."*
- **Language Added:** "A recent report by NESDEC on RSD 5 enrollment projections predicts a slightly decreasing trend in middle and high school enrollments in grades 7 to 12 for the next five to ten years . . . However, home sales to families with school-age children in Woodbridge (as well as Orange and Bethany) appear to have increased in the past few years and may result in higher-than-expected enrollments. Close attention to local housing sales may be warranted in order to monitor this trend at all grade levels." *Page 114, Historic & Community Resources, "Woodbridge and Amity Regional School Districts."*

In March 2015, the PZC voted unanimously to approve this revised 2015-2025 POCD.²²³

D. Note: Precedent For Ad-Hoc, Partial POCD Amendments

In June 2013, the PZC received a proposal from the Woodbridge Conservation Commission to amend the POCD by adding a Farm Land Preservation Plan, in order to make property at 902 Baldwin Road eligible for the State's Community Farms Preservation Program.²²⁴ During a July 1, 2013 meeting, the PZC Chairman noted that the Town was "about to go through the process of updating" the entire POCD, and the PZC members discussed "whether they would want to go through the stages twice."²²⁵ In response, Land Use Analyst Kristine Sullivan noted that "the process of amending the Town Plan is not a difficult one," and Zoning Enforcement Officer Terry Gilbertson said the POCD is a "living document" that could be updated "every two years instead of waiting for ten . . . if there is an issue that the Town cares about as a community then it is pretty straightforward."²²⁶

At the following PZC meeting on July 15, 2013, Donald Celotto, a former PZC Chairman, "assured the Commission that it is not a lot of work" to approve a POCD amendment.²²⁷ The current PZC Chairman stated that "the Commission is not opposed to the idea," given that "everybody in town would be in favor of preserving farmland and open space."²²⁸ On October 7, 2013, just four months after receiving the proposed amendment "to include an agricultural preservation plan" in the POCD, the PZC unanimously approved its adoption.²²⁹

VIII. 2009 To 2020: Country Club Of Woodbridge Development Proposals

As noted above, the former CCW property has been a source of controversy in recent years, generating significant opposition to any development plans that would increase density. The Town's 2009 purchase of the CCW property was based in part on fears that the property could otherwise be targeted by affordable housing developers. Residents voted overwhelmingly in a 2011 referendum against a proposal for age-restricted cluster townhomes, and waves of opposition from 2015 to 2020 (rooted in concerns that increased density on the CCW property could spread throughout town) led to the breakdown of negotiations over other proposals for age-restricted development. This opposition frequently alluded to Woodbridge's Zoning Regulations as carefully designed mechanisms to limit housing development.

A. 2009: Woodbridge Purchases CCW To "Control Its Development"

²²³ PLANNING & ZONING COMM'N, MEETING MINUTES (Mar. 23, 2015).

²²⁴ PLANNING & ZONING COMM'N, MEETING (June 3, 2013).

²²⁵ PLANNING & ZONING COMM'N, MEETING (July 1, 2013).

²²⁶ *Id.*

²²⁷ PLANNING & ZONING COMM'N, MEETING (July 15, 2013).

²²⁸ *Id.*

²²⁹ PLANNING & ZONING COMM'N, MEETING (Oct. 7, 2013).

The Town purchased the 150-acre property in 2009, after its owners went bankrupt.²³⁰ During the May 2009 Annual Town Meeting, the Board of Selectmen explained that their "primary reason for authorizing the purchase of the Club was to ensure the appropriate development of the largest single tract of land remaining in Woodbridge," with the goal "to control its development."²³¹ In response to a resident comment that "the Town was taking a big risk in pursuing something that's best left to private developers," and that with private development of homes "the tax base would increase," the First Selectman noted that "if the property were developed as you suggest, then of course there would be an increase in the necessary services for that property, including an increase in the school enrollment . . . maybe 45 or 50 [families]."²³² The resident responded that "no one's building 45 or 50 homes in one shot in this economy."²³³ The Woodbridge Town Attorney then chimed in to "clarify" that:

[Y]ou do have zoning and it does, right now, only permit single family dwellings. But that property is served by public water and public sewer. And I can assure you that after many years of fighting a whole host of affordable housing or denser developments, not myself, but reading about what's going on in a lot of towns, this is the kind of property that is prime for that. Woodbridge does not have affordable housing to speak of, and it has the potential services for this kind of development. So, while your initial zoning will give you some comfort, you can look to some of your surrounding towns. Look to Orange—they faced this time and again and they fought for many, many years and spent a lot of money fighting it, and they have a lot of dense development in Orange because they couldn't reconcile it. So it's to give you control of this property going forward. At least at some point you may have to decide to sell it for development, but you control what will go there as you go forward.²³⁴

These remarks, framing town ownership of the CCW as a way to protect against the development of affordable housing, were followed by applause from the audience.²³⁵

B. 2011: Residents Vote Two-To-One Against Age-Restricted Townhouses

In August 2011, the Woodbridge First Selectman released a "bid request outlining the town's interest in seeing" 19 acres of the property "used for age-restricted housing."²³⁶ The developer Toll Brothers submitted plans to build 54 units of age-restricted housing, with 13

²³⁰ Pam McLoughlin, *Woodbridge Country Club Proposals Will Get Closer Scrutiny*, NEW HAVEN REG. (Jan. 1, 2019), <https://www.nhregister.com/news/article/Woodbridge-country-club-proposals-will-get-closer-13501917.php>

²³¹ *Town of Woodbridge Annual Town Meeting 2009*, (WGATV broadcast May 18, 2009), https://archive.org/details/wgact-Annual_Town_Meeting_2009.

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ Bridget Albert, *Woodbridge Grapples with Housing Plan*, NEW HAVEN REG. (Nov. 21, 2011), <https://www.nhregister.com/news/article/Woodbridge-grapples-with-age-restricted-housing-11557079.php>.

buildings containing four townhouses each, and one building containing two townhouses.²³⁷ A November 2011 informational meeting about this proposal "turned contentious at times," with public comments warning that if Woodbridge residents moved into the new development, their old "homes could potentially be purchased by families with school-age children."²³⁸ One former PZC member said the current PZC was "way off base to bring a developer" in, and a Conservation Commission member said "the administration has no respect," and "this is no longer a democratic town."²³⁹ Nearly 1,800 residents participated in a December 2011 referendum on the proposal, voting overwhelmingly (1190 to 588) to reject it.²⁴⁰

C. 2015 To 2016: Toll Brothers Cluster Housing Proposal Draws Opposition

The Town continued exploring potential uses for the CCW property, noting in the 2015-2025 POCD its intent to "consider age-restricted life style housing which may include cluster housing or planned development district" and to "consider open space uses" (a second option added after the first generated controversy).²⁴¹ In February 2015, a committee appointed by the Town to consider development options recommended a new proposal by Toll Brothers for an "age-restricted, 55-and-older development of 96 attached townhouses and 74 single-family homes."²⁴² One Woodbridge resident wrote a Letter to the Editor objecting to "the narrow, three-story monstrosities companies like Toll Brothers are packing into any corner they can find in towns all over Connecticut," and saying that if a CCW zoning change occurs, "development will be unstoppable not only at the [CCW] but wherever an acre of Town land exists."²⁴³ Another resident created a "Say No to Toll" blog, to "spread the word about the potential destruction of this property" and warn that any "zoning change will set a precedent for potential future development elsewhere," meaning "litigation will be costly to the town to try and prevent future development."²⁴⁴

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ Melissa Nicefaro, *Woodbridge Voters Crush Development Plan*, PATCH (Dec. 13, 2011), <https://patch.com/connecticut/bethwood/woodbridge-voters-axe-development-plan>.

²⁴¹ PLANNING & ZONING COMM'N, 2015-25 TOWN OF WOODBRIDGE PLAN OF CONSERVATION AND DEVELOPMENT (Mar. 23, 2015), <https://www.woodbridgetown.org/DocumentCenter/View/214/Town-Plan-of-Conservation-and-Development-PDF?bidId=>.

²⁴² Pam McLoughlin, *Ad-hoc Committee Recommends Toll Brothers for Woodbridge Country Club Development*, NEW HAVEN REG. (Feb. 11, 2015), <https://www.nhregister.com/business/article/Ad-hoc-committee-recommends-Toll-Brothers-for-11357653.php>.

²⁴³ Joyce Simpson, *Letter: Woodbridge Country Club*, WOODBRIDGE TOWN NEWS (Dec. 10, 2014), <https://woodbridgetownnews.com/letter-woodbridge-country-club/>.

²⁴⁴ *What's Happening in Woodbridge*, SAY NO TO TOLL, (Apr. 29, 2015), <http://saynototoll.blogspot.com/2015/04/>.



Image Source: "Say No to Toll" Blog (May 2, 2015), saynototoll.blogspot.com/2015

A Woodbridge Selectman expressed similar concerns in a December 2015 column in the *Woodbridge Town News*.²⁴⁵ The Selectman emphasized that "Woodbridge is unique as the only town in Connecticut that borders a major city but feels like a rural community," calling "this unique character—and the high property values that have always accompanied it" a "direct result of our longstanding, far sighted zoning regulations."²⁴⁶ The column warned that "if zoning is changed to accommodate the Toll Brothers, we risk that such a change could spread to other large parcels of land in town."²⁴⁷

By July 2016, Toll Brothers had scaled back their proposal to only "80 active adult housing units on 42 acres of land," with the Town keeping 113 acres. 65 of the units would be "clustered one-family homes," with the remaining 15 being "carriage homes" with more than one unit in a building.²⁴⁸ In August 2016, the Woodbridge Board of Selectman voted unanimously against pursuing negotiations with Toll Brothers, instead deciding to negotiate with a senior fellow of the Yale Corporation who proposed a golf course development.²⁴⁹ This proposal was withdrawn later that year, with a Yale University vice president stating that "the University had other priorities at this time."²⁵⁰

²⁴⁵ Maria Cruz Kayne, *From Across the Aisle*, WOODBRIDGE TOWN NEWS (Dec. 10, 2015), <https://woodbridgetownnews.com/from-across-the-aisle-121115/>.

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ Pam McLoughlin, *Competing Plans Laid out for Country Club of Woodbridge Property*, NEW HAVEN REG. (July, 27, 2016), <https://www.nhregister.com/connecticut/article/Competing-plans-laid-out-for-Country-Club-of-11321151.php>.

²⁴⁹ Bettina Thiel, *New Country Club Proposal Viewed Favorably*, WOODBRIDGE TOWN NEWS (Aug. 31, 2016), <https://woodbridgetownnews.com/new-country-club-proposal-viewed-favorably/>.

²⁵⁰ Bettina Thiel, *Yale University: Not on our Golf Course*, WOODBRIDGE TOWN NEWS (Dec. 7, 2016), <https://woodbridgetownnews.com/yale-university-not-golf-course/>.

D. 2018 To 2020: Negotiations Over Single-Family, Active Adult Development Break Down

In February 2018, the Town mailed a survey concerning use of the CCW land to every Woodbridge household, asking residents to "rate six different land use options on a scale from 1 to 10."²⁵¹ The survey had a 26.3% response rate, with significant opposition to the options "sell a portion of the land for age-restricted, over-55 housing" (39% in favor, 41% opposed) and "sell the entire parcel for single-family homes with no age restriction and pay off any existing debt" (16% in favor, 65% opposed).²⁵² Use of the property for other residential uses, including multi-family or affordable housing, was not included as an option on the survey.

As the Board of Selectmen continued to consider development proposals, a Woodbridge Park Association member wrote a Letter to the Editor arguing that "any zoning change for this property will have enormous follow-on consequences for other properties in town and bring in housing much more clustered than our present 1½ acre zoning that our town leaders have had the vision to include in our residential zoning regulations for many years" – essentially arguing that this restrictive residential zoning is central to the "unique character" of the Town.²⁵³ Residents expressed similar sentiments during a December 2018 "informational/comment session on two proposals for upscale, age-restricted housing," with one speaker receiving "loud cheers and applause" after saying residents had already sent a "message loud and clear" by rejecting the original Toll Brothers proposal in the 2011 referendum.²⁵⁴ Coverage of the session noted that "many are concerned that once clustered housing is allowed, it will set a precedent and other such projects will be approved in town, compromising the community."²⁵⁵

In June 2019, the Board of Selectmen did vote to move forward with one of the proposals, which would use 60 acres to build 120 detached, single-family homes for "55-and-over active adults."²⁵⁶ Two Selectmen abstained from this vote, citing the "overwhelming dismay" of town residents "over the problems with density, traffic . . . and required zoning revisions that would forever change the character of our town" and noting that "what separates us

²⁵¹ Bettina Thiel, *Residents Asked to Weigh in on Country Club*, WOODBRIDGE TOWN NEWS (Feb. 8, 2018), <https://woodbridgetownnews.com/residents-asked-weigh-country-club/>.

²⁵² Bettina Thiel, *Country Club: Cash Cow or Open Space?*, WOODBRIDGE TOWN NEWS (May 3, 2018), <https://woodbridgetownnews.com/country-club-cash-cow-or-open-space/>.

²⁵³ Richard Forselius, *Letter: Country Club of Woodbridge – What Are Our Selectmen Doing?*, WOODBRIDGE TOWN NEWS (Nov. 16, 2018), <https://woodbridgetownnews.com/letter-country-club-of-woodbridge-what-are-our-selectmen-doing/>.

²⁵⁴ Pam McLoughlin, *Controversial Plans for Woodbridge Country Club Property Draw Hundreds*, NEW HAVEN REG. (Dec. 18, 2018), <https://www.nhregister.com/metro/article/Controversial-plans-for-Woodbridge-country-club-13473554.php>.

²⁵⁵ *Id.*

²⁵⁶ Bettina Thiel, *Selectmen Choose St. Pierre Proposal for Country Club*, WOODBRIDGE TOWN NEWS (June 28, 2019), <https://woodbridgetownnews.com/selectmen-choose-st-pierre-proposal-for-country-club/>.

from other towns that also had much open space is our well-considered zoning regulations."²⁵⁷ One Selectman warned that CCW development would set "a dangerous precedent that will create opportunities for other developers to come in with high-density proposals," which at a minimum would generate "legal fees" when "the Town refuses these proposals," and "at worst, we lose these cases and more development is here, and the Woodbridge we know is gone."²⁵⁸

The *Woodbridge Town News* published several Letters to the Editor that similarly opposed this proposal, with titles including "Why Aren't They Listening?", "Beware the Bait & Switch," "Country Club of Woodbridge – A Recurring Nightmare," and "Let's Keep the Woodbridge We Know & Love."²⁵⁹ The authors argued that the original 2009 purchase of the CCW was intended "as a way of preventing residential development" and that Woodbridge residents were largely "opposed to housing development."²⁶⁰ In their estimation, "a zoning change for this property will . . . [make] Woodbridge no different than many towns with town homes and clustered development throughout," since use of any acreage for cluster housing could lead to the remaining acres being "sold off piece by piece in the future," allowing for "dense development in a residential A zone" that would "change the character of our town forever" and undo a long legacy of "semi-rural character [that] was created over time with our careful zoning."²⁶¹

In January 2020, another Letter to the Editor warned that in Oxford, Connecticut, the owner of an "over-55 housing project is seeking to change the use of remaining land to . . . a 197-unit mid-rise apartment complex to be built under the provisions of Connecticut's Affordable Housing statutes," which "give a property owner broad discretion (i.e. little local government input) over the use of the parcel as long as a portion of the property is used as affordable housing." The author speculated that the proposed CCW developer may be unable to sell all their housing units "at their targeted \$500,000+ price" and said "the alarm bells are ringing . . . the possibility of an attempt to change the use seems high."²⁶² The Woodbridge Land

²⁵⁷ Dwight Rowland, *From the Other Side of the Aisle*, WOODBRIDGE TOWN NEWS (July 26, 2019), <https://woodbridgetownnews.com/from-the-other-side-of-the-aisle-7-26-19/>.

²⁵⁸ *Id.*

²⁵⁹ Cheryl Lipson, *Letter: Why Aren't They Listening?*, WOODBRIDGE TOWN NEWS (Apr. 11, 2019), <https://woodbridgetownnews.com/letter-why-arent-they-listening/>; Cathy Wick, *Letter: Beware the Bait & Switch*, WOODBRIDGE TOWN NEWS (Oct. 31, 2019), <https://woodbridgetownnews.com/letter-beware-the-bait-switch/>; Richard Forselius, *Letter: Country Club of Woodbridge: A Recurring Nightmare*, WOODBRIDGE TOWN NEWS (Oct. 31, 2019), <https://woodbridgetownnews.com/letter-country-club-of-woodbridge-a-recurring-nightmare/>; Michael Broderick, *Letter: Let's Keep the Woodbridge We Know & Love*, WOODBRIDGE TOWN NEWS (Oct. 31, 2019), <https://woodbridgetownnews.com/letter-lets-keep-the-woodbridge-we-know-love/>.

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² Deke Hotchkiss, *Letter: Will the Over-55 Housing Project Proposed for the Country Club of Woodbridge Be Successful?*, WOODBRIDGE TOWN NEWS (Jan. 9, 2020), <https://woodbridgetownnews.com/letter-will-the-over-55-housing-project-proposed-for-the-country-club-of-woodbridge-be-successful/>.

Trust Board of Directors also wrote to express their unanimous opposition to the proposal, because it "requires that we abandon the zoning protections that have allowed Woodbridge to remain a special and beautiful place" and brings "the very real likelihood of similarly dense development of land throughout the town," which would affect "quality of life for residents," the "costs for public infrastructure and programs," and "individual property values."²⁶³

A few weeks later, instead of moving forward with scheduling a referendum on the proposal, the Board of Selectmen "voted to cease further discussions" with Insite/Werner, the developers who had proposed the active-adult development.²⁶⁴ Coverage of the vote noted that "the builder wanted to be able to sell parcels to third-party investors," which First Selectman Beth Heller said "was not considered in the town's best interest."²⁶⁵ The First Selectman "moved to cease not only negotiations, but any discussions with Insite/Werner, a motion that passed unanimously."²⁶⁶

This breakdown of negotiations followed a familiar pattern of development debates in Woodbridge: town officials considered a small, limited increase in density, received significant opposition rooted in fear about opening the floodgates to higher density residential development anywhere in town coupled with a desire to preserve restrictive zoning, and as a result abandoned the endeavor and left the status quo in place.

IX. 2015 To 2019: Zoning Regulation Revisions

The PZC recently undertook a comprehensive review of the Woodbridge Zoning Regulations, and at one point did propose allowing multi-family dwellings in some parts of the Village District – but following significant public opposition, those proposals were dropped from the adopted regulations.

A. 2015 To 2018: Proposal Of A "T-4" Zone Allowing Multi-Family Dwellings

Beginning in October 2015, the PZC began discussing "possible regulation changes" to "address the recommendations of the newly adopted" POCD.²⁶⁷ Over the course of 2016 and 2017, the PZC dedicated several meetings to discussing potential revisions with a planning consultant, informed partly by responses to "a preference survey that [was] distributed to the townspeople."²⁶⁸ A shared assumption of the PZC and the planning consultant seemed to be that

²⁶³ Bryan Pines, *Letter: Land Trust Directors Oppose Sale of Public Land at the Former Country Club of Woodbridge*, WOODBRIDGE TOWN NEWS (Jan. 9, 2020), <https://woodbridgetownnews.com/land-trust-directors-oppose-sale-of-public-land-at-the-former-country-club-of-woodbridge/>.

²⁶⁴ Bettina Thiel, *Country Club Negotiations Break Down*, WOODBRIDGE TOWN NEWS (Mar. 5, 2020), <https://woodbridgetownnews.com/country-club-negotiations-break-down/>.

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ PLANNING & ZONING COMM'N, MEETING MINUTES (Oct. 5, 2015).

²⁶⁸ PLANNING & ZONING COMM'N, MEETING MINUTES (Mar. 7, 2016).

any new zoning regulations would "make no changes to Residential Zones A & B,"²⁶⁹ and instead "preserve the two main residential areas."²⁷⁰

Rather than make adjustments to those main residential zones, the proposals under review focused on the relatively small "Downtown/Flats/Village/Amity section of town."²⁷¹ Draft zoning regulations presented in February 2018 would have allowed multi-family dwellings by special exception in a proposed "T-4" zone, to be located in the Village District.²⁷² Opposition to this proposal was fierce, as described below.

B. February 2018: Public Opposition To T-4 Zone

During a February 27, 2018 public hearing, residents charged that "the proposals would tear apart the community that was there," that "high density rental properties represent an urban rather than a rural environment," and that "it tears the fabric of the community, adding a lot of new people."²⁷³ Residents were "not asking for an influx of new residents," which could cause "strains on town resources" including "schools, volunteer fire department, police," and worried that "rental units would not contribute as much to tax revenue"—such proposals would be "not a community builder but a community destroyer."²⁷⁴

Taxes were a common area of concern. One resident said "she knew the Commission wanted to have more taxes, but there had to be a different way before adding more buildings for housing."²⁷⁵ Another argued that "adding lots of multifamily housing with a school system overburdened was just going to increase the taxes even more."²⁷⁶ One raised the possibility of the State "eliminating the car tax," in which case "renters will pay no tax at all and much more of the burden of tax will fall onto the homeowners."²⁷⁷

Some residents felt that the Village District was being unfairly singled out, saying "no one ever talked about building up any further on Litchfield or any further up on Amity Road," and asking "if other sections of town refuse to allow high density development, why should the Woodbridge Village District which already has the highest percent have to absorb more?"²⁷⁸

Several other residents emphasized school system impacts that they feared, predicting that:

²⁶⁹ PLANNING & ZONING COMM'N, MEETING MINUTES (Oct. 18, 2016).

²⁷⁰ PLANNING & ZONING COMM'N, MEETING MINUTES (Oct. 30, 2017).

²⁷¹ *Id.*

²⁷² PLANNING & ZONING COMM'N, Draft Zoning Revisions of Feb. 27, 2018.

²⁷³ PLANNING & ZONING COMM'N, MEETING MINUTES (Feb. 27, 2018).

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ *Id.*

- The proposal would result in having "100 to 200" additional children "with nowhere to put them."
- "If two or three bedroom apartments were available families would rush to Woodbridge to enroll their children in the school system."
- "If development in that area was not 55 or over, the town schools would be flooded with people."
- "Apartments with 2 and 3 bedrooms would mean many more children added to our school system," because "most people that would want to move into those apartments would move here just for the school system."
- For every "one kid in the apartment it would cost the town about \$15,000."²⁷⁹

One resident specifically named "Hamden, New Haven and West Haven" as "three school districts in three towns that have some of the lowest school rankings in the State of Connecticut and they border a town like Woodbridge that has the best," adding "so you bet they move, and if they can get rentals or housing starts to go down in prices they are going to come with their family," and warning that "the town has to be very careful with the rate of development."²⁸⁰ After discussing his concerns about how "people come to the area for schools" and "are not going to stop coming," he stated that "he wanted young professionals."²⁸¹

Woodbridge First Selectman Beth Heller "asked the commission to reconsider some of the proposed regulations and to 'honor the wishes of people who live in the area.'"²⁸²

C. September And October 2018: Removal Of Proposed T-4 Zone; Continued Pushback

Following the public hearing, the PZC Chairman noted in a subsequent meeting that "he had been pressured by Town Hall, the First Selectman and Town Counsel" and "had relented" by "leaving the Residential Zones and Development 1 District alone," rather than making any changes that would be perceived to increase density.²⁸³ Instead of using a new T-4 zone to add multi-family uses in the Village District, the proposal was altered to focus on "needed updates to the Zoning Regulations including definitions, tables for bulk requirements and uses, and basic standards" – and "no changes would be made to the existing Zoning Districts."²⁸⁴

Another public hearing was held on September 20, 2018 on this updated proposal, beginning with the PZC Chairman acknowledging previous "pushback" and explaining that in

²⁷⁹ *Id.*

²⁸⁰ *Id.* These three towns are significantly more racially diverse than is Woodbridge.

²⁸¹ *Id.*

²⁸² Thiel, *supra* note 202.

²⁸³ PLANNING & ZONING COMM'N, MEETING MINUTES (Mar. 5, 2018).

²⁸⁴ PLANNING & ZONING COMM'N, MEETING MINUTES (Apr. 24, 2018).

response "to comments about strains on town resources . . . no increased density in any zone is proposed," and "there was nothing" in the new proposal "to encourage building anything that became rental units."²⁸⁵ The Chairman also noted that "the Affordable Housing District Regulations . . . were exactly the same as the current regulations."²⁸⁶

The public hearing was continued on October 15, 2018, during which several residents raised concerns that while the proposal no longer applied the T-4 zone to any part of town, the document still contained references to the T-4 definition (which the Chairman summarized as "a General Urban Zone consisting of mixed uses including residential, commercial, and retail").²⁸⁷ One resident called "the existence of T-4 in the document" a "grenade with a pin out," criticizing the use of the word "urban," because "that was not why anyone lived in Woodbridge."²⁸⁸ Another resident added that "he would extend the metaphor, it's a 'Trojan horse' that stalks the town," saying "the existence of the amorphous T-4" in the document gave property owners no assurances "that someday his or her home or his or her business won't be ground zero for T-4."²⁸⁹ Residents expressed opposition to "any philosophy that encouraged increased density in the town," characterized "the proposal of any type of zoning changes" as "nothing more than an unfixable disaster in the community,"²⁹⁰ and raised concerns "about the density being allowed, or even insinuated to be allowed to grow in Woodbridge by created zones, or names of zones that are not even included on the zoning map."

D. October And November 2018: Criticism Of Multi-Family Dwellings In The General Business District

The October 2018 public hearing also included criticism of an amendment adopted earlier in the year saying that "multiple-family dwellings, when accessory to a legal non-residential use, shall be permitted by Special Exception in the GB [General Business] District only in the locations depicted within the Red Line Map GB-A," which depicted a very small area covering parts of Hazel Terrace, Selden Street, and Amity Road.²⁹¹ An applicant had requested the amendment in June 2017, seeking to develop property at 18 Hazel Terrace for a two-story building with seven dwelling units, "4 two-bedroom units and 3 one-bedroom units."²⁹² The October 2017 public hearing was not well-attended, though two real estate agents did express their view "that condominiums do not fit on Hazel Terrace" and that "they were very skeptical that there would be upscale buyers buying into a property on Hazel Terrace," given that "their experiences with the residences on the street had not been very good."²⁹³ In November 2017, the

²⁸⁵ PLANNING & ZONING COMM'N, MEETING MINUTES (Sept. 20, 2018).

²⁸⁶ *Id.*

²⁸⁷ PLANNING & ZONING COMM'N, MEETING MINUTES (Oct. 15, 2018).

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ PLANNING & ZONING COMM'N, MEETING MINUTES (Jan. 18, 2018).

²⁹² PLANNING & ZONING COMM'N, MEETING MINUTES (June 5, 2017).

²⁹³ *Id.*

PZC unanimously approved the amendment "to allow multiple family dwellings no larger than 1,250 sq. feet in area each in the GB District by special exception."²⁹⁴

One month later, the PZC Chairman said "in hindsight that section needed to be tightened up a little bit," because "1250 sq. ft. units were large and needed to be downsized."²⁹⁵ In a January 2018 meeting, the PZC Chairman stated that "the intent was to create housing, but not excessive housing," and that "the apartments would be intended for young professionals," with the hope that they would "stay and move into a house in Woodbridge."²⁹⁶ The PZC then voted five to one to revise the language by lowering the maximum square footage to 650 square feet, allowing apartments only over first floor commercial uses, and reducing the area within the GB District where apartments were allowed.²⁹⁷

During the October 2018 public hearing on the broader zoning regulation revisions, a former PZC member referenced this earlier amendment, noting that "the current zoning regulations allow apartments on the right side of Amity Road, which he did not believe was fully discussed with the townspeople."²⁹⁸ He went on to say: "no one in town asked for them . . . it is an absolute abomination. Our taxes continue to spiral up in Woodbridge, and what we don't need are more school children . . . that's what apartments would create . . . you guys should be ashamed of yourselves from the board for allowing that to go through . . . no one in the greater town of Woodbridge, by and large, wants that, because people don't want their taxes increased, and people don't want multi-family dwellings all over the Village District . . . we're not New Haven, we don't need greater concentration of people . . . you're not listening or you would have responded to the previous meetings where the group spoke all against apartments."²⁹⁹

This public hearing extended into a November 2018 session, during which the same former PZC member reiterated that an "area that he thought should be changed was GBA where the Commission has allowed apartments," because "he did not believe that anyone really wanted to have apartments in that area" and thought the "change shouldn't have been made without more people in town knowing about it."³⁰⁰

E. 2019: Removal Of Multi-Family Dwellings From The General Business District

With the public hearing concluded, the PZC spent several months in 2019 undertaking a "detailed comparison and discussion" of "the existing and proposed regulations," making changes to the proposed regulations along the way.³⁰¹ In June 2019, the PZC voted unanimously to adopt these "updated regulations" with an effective date of July 1, 2019.³⁰² While the updated

²⁹⁴ PLANNING & ZONING COMM'N, MEETING MINUTES (Nov. 6, 2017).

²⁹⁵ PLANNING & ZONING COMM'N, MEETING MINUTES (Dec. 4, 2017).

²⁹⁶ PLANNING & ZONING COMM'N, MEETING MINUTES (Jan. 18, 2018).

²⁹⁷ *Id.*; PLANNING & ZONING COMM'N, MEETING MINUTES (Oct. 15, 2018).

²⁹⁸ PLANNING & ZONING COMM'N, MEETING MINUTES (Oct. 15, 2018).

²⁹⁹ *Id.*

³⁰⁰ PLANNING & ZONING COMM'N, MEETING MINUTES (Nov. 5, 2018).

³⁰¹ PLANNING & ZONING COMM'N, MEETING MINUTES (Jan. 7, 2019).

³⁰² PLANNING & ZONING COMM'N, MEETING MINUTES (June 3, 2019).

regulations do still preserve the distinction between "GB" ("General Business District that does not allow residential uses") and "GBA" ("General Business District Overlay that allows limited residential uses"), the only residential use now permitted in GBA is an "accessory dwelling unit as part of mixed use (Max. 4 Dwelling units)."³⁰³ The definition of "accessory dwelling unit," however, is "a dwelling unit that has been added onto or created within a single-family house."³⁰⁴ As a result, after nearly five years of Town officials discussing zoning regulation revisions, multi-family housing is still not permitted in Woodbridge.

X. Conclusion

Over the years, Woodbridge has frequently grappled with the question of whether to take steps to increase and diversify housing opportunities in the Town. To date, Woodbridge's answer has always been "No." While the Town's stated reasons for maintaining its exclusionary zoning mechanisms sometimes reference the physical status quo (preventing traffic congestion, preserving open space), often public opposition to any density increase has been rooted in protecting the socioeconomic status quo—keeping property values high, keeping families in more diverse neighboring towns out of Woodbridge schools, and keeping out would-be newcomers who cannot already afford to own a single-family home on a large lot. Town officials have at times seemed to acknowledge the need for evolving beyond this exclusionary status quo. But, if history is any guide, change will require the PZC to weather the public opposition that always arises to the prospect of affordable housing in Woodbridge.

³⁰³ ZONING REGULATIONS FOR THE TOWN OF WOODBRIDGE, *supra* note 33, at 41.

³⁰⁴ *Id.* at 6.

The Current Woodbridge Zoning Regulations Violate General Statutes § 8-2

I. The Zoning Regulations Violate Bedrock Principles Of Zoning Law Which Require The State's Zoning Power To Be Used To Ensure Housing Opportunities For All

The Zoning Regulations restrict residential development to exclusively single-family homes on large lots in the vast majority of residentially zoned land in Town. As a result, the Town successfully excludes low and moderate income families from these areas, as demonstrated by the extremely high median income of the Town. Multi-family development of any kind is prohibited everywhere but 0.2% of the residential area of the Town. Even in that tiny area, homes can be built for a maximum of *two* families. Unsurprisingly, there is virtually no rental housing in the Town and much of the rental housing that exists is in the form of expensive single-family homes. Only a few rental units are affordable to low or moderate income renters.

The Zoning Regulations thus violate Connecticut zoning law, as summarized here and set forth more fully below:

- As an integral part of the obligation to zone for the general welfare, zoning regulations must not operate to exclude low and moderate income households from a town, and must instead promote the development of housing opportunities that are affordable for low and moderate income households in the region;
- This fundamental duty is reinforced by various express provisions of the Connecticut Zoning Enabling Act, General Statutes § 8-2. The Act requires zoning regulations to encourage the development of multi-family housing and promote housing choice and economic diversity in housing, including for low and moderate income households;
- Finally, in exercising the zoning power – a power of the *State* – towns are not licensed to act as islands unto themselves: they must ensure housing opportunities for all households – including low and moderate income households – in their *region*.

In plain violation of these long-settled mandates, Woodbridge has decidedly not encouraged the development of affordable housing through its zoning. In fact, Woodbridge does not allow multi-family dwellings in any of its 13 zoning districts; to the extent there is housing in structures of three or more units in Town, it is in age-restricted developments.³⁰⁵ In addition, while the Zoning Regulations include a theoretical affordable housing floating zone, it is

³⁰⁵ The exceptions to the Town's general rule prove its exclusionary intent. In a very small number of locations, the Town permits, by Special Exception, active adult multi-family developments as part of a larger mixed-use developments. Such developments, of course, *still* exclude the vast majority of low-income persons either explicitly by age restrictions or implicitly through their limited scope.

designed to thwart affordable housing development and, as a result, has never been used. General Statutes § 8-2, provides in relevant part that:

[zoning] regulations shall also encourage the development of housing opportunities, including opportunities for multifamily dwellings, consistent with soil types, terrain and infrastructure capacity, for all residents of the municipality and the planning region in which the municipality is located, as designated by the Secretary of the Office of Policy and Management under section 16a-4a. Such regulations shall also promote housing choice and economic diversity in housing, including housing for both low and moderate income households, and shall encourage the development of housing which will meet the housing needs identified in the State's consolidated plan for housing and community development prepared pursuant to section 8-37t and in the housing component and the other components of the State plan of conservation and development prepared pursuant to section 16a-26.³⁰⁶

Furthermore, the Connecticut Supreme Court has held that towns must act in good faith to meet these requirements, a low bar that the Town of Woodbridge fails to meet.³⁰⁷

A. Zoning Must Be For The General Welfare, Which In Itself Precludes Exclusionary Zoning And Mandates Zoning For Affordability

Since the 1929 enactment of Connecticut's Zoning Enabling Act, state zoning law has granted municipalities the power to zone for the general welfare of the State. Courts in Connecticut and elsewhere have made clear that the duty to zone for the general welfare prohibits zoning regulations that exclude low and moderate income households from a municipality, and mandates that zoning proactively promote housing opportunities for such households.

1. *The Zoning Power Must Be Used To Promote The General Welfare Of The State*

The power to zone, upheld by the United States Supreme Court in *Village of Euclid v. Ambler Realty Co.* in 1926, is derived from the state's police power and delegated by the state to municipalities.³⁰⁸ In *Euclid*, and in decisions around the country since that time, the zoning power has been described as a power to regulate for the promotion of "health, safety, and the general welfare."³⁰⁹ In crafting its own zoning enabling act, the State of Connecticut used much of this same language, drafting the zoning statute to emphasize that zoning is for the general welfare of the State. Thus, § 8-2 includes both an overarching requirement to promote the general welfare and a series of specific requirements intended to build out the concept.³¹⁰

³⁰⁶ General Statutes § 8-2(a) (2019).

³⁰⁷ *AvalonBay Cmtys., Inc. v. Town of Orange*, 775 A.2d 284, 302 (Conn. 2001).

³⁰⁸ *Village of Euclid v. Amber Realty Co.*, 272 U.S. 365 (1926).

³⁰⁹ *Id.* at 383.

³¹⁰ General Statutes § 8-2(a) (2019).

Determining whether a zoning regulation "promotes the general welfare," as required by § 8-2, requires regulators and courts to analyze both a regulation's benefits and its drawbacks. According to the Connecticut Supreme Court, "a regulation that may have some beneficial effect will not, ipso facto, be considered valid and consonant with the general welfare but, rather, inquiry must also be directed toward whatever detrimental effects a particular regulation has."³¹¹ The Court concluded that "a regulation that has some relationship to promoting the general welfare or some subset of that concept, such as public health, safety, property values or any of the declared purposes set out in the enabling act in General Statutes § 8-2 would be valid if it does not at the same time promote or generate results that are contrary to the general welfare."³¹²

2. *Zoning That Excludes Low And Moderate Income Households Without A Rational, Legitimate Justification Is Contrary To The General Welfare*

In the landmark 1988 decision *Builders Service Corp. v. Planning and Zoning Commission of the Town of East Hampton*, the Connecticut Supreme Court struck down an East Hampton minimum floor area requirement, finding no evidence of "a rational relation between" the requirement "and the legitimate objectives of zoning" such as the "promotion of health, safety and general welfare."³¹³ The Court stressed that § 8-2's mandate was to "'encourage' the 'development of housing opportunities' not just in some zones for some citizens but 'for **all** citizens of the municipality'" and that zoning regulations are a "legitimate subject for . . . police power" **so long as** they have "a reasonable relation to the public health, safety and welfare."³¹⁴

If the regulations do not further one of these "proper objective[s]," however, the Connecticut Supreme Court expressed "serious concerns that the only possible justification . . . is an intent to discriminate against those with moderate and lower incomes."³¹⁵ "This form of denial of access" is **unequivocally not a purpose authorized by § 8-2.**³¹⁶ In striking down the regulation under § 8-2, the Connecticut Supreme Court relied on a New Jersey Supreme Court decision that invalidated a zoning regulation which was "directed solely toward economic segregation"³¹⁷ and suggested that "the conclusion that the requirements [in East Hampton] are a form of economic discrimination...causes grave concern."³¹⁸ In short, the *Builders Service* Court found that § 8-2 prohibits towns from using zoning to obstruct the construction of housing affordable to low and moderate income people.

Additionally, in *TCR New Canaan v. Planning and Zoning Commission of Town of Trumbull*, the court interpreted *Builders Service* to indicate that "[z]oning regulations and zoning

³¹¹ *Builders Serv. Corp. v. Planning & Zoning Comm'n*, 545 A.2d 530, 539 (Conn. 1988).

³¹² *Id.*

³¹³ *Id.* at 550.

³¹⁴ *Id.* at 550 (emphasis in original) and 542.

³¹⁵ *Id.* at 546.

³¹⁶ *Id.* (emphasis added).

³¹⁷ *Home Builders League of S. Jersey, Inc. v. Twp. of Berlin*, 405 A.2d 381, 392 (N.J. 1979) ("the ordinance appears to be directed solely toward economic segregation").

³¹⁸ *Builders Serv. Corp.*, 545 A.2d at 547.

comprehensive plans that discriminate against economically disadvantaged citizens are contrary to the public welfare and not within the general purposes of General Statutes § 8-2."³¹⁹

This understanding of the general welfare provision comports with that accepted by courts in other states interpreting similar language in their respective state constitutions or zoning enabling acts. Although this issue has yet to be litigated in most states, several of our neighboring Northeastern states have interpreted general welfare provisions to include obligations to zone in a way that precludes exclusionary zoning and encourages the development of affordable housing. In *Southern Burlington County NAACP v. Mount Laurel Township* ("*Mount Laurel I*"), the New Jersey Supreme Court held, in the context of a suit contesting minimum lot size and other exclusionary zoning requirements, that the "design of such [exclusionary zoning] limitations is obviously to restrict the number of families in the municipality having school age children and thereby keep down local education costs. Such restrictions are so clearly contrary to the general welfare as not to require further discussion."³²⁰ The general welfare requirement in *Mount Laurel I* "extend[ed] beyond [the municipality's] boundaries and [could not] be...confined to the...good of the particular municipality."³²¹ Indeed, the municipality had an "affirmative" "obligation" to "provide, by its land use regulations, the reasonable opportunity for an appropriate variety and choice of housing" that will "meet the needs, desires and resources of all categories of people who may desire to live within its boundaries."³²² The subsequent *Mount Laurel II* recognized an obligation for "every municipality" to "provide a realistic opportunity for a fair share" of regional housing need.³²³

Although *Mount Laurel I and II* are the best-known examples of this phenomenon, state appellate level courts elsewhere have reached similar conclusions. In 1991, the Supreme Court of New Hampshire held that a zoning regulation that "placed an unreasonable barrier to the development of affordable housing for low- and moderate-income families . . . flies in the face of the general welfare provision of [the New Hampshire zoning enabling act]."³²⁴ In 2002, the Supreme Court of Pennsylvania held "an ordinance will be found to be unreasonable and not substantially related to a police power purpose if it is shown to be unduly restrictive or exclusionary . . . an ordinance that has an exclusionary result or purpose cannot be substantially related to the general welfare."³²⁵ This decision built on a similar holding in 1970 when, in striking down a zoning ordinance, the Supreme Court of Pennsylvania commented that "protecting the character...of the municipality...is not sufficient justification for an exclusionary

³¹⁹ TCR New Canaan Inc. v. Planning & Zoning Comm'n, No. CV384353, 1992 WL 48587, at *22 (Conn. Super. Ct. March 5, 1992).

³²⁰ *S. Burlington Cty. NAACP v. Mount Laurel Twp.*, 336 A.2d 713, 729 (N.J. 1975), *appeal dismissed, cert. denied* ("*Mount Laurel I*").

³²¹ *Id.* at 728

³²² *Id.*

³²³ *S. Burlington Cty. NAACP v. Mount Laurel Twp.*, 456 A.2d 390, 418 (N.J. 1983). ("*Mount Laurel II*").

³²⁴ *Britton v. Town of Chester*, 595 A.2d 492, 494-96 (N.H. 1991).

³²⁵ *C & M Developers, Inc. v. Bedminster Twp. Zoning Hearing Bd.*, 820 A.2d 143, 151 (Pa. 2002).

zoning technique"³²⁶ and in 1965, when the Supreme Court of Pennsylvania found that "[t]he general welfare is not fostered or promoted by a zoning ordinance designed to be exclusive and exclusionary."³²⁷

In 1980, the New York Court of Appeals held "the enactment of a zoning ordinance is a valid exercise of the police power if its restrictions are not arbitrary and they bear a substantial relation to the health, welfare and safety of the community . . . a zoning ordinance will be invalidated on both constitutional and State statutory grounds if it was enacted with an exclusionary purpose, or it ignores regional needs and has an unjustifiably exclusionary effect."³²⁸ The New York Court of Appeals similarly "recogni[zed]...the principle that a municipality may not legitimately exercise its zoning power to effectuate socioeconomic or racial discrimination."³²⁹ More directly stated, "a municipality may not, by its zoning ordinance, create obstacles to the production of a full array of housing, includ[ing] low- and moderate-income housing."³³⁰

Lastly, in 2004 the Supreme Judicial Court of Massachusetts held that "through zoning bylaws, a town may allow itself breathing room to plan for the channeling of normal growth; it may not turn that breathing room into a choke hold against further growth . . . general welfare transcends one town's parochial interests."³³¹

In short, looking both to Connecticut case law and bedrock zoning principles as elaborated in neighboring states, the general welfare clause in Connecticut's Zoning Enabling Act both bars exclusionary zoning and creates an affirmative obligation to zone in a manner that encourages the development of affordable housing, even without the more explicit additions to § 8-2 over the last forty years.³³²

B. The Duty To Zone In A Manner That Does Not Exclude, But Welcomes, Low And Moderate Income Households Is Reinforced By Key Provisions Of § 8-2

³²⁶ Appeal of Girsh, 263 A.2d 395, 398 (Pa. 1970).

³²⁷ Nat'l Land & Inv. Co. v. Kohn, 215 A.2d 597, 612 (Pa. 1965).

³²⁸ Robert E. Kurzius, Inc. v. Inc. Vill. of Upper Brookville, 414 N.E.2d 680, 682 (N.Y. 1980).

³²⁹ Suffolk Hous. Servs. v. Town of Brookhaven, 511 N.E.2d 67, 69 (N.Y. 1987) (internal citations omitted).

³³⁰ Cont'l Bldg. Co. v. Town of N. Salem, 211 A.D.2d 88, 95 (N.Y. 1995).

³³¹ Zuckerman v. Town of Hadley, 813 N.E.2d 843, 850 (Mass. 2004) (internal citations omitted).

³³² The Connecticut Commission on Human Rights and Opportunities has promoted this understanding of the general welfare mandate since at least 1978. See CONN. COMM'N ON HUMAN RIGHTS & OPPORTUNITIES, *supra* note 13 at 61 ("Where housing needs of low- and moderate-income households exist in a larger area or region of which the jurisdiction is a part, that jurisdiction is failing to provide the opportunity to meet some of those housing needs within its own borders. By using zoning regulations to restrict the availability of lower cost housing, the jurisdiction is violating its mandate to protect the general welfare through its police powers granted in State Enabling Legislation.").

As courts were fleshing out the municipal duty to zone in a nondiscriminatory, non-exclusionary manner, the Connecticut Legislature was working in parallel to enshrine this fundamental duty in express statutory provisions.

In 1984, the Legislature amended General Statutes § 8-2 to specify that zoning "regulations shall also encourage the development of housing opportunities for all citizens of the municipality." In the Connecticut House of Representatives, the bill sponsor, Representative Gravel, stated that "[t]his bill makes clear that one of the functions of municipal zoning, is to encourage the development of housing opportunities for people who live in a municipality."³³³ He continued, "[t]his is not a new idea. Housing related elements are already mandated by Section 8-2... It seems only reasonable that we should acknowledge the meeting of housing needs to be one of the functions of zoning."³³⁴ In the Connecticut Senate, bill sponsor Senator Smith was even more explicit, describing the bill as stating:

...expressly that when zoning boards are adopting regulations then they would look toward what they have in their municipalities, if they only have large lot zoning or if they only have single family houses. In certain areas they have no two family housing. They have no low income housing. This says that they shall encourage affordable housing along those lines within their municipalities.³³⁵

In his remarks on the floor, Senator Smith seems to have contemplated, and seen fit to prohibit, just the scenario we find in Woodbridge today. Further, the bill sponsors acknowledged that they saw the mandate to develop housing opportunities as a legally enforceable obligation.³³⁶ In the years following this floor debate, Connecticut courts began to define the contours of this express obligation in the previously discussed *Builders Service* and related cases, particularly those also involving General Statutes § 8-30g, the builder's remedy.

In a 1995 § 8-30g appeal, a Connecticut Superior Court judge interpreted the housing obligation affirmed by *Builders Service* and noted the weight it carries in relation to other legitimate purposes of zoning under § 8-2. While acknowledging that "zoning for density, is, to be sure, a proper goal for a zoning commission under § 8-2," the court understood *Builders Service* to have interpreted the legislative mandate "that zoning commissions adopt regulations to 'encourage the development of housing opportunities for all citizens of the municipality consistent with soil types, terrain and infrastructure capacity'" as "not only... mandatory but broad in scope."³³⁷

The court, in applying this rule, held the town's plan of development to be "immediately suspect" because "discussion of the need for affordable housing [was] conspicuously absent" and

³³³ 27 H.R. Proc. Pt. 8, 1984 Sess., at 2739 (remarks of Rep. Gravel).

³³⁴ *Id.*

³³⁵ 27 Sen. Proc. Pt. 3, 1984 Sess., at 1012 (remarks of Sen. Smith).

³³⁶ *See, e.g.,* 27 H.R. Proc. Pt. 8, *supra* note 333 at 2746.

³³⁷ *Nichols v. Killingly Planning & Zoning Comm'n*, No. CV94 0540477 S, 1995 WL 356759, at *3 (Conn. Super. Ct. June 5, 1995) (quoting General Statutes § 8-2(a) (2019)).

because "this plan, which was adopted in 1987, and the density classifications which it proposes fails to take into account the need for affordable housing."³³⁸

Even when holding in favor of those opposing specific affordable housing projects, Connecticut state courts have been careful to reiterate the municipalities' underlying housing obligation. For instance, in *Hochberg v. Zoning Commission*, the court sustained an abutter's challenge to a variance granted with affordability conditions. However, it did so on the basis that affordability standards should be created through zoning regulations of general application rather than by conditioning specific approvals.³³⁹

Note that this obligation for generally applicable zoning provisions, not specific to any one site, to encourage housing opportunities is also distinct from the obligation for a municipality to allow development of a specific project when successfully challenged under General Statutes § 8-30g. However, a builders' remedy under § 8-30g is effective only when a developer seeks to build an affordable housing development of great enough scale to support the cost of bringing litigation. The Legislature created two separate, interconnected mechanisms to ensure that municipalities meet housing needs—§ 8-2 requires zoning to encourage generally-available housing opportunities, while § 8-30g provides for site-specific intervention. The § 8-2 obligation must be respected in its own right and given separate effect, especially when it comes to promoting affordability and housing choices town-wide and statewide, as the statute requires.

C. Housing Opportunities Explicitly Include Multi-Family Dwellings And Housing That Is Affordable To Low And Moderate Income Households

In 1991, the Legislature amended § 8-2 again, adding both a specific mandate to encourage multi-family dwellings and more detailed language around affordability.³⁴⁰ Today, § 8-2 clearly states that zoning "regulations shall also encourage the development of housing opportunities . . . including opportunities for multifamily dwellings" and that "such regulations shall also promote housing choice and economic diversity in housing, including housing for both low and moderate income households."³⁴¹

In the 1996 case *Griswold Hills Newington v. Newington Town Planning & Zoning Commission*, in which a developer appealed the commission's decision to restrict the amount of affordable housing that could be built, the Connecticut Superior Court held that the obligation to "encourage" the "development of housing opportunities" must be "read in conjunction with and in the context of" the adjacent requirement to promote housing choice, economic diversity, and low and moderate income housing.³⁴² The court discussed § 8-2 as a firm "mandate" on municipalities to promote affordability through zoning regulations:

³³⁸ *Id.*

³³⁹ *Hochberg v. Zoning Comm'n*, 589 A.2d 889, 891 (Conn. App. Ct. 1991).

³⁴⁰ Act Concerning Regional Housing Provisions in Zoning Codes, Sec. 1, § 8-2, 1991 Conn. Legis. Serv. P.A. 91-392 (West).

³⁴¹ General Statutes § 8-2(a) (2019).

³⁴² *Griswold Hills Newington v. Newington Town Planning & Zoning Comm'n*, No. CV94 0540954 S, 1996 WL 3674, at *2 (Conn. Super. Ct. Dec. 28, 1995).

whatever mandate for economic diversity is created [by § 8-2] . . . is intended to be inclusionary rather than exclusionary in scope. In other words, the statute means that all municipalities are required through the instrument of the zoning regulations to promote housing which includes rather than excludes households of low and moderate income.³⁴³

Additionally, in deciding § 8-30g appeals, courts often use this mandate to encourage and promote multi-family housing and housing for low and moderate income households as the justification for overturning commission rejections of affordable housing developments. In doing so, the courts are in effect penalizing towns in site-specific § 8-30g proceedings for abdication of their broader affordable housing responsibility under § 8-2. Courts have suggested that such abdication "leads inevitably to the perception that the commission's denial of plaintiff's application was motivated by some exclusionary purpose based on economic status, national origin or perhaps even race."³⁴⁴

This economic diversity mandate has also been given greater weight than that ascribed to other allowable purposes of zoning under § 8-2. In the 2000 case *Thompson v. Zoning Commission*, the court referred to "the 'encouragement . . . of housing opportunities' and 'the promotion of housing choice and economic diversity in housing including housing for both low and moderate income households' as 'overall goals of § 8-2,'" to be given greater weight than other purposes of zoning such as "overcrowding of land, inadequate light and air, noise pollution, the character of the neighborhood."³⁴⁵ Further, the court entirely rejected "quality of life" as a reason to prohibit the construction of affordable homes. The court objected to the Commission's "conclusion that the development 'will decrease the quality of life in Stratford,'" criticizing this conclusion as an impermissible "blanket disapproval of any and all affordable housing applications which do not conform to the town's own affordable housing regulations."³⁴⁶ The

³⁴³ *Id.* at *6-7.

³⁴⁴ *Toll Brothers v. Bethel Planning & Zoning Comm'n*, No. HHBCV030523881S, 2006 WL 3114387, at *7 (Conn. Super. Ct., Oct. 16, 2006) (reversing the planning and zoning commission subject to PUC-related conditions); *see Dakota Partners, Inc. v. Newington Town Plan & Zoning Comm'n*, No. HHDCV186103767S, 2019 WL 5424771, at *8-9 (Conn. Super. Ct. Aug. 28, 2019); *Garden Homes Mgmt. v. Planning & Zoning Comm'n*, No. HHBCV074015729S, 2009 WL 24282204, at *4 (Conn. Super. Ct. Nov. 3, 2009) (holding that "Oxford has done little or nothing to address the need for affordable housing" and "the Oxford regulations do not contain any provisions which seriously address [the § 8-2] requirement"); *Williams v. New Milford*, No. CV980492228S, 2000 WL 775643 (Conn. Super. Ct. May 24, 2000); *Nizza v. Town of Andover*, No. CV 93 0526193, 1994 WL 421458 (Conn. Super. Ct. Aug. 2, 1994); *Wisniewski v. Berlin Planning Comm'n*, No. CV92-0511017S, 1993 WL 452265 (Conn. Super. Ct. Oct. 14, 1993), *aff'd*, 655 A.2d 1146 (Conn. App. Ct. 1995), *cert. denied*, 658 A.2d 981 (Conn. 1995).

³⁴⁵ *Thompson v. Zoning Comm'n*, No. CV 990494184, 2000 WL 73519, at *10 (Conn. Super. Ct. Jan. 11, 2000) (discussing, in the context of an § 8-30g appeal, a municipality's attempt to use another stated purpose of zoning under § 8-2 as a reason for denying an application for a 25-unit affordable development) (quoting General Statutes § 8-2(a) (2019)).

³⁴⁶ *Id.* at *10.

court emphasized that "quality of life in a municipality" is a factor "not found in § 8-2 or § 8-30g."³⁴⁷

Connecticut courts have not had the opportunity to directly address the clear statutory obligation to zone in a way that encourages the construction of multi-family, affordable dwellings. What little case law does exist comports with the statutory language to indicate that municipalities must make multi-family construction a realistic option within at least some areas of the municipality.³⁴⁸

D. Municipalities Must Zone In Ways That Promote Sufficient Affordable Housing As Defined By Regional Needs

The obligation to use the zoning power delegated by the State in a way that welcomes, rather than excludes, all households – including low and moderate income households – necessarily must be based on the housing needs of households **in the surrounding region, not just those living in the town already**. This obligation flows from the fact that the zoning power is delegated by the State. The scope of the obligation is specified by several revisions to the State Zoning Enabling Act in 1991.

First, the Legislature explicitly expanded the municipal obligation under § 8-2 from one of providing housing opportunities for "all citizens of the municipality" to one of providing housing opportunities for "all residents of the municipality **and the planning region in which the municipality is included**," strengthening the Town's obligation to encourage the development of affordable housing.³⁴⁹ Second, in another statutory expression of the Legislature's intent to require municipalities to consider regional housing needs, it made another revision to require the municipality to take the State's Consolidated Plan into account, requiring that municipalities:

shall encourage the development of housing which will meet the housing needs identified in the state's consolidated plan for housing and community development prepared pursuant to section 8-37t and in the housing component and the other components of the state plan of conservation and development prepared pursuant to section 16a-26.³⁵⁰

In the years following these amendments, a number of Connecticut state court opinions reviewing § 8-30g appeals relied upon the newly amended § 8-2 to explain the affordable housing obligation more broadly. For instance, in a 1993 § 8-30g appeal, a Connecticut Superior Court cited these amendments as evidence that Connecticut had legislatively adopted a version of New Jersey's regionally-focused *Mount Laurel* doctrine, and had created an expectation that municipalities would use their planning and zoning powers to meet regional and statewide

³⁴⁷ *Id.* at *10.

³⁴⁸ *See, e.g.*, TCR New Canaan Inc. v. Planning & Zoning Comm'n, No. CV384353, 1992 WL 48587 (Conn. Super. Ct. March 5, 1992).

³⁴⁹ General Statutes § 8-2(a) (2019) (emphasis added).

³⁵⁰ *Id.*

affordable housing need. The court stated that the amendments "broaden the mandate for affordable housing to include the needs of residents of the planning region in which the municipality is located and to promote choice and economic diversity in housing for low and moderate income households" and suggested "that Connecticut has adopted some of the features found in *Southern Burlington County NAACP v. Township of Mount Laurel*."³⁵¹

In a second case, *Kaufman v. Danbury Zoning Commission*, the court was even more explicit, holding that "[t]he legislature was very careful in writing the statute not to restrict the scope of the need for affordable housing only to the municipality."³⁵² The court further explained that the § 8-30g statute "speaks in terms of municipalities but only because it is only municipalities that have zoning commissions whose regulatory jurisdiction is co-terminus with the boundaries of the municipalities which they serve."³⁵³ The court in *Kaufman* also concluded that the mandate to encourage development meeting the State's Consolidated Plan amplifies the municipal obligation to work toward regional affordability, noting that "section 8-37t refers to a Statewide Housing Needs Assessment for four separate economic classes" and finding that "[t]here can be little doubt that the legislature has, through these amendments to § 8-2, introduced into Connecticut a version of the Mount Laurel Doctrine" as "[t]hese amendments as well as numerous others made in recent years . . . clearly reflect not so much a concern for housing conditions in individual municipalities but rather a more comprehensive statewide concern for the problem."³⁵⁴

E. Conclusion

General Statutes § 8-2 provides an obligation to use zoning regulations in good faith³⁵⁵ to: encourage the development of multi-family affordable housing that meets regional needs, offer a range of opportunities including multi-family dwellings, promote economic diversity, and

³⁵¹ *Pratt's Corner P'ship v. Southington Planning & Zoning Comm'n*, No. CV92 0508877 S, 1993 WL 229752, at *2 (Conn. Super. Ct. June 21, 1993) (overturning a zoning denial under § 8-30g because the Commission failed to provide sufficient public interest to counter the interest in affordable housing).

³⁵² *Kaufman v. Danbury Zoning Comm'n*, No. CV92 0507929 S, 1993 WL 316792 at *9 (Conn. Super. Ct. Aug. 13, 1993) (holding that the Danbury Zoning Commission did not meet its burden under § 8-30g for rejecting the affordable housing application); *see Abel v. Planning & Zoning Comm'n*, 998 A.2d 1149, 1161 n.18 (Conn. 2010) ("We agree that zoning regulations are primarily for the benefit of the municipality that adopts them. We see no evidence, however, that the legislature intended that municipalities should be oblivious to the legitimate concerns of adjoining municipalities and their residents in making land use decisions."); *Nichols*, *supra* note 337 at *5.

³⁵³ *Kaufman*, *supra* note 352 at *9.

³⁵⁴ *Id.* at *9.

³⁵⁵ *AvalonBay Cmtys., Inc. v. Town of Orange*, No. CV 99065826, 2000 WL 226374, at *8 (Conn. Super. Ct. Feb. 9, 2000), *aff'd in part, vacated in part on other grounds*, 775 A.2d 284, 302 (Conn. 2001). The lower court explained this good faith standard, stating that the town's affordable housing regulations were not in good faith because the "availability of affordable housing exists only in theory and not in fact."

reasonably consider geologic and infrastructure conditions. Significantly, this statutory mandate goes well beyond the general welfare obligations that other states have found sufficient as a basis for mandating zoning that promotes affordable housing.

II. Woodbridge Has Failed To Fulfill Its Obligation Under § 8-2

Woodbridge has not zoned in a way that encourages the development of affordable housing, as required by state law. The Town is not meeting its share of regional need and is not promoting economic diversity through its zoning. Rather than actively *encouraging* the development of housing opportunities that include multi-family dwellings, the Town does not even *allow* that housing choice.

One subsection of the Town's current Zoning Regulations purports to enable "the inclusion of below market rate housing units... to increase the diversity of the Town's housing stock pursuant to the provisions of §§ 8-2g and 8-30g of the Connecticut General Statutes."³⁵⁶ The fact that this subsection was successfully designed never to be used, together with the totality of the Town's Zoning Regulations and the reality of housing in the Town of Woodbridge, demonstrate that this claim is untrue.

A. Regional Need For Affordable Housing Is Well-Documented

The Town of Woodbridge is located in the South Central planning region, as designated by the Secretary of the Office of Policy and Management per state statute.³⁵⁷ The South Central planning region has a population of nearly 600,000 and includes a range of municipalities with greatly divergent levels of poverty. Since 2004, the SCRCOG has acknowledged a regional "housing crisis" and called for "an effective regional approach to this regional problem."³⁵⁸ The SCRCOG's 2018 Plan of Conservation and Development confirmed that "affordability remains a concern due to uneven distribution of household incomes and housing choice within the region."³⁵⁹

The 2018 American Community Survey estimated that the South Central planning region's median household income is approximately \$68,000.³⁶⁰ Several towns bordering

³⁵⁶ ZONING REGULATIONS FOR THE TOWN OF WOODBRIDGE, *supra* note 33 at 41.

³⁵⁷ General Statutes § 16a-4a (2015).

³⁵⁸ Harrall-Michalowski Associates in Association with AMS Advisory Services, LLC and Scillia, Dowling, and Natarelli, *Regional Housing Market Assessment* ES-1 (as adopted by the South Central Regional Council of Governments on June 3, 2004) (p. ES-1), http://SCRCOG.org/wp-content/uploads/reports/2004_Reg_Housing_Report.pdf.

³⁵⁹ S. CENTRAL REGIONAL COUNCIL OF GOV'TS., SOUTH CENTRAL REGION PLAN OF CONSERVATION AND DEVELOPMENT 2018-2028 13, <https://SCRCOG.org/wp-content/uploads/2018/07/2018-07-SCRCOG-POCD-report-online.pdf>. (as adopted by the South Central Regional Council of Governments on June 27, 2018).

³⁶⁰ Data Appendix, X. Mean and Median Household Income By Race, SCRCOG 2018 (in 2018 Dollars).

Woodbridge have dramatically lower median incomes.³⁶¹ Indeed, at approximately \$142,000, Woodbridge has by far the highest median household income of any municipality in the South Central planning region.³⁶² Woodbridge is, however, required by law to zone in a way that provides housing opportunities for those living throughout the planning region and not just those already residing within the municipality. This requirement to zone for affordable housing is underscored by the language in § 8-2 stating that municipalities "shall encourage the development of housing which will meet the housing needs identified in the State's consolidated plan for housing and community development."³⁶³ The current version is the 2015-2019 Connecticut Consolidated Plan for Housing and Community Development (the "Consolidated Plan"), which remains in effect while the Legislature continues to consider the 2020-2025 Consolidated Plan.

The 2015-2019 Consolidated Plan, unfortunately, does not provide clear guidance to towns or regions about the level of need for affordable housing at various income levels.³⁶⁴ The Plan contradicts itself, and in setting out numerical assessments of need it fails to make clear what income levels it is targeting.³⁶⁵ Even taking the Plan's assessment at face value, to "rectify the current affordable renter household need problem by 2020, approximately 22,000 units [statewide] would have to be created annually."³⁶⁶ Woodbridge's effective prohibition on new housing units prevents the Town from contributing to this effort. Woodbridge has failed to zone in a way that encourages "development of housing which will meet the housing needs identified in the State's consolidated plan" and is therefore not doing its required share toward alleviating the regional need.³⁶⁷

B. Woodbridge Has An Indisputable Dearth Of Affordable Units

The Town has itself recognized this lack of affordable housing. As noted in the Town of Woodbridge's 2015-2025 Plan of Conservation and Development ("POCD"), current Woodbridge incomes are "highly concentrated in the top three categories of households earning \$100,000 or more each year."³⁶⁸ "Conversely, far fewer Woodbridge households fall into low-to-moderate income categories."³⁶⁹ Moreover, "high housing costs pose affordability challenges,"

³⁶¹ Data Appendix, XIII. Median Household Income by Town, SCRCOG 2018 (in 2018 dollars).

³⁶² *Id.*

³⁶³ General Statutes § 8-2(a) (2019).

³⁶⁴ CONN. DEP'T. OF HOUS., STATE OF CONNECTICUT 2015-19 CONSOLIDATED PLAN FOR HOUSING AND COMMUNITY DEVELOPMENT (2015).

³⁶⁵ For example, the Plan finds that, "The state will need approximately 50,000 additional housing units (owner-occupied and rental) during the 2015 – 2019 time period to meet the growing needs." *Id.* at ix. Later, however, the same Plan concludes, "approximately 110,000 rental units need to be created throughout the state." *Id.* at 32. The initial 50,000 estimate does not break down the projection by rental versus homeownership need, income, or household size.

³⁶⁶ *Id.* at 32.

³⁶⁷ General Statutes § 8-2(a) (2019).

³⁶⁸ 2015-25 WOODBRIDGE POCD, *supra* note 241 at 33.

³⁶⁹ *Id.*

and at the time the POCD went into effect "only 39 units or 1.1% of Woodbridge's housing stock [was] assisted" by a state or national housing affordability program.³⁷⁰

Today, there are only 43 affordable units in the Town of Woodbridge.³⁷¹ Of these 43 units, 35 are deed-restricted with affordability requirements set to expire in the very near term, while the other eight are only affordable due to move-to-opportunity vouchers attached to the tenants rather than to the units. Thirty of the deed-restricted units are part of a small elderly-only complex at 15 Lucy Street, which was funded using Low Income Housing Tax Credits in 1988 and will no longer be deed-restricted as affordable after 2020. Per the State's § 8-30g Appeals List, the remaining five deed-restricted units are due to Connecticut Housing Finance Authority mortgages, which are set to expire within the next five years.³⁷²

C. Despite This Unmet Need, Woodbridge Bans Multi-family Dwellings In All Zones

As shown below in Table 3.1 of the Town of Woodbridge Zoning Regulations, "multi-family dwellings" are not currently permitted anywhere in the Town of Woodbridge.³⁷³

Table 3.1 Allowed Uses by Zone														
REFER- ENCE	USES	ZONING DISTRICTS												
		A	B	TI	T2	T3-C	T3-D	T3- BB	BI	GB	GBA	Dev I	Dev 2 SDI	P
	Recreation + Fitness, Commercial													
	≤ 10,000 sf gross leasable space									SE			SE	
	> 10,000 sf gross leasable space									SE			SE	
3.3.LL	Residential													
3.3.LL.1	Single-Family	P	P			P		P						
	Two-Family					P	P							
	Accessory Dwelling Units in Single-Family Home	P	P			P								
3.3.LL.5	Affordable Housing													
	Accessory Dwelling Unit as part of Mixed Use (Max. 4 dwelling units),										SE			
	Multi-Family Dwellings													

On the contrary, Table 3.1 shows that while four Woodbridge zoning districts currently permit "single-family dwellings," no Woodbridge zoning districts currently permit multi-family dwellings (per the town's definition of a multi-family dwelling as one with three or more units). Additionally, an examination of the zoning map shows that the only two zones which allow for greater density than that permitted by strict single-family zoning (where two-family houses are permitted, but housing for three families or more is not) comprise merely an estimated 0.2% of

³⁷⁰ *Id.* at 24.

³⁷¹ NAT'L HOUS. PRESERVATION DATABASE, <https://nhpd.preservationdatabase.org/Data>. To access the data, create a username, log in, and search for Woodbridge, Connecticut.

³⁷² CONN. DEP'T HOUS. 2019 AFFORDABLE HOUSING APPEALS LIST – EXEMPT MUNICIPALITIES (2019), <https://portal.ct.gov/-/media/DOH/2019-Appeals-List-for-online.pdf>.

³⁷³ ZONING REGULATIONS FOR THE TOWN OF WOODBRIDGE, *supra* note 33 at 19.

the total land area of Woodbridge.³⁷⁴ The 2018 American Community Survey backs this up, estimating that approximately 93.8% of Woodbridge housing units are single-family units.³⁷⁵ Of the roughly 6.2% of housing units in Woodbridge that do not qualify as single-family, the vast majority are in the town's two elderly assisted living facilities.³⁷⁶ As such, the Woodbridge Zoning Regulations do not meet the mandate to affirmatively encourage opportunities for unrestricted multi-family dwellings delineated by General Statutes § 8-2.

D. Woodbridge's Sole Affordable Housing Regulation Is Unusable

Section 3.3.DD of the Zoning Regulations creates a floating zone ostensibly intended to facilitate the development of affordable housing. This provision, in actuality, does exactly the opposite. **Town records indicate that since its enactment in the 1990s, this provision of the Zoning Regulations has not been used even once.**³⁷⁷ This is hardly surprising; the provision is designed to make affordable housing construction impossible, as even a cursory examination of its provisions demonstrates.

The provision burdens would-be affordable housing developers at every turn. First, the "Affordable Housing District Developments" described in Section 3.3.DD allow only for single-family detached housing and elderly housing. As has been well-documented, single-family-only zoning is a major barrier to the construction of affordable units.³⁷⁸ In 2006, the Connecticut Superior Court noted in *Toll Bros v. Bethel Planning & Zoning Commission* that "since the enactment of Section 8-30g in 1988... increased density is an inherent element of every affordable housing application," recognizing that density is a necessary though not sufficient condition for affordability in Connecticut.³⁷⁹ Further, the setbacks required by Section 3.3.DD(1)(a) are significantly larger than those required for other residential districts in Woodbridge, creating yet another barrier to development. Affordable Housing District Developments are also subject to more burdensome development plan requirements (Section 3.3.DD(9)) and parking space minimums (Section 3.3.DD(8)(e)).³⁸⁰

The Town successfully designed its affordable housing floating zone to be unusable. The provision (apparently intentionally) creates barriers to the creation of affordable, multi-family housing. Its subsections render Section 3.3.DD of the Zoning Regulations a sham, as evidenced by the Town's pronounced lack of affordable development.

³⁷⁴ Based on measurements of town land area in Google Maps (on file with 2 Orchard Road, LLC).

³⁷⁵ Data Appendix, III. Proportion Of Households In Single-Family, Two-Family And Multi-Family (3+) Structures, SCRCOG 2018.

³⁷⁶ *Id.*

³⁷⁷ See generally, Woodbridge Zoning History, *supra*.

³⁷⁸ 2015-19 CONSOLIDATED PLAN, *supra* note 364 at 35-42.

³⁷⁹ *Toll Brothers v. Bethel Planning & Zoning Comm'n*, No. HHBCV030523881S, 2006 WL 3114387, at *8 (Conn. Super. Ct., Oct. 16, 2006)

³⁸⁰ ZONING REGULATIONS FOR THE TOWN OF WOODBRIDGE, *supra* note 33 at 4.

E. Soil Types Do Not Provide a Legitimate Excuse to Ban Multi-Family Housing³⁸¹

General Statutes § 8-2 states that zoning may vary within reason, based on soil types, terrain and infrastructure capacity, but the obligation to encourage affordable housing remains. In concert with the addition of new, explicitly affirmative language regarding affordable housing (see *supra* at 54), the Legislature also stated that this housing should be "consistent with soil types, terrain and infrastructure capacity." This clause remains in § 8-2 today, and while useful in defining the parameters, must be interpreted reasonably in accordance with the overall goals of the statute.

The legislative history and the interpretation of the clause since its enactment indicate that this clause does not allow municipalities to invoke soil types, terrain, or infrastructure capacity as a per se excuse for abdicating their affordable housing responsibilities under § 8-2. Instead, towns may consider which types of affordable housing are best suited for the underlying geology and infrastructure build-out. During debate on the floor of the Connecticut House of Representatives, Representative Meyer argued this amendment would help "small towns who might be doing their utmost with accessory apartments and other ways of providing for as much housing as possible in their communities."³⁸² Further, he saw it as a fair compromise "finally put[ting] into the zoning statutes, the necessity of housing for everyone" while offering "protection" for towns that are not "fully sewerred or do not have water lines throughout [the] town" to not be seen as violating § 8-2 if they do not put all kinds of affordable housing in "**every section of**" the "community."³⁸³

The statutory language, legislative history, and limited case law that has followed indicate that although the soil type and terrain must be taken into consideration, this should only be done to the extent reasonable.³⁸⁴ In crafting regulations that are compliant with this clause, a municipality must recognize that different kinds of housing may be suitable for different parts of town, where the geography may differ. Some parts of a given municipality may be well-suited for apartment buildings, due to terrain and existing infrastructure capacity, while other parts may be better suited for gentle density, of the type proposed in our Opportunity Housing Zoning Regulation. Regardless of local zoning regulations, housing developers must meet the requirements set out by the State's Department of Public Health and the Department of Energy and Environmental Protection.

³⁸¹ Interview with Steve Trinkaus, Principal, Trinkaus Engineering, LLC.

³⁸² 27 H.R. Proc. Pt. 8, *supra* note 333 at 2742 (remarks of Rep. Meyer). Representative Meyer clearly viewed this as legitimate when discussing on the floor, but more recent scholarship shows that limiting sewer connections has often been used as pretext for exclusion. See Ellickson, *supra* note 34.

³⁸³ 27 H.R. Proc. Pt. 8, *supra* note 333 at 2742 (remarks of Rep. Meyer) (emphasis added).

³⁸⁴ See generally *Saddle Ridge Devs. v. Easton Planning & Zoning Comm'n*, No. LNDCV116038947S, 2016 WL 720247 (Conn. Super. Ct. Jan. 25, 2016); *D'Amato v. Orange Plan & Zoning Comm'n*, No. CV 92-0506426S, 1993 WL 45042 (Conn. Super. Ct. Feb. 5, 1993).

Indeed, evolving technology and changes to State regulations eliminate any rationale for the Town to prohibit multi-family housing across the entire Town based on soils. The current Zoning Regulations have not kept up with advances in septic system design as set forth in the Connecticut Public Health Code, or with technical advances in the field.³⁸⁵ Table 6, below, in the Technical Standards provides the required effective leaching area by percolation rate.³⁸⁶

Table 6

Percolation Rate (Minutes to Drop One Inch)	Square Feet of Required Effective Leaching Area (ELA)			
	2-Bedroom Building	3-Bedroom Building	For Each Bedroom Above 3	
			Single Family	Multi-family
LESS THAN 10.1	375	495	82.5	165
10.1-20.0	500	675	112.5	225
20.1-30.0	565	750	125	250
30.1-45.0	675	900	150	300
45.1-60.0	745	990	165	330

In recognition of these advances, recent regulatory changes further enable the development of septic systems for multi-family housing. First, the State has reduced the effective leaching area for multi-family units in a single building above three bedrooms. Second, the State has reduced the flow factor in the minimum leaching system spread calculation,³⁸⁷ which is a calculation that must be done for all new and replacement on-site sewage systems. The net effect is that it is now easier to develop septic systems that are capable of supporting multi-family housing.

In addition to these regulatory changes, there are many proprietary leaching systems³⁸⁸ which provide a high effective leaching area per linear foot and these systems allow septic systems to be placed in smaller spaces. These new systems are significantly more capable than previous systems, on which it appears Woodbridge relied.

The sum total of these regulatory and technical advances is that septic systems can be designed with greater flexibility to accommodate more effluent flow on a given parcel than was possible under previous versions of the Zoning Regulations. Given these changes in the field of

³⁸⁵ CONN. DEP'T PUBLIC HEALTH, CONN. PUB. HEALTH CODE: ON-SITE SEWAGE DISPOSAL REGULATIONS AND TECHNICAL STANDARDS FOR SUBSURFACE SEWAGE DISPOSAL SYSTEMS (2018), https://portal.ct.gov/-/media/Departments-and-Agencies/DPH/dph/environmental_health/environmental_engineering/2018-Uploads/Technical-Standards-2018-Master-011918.pdf?la=en.

³⁸⁶ *Id.* at 43.

³⁸⁷ Minimum leaching system spread calculation, MLSS, is comprised of three values: flow factor, mentioned above, based on the number of bedrooms for residential systems; percolation factor, based on the observed percolation rate in the field; hydraulic factor, based on the depth of soil to a restrictive layer versus the slope of the land. For hydraulic factor, the flatter the slope is, the larger that factor will be; and the deeper the depth to a restrictive layer, the smaller the hydraulic factor will be.

³⁸⁸ E.g., Greenleach, Geomatrix, Mantis.

septic systems, the Town cannot claim that septic systems provide a legitimate "rational" objective to justify its on ban multi-family housing across the Town.³⁸⁹

F. Conclusion

In short, the Town has not met its affordable housing obligations under Connecticut law. After decades of zoning to restrict multi-family options, it should come as no surprise that the Town's AHD has yet to yield a single new affordable housing unit. The Zoning Regulations do not "promote housing choice and economic diversity in housing, including housing for both low and moderate income households." It is **not** responsive to affordable housing needs identified in the Consolidated Plan. It does **not** take into consideration the needs of residents of the South Central planning region. Instead, the Zoning Regulations enact a town-wide ban on multi-family housing, shutting the doors of their privileged community to many who would benefit from access to it. The current Zoning Regulations – both because they constitute a town-wide ban on multi-family housing needed to create affordability and because the available affordable housing districts are charitably described as impractical for developer use – fail to comply with state law and would be invalidated in court.

³⁸⁹ Builders Serv. Corp. v. Planning & Zoning Comm'n, 545 A.2d. 530, 539 (Conn. 1988).

The Current Woodbridge Zoning Regulations Violate The Connecticut Constitution's Ban On Segregation

The Connecticut Constitution requires that "[n]o person . . . be subjected to segregation . . . in the exercise or enjoyment of his or her civil or political rights."³⁹⁰ The Town of Woodbridge is segregated. It has used its own zoning regime to segregate itself from the rest of New Haven County, the region and the State of Connecticut. Therefore, the Zoning Regulation is unconstitutional.

I. The State Constitution Bars Segregation And Requires Affirmative Measures To Dismantle Segregation Wherever It Is Found

Article I, § 20 of the Connecticut Constitution states: "No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of religion, race, color, ancestry, national origin, sex or physical or mental disability."³⁹¹ The plain text of this article – affirmed by legislative intent, subsequent amendments to § 20, and the contrasting text of other state constitutions – prohibits not just discrimination, but also segregation. The State is required to both prevent future segregation and take steps to undo existing segregation. An application of the relevant test laid out in the seminal case *State v. Geisler* confirms this reading of § 20.

A. The Plain Text Of The State Constitution And Other Interpretive Devices Demonstrate That Segregation Is Prohibited And Affirmative Measures To Dismantle Segregation Are Required

The longstanding ban on multi-family housing in the Town of Woodbridge violates the constitutional prohibition of segregation. This prohibition is **in addition to** the bar on discrimination and the requirement of equal protection, and therefore requires more than equal protection and nondiscrimination; it requires taking proactive steps to dismantle segregation. Text, legislative history, subsequent amendments to the Constitution, and comparable provisions of sister states all support this reading of the Connecticut Constitution.

1. The Constitutional Text Is Unambiguous – Acts To Segregate And Segregation Itself Are Prohibited

A straightforward reading of the text suffices to hold that the Town's exclusionary zoning policy violates the relevant clause of the Connecticut Constitution both because it creates racial segregation and because it does not affirmatively remedy existing racial segregation.

Article I, § 20 contains several distinct mandates: first, that equal protection of the law "not be denied"; second, that no one be "subjected to . . . discrimination"; and third, that no one be "subjected to segregation."³⁹² As the Supreme Court of Connecticut has stated, "[u]nless there is

³⁹⁰ CONN. CONST. art. I, § 20.

³⁹¹ *Id.*

³⁹² *Id.*

some clear reason for not doing so, effect must be given to every part of and **each word** in the constitution."³⁹³ The anti-segregation clause must be interpreted in the context of the rest of the clause as meaning more than equal protection and nondiscrimination.

The text providing equal protection of the law and forbidding discrimination roughly mirrors the language of the equal protection clause of the 14th Amendment to the United States Constitution.³⁹⁴ Together, they create a far-reaching requirement that "all persons similarly situated should be treated alike."³⁹⁵ But the United States Constitution has no anti-segregation clause; even the 13th Amendment, which ended the practice of slavery, did not address segregation.³⁹⁶ Written some 100 years **after** the ratification of the 13th and 14th Amendments to the United States Constitution, the anti-segregation clause in the Connecticut Constitution requires something **more** than those Amendments. The clause "has independent constitutional significance."³⁹⁷

The "significance" is, simply, that the existence of segregation is prohibited within the State of Connecticut. The Connecticut Supreme Court has previously defined segregation within this clause as both an "act or process of separation" **and** as "the separation or isolation of a race, class, or ethnic group."³⁹⁸ Thus, both "act[s]" to segregate and the **condition** of segregation violate the plain text of § 20.

2. *1965 Constitutional Convention Statements Support This Understanding Of The Anti-Segregation Clause*

The delegates at the 1965 Connecticut Constitutional Convention enacted a sweeping prohibition of segregation to undo the invidious practice as it existed and to prohibit its future reemergence. For the delegates, Article I, § 20 was "a broad statement of principle that is all inclusive and would provide a complete umbrella for the **total protection** against discrimination and ... segregation."³⁹⁹ To the extent that there was debate on the meaning of the term segregation, it was regarding whether the term segregation was too narrow.⁴⁰⁰ To address these concerns, Delegate Woodhouse stated that "[i]t would be regrettable if it should be **in any way** suggested that this Constitution did not **unequivocally oppose** the philosophy and the practice of

³⁹³ *Stolberg v. Davidson*, 402 A.2d 763, 770 (Conn. 1978) (emphasis added).

³⁹⁴ U.S. CONST. amend XIV, § 1 ("[N]or shall any State...deny to any person within its jurisdiction the equal protection of the laws.").

³⁹⁵ *Brooks v. Sweeney*, 9 A.3d 347, 361 (Conn. 2010). *See also*, *Kerrigan v. Comm'r of Pub. Health et al.*, 957 A.2d 407 (Conn. 2008) (holding that laws restricting civil marriage to heterosexual couples violated same-sex couples' state constitutional equal protection rights).

³⁹⁶ U.S. CONST. amend XIII, § 1 ("Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.").

³⁹⁷ *Sheff v. O'Neill*, 678 A.2d 1267, 1282 (Conn. 1996).

³⁹⁸ *Id.* at 1282 n.31.

³⁹⁹ 2 Proceedings of the Third Constitutional Convention 692 (1965) (statement of Del. Kennelly) (emphasis added).

⁴⁰⁰ *Sheff*, 678 A.2d at 1284.

segregation."⁴⁰¹ Other delegates described the language of § 20 as a "new opportunity to give proper expression to the right of man;"⁴⁰² the "very strongest human rights principle that this convention can put forth;"⁴⁰³ and "comprehensive."⁴⁰⁴

Pertinently, Delegate Bernstein explicitly included housing in the set of rights protected by the anti-segregation clause: "in this section which states that there will be enjoyment of civil and political rights...these rights include rights of freedom from discrimination in...**housing**."⁴⁰⁵

3. *Subsequent Amendments To Article I, § 20 Retained The Prohibition On Segregation And Were Overwhelmingly Ratified By Popular Referendum*

On two separate occasions since its initial passage § 20 has been amended. In both instances, the amendments re-ratified the initial language of the anti-segregation portion of the clause while adding a protected class. Thus, on three separate instances, decision-makers—whether a Constitutional Convention or the General Assembly and voters—have considered and endorsed the anti-segregation language, demonstrating the enduring strength of the anti-segregation mandate with the Legislature and the broader public.

In the first instance, legislators added "sex" to the list of protected classes under § 20. Senator Lieberman read the entirety of the revised article into the legislative history, including the portion banning segregation.⁴⁰⁶ The 1972 amendment passed the House, Senate, and was ratified by popular referendum,⁴⁰⁷ showcasing a broad consensus in favor of the entirety of the Article, seven years after initial passage.

Eleven years later, the Legislature again revisited § 20, this time to add mental or physical disability to the list of protected classes. Senator Owens spoke in support of the passage "[t]hese people shall not be...subject to segregation...because of their handicaps."⁴⁰⁸ Representative Tulisano also spoke in favor of the amendment's prohibition of segregation.⁴⁰⁹ The constitutional prohibition on segregation was again passed in 1983 by the House, Senate, and popular referendum.⁴¹⁰

Connecticut's anti-segregation clause was adopted and re-ratified during a convulsive period in American history. The Civil Rights Movement drew the public eye to spatial separation by race, while the South African struggle against apartheid brought international condemnation. The Kerner Commission put a spotlight on America's own ugly version of apartheid – including

⁴⁰¹ Proceedings, *supra* note 399, at 691-692 (statement of Del. Woodhouse) (emphasis added).

⁴⁰² *Id.* at 694 (statement of Del. Grasso).

⁴⁰³ *Id.* at 692 (statement of Del. Kennelly).

⁴⁰⁴ *Id.* at 693 (statement of Del. Houston).

⁴⁰⁵ *Id.* at 694 (statement of Del. Bernstein) (emphasis added).

⁴⁰⁶ 15 S. Proc. Pt. 4, 1972 Sess., at 1525 (statement of Sen. Lieberman).

⁴⁰⁷ *Id.* The popular vote was 560,711 in favor and 135,427 against.

⁴⁰⁸ 26 S. Proc. Pt. 9, 1983 Sess., at 3170 (statement of Sen. Owens).

⁴⁰⁹ 26 Ass. Proc. Pt. 11, 1983 Sess., at 3971 (statement of Rep. Tulisano).

⁴¹⁰ *Id.* This time the popular vote was 637,754 in favor and 180,955 against.

right here in the cities and suburbs of Connecticut. Civic-minded reformers such as the delegates to the Constitutional Convention sought to destroy the invidious practice at home while they condemned it abroad. It is in **that** context that the anti-segregation clause must be understood. Throughout its fifty-five-year history, the anti-segregation clause has signified a binding public commitment to refrain from segregating and to dismantle existing segregation.

4. *The Text Of Connecticut's Prohibition On Segregation Is Broader Than Those Of Sister States*

Connecticut's prohibition on segregation stands out among its sister states. Most states do not have explicit bans on segregation in their constitutions. In New Jersey, the relevant portion of the state constitution reads: "[n]o person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in the militia or in the public schools, because of religious principles, race, color, ancestry or national origin."⁴¹¹ This prohibition, limited to militia and public schools, is notably narrower in scope than the Connecticut prohibition, yet New Jersey has struck down exclusionary zoning for its failure to make available low and moderate income housing.⁴¹² Other states generally lack prohibitions on segregation; indeed, Alabama still has not repealed the segregation clause within its state constitution.⁴¹³ Connecticut's segregation prohibition is unique and requires more than other states because it is unique.

B. A Connecticut State Court Applying A *Geisler* Analysis Will Reach The Same Conclusion – The Prohibition On Segregation Forbids Actions That Segregate And Requires Affirmative Steps To Desegregate

In the following section, we apply the analytical process Connecticut state courts use to interpret provisions of the Connecticut Constitution in instances where they may provide rights more extensive than their federal counterparts. In this instance, Connecticut's § 20 is the counterpart of the equal protection clause of the 14th Amendment. Following this process for this provision yields the unambiguous conclusion that § 20 provides a significantly more extensive right than the 14th Amendment. As a result, the Town's actions are impermissible and the Town must act to remedy intra-regional segregation.

Connecticut courts look to the United States Constitution and the interpretive decisions of the United States Supreme Court for guidance in interpreting analogous provisions of the Constitution of the State of Connecticut.⁴¹⁴ They are not limited by this guidance; Connecticut

⁴¹¹ N.J. CONST. art. I, §5.

⁴¹² Mount Laurel I, *supra* note 320 at 724.

⁴¹³ ALA. CONST. § 256: "The legislature shall establish...[s]eparate schools...for white and colored children."

⁴¹⁴ *See, e.g.,* Ghant v. Comm'r of Corr., 761 A.2d 740, 749 n.16 (Conn. 2000) ("[W]e point out that this court has held that '[t]he due process provisions of the state and federal constitutions generally have the same meaning and impose similar constitutional limitations.'"); Broadley v. Bd. of Educ., 639 A.2d 502, 506 n.15 (Conn. 1994) ("The equal protection provisions of the

courts have an "obligation" to "independently...construe the provisions of [the] state constitution."⁴¹⁵ Federal constitutional law "establishes a *minimum* national standard for the exercise of individual rights and does not inhibit state governments from affording higher levels of protection for such rights."⁴¹⁶ In this instance, the relevant federal constitutional minimum is provided by the equal protection clause of the 14th Amendment.

In assessing "whether, in any given instance," the "state constitution affords broader protection to our citizens than the federal constitutional minimum," the Supreme Court of Connecticut uses a "well settled" framework⁴¹⁷ a systematic six factor analysis, although not every factor is relevant in all cases.⁴¹⁸ Initially enumerated by the *Geisler* court,⁴¹⁹ and repeatedly affirmed and applied,⁴²⁰ the courts of Connecticut consider the following:

(1) persuasive relevant federal precedents; (2) the text of the operative constitutional provisions; (3) historical insights into the intent of constitutional forebears; (4) related Connecticut precedents; (5) persuasive precedents of other state courts; and (6) contemporary understandings of applicable economic and sociological norms, or as otherwise described, relevant public policies.⁴²¹

A *Geisler* analysis of the segregation clause demonstrates that exclusionary zoning is prohibited and that the State, through its municipalities, must affirmatively remedy segregation. All six factors support this interpretation of the clause. Under a *Geisler* analysis, a court will invalidate the zoning practices of the Town of Woodbridge and require that the Town proactively right the longstanding wrong created by its Zoning Regulations.

1. *Relevant Federal Precedent Requires The State To Dismantle Segregation*

Federal court decisions interpreting the equal protection clause of the 14th Amendment are one relevant source of federal precedent for understanding § 20, but they only define the baseline. Connecticut's Article I, § 20, with its prohibition of segregation, has language not found in the 14th Amendment. To understand what that language signifies, the most relevant

federal and state constitutions have the same meaning and limitations."); *Keogh v. Bridgeport*, 444 A.2d 225, 230 (Conn. 1982) ("The due process provisions of the state and federal constitutions generally have the same meaning and impose similar constitutional limitations."); *Franklin v. Berger*, 560 A.2d 444, 447 n.5 (Conn. 1989) ("We discuss the state and federal clauses simultaneously as '[t]he equal protection provisions of the federal and state constitutions have the same meaning and limitations.")

⁴¹⁵ *State v. Barton*, 594 A.2d 917, 927 (Conn. 1991).

⁴¹⁶ *Cologne v. Westfarms Assocs.*, 469 A.2d 1201, 1206 (Conn. 1984) (emphasis added).

⁴¹⁷ *Doe v. Hartford Roman Catholic Diocesan Corp.*, 119 A.3d 462, 497 (Conn. 2015).

⁴¹⁸ *State v. Morales*, 657 A.2d 585, 589 n.10 (Conn. 1995).

⁴¹⁹ *State v. Geisler*, 610 A.2d 1225, 1232 (Conn. 1992).

⁴²⁰ *See, e.g., State v. Santiago*, 49 A.3d 566, 659 (Conn. 2012); *State v. Jenkins*, 119 A.3d 806, 840 (Conn. 2010); *Kerrigan v. Comm'r of Public Health*, 957 A.2d 407, 421 (Conn. 2008); *State v. Morales*, 657 A.2d 585, 589 (Conn. 1995).

⁴²¹ *Doe*, 119 A.3d at 497.

federal statute is the Civil Rights Act of 1968, Titles VIII through IX, commonly known as the Fair Housing Act.⁴²² This Act passed in response to civil unrest over discrimination and segregation in 1968, comparable in many ways to the injustice, discrimination, and segregation that inspired the massive peaceful protests of May – June 2020. Among other objectives, this Act made it the policy of the federal government that federal agencies and federal grantees affirmatively further the purposes of the Fair Housing Act ("AFFH," affirmatively furthering fair housing).⁴²³ In effect, AFFH requires that federal agencies and grantees use their "programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases."⁴²⁴ The Second Circuit has upheld HUD's authority to implement this AFFH mandate in the context of exclusionary zoning.⁴²⁵ The most comprehensive federal statement on what anti-segregation means for housing is to **take actions that affirmatively further desegregation.**

2. *The Plain Text Of Article I, § 20 Does Not Include An Intent Requirement – Thus, The State Must Act Even If It Did Not Intend To Segregate*

The relevant clause of the Connecticut Constitution has no textual restrictions on its applicability – if a person is "subject" to "segregation" in the exercise of civil and political rights, there is a constitutional wrong that must be remedied.⁴²⁶ There is no intent requirement to be found in the text of the clause. The Supreme Court of Connecticut has plainly stated that the relevant clause "is neutral about segregative intent,"⁴²⁷ and "require[d] the legislature to take affirmative responsibility to remedy segregation in our public schools, regardless of whether that segregation has occurred de jure or de facto."⁴²⁸

Further, although federal courts have read an intent requirement into the due process clause of the Fifth Amendment,⁴²⁹ as well as the equal protection clause of the Fourteenth Amendment,⁴³⁰ disparate impact claims (which do not require intent) are cognizable under the

⁴²² 42 U.S.C. §§ 3601 – 3619 (2018).

⁴²³ 42 U.S.C. § 3608(e)(5) (2018) (requiring HUD to "administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of [the FHA]").

⁴²⁴ NAACP v. Sec'y of Hous. & Urban Dev., 817 F.2d 149, 155 (1st Cir. 1987).

⁴²⁵ Cty. of Westchester v. U.S. Dep't of Hous. & Urban Dev., 802 F.3d 413, 428 (2d Cir. 2015) (holding that HUD could reject a jurisdiction's application for funding if it determined that the jurisdiction failed to consider the exclusionary impact of its zoning laws).

⁴²⁶ CONN. CONST. art. I, § 20.

⁴²⁷ Sheff v. O'Neill, 678 A.2d 1267, 1282 (Conn. 1996).

⁴²⁸ *Id.* at 1283.

⁴²⁹ Washington v. Davis, 426 U.S. 229, 240 (1976).

⁴³⁰ *See, e.g.,* Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 265 (1977) ("Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause.").

Fair Housing Act.⁴³¹ As discussed above, the Fair Housing Act is the most relevant federal statute for interpreting the meaning of the anti-segregation clause.

3. *The Legislative Intent Of The Authors Of Article I, § 20, Support The Interpretation Of The Anti-Segregation Clause Set Forth Above*

As discussed *supra* at pages 70 and 71, respectively, the intent of the delegates at the Constitutional Convention of 1965 and intent of the legislators who revised the Amendment support an interpretation of the anti-segregation clause that forbids segregation and requires affirmative action to undo existing segregation.

4. *The Most Relevant Connecticut Precedent Compels An Interpretation Of The Segregation Clause That Mandates State Affirmatively Furthering Fair Housing*

In the landmark case *Sheff v. O'Neill*, the Supreme Court of Connecticut held that "[t]he express inclusion of the term 'segregation'...has independent constitutional significance."⁴³² The explicit prohibition of segregation was meant to "extend broad protection to all persons from all forms of racial and ethnic discrimination and segregation."⁴³³ A Connecticut Appellate Court confirmed that the segregation clause was the grounds for decision in the case: "[*Sheff*] was not premised on the equal protection clause of our state constitution but instead was decided on [the anti-segregation clause]."⁴³⁴

For the *Sheff* court, "it [was] crucial for a democratic society to provide all schoolchildren with fair access to an unsegregated education."⁴³⁵ To ensure such access, the court applied the anti-segregation clause to strike down an unequal, racist system that provided access to education which relied on "town boundaries" as the "dividing lines" between school districts within the State.⁴³⁶ There is a clear parallel to the present situation in Woodbridge. Housing is a service just as "crucial" to a democratic society as education. In Woodbridge, the State's zoning power is similarly deployed within "town boundaries" that act as a "dividing line[]" between those who have access to unsegregated housing and those who do not.⁴³⁷ Further, in *Sheff* the court required that the State "take affirmative responsibility to remedy segregation...regardless of whether that segregation has occurred de jure or de facto."⁴³⁸

⁴³¹ Texas Dep't. of Hous. & Cmty. Affairs v. Inclusive Cmty Project, Inc., 135 S.Ct. 2507, 2525 (2015) ("In light of the longstanding judicial interpretation of the FHA to encompass disparate-impact claims and congressional reaffirmation of that result, residents and policymakers have come to rely on the availability of disparate-impact claims.").

⁴³² *Sheff*, 678 A.2d at 1282.

⁴³³ *Id.* at 1284.

⁴³⁴ *Abdullah v. Comm'r of Corr.*, 1 A.3d 1102, 1110 (Conn. App. Ct. 2010).

⁴³⁵ *Sheff*, 678 A.2d at 1289.

⁴³⁶ *Id.*

⁴³⁷ *Id.*

⁴³⁸ *Id.* at 1283.

Thus, the key Connecticut precedent on the anti-segregation clause compels a reading that forbids segregation and which also requires the State and its towns to "affirmatively" "remedy" it. *Sheff* is the leading articulation of the breadth of the anti-segregation clause in Connecticut law, and it resoundingly stands for the principle that the anti-segregation clause should be interpreted "broad[ly]" to cover "all forms" of racial segregation.⁴³⁹

5. *Even Sister States Without Anti-Segregation Clauses Have Required Proactive Measures To Dismantle Segregative Zoning Laws*

The persuasive decisions of other state high courts support a reading of the anti-segregation clause that prohibits de facto segregation through application of facially neutral zoning laws. The Connecticut Constitution's unique anti-segregation clause⁴⁴⁰ is distinct from the grounds upon which New Jersey, New York, and Pennsylvania have struck down exclusionary zoning measures. However, the fact that **despite the absence** of an anti-segregation clause, these sister state courts strike down exclusionary zoning practices with segregative effects **strengthens** the case that a state constitution **with an explicit** ban on segregation should both invalidate the exclusionary zoning policies of the Town of Woodbridge and require the Town to take steps to remedy existing segregation.

In the landmark *Mount Laurel I* and *Mount Laurel II* cases, the Supreme Court of New Jersey struck down a series of restrictive, exclusionary zoning policies by the municipal defendant on general welfare grounds and required the community to remedy segregation.⁴⁴¹ Citing multiple sources that blamed "suburban exclusion" and "exclusionary zoning" as a "principal cause[]" for "making America 'two societies, one black, one white, separate and unequal,'" the *Mount Laurel I* and *II* cases required a remedy for segregation in the state of New Jersey.⁴⁴²

In *Mount Laurel I*, the court concluded that "a zoning regulation...must promote...the general welfare...[and] a zoning enactment which is contrary to the general welfare is invalid."⁴⁴³ The "proper provision for adequate housing of **all categories of people** is certainly an absolute essential in promotion of the general welfare required in all local land use regulation."⁴⁴⁴ The general welfare requirement in *Mount Laurel I* "extend[ed] beyond [the municipality's] boundaries and cannot be...confined to the...good of the particular municipality."⁴⁴⁵ Indeed, the municipality had an "affirmative" "obligation" to "provide, by its land use regulations, the reasonable opportunity for an appropriate variety and choice of housing" that will "meet the needs, desires and resources of all categories of people who may

⁴³⁹ *Id.* at 1284.

⁴⁴⁰ The New Jersey Constitution provides a ban on segregation, but limits its application to the militia and to public schools. N.J. CONST. art. I, pt. 5. New York and Pennsylvania do not have anti-segregation clauses in their state constitutions, nor does the federal constitution.

⁴⁴¹ *Mount Laurel I*, *supra* note 320; *Mount Laurel II*, *supra* note 323.

⁴⁴² *Mount Laurel II*, *supra* note 323 at 415 n.5.

⁴⁴³ *Mount Laurel I*, *supra* note 320 at 725.

⁴⁴⁴ *Id.* at 727 (emphasis added).

⁴⁴⁵ *Id.* at 728.

desire to live within its boundaries."⁴⁴⁶ The subsequent *Mount Laurel II* recognized an obligation for "every municipality" to "provide a realistic opportunity for a fair share" of regional housing need.⁴⁴⁷ Taken together, the cases demonstrate a state high court invalidating exclusionary zoning and requiring a community to remedy economic segregation (which so often corresponds with racial segregation) in the absence of a constitutional anti-segregation clause that applies to housing.

New York state courts have also struck down exclusionary zoning as unconstitutional when they do not provide for the "general welfare."⁴⁴⁸ The New York Court of Appeals used a regional approach to housing to develop a two-part test for when an ordinance that excludes multi-family from certain parts of a community is invalid.⁴⁴⁹ First, the test asks "whether the [zoning authorities have] provided a properly balanced and well ordered plan for the community;" second, "consideration [must]...be given to regional needs and requirements."⁴⁵⁰ If an ordinance does not provide for regional and local multi-family housing needs, then it will have "no substantial relation to the public health, safety, morals or general welfare."⁴⁵¹

Applying this test in subsequent litigation, the Appellate Division in *Berenson v. New Castle* held a town's zoning ordinance unconstitutional and remanded to the Town Board for reconsideration.⁴⁵² Separately, in a situation similar to that of the Town, a New York state court used the *Berenson* test to invalidate an exclusionary zoning law that restricted multi-family housing.⁴⁵³ In New York, which lacks the explicit constitutional prohibition on segregation found in Connecticut, courts are still willing to hold that exclusionary zoning schemes which restrict multi-family housing are unconstitutional. The inclusion of the segregation language in Article I, § 20 of the Connecticut Constitution requires more than the New York remedy— it requires affirmatively furthering fair housing.

Similarly, in Pennsylvania, the state's highest court struck down as unconstitutional a restrictive, exclusionary zoning policy which first banned "apartment-type dwellings" entirely and subsequently restricted them to less than one percent of the defendant municipality's total area.⁴⁵⁴ The Pennsylvania Supreme Court cited to and endorsed the fair share requirement of *Mount Laurel II*.⁴⁵⁵ In a subsequent decision, the court again applied a "fair share" rationale to strike down a zoning ordinance that excluded multi-family housing from 98.86% of a

⁴⁴⁶ *Id.* (emphasis added).

⁴⁴⁷ *Mount Laurel II*, *supra* note 322 at 418.

⁴⁴⁸ *Berenson v. New Castle*, 38 N.Y.2d 102, 107 (N.Y. 1975).

⁴⁴⁹ *Id.* at 110.

⁴⁵⁰ *Id.*

⁴⁵¹ *Id.* at 111.

⁴⁵² *Berenson v. New Castle*, 415 N.Y.S.2d 669, 679 (N.Y. App. Div. 1979).

⁴⁵³ *Cont'l Bldg. Co. v. N. Salem*, 625 A.D.2d 88, 92-94 (N.Y. App. Div. 1995) (upholding a trial court decision striking down as unconstitutionally exclusionary a zoning ordinance whose "net result" was a "scheme of large-lot, single-family residential development" that failed to meet the regional need) (emphasis added).

⁴⁵⁴ *Willistown Twp. v. Chesterdale Farms, Inc.*, 341 A.2d 466 (Pa. 1975).

⁴⁵⁵ *Id.* at 468.

municipality's land.⁴⁵⁶ As in New York, Pennsylvania lacks a prohibition on segregation – but the state courts nonetheless voided zoning restrictions similar to those in Woodbridge. The prohibition on segregation in Connecticut's Constitution demands more than mere statutory invalidation.

6. *Economic And Sociological Findings Support Affirmatively Furthering Fair Housing*

The final *Geisler* factor weighs decisively in favor of an anti-segregation clause interpretation that prohibits de facto segregation and mandates affirmatively furthering fair housing. The overwhelming findings of the disciplines of economics and sociology demonstrate that: first, Connecticut and the South Central planning region, in which Woodbridge is located, are segregated; second, that geographic segregation matters for life outcomes; and third, that exclusionary zoning enables segregation. See *infra* at 78-82.

II. Woodbridge Is Segregated As A Result Of Exclusionary Zoning, And Must Proactively Remedy The Segregation

The exclusionary zoning policies of the Town of Woodbridge have directly contributed to racial segregation within the region. The effective ban on multi-family housing locks out members of communities of color, denying them access to the Town's amenities and opportunities.

A. Woodbridge Is Racially Segregated

A lengthy ProPublica series documenting segregation in the State used the subheader: "[h]ousing segregation is a national trend, but Connecticut is somewhat ahead of the pack."⁴⁵⁷ "Black and Hispanic residents statewide live in some of the nation's most segregated neighborhoods."⁴⁵⁸ Woodbridge and the broader SCRCOG region are racially segregated. The Town of Woodbridge is disproportionately white, while the rest of the region is significantly less white.⁴⁵⁹ In Woodbridge, 74.8% of the population is white non-Hispanic, 2.7% is Black non-Hispanic, and 5.6% is Hispanic; in the broader South Central planning region, 63.3% of the

⁴⁵⁶ *Surrick v. Zoning Hearing Bd.*, 382 A.2d 105, 112 (Pa. 1977).

⁴⁵⁷ ProPublica, *Invisible Walls: Connecticut's Separate and Unequal Housing*. <https://www.propublica.org/series/invisible-walls>.

⁴⁵⁸ Jacqueline Rabe Thomas, *Invisible Walls: Separated by Design: How Some of America's Richest Towns Fight Affordable Housing*, THE CONNECTICUT MIRROR, May 22, 2019. <https://www.propublica.org/article/how-some-of-americas-richest-towns-fight-affordable-housing>.

⁴⁵⁹ Federal courts have found there to be racial segregation where a town was disproportionately white compared to the demographics of the surrounding areas. See, e.g., *United States v. City of Black Jack*, 508 F.2d 1179, 1183-85 (8th Cir. 1974) (finding that "[t]he virtually all-white character of Black Jack was in marked contrast to the racial composition of other parts of the St. Louis area," and holding that the FHA does not require a showing of racial motivation to establish a prima facie case of racial discrimination).

population is white non-Hispanic, 13.5 % of the population is Black non-Hispanic, and 16.4% is Hispanic.⁴⁶⁰ The Town's own POCD notes that Woodbridge is "fairly homogenous, especially in comparison to both New Haven County and the State of Connecticut."⁴⁶¹

B. This Segregation Is A Result Of Historical Zoning Decisions To Keep Out Multi-Family Housing

Exclusionary zoning policies are "perhaps as insidious as outright racial segregation" because they "exclude[] substantial numbers of people of color," but do so while pretending to be race neutral.⁴⁶² Despite this pretention, exclusionary zoning is "largely responsible for differences in racial segregation between cities."⁴⁶³ Indeed, "the motivation for exclusionary zoning was often racial animus."⁴⁶⁴ Historically, the use of "exclusionary zoning [has] had its greatest impact on African Americans."⁴⁶⁵

Exclusionary policies such as single-family zoning and large lot requirements increase housing costs within high-opportunity communities, driving increased socioeconomic segregation.⁴⁶⁶ Exclusionary zoning causes economic segregation by limiting affordable housing supply and driving up housing costs. "Community wealth is strongly positively correlated with the degree of local land use regulation."⁴⁶⁷ Such policies "effectively [] designate[s] the economic wherewithal of the families living in each residential neighborhood"⁴⁶⁸ and "act[] as a considerable barrier to locating subsidized and affordable housing in higher opportunity communities."⁴⁶⁹ Allowing higher density projects would be "more cost efficient" and "allow [developers] to sell the units for less than the typical [single-family] home."⁴⁷⁰ "In extremely wealthy neighborhoods, with very large lot requirements, policies can effectively exclude virtually all families not in the top 1 percent by income and wealth."⁴⁷¹

⁴⁶⁰ Data Appendix, I. Racial Composition Of Woodbridge And SCRCOG Populations, 2018.

⁴⁶¹ 2015-25 WOODBRIDGE POCD, *supra* note 241 at 19.

⁴⁶² RICHARD D. KAHLENBERG, AN ECONOMIC FAIR HOUSING ACT 2 (2017). <https://production-tcf.imgix.net/app/uploads/2017/08/09133724/an-economic-fair-housing-act.pdf>

⁴⁶³ *Id.* at 17.

⁴⁶⁴ *Id.* at 21.

⁴⁶⁵ Christopher Silver, *The Racial Origins of Zoning in American Cities*, in URBAN PLANNING AND THE AFRICAN AMERICAN COMMUNITY: IN THE SHADOWS (June Manning Thomas & Marsha Ritzdorf eds., 1997).

⁴⁶⁶ Jonathan T. Rothwell and Douglas S. Massey, *Density Zoning and Class Segregation in U.S. Metropolitan Areas*, 91 SOC. SCI. Q. 1123 (2010).

⁴⁶⁷ Joseph Gyourko, Albert Saiz, & Anita Summers, *A New Measure of the Local Regulatory Environment for Housing Markets: The Wharton Residential Land Use Regulatory Index*, 45 J. URB. STUD. 693, 714 (2007).

⁴⁶⁸ KAHLENBERG, *supra* note 462 at 7.

⁴⁶⁹ OPEN COMMUNITIES ALLIANCE, OUT OF BALANCE: SUBSIDIZED HOUSING, SEGREGATION AND OPPORTUNITY IN CONNECTICUT 10, September 2017.

⁴⁷⁰ Thomas, *supra* note 458.

⁴⁷¹ KAHLENBERG, *supra* note 462 at 4.

As economic segregation occurs in the context of a "staggering" racial wealth gap,⁴⁷² economic segregation causes racial segregation. Wealthy white communities use exclusionary zoning to exclude lower-income communities of color. "Because African Americans were (and are) disproportionately low income, economically exclusionary zoning accomplishe[s] much of the same end result as explicit racial zoning."⁴⁷³ "[A]nti-density regulations are responsible for a large share of observed patterns in [racial] segregation from 1990 to 2000."⁴⁷⁴ Allowing multi-family housing is a "particularly strong" remedy to desegregate neighborhoods, driving substantial and statistically significant increases in the Black and Hispanic population.⁴⁷⁵

Woodbridge has successfully deployed exclusionary zoning to increase housing costs and exclude people of color from within its boundaries. For generations, Woodbridge has effectively barred multi-family housing within Town boundaries: 93.8% of Woodbridge households occupy single-family structures.⁴⁷⁶ The comparable figure across the South Central planning region is 59.9%.⁴⁷⁷ The few multi-family housing units in Woodbridge are exclusively restricted to elderly residents.⁴⁷⁸ For the people of Woodbridge, including a former Woodbridge Selectman, that's a feature, not a bug: the "unique character" of Woodbridge and the "high property values that have always accompanied it" are a "direct result of our longstanding, far sighted zoning regulations."⁴⁷⁹

This is no isolated comment, but rather representative of a long history of opposition to multi-family housing in Woodbridge. Two episodes suffice to illustrate the Town's longstanding exclusionary policy and its opposition to proposed zoning changes that might desegregate the Town. First, in early 1993, in response to 1991 amendments to the State Zoning Enabling Act, the Town considered minimal changes to its Zoning Regulations. A contemporary letter to the editor in the *New Haven Register*, titled "Hysteria Greeted Affordable Housing Plan in Woodbridge," characterized "the reaction of many Woodbridge residents to the very notion of

⁴⁷² KRISTON MCINTOSH ET AL., THE BROOKINGS INSTITUTION, EXAMINING THE BLACK-WHITE WEALTH GAP (2020), <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/>.

⁴⁷³ KAHLENBERG, *supra* note 462 at 6 (citing to RICHARD ROTHSTEIN, THE COLOR OF LAW 177 (2017)).

⁴⁷⁴ Jonathan T. Rothwell, *Racial Enclaves and Density Zoning: The Institutionalized Segregation of Racial Minorities in the United States*, 13 AM. L. & ECON. REV. 290, 290 (2011).

⁴⁷⁵ Matthew Resseger, *The Impact of Land Use Regulation on Racial Segregation: Evidence from Massachusetts Zoning Borders* at 33 (2013), https://scholar.harvard.edu/files/resseger/files/resseger_jmp_11_25.pdf.

⁴⁷⁶ Data Appendix, III. Proportion Of Households In Single-Family, Two-Family And Multi-Family (3+) Structures, SCRCOG 2018.

⁴⁷⁷ *Id.*

⁴⁷⁸ Data Appendix, VIII. Department Of Housing "Assisted Units" And Percent Of Units In Multi-Family (3+) Structures, SCRCOG 2018-2019.

⁴⁷⁹ Maria Cruz Kayne, *From Across the Aisle*, WOODBRIDGE TOWN NEWS (Dec. 10, 2015), <https://woodbridgetownnews.com/from-across-the-aisle-121115/>.

affordable housing as downright alarming."⁴⁸⁰ The author described "one irate resident" who raised concerns that "affordable-housing residents would 'climb over a fence and hurt my children or steal my car.'"⁴⁸¹ The author noted that "the zoning laws in Woodbridge have so far succeeded only in keeping Woodbridge white."⁴⁸²

Second, at a 2015 hearing regarding the Town's proposed POCD, very limited recommendations regarding affordable housing drew opposition demonstrative of segregative intent. One former member of the PZC described the proposed changes as "a Trojan Horse" and a "springboard to change the zoning (the soul of the town)."⁴⁸³ Another resident who "had lived in New Jersey and watched it get developed" stressed that "he liked the Town the way it was" and "it would be a shame to change the zoning," stating that "the people in the flats deserve better than the expansion of two family housing in their neighborhoods."⁴⁸⁴ The Chairman of the Economic Development Commission responded to the comments "on the development of New Jersey" by saying "that New Jersey's municipalities are subject to different laws than in Connecticut [referring to *Mt. Laurel I and II* cases] which requires every town to provide affordable housing."⁴⁸⁵ Another resident expressed concerns that changes would "be the first step towards fundamentally changing the character of Woodbridge."⁴⁸⁶

By initially implementing and subsequently maintaining policies that barred multi-family affordable housing developments, the Town perpetuated racial segregation through economic means. The median home value in Woodbridge is more than \$400,000; in neighboring New Haven, the most expensive zip code has a median home value of just \$233,000.⁴⁸⁷ The impact of the Town's policy also appears in the affordable housing statistics – just 1.24% of housing units in Woodbridge are affordable, compared to 32.05% in neighboring New Haven.⁴⁸⁸

The primary effect of raising housing costs through exclusionary zoning is to exclude people of color from the Town. The well-documented racial wealth gap⁴⁸⁹ impairs members of communities of color from purchasing residences in a Town with median home value in excess of \$400,000. Regionally, the median white household income is \$79,000, compared with

⁴⁸⁰ Michael Rader, *Hysteria Greeted Affordable Housing Plan in Woodbridge*, NEW HAVEN REG. (June 28, 1994).

⁴⁸¹ *Id.*

⁴⁸² *Id.*

⁴⁸³ PLANNING & ZONING COMM'N, MEETING MINUTES (Jan. 26, 2015).

⁴⁸⁴ *Id.*

⁴⁸⁵ *Id.*

⁴⁸⁶ *Id.*

⁴⁸⁷ Data Appendix, XI. Average Home Value In The SCRCOG By Zip Code, 2020.

⁴⁸⁸ Data Appendix, VIII. Department Of Housing "Assisted Units" And Percent Of Units In Multi-Family (3+) Structures, SCRCOG 2018-2019.

⁴⁸⁹ See, e.g., Lisa J. Dettling et al., *Recent Trends in Wealth-Holding by Race and Ethnicity: Evidence from the Survey of Consumer Finances*, FED. RESERVE (Sept. 27, 2017) ("Black families' median and mean net worth is less than 15 percent that of white families....").

\$42,000 for Black households and \$45,000 for Hispanic households.⁴⁹⁰ Households with median incomes of \$42,000 and \$45,000 cannot afford homes with a median value of \$400,000, as demonstrated by the divergent racial composition of mortgage applications in Woodbridge and the rest of the County: in Woodbridge, only 6.7% of all applications came from Black or Hispanic applicants, compared to 20.3% across all of New Haven County.⁴⁹¹ Without a substantial body of affordable rental stock, the disproportionately Black and Hispanic populations of lower-income renters⁴⁹² are systematically excluded from Woodbridge. The exclusionary zoning policy of Woodbridge contributes to segregation within the South Central planning region.

C. Segregation Creates Disparities In Opportunity Within Connecticut

The racial segregation of Woodbridge translates directly into disparities in opportunity for the predominantly white population of Woodbridge and the more racially diverse surrounding region. "[G]eography defines life outcomes for low-income families, and particularly low-income families of color."⁴⁹³ The community where residents of Connecticut live determines their ability to access critical services - housing, education, jobs, and transportation. The Open Communities Alliance, relying on a blend of economic, educational, and housing quality indicators, found that 73% of the Black and Latino residents of Connecticut live in low opportunity areas.⁴⁹⁴ Further, "approximately half of Connecticut's Black and Latino residents live in the 2% of the land area of the State assessed as **very** low opportunity" – compared to only 9% of whites.⁴⁹⁵

If families in low opportunity areas were able to move to communities with higher opportunities, children currently in low opportunity areas could have better life outcomes – including an increased probability of attending institutions of higher education, maintaining a stable relationship, and earning higher incomes.⁴⁹⁶ But because they are systematically denied access to higher opportunity areas, "Black and Latino residents [of Connecticut], on average, earn half or less of what White residents earn."⁴⁹⁷

In Woodbridge, the 2018 median household income was \$142,000; in neighboring and less-white New Haven, the median household income was **more than \$100,000 less** -

⁴⁹⁰ Data Appendix, X. Mean and Median Household Income By Race, SCRCOG 2018 (in 2018 Dollars).

⁴⁹¹ Data Appendix, XII. Mortgage Applications in Woodbridge and New Haven County by Race, 2007-2017.

⁴⁹² Data Appendix, XXV. Percent Of Households In Structures With Two Or More Units, That Are Renters And Low Income By Income and Race, SCRCOG 2018.

⁴⁹³ OUT OF BALANCE, *supra* note 469.

⁴⁹⁴ *Id.* at 2.

⁴⁹⁵ *Id.* at iv (emphasis added).

⁴⁹⁶ Raj Chetty, Nathaniel Hendren, & Lawrence Katz, *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment*, 106 AMER. ECON. REV. 855, 2016.

⁴⁹⁷ *Id.* at 4.

\$41,000.⁴⁹⁸ Across SCRCOG, just 7% of white non-Hispanic households live below the poverty line, compared with 20% of Black-headed households and 20% of Hispanic-headed households.⁴⁹⁹

Disparities are reflected in the public schools as well, providing the primary pathway by which racial inequality is reproduced onto the next generation. In one measurement of school quality, Woodbridge received 84.7% of possible points, marking it as a regional leader; trailing the entire region was the New Haven School district, with a score of 64.7%.⁵⁰⁰

D. As A State Actor, The Constitution Requires That Woodbridge Take Steps To Remedy Segregation

The Town of Woodbridge is a municipality exercising zoning powers delegated to it by the Connecticut Zoning Enabling Act.⁵⁰¹ The Town is therefore a state actor, subject to the constitutional prohibition on segregation, and the concomitant affirmative duty to mitigate segregation. The Connecticut Supreme Court has held that "[i]t is well established that, 'as a creation of the state, a municipality [whether acting itself or through its planning and zoning commission] has no inherent powers of its own ... and that [it] possesses only such rights and powers that have been granted expressly to it by the state...'"⁵⁰² It follows that a municipality's exercise of its zoning powers constitutes state action; therefore, the exclusionary Zoning Regulations of Woodbridge are subject to the constitutional prohibition on segregation and the constitutional requirement that it take action to address existing segregation.⁵⁰³

⁴⁹⁸ Data Appendix, XIII. Median Household Income by Town, SCRCOG 2018 (in 2018 Dollars).

⁴⁹⁹ Data Appendix, XVIII. Percent Of Households Living Below Various Income Thresholds By Race, SCRCOG 2018.

⁵⁰⁰ Data Appendix, XIV. Elementary School Performance Metrics in the SCRCOG Used By State Department of Education, 2019.

⁵⁰¹ General Statutes § 8-2(a) (2019).

⁵⁰² See *Buttermilk Farms, LLC v. Planning & Zoning Comm'n*, 973 A.2d 64, 70 (Conn. 2009). See also *Capalbo v. Planning and Zoning Bd.*, 547 A.2d 528, 533 (1988) ("Under our law, a municipality, as a creation of the state, has no inherent powers of its own.").

⁵⁰³ CONN. CONST. art. I, § 20.

The Current Woodbridge Zoning Regulations Violate The Federal Fair Housing Act, 42 U.S.C. §§ 3601-3619

The Town's Zoning Regulations violate the Fair Housing Act ("FHA") on theories of both disparate impact and segregative effect, at a minimum.⁵⁰⁴

I. Woodbridge's Zoning Regulations Violate The Federal Fair Housing Act Because It Imposes A Disparate Impact On Protected Classes And Is Not Justified By A Legitimate Governmental Interest.

Woodbridge's Zoning Regulations violate the FHA because they impose a disparate impact on protected classes that is not justified by reference to a legitimate government interest. In relevant part, the federal FHA provides: "it shall be unlawful... to...**otherwise make unavailable or deny**, a dwelling to any person because of race, color, religion, sex, familial status, or national origin."⁵⁰⁵

The Town's exclusionary Zoning Regulations "make[s] unavailable" housing opportunities in the Town of Woodbridge, with a disparate impact on Black and Hispanic communities in the State of Connecticut, the South Central planning region, and neighboring municipalities in particular. Exclusionary zoning practices are covered by the FHA; no less an authority than the Supreme Court has described the practice as the "heartland of disparate impact liability" under the FHA.⁵⁰⁶ This conclusion is bolstered by decades of court decisions striking down zoning ordinances that disproportionately excluded protected classes from towns or neighborhoods through zoning limits on multi-family, affordable housing, as well as a rule adopting the rationale of this longstanding case law, and since applied by the Second Circuit.⁵⁰⁷ First, a plaintiff makes a prima facie case by showing that a particular zoning practice imposes a disparate negative impact on a protected group. Next, the defendant has an opportunity to rebut this prima facie case by showing that the practice furthers a substantial, legitimate, and nondiscriminatory governmental interest. Finally, the plaintiff can still succeed by demonstrating

⁵⁰⁴ While this analysis focuses on how Woodbridge's Zoning Regulations presently constitute an FHA violation based on their ongoing impacts, the FHA also prohibits *intentional* discrimination with respect to zoning decisions. Courts rely on a number of factors, first described by the Supreme Court in *Arlington Heights v. Metropolitan Housing Dev. Corp.*, to determine whether a government entity has engaged in intentional discrimination. 429 U.S. 252, 252 (1977). The PZC should note that the Town's extensive history of refusing to zone for multi-family housing and affordability and the longstanding disparate impact of the Zoning Regulations on Black and Hispanic households would strongly tip the scale toward a potential finding of intentional discrimination. *See* *Mhany Mgmt., Inc. v. Cty. of Nassau*, 819 F.3d 581, 606 (2d. Cir. 2016).

⁵⁰⁵ 42 U.S.C. § 3604(a) (2018) (emphasis added).

⁵⁰⁶ *Mhany Mgmt., Inc. v. Cty. of Nassau*, 819 F.3d 581, 619 (2d Cir. 2016) (quoting *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project*, 135 S.Ct. 2507, 2521–22 (2015)).

⁵⁰⁷ 24 C.F.R. § 100.500 (2020); *Mhany*, 819 F.3d at 617-19. HUD released text for a new disparate impact rule on September 3, 2020 that conflicts with *Mhany* and 24 C.F.R. § 100.500. This rule has not yet gone into effect and it does not change this zoning amendment application's conclusion that Woodbridge's policies produce a disparate impact.

the availability of less discriminatory alternatives to the policy in question that can achieve the defendant's legitimate governmental interest. Under this framework, Woodbridge's current Zoning Regulations violate the FHA.

A. The Town Has Illegally Excluded Protected Classes For Decades

Through its Zoning Regulations, the Town has waged an ongoing campaign against the development of multi-family housing, an effort that stretches back to the 1930s.⁵⁰⁸ As discussed *supra* at page 64, under Woodbridge's Zoning Regulations, multi-family housing of any kind is **prohibited** in all but a tiny portion of the residential area of the Town – and even in that tiny area (0.2% of the residential area), the highest density permitted by the Zoning Regulations is two-family units.⁵⁰⁹ Multi-family housing of three or more units is prohibited everywhere.⁵¹⁰ Applications to amend the Zoning Regulations to permit multi-family housing were rejected on at least six occasions: 1981, 1982, 1983, 1993, 1994, and 2007.⁵¹¹ Tellingly, the latter three rejections postdate the enactment of amendments to the State Zoning Enabling Act, which required municipalities to "encourage the development of housing opportunities, including opportunities for multi-family dwellings." These efforts have yielded the near-total exclusion of multi-family housing. This is aptly demonstrated both by the ordinance itself and by the actual numbers of multi-family housing units. In the Town's 2019 Zoning Regulations, Table 3.1, titled "Allowed Uses by Zone," prohibits multi-family housing **in all zones**.⁵¹² There have been **no developments of multi-family housing** in the Town within the last decade; and of the 30 affordable multi-family housing units currently in existence, **all** of them are restricted to elderly occupants.⁵¹³

For Woodbridge and the surrounding region, the ultimate impact of this near-century of exclusionary zoning is two-fold: housing costs are extraordinarily high and housing opportunities are limited. At over \$400,000, the median home value in Woodbridge is roughly double the median home value in neighboring New Haven.⁵¹⁴ Substantial literature has documented the clear and direct connection between exclusionary zoning and housing costs. "The vast majority of studies have found that locations with more [zoning] regulation have higher house prices."⁵¹⁵ "Exclusionary zoning...artificially drives up the price of available housing units...rais[ing] rents

⁵⁰⁸ Ellickson, *supra* note 34 at 11 ("Woodbridge CT, for example [was] imposing binding large-lot requirements in the 1930s...").

⁵⁰⁹ Based on measurements of town land area in Google Maps (on file with 2 Orchard Road, LLC).

⁵¹⁰ ZONING REGULATIONS FOR THE TOWN OF WOODBRIDGE, *supra* note 33 at 19.

⁵¹¹ Woodbridge Zoning History, *supra* at 22.

⁵¹² ZONING REGULATIONS FOR THE TOWN OF WOODBRIDGE, *supra* note 33 at 19.

⁵¹³ Data Appendix, VIII. Department Of Housing "Assisted Units" And Percent Of Units In Multi-Family (3+) Structures, SCRCOG 2018-2019.

⁵¹⁴ Data Appendix, XI. Average Home Value In The SCRCOG By Zip Code, 2020. The median home value in the most expensive zip code in New Haven is \$233,000.

⁵¹⁵ Joseph Gyourko & Raven Molloy, *Regulation and Housing Supply* 42 (Nat'l Bureau of Econ. Research, Working Paper No. 20536, 2014), <https://www.nber.org/papers/w20536>.

and home prices."⁵¹⁶ With respect to supply, the Town's own POCD states that the Town "has largely built to the limits of current land use regulations."⁵¹⁷ Again, research backs this connection: exclusionary zoning causes a "decline in new construction"⁵¹⁸ that reduces the supply of new housing on the market, and "[m]ounting evidence shows zoning is a barrier to affordable housing production."⁵¹⁹

B. Woodbridge's Lack Of Multi-Family, Affordable Housing Options Disproportionately Harms Black And Hispanic Households

A number of different measures show the extent to which this pernicious residential zoning scheme disproportionately harms Black and Hispanic households by making the development of multi-family rental and affordable housing off limits for virtually all developable land. For instance:

- While Woodbridge has **far fewer** multi-family housing units relative to its total housing stock than other towns in the region and the regional average – 93.8% of Woodbridge households reside in single-family housing, compared to 59.9% in the region – in the region surrounding Woodbridge, Black and Hispanic households are disproportionately occupants of multi-family housing units relative to White households, such that Black and Hispanic households are roughly **four times more likely** to occupy a two or more unit structure than a White household.⁵²⁰
- Similarly, while renters (who disproportionately occupy multi-family housing) are unsurprisingly underrepresented in Woodbridge relative to the surrounding region, Black and Hispanic households are overrepresented among renters of housing relative to White counterparts in the region, such that Black households in the region are over four times as likely to be renters as are White households, and Hispanic households are five times as likely.⁵²¹

⁵¹⁶ RICHARD D. KAHLENBERG, *supra* note 462 at 24. *See also*, Edward L. Glaeser & Joseph Gyourko, *The Impact of Zoning on Housing Affordability*, HARV. INST. ECON. RES. 25 ("[Z]oning, and other land use controls, are more responsible for high prices...").

⁵¹⁷ 2015-25 WOODBRIDGE POCD, *supra* note 241 at 71.

⁵¹⁸ Edward L. Glaeser & Bryce A. Ward, *The Causes and Consequences of Land Use Regulation: Evidence from Greater Boston* 20 (Nat'l Bureau of Econ. Research, Working Paper No. 12601, 2006), <https://www.nber.org/papers/w12601>.

⁵¹⁹ GERRIT KNAAP ET AL., AMER. PLAN. ASSOC., ZONING AS A BARRIER TO MULTIFAMILY HOUSING DEVELOPMENT 70 (2007) ("Mounting evidence shows zoning is a barrier to affordable housing production.").

⁵²⁰ Data Appendix, V. Percent of Households That Live in Single Family, Two Family And Multifamily (3+) Structures By Race, SCRCOG 2018; Data Appendix, III. Proportion Of Households In Single-Family, Two-Family And Multi-Family (3+) Structures, SCRCOG 2018.

⁵²¹ Data Appendix, VII. Percent of Households that are Renters in Two or More Unit Structures by Race, SCRCOG 2018.

- There is also significant racial disparity when looking at occupancy of multi-family rental housing in particular. Relative to White households, both Black and Hispanic households are more than four times as likely to rent in structures of two or more units⁵²²
- Housing that is affordable for low and moderate income families is disproportionately multi-family and rental housing,⁵²³ and renters and residents in need of affordable housing in the South Central planning region are predominantly Black and Hispanic.⁵²⁴

The Town's zoning scheme disproportionately harms non-white residents in the region. Aside from a sham affordable housing zone that has never been used, it prohibits multi-family development in virtually all of the Town's residential area. Predictably, this prohibition causes a lack of multi-family and affordable housing options in Woodbridge.

C. Woodbridge's Current Zoning Regulations Cannot Be Justified By A Legitimate Government Interest

Further, the Town cannot meet its burden to show that the outright, and longstanding, prohibition of multi-family housing and insistence on large single-family lots in the vast majority of residential area "is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests."⁵²⁵ For a number of reasons – the available evidence concerning the housing and growth goals of the Town, region, and State; the housing needs of the region; the town's obligations under state law with respect to housing opportunities for low and moderate income households; and fair housing caselaw precedent addressing exclusionary zoning – the Town's complete disallowance of multi-family construction cannot be sustained under the FHA as justified by a legitimate government interest.⁵²⁶ Woodbridge's own POCD, while not

⁵²² Data Appendix, V. Percent of Households That Live in Single Family, Two Family And Multifamily (3+) Structures By Race, SCRCOG 2018.

⁵²³ Data Appendix, XXIII. Monthly Housing Costs By Number Of Units In Structure And Renter Versus Owner, SCRCOG 2018.

⁵²⁴ Data Appendix, XIX. Percent Of Households That Are Cost Burdened and Severely Cost Burdened By Race, SCRCOG 2018.

⁵²⁵ *Mhany Mgmt., Inc. v. Cty. of Nassau*, 819 F.3d 581, 617 (2d Cir. 2016) (citing 24 C.F.R. § 100.500(c)(1)– (2) (2020)).

⁵²⁶ *Town of Huntington v. Huntington Branch NAACP*, 488 U.S. 15 (1988); *Mhany*, 819 F.3d 581; *United States v. City of Black Jack*, 508 F.2d 1179, 1186-88 (finding that the town's own planners had concluded that multi-family development would not result in school overcrowding or single-family home devaluation); *Dews v. Town of Sunnyvale*, 109. F.Supp.2d 526, 568 (holding that the town's offered rationales, septic tanks and regional obligations, are pretextual, are either not legitimate or pretextual). *See also* CENTER FOR HOUSING POLICY, "DON'T PUT IT HERE!" DOES AFFORDABLE HOUSING CAUSE NEARBY PROPERTY VALUES TO DECLINE? 1 (2009), (available at: https://furmancenter.org/files/media/Dont_Put_It_Here.pdf) (review of four

recommending the construction of multi-family units itself, does point to several local and regional problems for which multi-family housing is an obvious solution.⁵²⁷

D. Even If Woodbridge's Zoning Regulations Furthered Any Legitimate Governmental Interests, There Are Less Discriminatory Alternatives Available To Serve Those Interests.

If Woodbridge were to establish legitimate governmental interests – which the Town cannot – it would not matter because any such claimed interests could be served by less discriminatory alternatives.⁵²⁸ Here, the comprehensive scope of its ban on multi-family housing is demonstrably **not** necessary to achieve any conceivable legitimate interests. Our proposed text amendment retains all of the bulk requirements for a building in residential zones—height, setback, building coverage—so that there is no change in the size of building that can be constructed in those zones. It also seeks no changes in the current Public Health Code

empirical literature reviews finding "the vast majority of studies have found that affordable housing does not depress neighboring property values, and may even raise them in some cases.").⁵²⁷ 2015-25 WOODBRIDGE POCD, *supra* note 241. The POCD highlights the following issues which either suggest that multi-family housing will not present some of the typically-cited problems or that the town would in fact benefit from more multi-family housing. The "Housing and Demographics" chapter notes that "the Town could see a decline in population of several hundred residents by the conclusion of this plan," as well as "declining numbers of school age children," which would suggest that multi-family development would not create a population strain. *Id.* at 8, 11. The Town notes that its "large homes" are out of balance with "shrinking households." Strikingly, "56% of Woodbridge homes have at least four bedrooms, while only a quarter of households have four or more persons." *Id.* at 25. The POCD warns that "residents seeking smaller homes—which may be more affordable and easier to maintain—have very few choices available, and may look for more suitable options elsewhere." Allowing multi-family housing could create such options in Woodbridge. *Id.* at 27-28. The "Housing Action Plan" calls for "enhancing the variety of options available through future development opportunities," including "options for Woodbridge's youngest and oldest families," which could arguably be provided by multi-family housing. *Id.* at 27. The "Mid-Term Action Agenda" calls for "provid[ing] smaller, lower-maintenance housing options with and without age restrictions," giving the specific example of "in-law units for related persons"—but this logic could be extended to include multi-family housing options. *Id.* at 28. The "Transportation" chapter notes that "observed traffic volumes have fallen on most roads since 2006," which may reduce concerns that multi-family housing would lead to burdensome traffic levels. *Id.* at 50. *Cf.* Dews, Dews v. Town of Sunnyvale, 109 F.Supp.2d 526, 569 (finding that town's offered justifications for disallowance of multi-family housing were not legitimate because the town's own plan called for multi-family housing to meet its regional environmental and open space goals).

⁵²⁸ See Mhany, 819 F.3d at 617-19 (discussing requirement of considering if alternatives that have less disparate impact are available and concluding that the Supreme Court in *Inclusive Communities* had implicitly adopted HUD's approach in its 2013 rule) (quoting Texas Dep't. of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc., 135 S.Ct. 2507, 2518 (2015)); *id.* at 618-19 (discussing HUD's 2013 discriminatory effects rule, 24 C.F.R. § 100.500); Town of Huntington v. Huntington Branch NAACP, 488 U.S. 15 (1988).

requirements for septic systems. The only change is to allow more families to live in the same size dwelling.

II. Woodbridge's Zoning Regulations Violate The FHA Because It Reinforces And Perpetuates Segregation In The Region

A. Courts Review Segregative Effects Claims under the Same Burden-Shifting Process

There is another reason why the Zoning Regulations are unlawful under the FHA: zoning policies or practices that perpetuate segregated housing patterns in a town or region, unless they are necessary to achieve a legitimate government interest, violate the FHA. The legal framework for a segregative effects claim is similar to that of a disparate impact claim, as discussed above.⁵²⁹ The complaining party must show that the zoning practice in question has created, **perpetuated, reinforced or increased segregation at the community level** rather than harmed a minority group.⁵³⁰ When zoning maintains racial segregation and disallow housing that would introduce minority populations into a heavily non-minority area, courts have invalidated provisions of the zoning.⁵³¹ Further, courts have typically been content to accept slightly weaker causal connections between the practice in question and the effect observed in segregative effects claims.⁵³²

B. The Town's Zoning Regulations Perpetuate Segregation

The Town's Zoning Regulations, by disallowing multi-family housing in almost all areas of the town, and thus precluding the development of housing disproportionately needed by Black and Hispanic households in the region, perpetuate, reinforce, and increase segregation in the State of Connecticut, the South Central planning region, and neighboring municipalities. A few data points suffice to tell the story:

- The existing population of Woodbridge is 2.7% Black non-Hispanic, and 5.6% Hispanic. By comparison, the population of the region is 13.5% Black non-Hispanic, and 16.4% Hispanic.⁵³³

⁵²⁹ 24 C.F.R. § 100.500(a) (2020) (imposing liability if a housing policy "results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns").

⁵³⁰ *Id.*

⁵³¹ *Huntington Branch*, *supra* note 526; *Mhany*, *supra* note 506; *City of Black Jack*, *supra* note 459 at 1186-88; *Shannon v. U.S. Dep't of Hous. & Urban Dev.*, 436 F.2d 809 (3d Cir. 1970) (finding violations of the 1949 Housing Act, 1964 and 1968 Civil Rights Acts when HUD located a housing project in a minority-predominant urban renewal area, because the placement furthered segregation).

⁵³² Robert G. Schwemm, *Segregative-Effect Claims Under the Fair Housing Act*, 20 N.Y.U. J. LEGIS. & PUB. POL'Y 709, 739 (2017).

⁵³³ Data Appendix, I. Racial Composition Of Woodbridge And SCRCOG Populations, 2018.

- The households of Woodbridge are disproportionately occupants of single-family homes (93.8%),⁵³⁴ and are also disproportionately owners (89%), rather than renters (11%).⁵³⁵ The median income is the highest in the region at \$142,000.⁵³⁶ The comparison to Black and Hispanic households in the region is stark: just 36% of Black and 35% of Hispanic households live in single-family homes;⁵³⁷ 64% of Black and 67% of Hispanic households are renters;⁵³⁸ the median income for Black households is \$42,000 and for Hispanic households it is \$45,000.⁵³⁹ As a result, just 6% of the Woodbridge housing stock is affordable for the median Black and Hispanic family.⁵⁴⁰
- From 2007 to 2017, mortgage applicants in the Town of Woodbridge were 4% Hispanic and 3% Black, compared to 11% and 9%, respectively, within New Haven County.⁵⁴¹
- The precise number of Black students in Woodbridge School District is unavailable because there are so few; in another school district that serves Woodbridge, Black students comprise just 3.0% of the school population.⁵⁴² Comparable numbers for Hispanic students are 7.3% and 1.3%.⁵⁴³

Thus, it is clear that Woodbridge's Zoning Regulations increase segregation. Even the Town knows it: thus, their own POCD states that Woodbridge is "fairly homogenous, especially in comparison to both New Haven County and the State of Connecticut."⁵⁴⁴ Segregation would decrease if Woodbridge's Zoning Regulations were to allow reasonable, affordable multi-family developments within the Town's boundaries.

⁵³⁴ Data Appendix, III. Proportion Of Households In Single-Family, Two-Family And Multi-Family (3+) Structures, SCRCOG 2018.

⁵³⁵ Data Appendix, II. Composition Of Renters And Owners In Woodbridge And The SCRCOG, 2018.

⁵³⁶ Data Appendix, XIII. Median Household Income by Town, SCRCOG 2018 (in 2018 Dollars).

⁵³⁷ Data Appendix, V. Percent of Households That Live in Single Family, Two Family And Multifamily (3+) Structures By Race, SCRCOG 2018

⁵³⁸ Data Appendix, VI. Percent Of Households That Are Renters Versus Owners by Race, SCRCOG 2018.

⁵³⁹ Data Appendix, X. Mean and Median Household Income By Race, SCRCOG 2018 (in 2018 Dollars).

⁵⁴⁰ Data Appendix, IX. Monthly Housing Costs in Woodbridge, 2018.

⁵⁴¹ Data Appendix, XII. Mortgage Applications in Woodbridge and New Haven County by Race, 2007-2017.

⁵⁴² Data Appendix, XVI. Racial Composition Of Enrolled Students In Schools Serving Woodbridge Residents 2018-2019

⁵⁴³ *Id.*

⁵⁴⁴ 2015-25 WOODBRIDGE POCD, *supra* note 241 at 19.

The Current Woodbridge Zoning Regulations Violate The Connecticut Fair Housing Act, General Statutes § 46a-64c

The Zoning Regulations violate the Connecticut Fair Housing Act ("CFHA") on theories of disparate impact, segregative effect, and discrimination based on lawful source of income. Because the claims of disparate impact and segregative effect are similar to those previously set forth, this section focuses on the lawful source of income claim.

I. The Town's Zoning Regulations Violate The Connecticut Fair Housing Act On Theories Of Disparate Impact And Segregative Effect

The extensive restrictions on multi-family housing within the Town's Zoning Regulations violate the CFHA⁵⁴⁵ on the same grounds that they violate the federal Fair Housing Act.⁵⁴⁶ The Connecticut Supreme Court's interpretations of the CFHA are "guided by the case law surrounding the federal fair housing laws."⁵⁴⁷ Either disparate treatment or disparate impact suffice to establish violations of the CFHA.⁵⁴⁸ In this instance, as discussed above, the Town's ban on multi-family housing results in a disparate impact on Black and Hispanic residents of Connecticut in violation of the plain text of the CFHA.⁵⁴⁹ Applying the burden-shifting process discussed *supra* at 89 and 84, a court will hold that the Zoning Regulations violate the CFHA on theories of segregative effect and disparate impact.

II. The Town's Zoning Regulations Further Violate The Connecticut Fair Housing Act's Prohibition Against Discrimination Based On Lawful Source Of Income

The ban on multi-family housing also violates CFHA's prohibition of discrimination based on lawful source of income. In relevant part, the statute provides: "[i]t shall be a discriminatory practice in violation of this section...[to] otherwise make unavailable or deny, a dwelling to any person because of...lawful source of income."⁵⁵⁰ To put the claim simply and directly: the Town's zoning restrictions preclude the development of new affordable, multi-family housing by private actors; the direct consequence of that preclusion is that housing is disproportionately "made unavailable" to a protected class – recipients of housing assistance.⁵⁵¹

⁵⁴⁵ General Statutes § 46a-64c (2018).

⁵⁴⁶ 42 U.S.C. §§ 3601 – 3619 (2018).

⁵⁴⁷ *Zlokower v. Comm'n on Human Rights & Opportunities*, 510 A.2d 985, 987 (Conn. 1986).

⁵⁴⁸ *AvalonBay Cmtys., Inc. v. Town of Orange*, 775 A.2d 284, 308 (Conn. 2001) (citing *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 934-35 (2d Cir. 1988)).

⁵⁴⁹ General Statutes § 46a-64c(a)(1) (2018) ("It shall be a discriminatory practice in violation of this section: (1) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or **otherwise make unavailable or deny, a dwelling to any person because of race, creed, color, national origin, [or] ancestry...**").

⁵⁵⁰ *Id.*

⁵⁵¹ *Id.*

A. The Town Has Consistently Acted To Discriminatorily Exclude Recipients Of Housing Assistance By Restricting Housing Supply And Increasing Housing Costs

As set forth more fully above at page 85, the Town has consistently acted to restrict the supply of housing and increase housing costs within its boundaries. These practices are long-standing: a well-documented report by the Connecticut Commission on Human Rights and Opportunities from 1978 draws conclusions still relevant today. In that report, Woodbridge was identified as among the towns with the most homogeneous demographics and the "most severely restricted" zoning.⁵⁵² Specifically, the report noted that "Woodbridge...[has] made little effort to build assisted housing [noting that they had built no units]."⁵⁵³ Further, Woodbridge's zoning regulations had "prevent[ed] the construction of housing at a cost affordable by low and moderate income residents."⁵⁵⁴ and the Town's dedication to exclusion takes a toll on recipients of housing assistance.

Both the high cost of housing and its relative scarcity exclude recipients of housing assistance. The two critical housing assistance programs are the federal Section 8 Housing Choice Vouchers ("Section 8") and the State's Rental Assistance Program ("RAP"). These programs provide financial assistance to qualifying low-income families, tied to the amount of income the family makes and the rent or mortgage payment. This assistance caps the amount of rent that a family can pay, assistance-inclusive, based on "the amount generally needed to rent a moderately priced dwelling unit in the local housing market."⁵⁵⁵ Although the maximum payments are location-adjusted, the high cost of housing in the Town exceeds the amount available under these programs. Further, the sheer **lack** of housing (and new construction) within the Town prevents recipients of housing assistance from accessing the Town's housing market. The results of the Town's exclusionary policy are visible in the concentration of voucher usage within the Town and the broader region: 1.24% of Woodbridge receives housing assistance, compared to 13.3% in the region and 32.05% in neighboring New Haven.⁵⁵⁶

This state of affairs contravenes the policy of the State of Connecticut, which recognizes that housing choice is critical to the wellbeing of its citizens. The underlying policy rationale behind **both** RAP and Section 8 is to provide housing assistance that is not restricted to a single

⁵⁵² CONN. COMM'N ON HUMAN RIGHTS & OPPORTUNITIES, *supra* note 13 at 83.

⁵⁵³ *Id.* at 43.

⁵⁵⁴ *Id.* at 56.

⁵⁵⁵ CONN. STATE DEP'T OF HOUS., RENTAL ASSISTANCE PROGRAM, <https://portal.ct.gov/DOH/DOH/Programs/Rental-Assistance-Program>. *See also* CONN. STATE DEP'T OF HOUS., SECTION 8 HOUSING CHOICE VOUCHER, <https://portal.ct.gov/DOH/DOH/Programs/Section-8-Housing-Choice-Voucher-Program> ("The PHA determines a payment standard that is the amount generally needed to rent a moderately-priced dwelling unit in the local housing market. This payment standard is used to calculate the amount of housing assistance a family will receive. The payment standard does not limit the amount of rent a landlord may charge, but it does limit the amount of rent a tenant may pay.").

⁵⁵⁶ Data Appendix, VIII. Department Of Housing "Assisted Units" And Percent Of Units In Multi-Family (3+) Structures, SCRCOG 2018-2019.

location or community; that is, to enable low-income residents of Connecticut to exercise their choice to select the community that best enables them to thrive.⁵⁵⁷ RAP "is the major state-supported program for assisting very-low-income families to afford decent, safe, and sanitary housing in the private market" and "participant[s] [are] free to choose *any* private rental housing" that meets the program's standards.⁵⁵⁸

Recipients of housing assistance deserve to be protected from the predations of exclusionary towns such as Woodbridge. Fortunately, in the State of Connecticut, they **are** protected. Housing assistance is, according to the Connecticut Supreme Court, a "lawful source of income" covered by the CFHA, and recipients of housing assistance are a protected class.⁵⁵⁹ Because the Zoning Regulations prevent the development of housing attainable through housing assistance, it "make[s] unavailable" **any** housing options for recipients of Section 8 and RAP. The Town's policy precludes development of housing that can be accessed by one of the CFHA's protected classes, a policy so extreme that it **must** be a violation of the statute if its protections are to be more than a paper guarantee. To appropriately remedy the Town's failure to comply with this prohibition on discrimination (along with the other legal violations set forth herein), the Town must not merely permit the construction of the multi-family housing development in question at 2 Orchard Lane, but also accept the text amendment to its Zoning Regulations to allow multi-family housing, with sensible affordability options, more widely within the Town.

B. Excluding A Protected Class Through Zoning Regulation Is A Discriminatory Practice Covered By The Connecticut Fair Housing Act

The CFHA is a far-reaching remedial statute which prohibits a broad range of discriminatory practices within the State of Connecticut. Although most frequently applied to void illegal acts undertaken by private landlords in the context of renting apartments, the Act also prohibits public actors using exclusionary zoning measures to discriminate against protected classes. This interpretation of the statute is supported by the plain text of the statute, interpretations of the federal FHA, legislative history, Connecticut case law, precedent from peer jurisdictions, and a growing body of legislation in other United States jurisdictions which provide protection for recipients of housing.

1. *The Plain Text Of The CFHA Prohibits A Broad Set Of Practices By A Public Or Private Actor Which Makes Housing Unavailable To A Protected Class*

⁵⁵⁷ See, e.g., CONN. GEN. ASSEMB., OFFICE OF LEGISLATIVE RESEARCH, 98-R-0083 *Age Discrimination*, <https://www.cga.ct.gov/PS98/rpt%5Colr%5Chtm/98-R-0083.htm>.

⁵⁵⁸ RENTAL ASSISTANCE PROGRAM, *supra* note 555.

⁵⁵⁹ *Comm'n on Human Rights and Opportunities v. Sullivan Assocs.*, 739 A.2d 238, 246 (Conn. 1999) ("Pursuant to this statute, it is part of the public policy of this state that landlords may not discriminate against housing applicants because such applicants, otherwise qualified as potential tenants, look to section 8 assistance for payment of the stipulated rent."); *Comm'n on Human Rights and Opportunities v. Sullivan*, 939 A.2d 541, 548 (Conn. 2008) ("We conclude that *Sullivan I* was correctly decided."). See also General Statutes § 46a-63(3) ("Lawful source of income' means income derived from...housing assistance...").

The Town's effective ban on multi-family housing violates the plain language of the CFHA, which states in relevant part, "[i]t shall be a discriminatory practice...[to] otherwise make unavailable or deny, a dwelling to any person because of...lawful source of income."⁵⁶⁰ Connecticut courts seeking to interpret a statute "look first to the language of the statute to determine [legislative] intent."⁵⁶¹ In this case, the statutory language extends to the Town's practices.

As an initial matter, the legislative text contemplates a broad spectrum of "practice[s]" within its ban on "discriminat[ion]."⁵⁶² The plain text of the statute preceding the broad term "otherwise," which enumerates two specific violations⁵⁶³ does not in any way limit the type of practices forbidden by the statute. Instead, the statute lists a few of the most common and egregious examples of discriminatory practices before adding the final term in the list to catch those invidious practices not explicitly specified. Municipal zoning regulations are an example of a "discriminatory practice" that "otherwise make[s]" housing "unavailable."⁵⁶⁴ The Town's ban on multi-family housing "make[s]" "dwelling[s]" within Woodbridge "unavailable" for all non-elderly persons who receive housing assistance because it prevents the construction of new housing and increases the price of existing housing.⁵⁶⁵

Second, the text of the statute does not specify **what type** of actor is forbidden from discriminating; instead, it provides broadly that "it shall be a discriminatory practice" to commit one of the violations listed.⁵⁶⁶ The very construction of this initial phrase in the statute does not even contemplate restrictions based on the type of actor. Had the Legislature intended to restrict the operation of the relevant statutory provision to solely private actors, thereby excluding public actors, the statute would read very differently. A specific hypothetical example, based on one of the explicitly listed discriminatory practices in the text, is illuminating. If the Town owned public housing units and "refuse[d] to sell or rent" to a protected class after a member of that protected class "ma[de] a bona fide offer," that would surely be covered by the scope of the statute.⁵⁶⁷ No plausible construction of the text suggests that the Legislature intended to forbid private discrimination but permit public discrimination. Thus, discriminatory actions taken by municipalities are covered by the statute.

Third, the plain text exceptions and limitations within the statute do not foreclose the statute's application to the Town's conduct; instead, their inclusion suggest that the Legislature

⁵⁶⁰ General Statutes § 46a-64c(a)(1) (2018).

⁵⁶¹ *Piteau v. Bd. of Educ.*, 15 A.3d 1067, 1083 n.17 (Conn. 2011).

⁵⁶² General Statutes § 46a-64c(a)(1) (2018).

⁵⁶³ *Id.* ("To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of...").

⁵⁶⁴ *Id.*

⁵⁶⁵ *Id.*

⁵⁶⁶ *Id.*

⁵⁶⁷ *Id.*

did not intend to exclude discriminatory zoning regulation.⁵⁶⁸ Courts will not excuse the Town's discriminatory actions absent a clear statutory exception as their practice is to refuse to "read into a remedial statute an unstated exception that would undermine the legislature's manifest intent to afford low income families access to the rental housing market."⁵⁶⁹

Three exceptions are plausibly relevant here. First, the statute's provisions do not apply to small, owner-occupied rental units.⁵⁷⁰ Second, the statute provides that the prohibitions based on lawful source of income "shall not prohibit the denial of full and equal accommodations solely on the basis of insufficient income."⁵⁷¹ Third, "reasonable...municipal ordinance[s] restricting the maximum number of persons permitted to occupy a dwelling" are excepted.⁵⁷² Each of these exceptions potentially bears on conduct that might otherwise be illegally discriminatory towards housing assistance recipients,⁵⁷³ but **none** of these exceptions provides an escape hatch for exclusionary zoning.

The first exception obviously does not apply – owner-occupied housing is an issue distinct from exclusionary zoning by municipal authorities. The second exception, limiting the lawful source of income provision from applying to instances where "insufficient income" is the "sole[]" reason for the "denial of full and equal accommodations" also does not pertain.⁵⁷⁴ As an initial matter, the Connecticut Supreme Court has interpreted this exception narrowly to avoid undermining the statute's nondiscriminatory purpose.⁵⁷⁵ Further, the exception does not apply because, again, denial of accommodations for insufficient income is not at issue. The Town is not directly denying accommodations on the basis of insufficient income, as if the Town were a landlord turning down a tenant without sufficient income. Instead, the Town is preventing the private construction of housing accommodations that are affordable to those with housing assistance. That is a distinct violation not excepted from the scope of the CFHA.

⁵⁶⁸ DeNunzio v. DeNunzio, 128 A.3d 901, 910 (Conn. 2016) ("Under the doctrine of *expressio unius est exclusio alterius* – the expression of one thing is the exclusion of another – we presume that when the legislature expresses items as part of a group or series, an item that was not included was deliberately included). In this instance, the legislature lists exceptions to the prohibition on discrimination in §§ 46a-64c(b) – (d). The three exceptions noted are the exceptions relevant to source of income discrimination.")

⁵⁶⁹ Sullivan I, *supra* note 559 at 250.

⁵⁷⁰ General Statutes § 46a-64c(b)(1) (2018).

⁵⁷¹ General Statutes § 46a-64c(b)(5) (2018).

⁵⁷² General Statutes § 46a-64c(c) (2018).

⁵⁷³ For instance, the owner of two-unit home might decline to rent to a recipient of housing assistance, which would, per the exception in General Statutes § 46a-64c(b)(1), not be barred by this statute.

⁵⁷⁴ General Statutes § 46a-64c(b)(5) (2018).

⁵⁷⁵ Sullivan I, *supra* note 559 at 254 ("The more plausible construction of the statutory exception is to give it a narrow reading that comports with the policy of the statute overall. Under that narrow construction, the exception affords a landlord an opportunity to determine whether, presumably for reasons extrinsic to the section 8 housing assistance calculations, a potential tenant lacks sufficient income to give the landlord reasonable assurance that the tenant's portion of the stipulated rental will be paid promptly...").

Even the third exception, which at first glance might seem relevant, permits municipal limits on the "maximum number of persons...per dwelling" rather than limits on housing unit density. These issues are related, but distinct: one governs the density of people within a dwelling, the other governs the density of housing units within a community. Further, the word "reasonable" in the exception limits the scope and provides ample grounds for court scrutiny even when the exception **does** apply.⁵⁷⁶

The legislative title further supports an understanding of the statute that encompasses the Town's actions. Although not "determinative", the "title of a statute provides some evidence of its meaning."⁵⁷⁷ In this instance, the section is titled "[d]iscriminatory housing practices prohibited."⁵⁷⁸ The title, then, succinctly states that there is a bar on activities in the housing market that have a discriminatory function. There are no modifying or limiting words within the title to suggest that it only covers private actions, or that it only covers the sale or rental of an apartment. Instead, the title is a straightforward, powerful statement of the Legislature's goal to prevent prejudicial treatment of protected classes.

2. *Interpretations Of The Relevant Parallel Text Of The Federal FHA Reinforce This Interpretation Of The Source Of Income Provision*

The text of the statute and case law interpreting the FHA also support an interpretation of the CFHA that covers exclusionary zoning. The CFHA is explicitly based on the FHA.⁵⁷⁹ As a result, construction of the CFHA is "guided by the case law surrounding the federal fair housing laws."⁵⁸⁰ Thus, although the FHA does not make recipients of lawful source of income a protected class, case law interpreting the comparable passage illuminates the CFHA.

The relevant statutory provision in the FHA uses near-identical language to describe prohibited discriminatory practices: "it shall be unlawful...[t]o refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial

⁵⁷⁶ See, e.g., *Comm'n on Human Rights & Opportunities v. Ackley*, 2001 WL 951374, *11 (Sup. Ct. Conn. July 20, 2001) ("Both statutory subsections use the word 'reasonable' and it must be presumed that the legislatures, state and federal, had a purpose in mind when they did so. The common sense reading is that although local ordinances restricting the maximum number of occupants maybe exempt from the operation of the fair housing acts, for such exemption to apply they must be 'reasonable.'").

⁵⁷⁷ *Coyle v. Comm'r of Revenue Servs.*, 69 A.3d 310, 314 (Conn. App. Ct. 2013).

⁵⁷⁸ General Statutes § 46a-64c (2018).

⁵⁷⁹ See, e.g., CONN. GEN. ASSEMB., OFFICE OF LEGISLATIVE RESEARCH, 98-R-0083 AGE DISCRIMINATION, <https://www.cga.ct.gov/PS98/rpt%5Colr%5Chtm/98-R-0083.htm> ("In 1988 Congress passed federal fair housing amendments which mandate that states must have fair housing laws that are substantially equivalent to the federal fair housing laws....[t]his House bill accomplishes [that] through technical and substantive amendments to our current laws to make it conform with the federal law.")

⁵⁸⁰ *Zlokower v. Comm'n on Human Rights & Opportunities*, 510 A.2d 985, 987 (Conn. 1986).

status, or national origin."⁵⁸¹ There are only two differences between this text and the parallel text of the CFHA: the exclusion of lawful source of income, and the use of "it shall be unlawful"⁵⁸² rather than "it shall be a discriminatory practice."⁵⁸³ The first difference is the basis of this claim under state law; the second difference is no distinction at all, but alternative language to express the same purpose.

Critically, this section of the FHA has been repeatedly interpreted to encompass a prohibition on discriminatory municipal zoning practices. The Second Circuit, citing to the Supreme Court, has held that the phrase "otherwise make unavailable" (identical to the language used in the CFHA) "has been interpreted to reach a wide variety of discriminatory housing practices, **including discriminatory zoning restrictions**," an understanding repeatedly endorsed by federal courts interpreting the FHA.⁵⁸⁴ Indeed, in 2016 the Second Circuit upheld a district court decision finding municipal liability for a local zoning decision under § 3604(a) of the FHA.⁵⁸⁵ The Connecticut Supreme Court has explicitly endorsed this interpretation.⁵⁸⁶

Because the CFHA is "guided by the case law" interpreting the FHA, these interpretations are highly relevant, if not dispositive, to understanding the scope of the protections afforded to protected classes under the Connecticut statute.⁵⁸⁷ Thus, interpretations of

⁵⁸¹ 42 U.S.C. § 3604(a) (2018).

⁵⁸² *Id.*

⁵⁸³ General Statutes § 46a-64c(a)(1) (2018).

⁵⁸⁴ *LeBlanc-Sternberg v. Fletcher*, 67 F.3d 412, 424 (2d Cir. 1995) (emphasis added). The court held that the district court erred in not providing injunctive relief to Hasidic community which was targeted by Municipality's zoning practices. In reaching that conclusion, the Second Circuit relied on: *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 938 (2d Cir.), *aff'd*, 488 U.S. 15, 109 S.Ct. 276 (1988) (per curiam) (holding that Town's failure to amend the restrictive zoning ordinance perpetuated segregation); *Casa Marie, Inc. v. Superior Court of P.R.*, 988 F.2d 252, 257 n.6 (1st Cir. 1993) ("[t]he phrase 'otherwise make unavailable or deny' encompasses a wide array of housing practices...and specifically targets the discriminatory use of zoning laws and restrictive covenants.") *See also* *Mhany Mgmt., Inc. v. Cty. of Nassau*, 819 F.3d 581, 600 (2d Cir. 2016) ("The phrase [as found in 42 U.S.C. § 3604(a)] 'otherwise make unavailable' has been interpreted to reach a wide variety of discriminatory housing practices, including discriminatory zoning restrictions."); *S.-Suburban Hous. Ctr. v. Greater S. Suburban Bd. of Realtors*, 935 F.2d 868, 882 (7th Cir. 1991) ("[C]ourts have construed the phrase 'otherwise make unavailable or deny' in subsection (a) to encompass mortgage 'redlining', insurance redlining, racial steering, **exclusionary zoning decisions** ...") (emphasis added); *Sierra v. City of N.Y.*, 552 F.Supp.2d 428, 430 (S.D.N.Y. 2008).

⁵⁸⁵ *Mhany*, 819 F.3d at 624 ("We affirm the judgment of the district court insofar as it found Plaintiffs had established liability under 42 U.S.C. § 3604(a) of the FHA based on a theory of disparate treatment.").

⁵⁸⁶ *AvalonBay Cmtys., Inc. v. Town of Orange*, 775 A.2d 284, 307 (Conn. 2001).

⁵⁸⁷ *Zlokower v. Comm'n on Human Rights & Opportunities*, 510 A.2d 985, 987 (Conn. 1986). *Cf.* *Pierce v. Underwood*, 487 U.S. 552, 565 (1988) (relying on an interpretation of the phrase "substantially justified" in the Fed. R. Civ. P. to interpret the same term in *The Equal Access to*

the identical text within the federal FHA strongly suggest that discriminatory zoning practices are within the scope of the CFHA.

3. *Connecticut Legislators Believed They Were Passing A "Comprehensive" Measure To Address Housing Discrimination*

If the meaning of the text of a statute is not clear, Connecticut courts "look for interpretive guidance to the legislative history."⁵⁸⁸ The relevant legislative history documents that legislators wanted to address the exclusionary measures at issue in Woodbridge. The Legislature intended the CFHA to be a broad, remedial statute modeled on the FHA,⁵⁸⁹ with the power to put an end to the multitudinous and long-standing practices of housing discrimination in the State of Connecticut.

"When considering legislative history, '[w]e pay particular attention to statements of the legislators who sponsored the bill."⁵⁹⁰ The House Bill sponsor, in remarks on the House floor, argued that the House should support the bill because "it provides for a **comprehensive** approach to addressing housing discrimination in this State."⁵⁹¹ The word "comprehensive" is of particular importance because it affirms the underlying goal of the statute: to eliminate **all** invidious practices of housing discrimination within the State. Indeed, although the sponsor noted that statute covers protected classes in instances in which they try to rent a unit and are denied on the basis of their membership in a protected class – the practice most commonly litigated under the lawful source of income provisions in the CFHA – he describes this practice as merely an "example" of the type of conduct forbidden by the statute.⁵⁹² The most relevant legislative history of the statutory provisions at issue supports the conclusion that the Legislature intended the exclusionary zoning measures to be covered by the statute.

4. *Connecticut Courts Have Interpreted The Source Of Income Provision Liberally To Cover Practices Not Explicitly Enumerated In The Text*

Relevant Connecticut case law affirms that exclusionary zoning is a discriminatory "practice" covered under the CFHA. As an initial matter, the Connecticut Supreme Court recognizes that "there exists a general public policy in this state to eliminate **all forms** of invidious discrimination."⁵⁹³ Further, when interpreting remedial statutes such as the CFHA, the

Justice Act, the U.S. Supreme Court endorses the statutory interpretation technique of presuming similar meanings when legislatures use consistent terminology across different but related statutes).

⁵⁸⁸ *Gonzalez v. O & G Indus., Inc.*, 140 A.3d 950, 958 (Conn. 2016).

⁵⁸⁹ *See* CONN. GEN. ASSEMB., OFFICE OF LEGISLATIVE RESEARCH, *supra* note 579.

⁵⁹⁰ *In re Elianah T.-T.*, 165 A.3d 1236, 1244 n.8 (Conn. 2017) (citing *Doe v. Marselle*, 675 A.2d 835, 838 n.9 (Conn. 1996)).

⁵⁹¹ H-577, Vol. 33 Pt. 24, 1990 Sess. 8249, 8384 (Conn. 1990) (emphasis added) (statement of Rep. Coleman).

⁵⁹² *Id.* at 8387.

⁵⁹³ *Thibodeau v. Design Grp. One Architects, LLC*, 802 A.2d 731, 740 (Conn. 2002) (emphasis added).

Connecticut Supreme Court follows the basic principle of statutory construction that "remedial statutes should be construed liberally in order to effectuate the legislature's intent."⁵⁹⁴

When specifically addressing the source of income provisions in the CFHA, the Connecticut state courts have indeed interpreted it "liberally." The Connecticut court system has forced landlords to rewrite their leases to comply with the terms of the Section 8 program,⁵⁹⁵ applied discrimination protections to the sale of liability insurance,⁵⁹⁶ and required landlords to accept non-cash forms of housing assistance.⁵⁹⁷ None of these violations are explicitly contemplated within the text of the CFHA, but "courts have found viable claims for discriminatory conduct that was not directly connected to the rental or sale of housing, but which nonetheless had a discriminatory impact on equal housing opportunities."⁵⁹⁸ The courts have consistently applied the Connecticut Supreme Court's general policy of liberal construction of remedial statutes to strike down many discriminatory practices that impact the ability of housing assistance recipients to access housing in the State.

5. *Other Jurisdictions Also Interpret Their Source Of Income Provisions Broadly To Forbid Discriminatory Practices Not Directly Contemplated In The Relevant Statute*

Beyond Connecticut, other jurisdictions construe their source of income provisions broadly to protect recipients of housing assistance from a wide variety of discriminatory practices that are not explicitly provided in the text. In New Jersey, a narrow reading of the relevant state statute⁵⁹⁹ in the context of the relevant federal provision⁶⁰⁰ would only prohibit landlords that already participate in Section 8 housing from rejecting prospective tenants "because of that tenant's status as a Section 8 recipient."⁶⁰¹ Relying on legislative intent, plain meaning, and federal precedent, the New Jersey Supreme Court declined to read the source of income protection narrowly, holding instead that it "prohibit[ed] landlords from refusing to

⁵⁹⁴ Sullivan II, *supra* note 559 at 551.

⁵⁹⁵ See Sullivan I, *supra* note 559 at 238.

⁵⁹⁶ See *Francia v. Mount Vernon Fire Ins. Co.*, No. CV084032039S, 2012 WL 1088544, at *5-7 (Conn. Super. Ct. Mar. 6, 2012) (holding that the CFHA's protections for source of income apply to the sale of liability insurance to landlords) ("[T]he plaintiff's allegations against the defendants come within the ambit of the Connecticut fair housing laws when the complaint is construed in the manner most favorable to sustaining its legal sufficiency, and where § 46a-64c is to be read broadly...and in consideration of its legislative purpose and intent.").

⁵⁹⁷ See Comm'n on Human Rights & Opportunities *ex rel.* Palmer v. Burkamp, CVH7749, 2012 WL 2850985 (Conn. Super. Ct. May 21, 2012).

⁵⁹⁸ *Francia*, 2012 WL 1088544, at *4.

⁵⁹⁹ N.J.S.A. §§ 2A:42 – 100 (2018) ("No person...shall refuse to rent or lease any house or apartment to another person because of the source of any lawful source of income received by the person or the source of any lawful rent payment to be paid for the house or apartment.").

⁶⁰⁰ 42 U.S.C. § 1437f(t) (2018). The New Jersey Supreme Court reads this provision to be restricted to only landlords that participate in the Section 8 program.

⁶⁰¹ *Franklin Tower One, L.L.C. v. N.M.*, 157 N.J. 602, 611 (N.J. 1999).

accept a Section 8 voucher from an existing tenant" even though the landlord did not already participate in the program.⁶⁰²

In Massachusetts, the high court has held that the state's ban on source of income discrimination requires that a landlord accept the termination provisions in the state agency's form contract.⁶⁰³ Although the state statute⁶⁰⁴ did not explicitly list termination provisions as a condition of public housing assistance protected by the statute, the court relied on the broad language of the text and the statutory purpose to hold that the defendant's "repudiation of the requirements contained in the [lease provided by the public housing authority] falls squarely within the ambit of the prohibition."⁶⁰⁵

In California, a state appellate court went even farther, repairing a possible error in statutory drafting to protect recipients of housing assistance seeking to purchase homes, holding that "[p]laintiffs have stated a claim for intentional source-of-income discrimination...[the statutory provision] cannot be read so narrowly as to make it applicable only to tenants or potential tenants seeking rental housing."⁶⁰⁶ Despite statutory text to the contrary, the decision applied the definition of source of income from the part of the relevant statute⁶⁰⁷ that limited its scope to rental tenancy to the statutory section on home purchasing.⁶⁰⁸ The California State Legislature passed this interpretation into law in 2020.⁶⁰⁹

6. *A Burgeoning Statutory Consensus Supports Strong Protections For Recipients Of Housing Assistance*

Finally, passage of new statutes and amendments to existing statutes that protect recipients of housing assistance also testify to a growing policy consensus regarding the discrimination faced by this class of persons, and the need to protect them. In the past eight years, six different states⁶¹⁰ and dozens of local governments have passed or amended statutes that protect recipients of housing assistance.⁶¹¹

⁶⁰² *Id.* at 623.

⁶⁰³ *DeLiddo v. Oxford St. Realty, Inc.*, 876 N.E.2d 421 (Mass. 2007).

⁶⁰⁴ MASS. GEN. LAWS, ch. 151B, §4(10). The statute prohibits landlords from discriminating on the basis of "any requirement" of housing subsidy programs.

⁶⁰⁵ *DeLiddo*, 876 N.E.2d at 429.

⁶⁰⁶ *Sisemore v. Master Financial, Inc.*, 60 Cal. Rptr. 3d 719, 724 (Cal. Ct. App. 2007).

⁶⁰⁷ CAL. GOV'T CODE § 12955(p)(1) (2018), *amended by* CAL. GOV'T CODE §12955 (Stats. 2019, c.600 (S.B.329)) (updating the legislative text of (p)(1) to explicitly align with the ruling in *Sisemore*).

⁶⁰⁸ *Sisemore*, 60 Cal. Rptr. 3d at 742.

⁶⁰⁹ CAL. GOV'T CODE §12955(p)(1) (2020).

⁶¹⁰ CAL. GOV'T CODE § 12955 (2020); DEL. CODE ANN. tit. 6 § 4601 (2016); MD. CODE ANN., STATE GOV'T §§ 20-701:704 (2020); 2019); OR. REV. STAT. § 659A.421 (2013); VA. CODE ANN. § 36-96 (2020); WASH. REV. CODE § 59.18 (2018).

⁶¹¹ POVERTY & RACE RESEARCH ACTION COUNCIL, EXPANDING CHOICE: PRACTICAL STRATEGIES FOR BUILDING A SUCCESSFUL HOUSING MOBILITY PROGRAM, APPENDIX B: STATE, LOCAL AND

C. The Town's Multi-Family Housing Ban Violates The Applicable HUD / Second Circuit Framework

In the previous subsections, we first enumerated the century-long campaign against multi-family housing by the Town, driven by exclusionary animus, and then demonstrated that a straightforward reading of the CFHA protects recipients of housing assistance from exclusionary zoning ordinances.

Next, we turn to apply the relevant legal analysis to the practices of the Town of Woodbridge to conclude that they are in violation of the CFHA. "In analyzing housing discrimination claims under our state statutory scheme," the Connecticut state courts "are guided by the cases interpreting federal fair housing laws."⁶¹² The federal courts, in conjunction with the Department of Housing and Urban Development, have adopted the burden shifting process under C.F.R. § 100.500 discussed *supra* at page 84. The same process will guide the Connecticut state courts, which apply federal standards of evidence to assess state housing claims.⁶¹³

First, the court will find that zoning practices of the Town of Woodbridge, through their impact on the development of affordable, multi-family housing, has a disparate negative impact recipients of housing assistance, a protected class.⁶¹⁴ Second, the court will find that there is no "substantial, legitimate, nondiscriminatory interest" at stake.⁶¹⁵ Finally, in the alternative, even if a court were to find there is a legitimate interest, there are less discriminatory options available to Woodbridge.⁶¹⁶

I. *There Is A Prima Facie Case That The Town's Zoning Practices Have A Discriminatory Impact On Recipients Of Housing Assistance*

There is a clear prima facie case that a protected group, recipients of Section 8 and RAP, suffers disproportionately from the lack of multi-family and affordable housing choices in Woodbridge. CFHA expressly defines "housing assistance" as a lawful source of income that the

FEDERAL LAWS BARRING SOURCE-OF-INCOME DISCRIMINATION (2019), <https://prprac.org/pdf/AppendixB.pdf>.

⁶¹² Sullivan II, *supra* note 559 at 553 (citing Miko v. Comm'n on Human Rights & Opportunities, 596 A.2d 396 (Conn. 1991)).

⁶¹³ AvalonBay Cmtys., Inc. v. Town of Orange, 775 A.2d 284, 307 (Conn. 2001).

⁶¹⁴ 24 C.F.R. § 100.500(c)(1) (2020) ("The charging party...has the burden of proving that a challenged practice caused or predictably will cause a discriminatory effect.").

⁶¹⁵ 24 C.F.R. § 100.500(c)(2) (2020) ("[T]he...defendant has the burden of proving that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests...").

⁶¹⁶ 24 C.F.R. § 100.500(c)(3) (2020) ("[T]he charging party...may still prevail upon proving that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect.

CFHA intends to protect.⁶¹⁷ Further, the Connecticut Supreme Court has held that the Legislature intended to protect recipients of federal or state housing assistance from discrimination through the use of the term "lawful source of income."⁶¹⁸ Only 1.24% of the Town of Woodbridge receives housing assistance, as compared to 13.3% within the region as a whole.⁶¹⁹ In addition, as a practical matter, the vast majority of recipients of Section 8 or RAP assistance must rent. The housing units that can be accessed by this assistance in the region are predominantly multi-family housing, given the cost of single-family housing and the caps on rental assistance provided by HUD (which mandates that 75% of Section 8 vouchers must go to households earning 30% or less of the area median Income)⁶²⁰ and the State's RAP, which places a cap on the maximum rent that can be paid by a tenant.⁶²¹ Thus, the current lack of multi-family housing places a disproportionate burden on recipients of housing assistance, a protected class in the statutory scheme of CFHA.

The potential availability of homes for **purchase** does not meet the needs of the protected class, given the prohibitive cost of existing housing stock and the income / wealth profiles of recipients of housing assistance. The lack of rental housing options prevents the protected class from residing in Woodbridge. Few recipients of housing assistance use such assistance to purchase homes in Woodbridge or elsewhere in the State because of the steep barriers to doing so.⁶²²

⁶¹⁷ General Statutes § 46a-63(3) provides the definition of "lawful source of income" as "income derived from social security, supplemental security income, housing assistance, child support, alimony or public or general assistance."

⁶¹⁸ Sullivan I, *supra* note 559 at 248.

⁶¹⁹ Data Appendix, VIII. Department Of Housing "Assisted Units" And Percent Of Units In Multi-Family (3+) Structures, SCRCOG 2018-2019. In the Second Circuit, the percentage (rather than absolute numbers) of a protected racial group is the appropriate measure of each group's needs of affordable housing options. Huntington Branch, *supra* note 526. The state courts look to the federal courts for guidance in interpreting the CFHA, and will be willing to analogize to the standard for source of income.

⁶²⁰ JOSEPH R. HOLSTEAD, CONN. GEN. ASSEMB., OFFICE OF LEGISLATIVE RESEARCH, 2008-R-0539 AFFORDABLE HOUSING PROGRAMS IN CONNECTICUT 2008, <https://www.cga.ct.gov/2008/rpt/2008-R-0539.htm>. See also Section 8 Housing Choice Voucher, CONNECTICUT STATE DEP'T OF HOUSING, <https://portal.ct.gov/DOH/DOH/Programs/Section-8-Housing-Choice-Voucher-Program> ("The PHA determines a payment standard that is the amount generally needed to rent a moderately-priced dwelling unit in the local housing market. This payment standard is used to calculate the amount of housing assistance a family will receive. The payment standard does not limit the amount of rent a landlord may charge, but it does limit the amount of rent a tenant may pay.")

⁶²¹ RENTAL ASSISTANCE PROGRAM, *supra* note 555.

⁶²² Across the entire state of Connecticut, the last five years have seen an average of 100 enrollments per year, of which merely 40 were in Housing Authorities in the relevant region of Connecticut (SCRC). U.S. DEP'T OF HOUS. & URBAN DEV., HCV HOMEOWNERSHIP ENROLLMENTS, CY 2013-CY 2017. (https://www.hud.gov/sites/dfiles/PIH/documents/HCV_Homeownership_Enrollments.pdf).

2. *There Is No Legitimate Governmental Interest At Stake*

The burden then falls on the defendant to prove that the "challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent or defendant."⁶²³ For all of the reasons discussed above, a town-wide ban on multi-family housing cannot be justified.

3. *In The Alternative, Even If There Is A Legitimate Governmental Interest, There Are Less Discriminatory Options Available To Woodbridge.*

After Woodbridge establishes a "substantial, legitimate, nondiscriminatory interest" furthered by the challenged practice, the burden shifts back to the plaintiff to show that the interests asserted by defendants "could be served by another practice that has a less discriminatory effect."⁶²⁴

If the Town **does** succeed in demonstrating that there is a legitimate government interest at stake, OCT will prove that there are less discriminatory alternatives available than the Town's current effective ban on multi-family housing. As noted above, courts in other jurisdictions have been persuaded that even if single-family homes with large lot sizes are needed for a certain governmental interest, the interest at stake may be served adequately with a less-than-municipality-wide zoning for that use.⁶²⁵

D. Conclusion

The Town of Woodbridge has practiced exclusionary zoning for nearly a century. That is long enough – in this time of renewed focus on exclusion and discrimination, the actions of the Town must be struck down. Repeated choices to exclude multi-family housing from the Town have resulted in a disparate impact on recipients of housing assistance, in clear violation of Connecticut statute. Applying the relevant evidentiary framework, a reviewing court will hold the Town to be in violation of the statute and strike down the zoning scheme.

⁶²³ 24 C.F.R. § 100.500(c)(1) - (2) (2020).

⁶²⁴ 24 C.F.R. § 100.500(c)(3) (2020).

⁶²⁵ *Dews v. Town of Sunnyvale*, 109 F.Supp.2d 526, 569 (finding that septic tank concerns justified large-lot single-family zoning only in a small part of the town); *Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Par.*, 641 F. Supp. 2d 563, 574-77 (E.D. La. 2009) (finding that town-wide moratorium was not needed to prevent the negative effects of a large development in one particular section of the town).

The Proposed Opportunity Housing Zoning Regulation Is Consistent With Portions of Woodbridge's Plan of Conservation and Development

I. Consideration of POCD in Zoning Amendments

General Statutes § 8-2(a) provides that zoning regulations "shall be made in accordance with a comprehensive plan and in adopting such regulations the commission shall consider the plan of conservation and development prepared under section 8-23." As part of this consideration, the commission "shall state on the record its findings on consistency of the proposed establishment, change or repeal of such regulations and boundaries with such plan."⁶²⁶ Similarly, § 8-3a(a) provides that "in any municipality which has a combined planning and zoning commission [such as Woodbridge] . . . the commission shall state on the record its findings on consistency of a proposed zoning regulation or boundaries or changes thereof with the plan of development of the municipality."

Despite this consideration requirement, the Connecticut Supreme Court has held that the zoning commission "is not bound by the plan," which is "merely advisory."⁶²⁷ While a commission must make findings about consistency, it does not have to "deny the proposed zoning change" simply because "there is an inconsistency between the proposed change and the town's plan of development."⁶²⁸ The statutory framework "requir[es] **consideration**" of the POCD, but only "encourage[s] a policy of **conformance** with the recommendations made in the plan."⁶²⁹

That said, "a commission may deny a change of zone request by citing lack of compliance with the municipal plan of conservation and development, even though the document is advisory."⁶³⁰ Similarly, a commission may rely "on specific findings and recommendations" made in the POCD as a basis for approving "amendments to the zoning regulations and zoning map."⁶³¹

Woodbridge's current POCD identifies itself as a merely advisory document, stating that its "Action Agenda does not bind the Board of Selectmen or any other branch of Town

⁶²⁶ General Statutes § 8-3(b).

⁶²⁷ *Harris v. Zoning Comm'n*, 788 A.2d 1239, 1244 n.4 (Conn. 2002).

⁶²⁸ *Aiudi & Sons, LLC v. Plainville Planning & Zoning Comm'n*, No. CV000499805S, 2001 WL 862683, at *4 (Conn. Super. Ct. July 6, 2001); *see also* *Slowikowska v. Cromwell Planning & Zoning Comm'n*, No. CV166067913S, 2017 WL 2817580, at *4-5 (Conn. Super. Ct. May 19, 2017) (plaintiffs argued that an approved zone change was inconsistent with eight provisions of the Plan of Conversation and Development; the court declined to find "that the commission abused its broad legislative discretion in an illegal or arbitrary way").

⁶²⁹ *Six Six One Middle Tpk. Assocs. v. Planning & Zoning Comm'n*, No. CV 9661220S, 1999 WL 370543, at *12 (Conn. Super. Ct. May 18, 1999).

⁶³⁰ *Madison NR, LLC v. Town of Madison Planning & Zoning Comm'n*, No. CV010455127S, 2002 WL 31819071, at *5 (Conn. Super. Ct. Nov. 22, 2002) (citing *Hall v. Planning & Zoning Board*, 153 Conn. 574, 576 (1966)).

⁶³¹ *Six Six One Middle Tpk. Assocs.*, 1999 WL 370543, at *12.

government to take particular actions."⁶³² Instead, it provides "a framework that must be consulted in the course of . . . any amendments to the Town's zoning regulations."⁶³³

II. Current Woodbridge POCD

Woodbridge's most recent POCD dates from 2015.⁶³⁴ On the whole, the POCD recognizes Woodbridge's lack of affordable housing, but spends most of its energy on finding solutions to the problems faced by existing, aging Woodbridge residents, rather than on exploring ways to make the Town's opportunities available to other families. The POCD pays lip service to the idea of making affordable housing available in the Town, but, in substance, assumes that development practices will remain much as they have been. For example, the POCD's "buildout scenario . . . assumes that [Woodbridge's existing] regulations will persist into the future."⁶³⁵ The POCD estimates that 613 new housing units could be built under current rules,⁶³⁶ but notes that "the bulk of [these] potential residential development opportunities" are located in "the Residential A zoning district," which only "allows for single-family housing on parcels 1.5 acres and larger."⁶³⁷ In short, the POCD makes no effort to "make provision for the development of housing opportunities" or "promote housing choice and economic diversity."

Nonetheless, **our proposal to allow multi-family housing in residential zones is consistent with the current POCD**, even in its statutorily deficient state:

- The "Housing and Demographics" chapter notes that "the Town could see a decline in population of several hundred residents by the conclusion of this plan,"⁶³⁸ as well as "declining numbers of school age children,"⁶³⁹ which would suggest that multi-family development would not create a population strain.
- This Chapter also finds a "need for additional housing units in the Woodbridge Village area, including mixed use housing suited to the Village's character," in part because the "larger single-family units" that older homeowners may soon attempt to sell will not be in high demand by "younger buyers living in smaller households with fewer children."⁶⁴⁰ This analysis could lend support to zoning regulations that allow greater housing density.

⁶³² 2015-25 WOODBRIDGE POCD, *supra* note 241 at 135.

⁶³³ *Id.*

⁶³⁴ *Id.*

⁶³⁵ *Id.* at 67.

⁶³⁶ *Id.* at 68.

⁶³⁷ *Id.* at 70.

⁶³⁸ *Id.* at 8.

⁶³⁹ *Id.* at 11.

⁶⁴⁰ *Id.* at 17.

- The POCD describes "Woodbridge's racial composition" (87% White, 9% Asian, 2% Black in 2010) as "fairly homogenous, especially in comparison to both New Haven County and the State of Connecticut."⁶⁴¹ Affordable multi-family housing opportunities would help change this self-identified homogeneity.
- After noting that Woodbridge "has the highest housing prices of all of its surrounding communities, and has held that position for 25 years,"⁶⁴² the POCD acknowledges that these "high housing costs pose affordability challenges."⁶⁴³ A majority of renters in Woodbridge "pay over 30% of household income on rent and related housing expenses."⁶⁴⁴ Moreover, "only 39 units or 1.1% of Woodbridge's housing stock" are assisted by "program including CHFA and HUD assisted units, tenant rental assistance, and CHFA and USDA-backed mortgages."⁶⁴⁵ Incomes in Woodbridge "are highly concentrated in the top three categories of households earning \$100,000 or more each year," while "far fewer Woodbridge households fall into low-to-moderate income categories."⁶⁴⁶ This discussion could indicate a need for additional policy interventions to promote affordability.
- The POCD indicates that Woodbridge's many "large homes" are out of balance with "shrinking households."⁶⁴⁷ Strikingly, "56% of Woodbridge homes have at least four bedrooms, while only a quarter of households have four or more persons."⁶⁴⁸ The POCD warns that "residents seeking smaller homes—which may be more affordable and easier to maintain—have very few choices available, and may look for more suitable options elsewhere."⁶⁴⁹ Allowing multi-family housing could create such options in Woodbridge.
- The "Housing Action Plan" calls for "enhancing the variety of options available through future development opportunities," including "options for Woodbridge's youngest and oldest families,"⁶⁵⁰ which could arguably be provided by multi-family housing. The "Mid-Term Action Agenda" calls for "provid[ing] smaller, lower-maintenance housing options with and without age restrictions," giving the specific example of "in-law units

⁶⁴¹ *Id.* at 19.

⁶⁴² *Id.* at 23.

⁶⁴³ *Id.* at 24.

⁶⁴⁴ *Id.*

⁶⁴⁵ *Id.*

⁶⁴⁶ *Id.* at 33.

⁶⁴⁷ *Id.* at 25.

⁶⁴⁸ *Id.*

⁶⁴⁹ *Id.*

⁶⁵⁰ *Id.* at 27.

for related persons" ⁶⁵¹ – but this logic could be extended to include multi-family housing options.

- The "Transportation" chapter notes that "observed traffic volumes have fallen on most roads since 2006," which may reduce concerns that multi-family housing would lead to burdensome traffic levels. ⁶⁵²

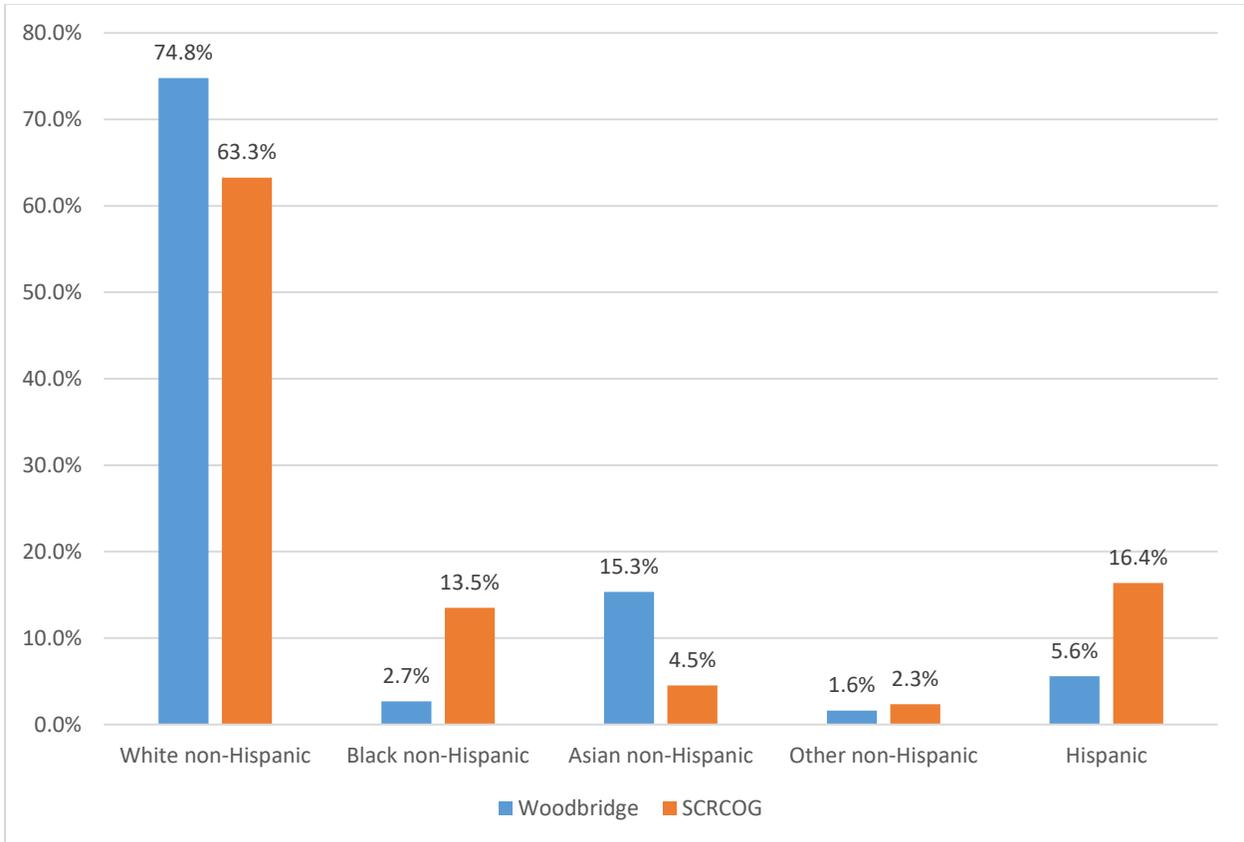
⁶⁵¹ *Id.* at 28.

⁶⁵² *Id.* at 50.

Data Appendix

I. Racial Composition Of Woodbridge And SCRCOG Populations, 2018^{653, 654}

	Woodbridge	SCRCOG
White non-Hispanic	74.8%	63.3%
Black non-Hispanic	2.7%	13.5%
Asian non-Hispanic	15.3%	4.5%
Other non-Hispanic	1.6%	2.3%
Hispanic	5.6%	16.4%

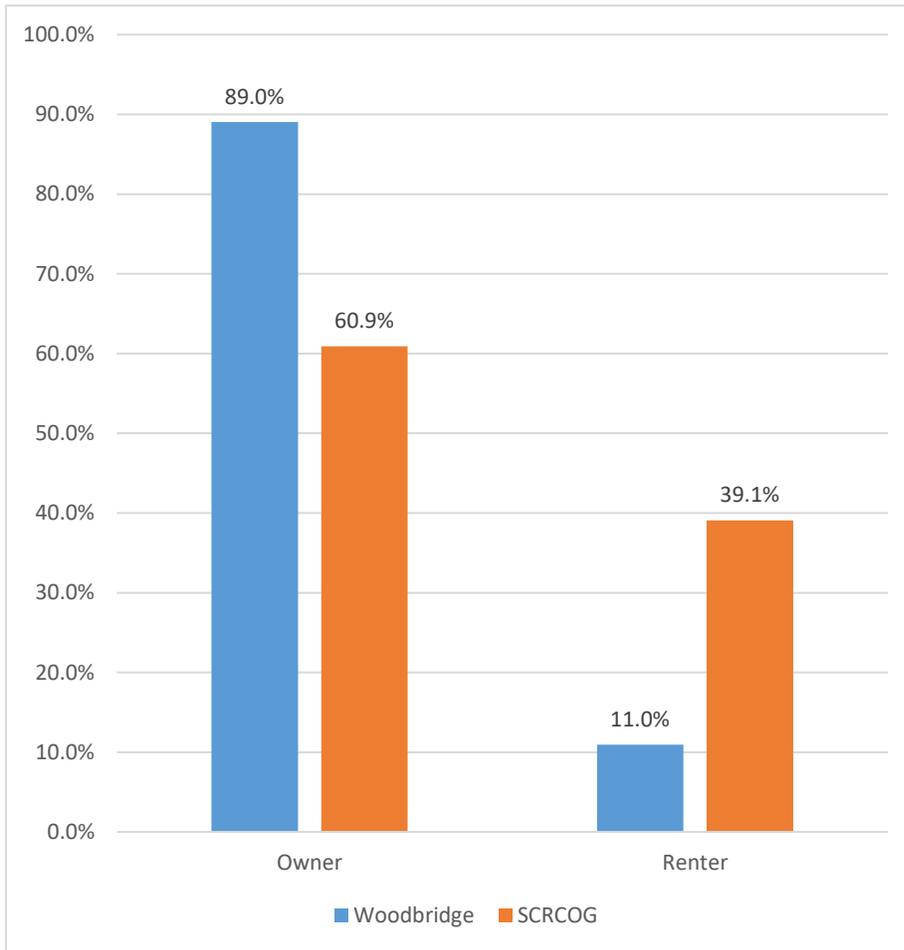


⁶⁵³ Source: Census 2018 ACS 5-Year Estimates Detailed Tables, Table ID: B03002.

⁶⁵⁴ The SCRCOG (South Central Region Council of Governments) is comprised of 15 towns: Bethany, Branford, East Haven, Guilford, Hamden, Madison, Meriden, Milford, New Haven, North Branford, North Haven, Orange, Wallingford, West Haven and Woodbridge. New Haven County and the New Haven-Milford Metropolitan Statistical Area (MSA) are comprised of 28 towns total, the same 15 towns in the SCRCOG and these 13 additional towns: Ansonia, Beacon Falls, Cheshire, Derby, Middlebury, Naugatuck, Oxford, Prospect, Seymour, Southbury, Waterbury and Wolcott.

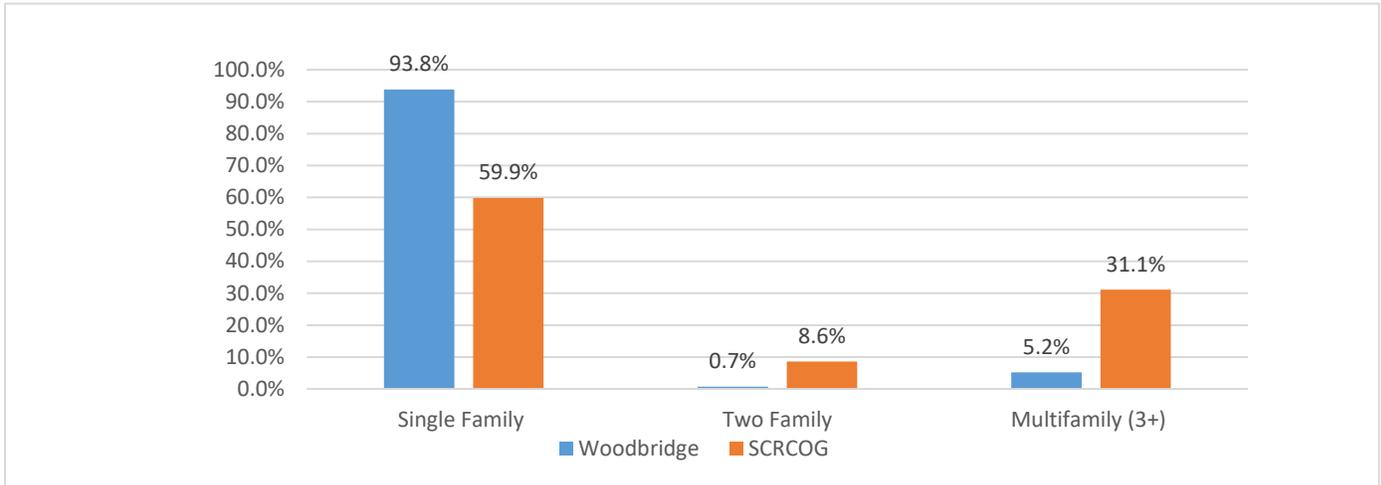
II. Composition Of Renters And Owners In Woodbridge And The SCRCOG, 2018⁶⁵⁵

	Woodbridge	SCRCOG
Owner	89.0%	60.9%
Renter	11.0%	39.1%



⁶⁵⁵ Source: 2018 ACS 5-Year Estimates Detailed Tables, Table ID: B25032.

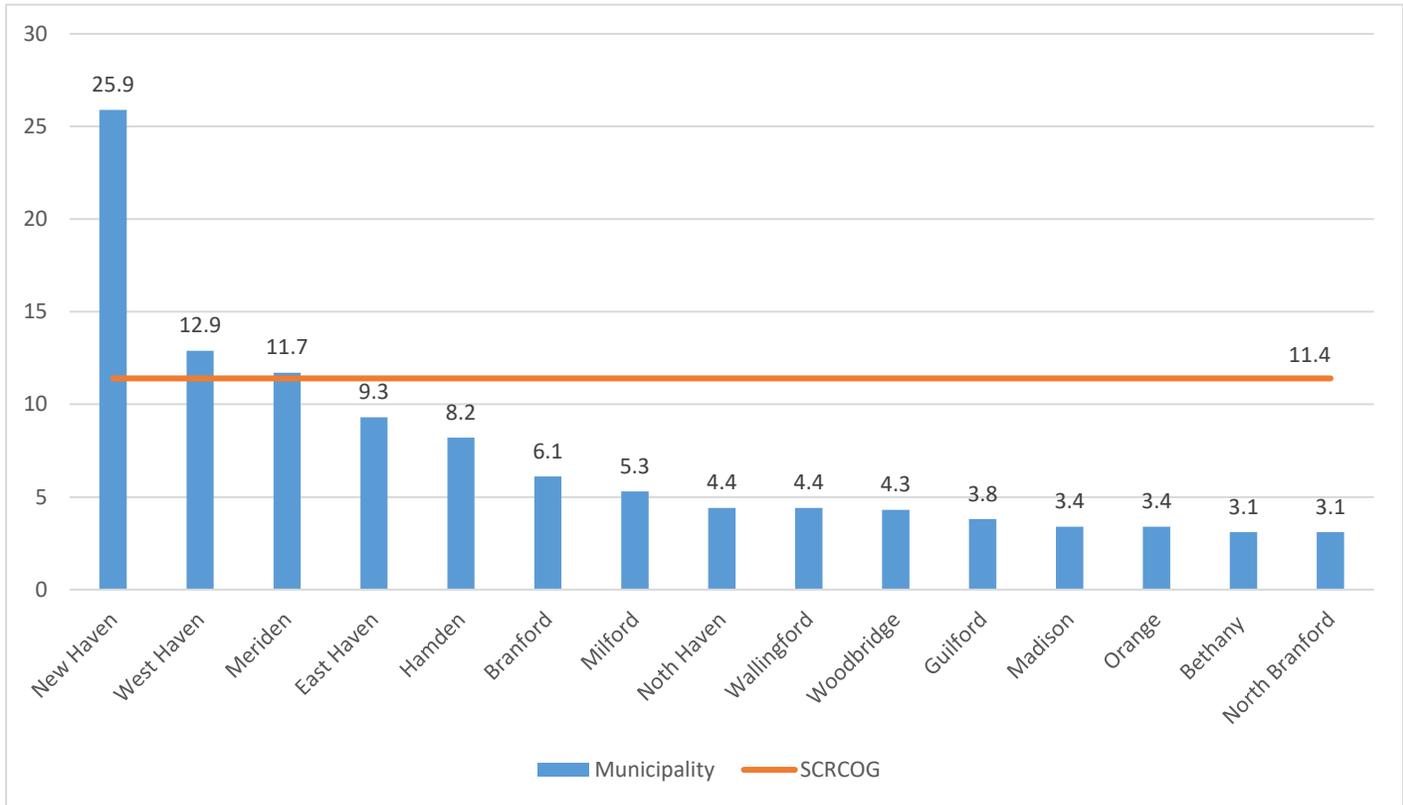
III. Proportion Of Households In Single-Family, Two-Family And Multi-Family (3+) Structures, SCRCOG 2018⁶⁵⁶



Town	Total	Single-Family Units	Percent	Two-Family Units	Percent	Multi-Family (3+) Units	Percent
Bethany	1,967	1,862	94.7%	8	0.4%	0	0.0%
Branford	12,430	8,370	67.3%	712	5.7%	3,143	25.3%
East Haven	11,113	7,644	68.8%	717	6.5%	2,735	24.6%
Guilford	8,314	7,358	88.5%	267	3.2%	675	8.1%
Hamden	22,945	14,267	62.2%	1,436	6.3%	7,202	31.4%
Madison	6,911	6,409	92.7%	97	1.4%	405	5.9%
Meriden	26,218	14,974	57.1%	2,632	10.0%	8,536	32.6%
Milford	22,065	16,446	74.5%	819	3.7%	4,612	20.9%
New Haven	49,770	12,325	24.8%	8,634	17.3%	28,781	57.8%
North Branford	5,451	4,575	83.9%	161	3.0%	686	12.6%
North Haven	8,785	7,546	85.9%	97	1.1%	1,142	13.0%
Orange	4,939	4,501	91.1%	64	1.3%	374	7.6%
Wallingford	18,518	13,118	70.8%	1,393	7.5%	3,795	20.5%
West Haven	19,576	10,723	54.8%	1,941	9.9%	6,884	35.2%
Woodbridge	2,931	2,750	93.8%	20	0.7%	153	5.2%
SCRCOG	221,933	132,868	59.9%	18,998	8.6%	69,123	31.1%

⁶⁵⁶ Source: 2018 ACS 5-Year Estimates Detailed Tables, Table ID: B25032. The ACS data presented here for multi-family units consists of occupied housing units in structures of three or more units. This ACS category likely includes senior-only housing but may not include all nursing homes, some of which are classified as group quarters, not as housing units by the ACS. These data do not include mobile homes, RVs, boats and other vehicles.

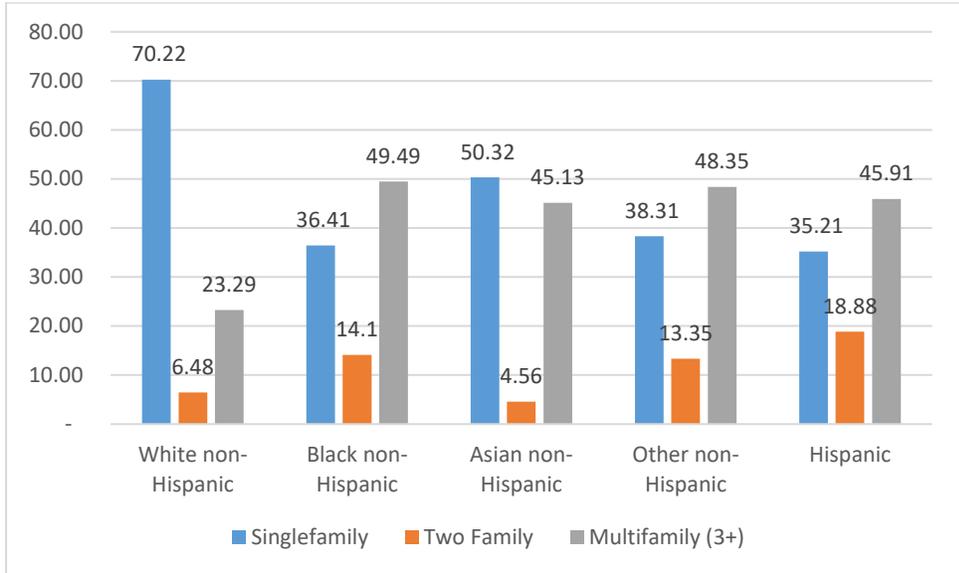
IV. Percent Of Households That Live Below The Federal Poverty Threshold By Town, SCRCOG 2018^{657, 658}



⁶⁵⁷ Source: 2018 ACS 5-Year Estimates Detailed Tables, Table ID: S1701. Note: the orange line represents the poverty rate for the region. Universe: population for whom poverty status is determined. See the following website for more information on poverty status: <https://www.census.gov/topics/income-poverty/poverty/guidance/poverty-measures.html>.

⁶⁵⁸ In 2018 the poverty threshold for a family of four was \$25,701. See the following website for more information on the poverty threshold: <https://www.census.gov/topics/income-poverty/poverty/guidance/poverty-measures.html>.

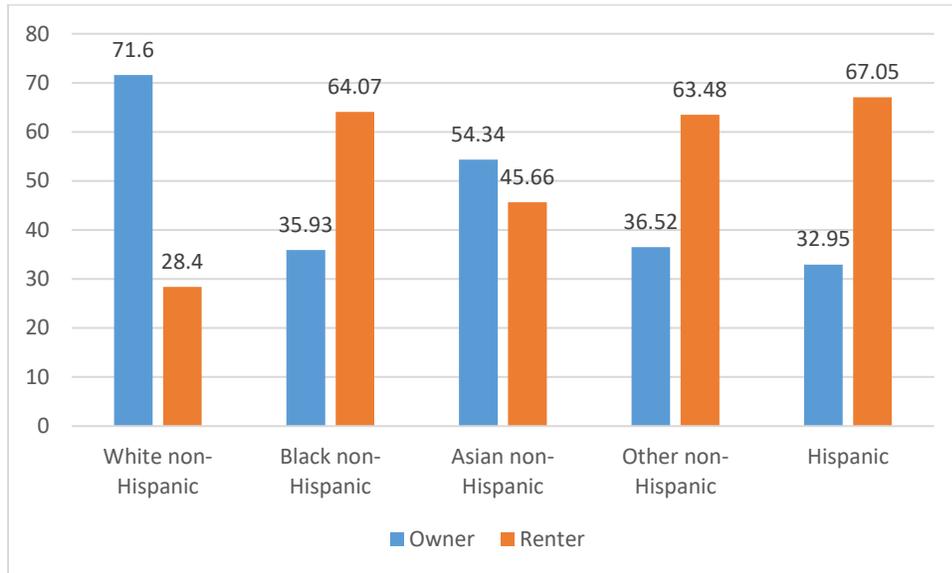
V. Percent Of Households That Live In Single-Family, Two-Family And Multi-Family (3+) Structures By Race, SCRCOG 2018⁶⁵⁹



Black non-Hispanic households are 4.12 times as likely as White non-Hispanic households to live in two or more-unit structures. Hispanic households are 4.34 times as likely as White non-Hispanic households to live in two or more-unit structures. Black non-Hispanic households are 4.1 times as likely as White non-Hispanic households to live in multi-family (3+) structures; Hispanic households are 3.93 times as likely as White non-Hispanic households to live in multi-family (3+) structures.

⁶⁵⁹ Source: 2014-2018, ACS 5-year, IPUMS USA, University of Minnesota, www.ipums.org; the SCRCOG is defined here as the 5 PUMAs that encompass the SCRCOG (00902, 00903, 00904, 00905, 00906) and include data from three towns (Seymour, Ansonia and Derby) that are not part of the SCRCOG.

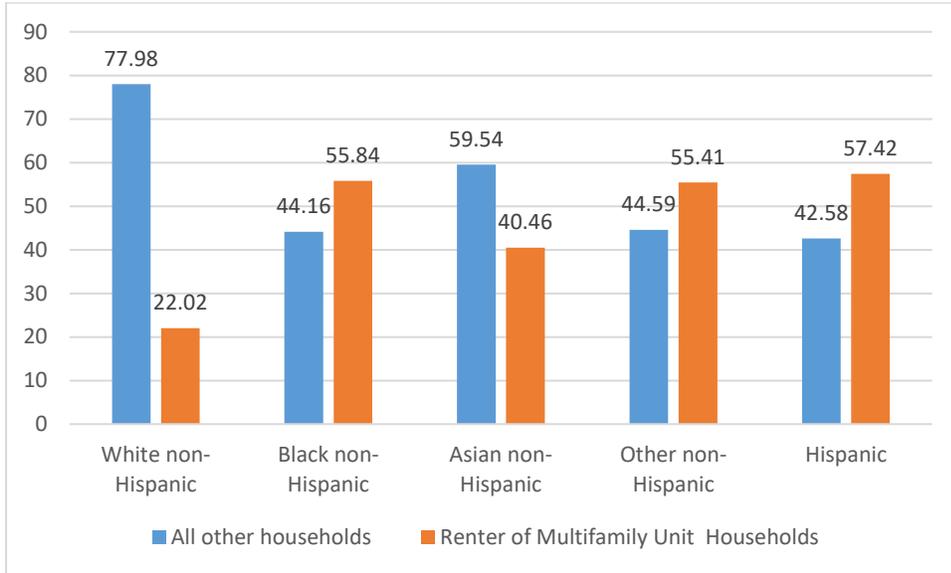
VI. Percent Of Households That Are Renters Versus Owners By Race, SCRCOG 2018⁶⁶⁰



Black non-Hispanic households are 4.49 times as likely as White non-Hispanic households to be renters; Hispanic households are 5.13 times as likely as White non-Hispanic households to be renters.

⁶⁶⁰ *Id.*

VII. Percent of Households that are Renters in Two or More Unit Structures by Race, SCRCOG 2018⁶⁶¹



Black non-Hispanic households are 4.48 times as likely as White non-Hispanic households to be renters in two or more unit structures; Hispanic households are 4.78 times as likely as White non-Hispanic households to be renters in two or more unit structures.

⁶⁶¹ *Id.*

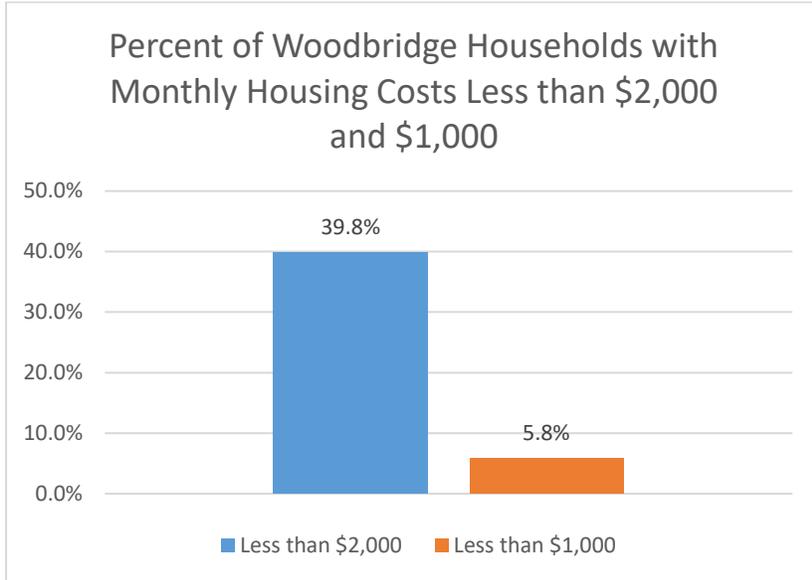
VIII. Department Of Housing "Assisted Units" And Percent Of Units In Multi-Family (3+) Structures, SCRCOG 2018-2019⁶⁶²

Woodbridge has 30 multi-family affordable units, 8 voucher households and 5 state mortgage-subsidy households for a total of 43 units counted by the State Department of Housing as affordable for the purposes of the annual Affordable Housing Appeals Act listing, available at: <https://portal.ct.gov/DOH/DOH/Programs/Affordable-Housing-Appeals-Listing>. All 30 of the multi-family housing units in Woodbridge that were counted as affordable by the State in 2018-2019 are restricted elderly units.

	Percent Assisted Units	Percent Multi-Family (3+) Units
New Haven	32.05%	57.8%
Meriden	16.45%	32.6%
West Haven	14.42%	35.2%
Hamden	8.67%	31.4%
East Haven	8.03%	24.6%
North Haven	5.44%	13.0%
Milford	5.31%	20.9%
Wallingford	4.33%	20.5%
Branford	3.36%	25.3%
Guilford	2.41%	8.1%
North Branford	2.22%	12.6%
Madison	1.69%	5.9%
Orange	1.37%	7.6%
Woodbridge	1.24%	5.2%
Bethany	0.68%	0.0%
SCRCOG	13.3%	31.1%

⁶⁶² Sources: CT Department of Housing, Affordable Housing Appeals List 2019; 2018 ACS 5-Year Estimates Detailed Tables, Table ID: B25032. With regard to the data concerning multi-family units, see also, Data Appendix III, *supra*, and the footnote appended thereto.

IX. Monthly Housing Costs In Woodbridge, 2018⁶⁶³



In 2018, the Woodbridge median household income was estimated to be \$142,188, meaning that the median Woodbridge household, spending no more than 30% of household income could afford to pay \$3,554.70 per month towards housing costs.⁶⁶⁴

⁶⁶³ Source: 2018 ACS 5-year Estimates Detailed Tables; table ID: B25094, DP04. These figures include the 29.6% (772) of homeowner households in Woodbridge which do not have a mortgage; 2018 ACS 5-year Estimates Detailed Tables; table ID: B25081.

⁶⁶⁴ Source: 2018 ACS 5-year Estimates Detailed Tables; table ID: B19013.

X. Mean And Median Household Income By Race, SCRCOG 2018 (in 2018 Dollars)⁶⁶⁵

	SCRCOG Mean Household Income	SCRCOG Median Household Income	SCRCOG Housing Costs Affordable to the Median Household
White non-Hispanic	\$104,613	\$78,999	\$1,975
Black non-Hispanic	\$58,300	\$41,600	\$1,040
Asian non-Hispanic	\$119,041	\$88,915	\$2,223
Other non-Hispanic	\$73,262	\$55,861	\$1,397
Hispanic	\$58,998	\$45,289	\$1,132
Total	\$92,637	\$68,028	\$1,701

⁶⁶⁵ Source: 2014-2018, ACS 5-year, IPUMS USA, University of Minnesota, www.ipums.org; the SCRCOG is defined here as the 5 PUMAs that encompass the SCRCOG (00902, 00903, 00904, 00905, 00906) and include data from three towns (Seymour, Ansonia and Derby) that are not part of the SCRCOG.

XI. Average Home Value In The SCRCOG By Zip Code, 2020^{666, 667}

Zip Code	Town	Median Home Value
06443	Madison	\$ 409,753
06525	Woodbridge	\$ 403,449
06477	Orange	\$ 382,679
06461	Milford	\$ 314,474
06460	Milford	\$ 304,980
06472	North Branford	\$ 292,971
06471	North Branford	\$ 267,486
06492	Wallingford	\$ 260,784
06518	Hamden	\$ 238,922
06517	Hamden	\$ 232,885
06510	New Haven	\$ 232,633
06515	New Haven	\$ 225,373
06512	East Haven	\$ 212,431
06511	New Haven	\$ 211,238
06516	West Haven	\$ 200,613
06514	Hamden	\$ 190,311
06450	Meriden	\$ 176,073
06451	Meriden	\$ 175,629
06513	New Haven	\$ 156,701

⁶⁶⁶ Source: Zillow Home Value Index (ZHVI); Universe: all homes; some Zip Codes in SCRC not available; As of 4/30/2020 (in 2020 dollars); ZHVI data: <https://www.zillow.com/research/data/>; ZHVI Methodology: <https://www.zillow.com/research/zhvi-methodology-2019-deep-26226/>

⁶⁶⁷ This table shows all zip codes that were reported by Zillow in the SCRCOG region, some zip codes are not reported by Zillow for lack of data.

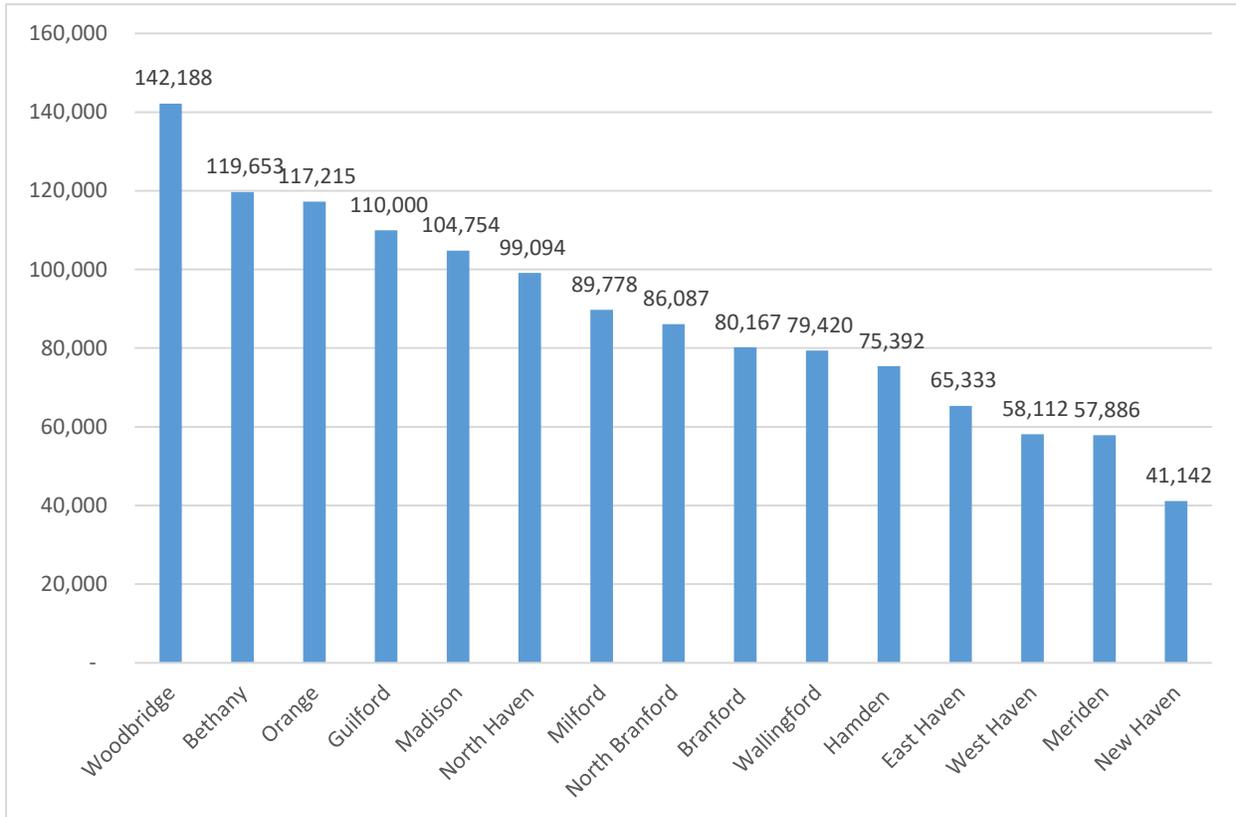
XII. Mortgage Applications in Woodbridge and New Haven County by Race, 2007-2017^{668, 669}

	Woodbridge		New Haven County	
Black non-Hispanic	46	3.1%	10,749	9.2%
Asian non-Hispanic	219	14.9%	5,001	4.3%
White non-Hispanic	1,144	77.9%	88,062	75.0%
Other non-Hispanic	7	0.5%	594	0.5%
Hispanic	53	3.6%	13,033	11.1%
Total	1,469	100%	117,439	100%

⁶⁶⁸ Source: Consumer Financial Protection Bureau, Home Mortgage Disclosure Act Data, cfpb.gov.

⁶⁶⁹ Race data missing for 31,334 applications in NH County.

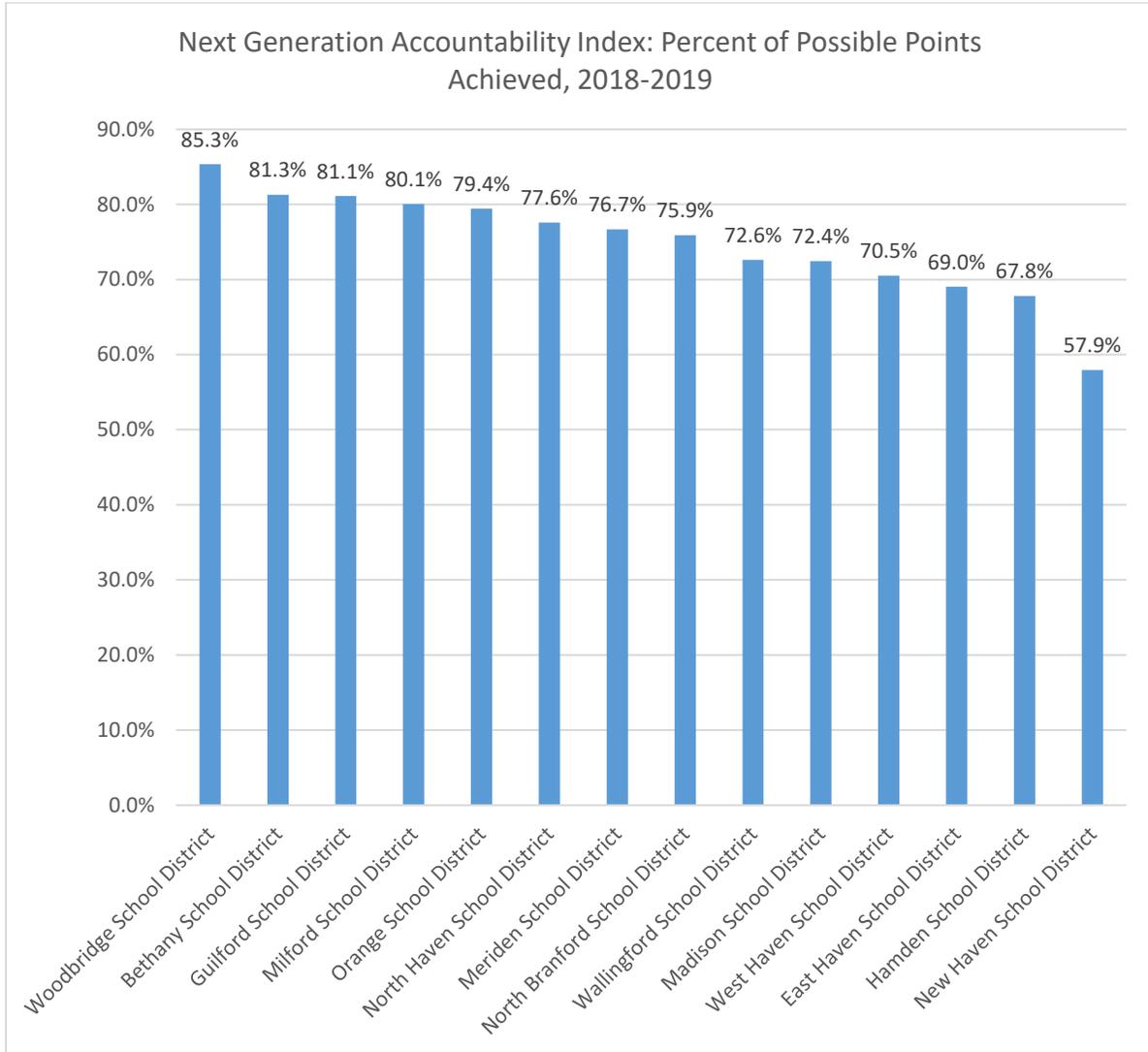
XIII. Median Household Income by Town, SCRCOG 2018 (in 2018 dollars)⁶⁷⁰



Woodbridge	142,188
Bethany	119,653
Orange	117,215
Guilford	110,000
Madison	104,754
North Haven	99,094
Milford	89,778
North Branford	86,087
Branford	80,167
Wallingford	79,420
Hamden	75,392
East Haven	65,333
West Haven	58,112
Meriden	57,886
New Haven	41,142

⁶⁷⁰ Source: 2018 ACS 5-year Estimates Detailed Tables; table ID: B19013.

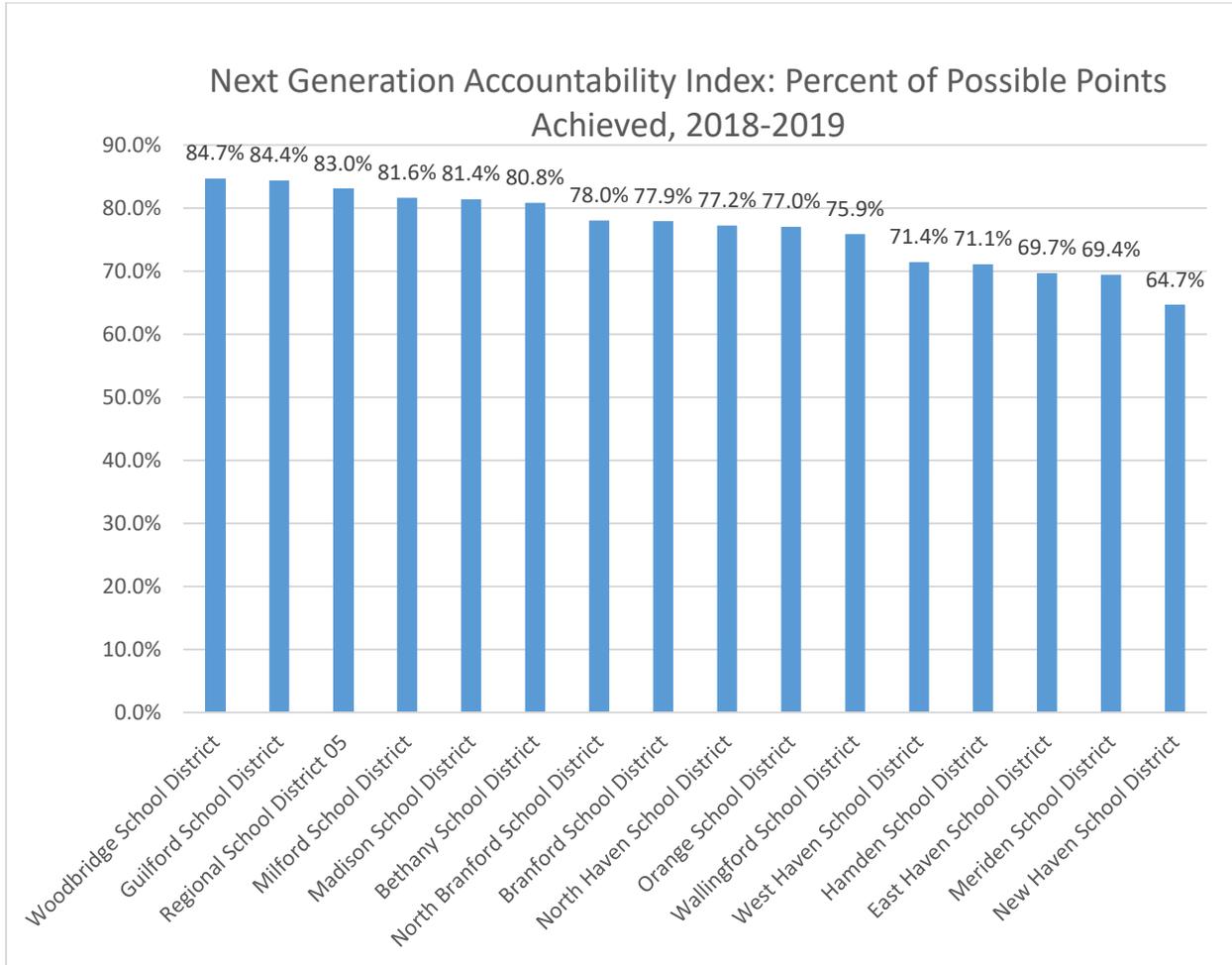
XIV. Elementary School Performance Metrics In The SCRCOG Used By State Department Of Education, 2019^{671, 672}



⁶⁷¹ For purposes of comparison, elementary school is defined as having a highest grade level of 5th or 6th grade – Branford which has no such school, is excluded. School districts include magnet schools and exclude charter schools, which are considered separate school districts by the state’s department of education.

⁶⁷² Source: CDSE District Profile and Performance Reports, <http://edsight.ct.gov/SASPortal/main.do>.

XV. School District Performance Metrics In The SCRCOG Used By State Department Of Education, 2019^{673, 674}



⁶⁷³ Regional District 05 serves middle and high school Woodbridge residents. School districts include magnet schools and exclude charter schools, which are considered separate school districts by the state’s department of education.

⁶⁷⁴ Source: CDSE District Profile and Performance Reports, <http://edsight.ct.gov/SASPortal/main.do>.

**XVI. Racial Composition Of Enrolled Students In Schools Serving Woodbridge Residents
2018-2019⁶⁷⁵**

	Woodbridge School District		Regional School District 05	
American Indian / Alaskan Native	suppressed < 20	n/a	suppressed < 20	n/a
Asian	118	13.9%	311	14.2%
Black or African American	suppressed < 20	n/a	66	3.0%
Hispanic or Latino of Any Race	62	7.3%	29	1.3%
Native Hawaiian / Pacific Islander	0	0.0%	suppressed < 20	n/a
Two or More Races	38	4.5%	95	4.3%
White	591	69.8%	1,676	76.7%
Total	847		2,186	

⁶⁷⁵ Source: CDSE District Profile and Performance Reports, <http://edsight.ct.gov/SASPortal/main.do>.

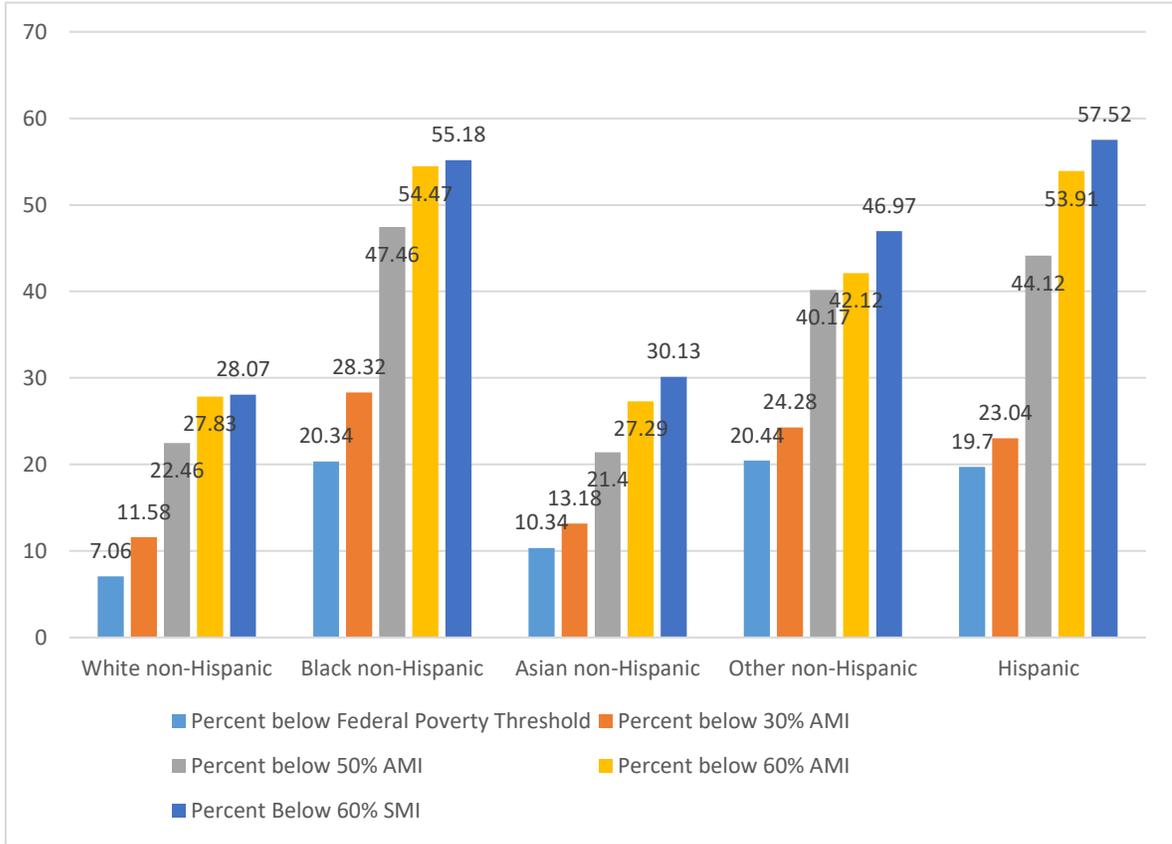
**XVII. Percent of Households Living Below Various Income Thresholds By Race,
SCRCOG 2018⁶⁷⁶**

	Percent below Federal Poverty Threshold	Percent below 30% AMI	Percent below 50% AMI	Percent below 60% AMI	Percent Below 60% SMI
White non- Hispanic	7.06	11.58	22.46	27.83	28.07
Black non- Hispanic	20.34	28.32	47.46	54.47	55.18
Asian non- Hispanic	10.34	13.18	21.4	27.29	30.13
Other non- Hispanic	20.44	24.28	40.17	42.12	46.97
Hispanic	19.70	23.04	44.12	53.91	57.52

Black non-Hispanic households are 3.12 times as likely as White non-Hispanic households to have incomes less than 50% AMI; Hispanic households are 2.73 times as likely as White non-Hispanic households to have incomes less than 50% AMI. Black non-Hispanic households are 3.16 times as likely as White non-Hispanic households to have incomes less than 60% SMI; Hispanic households are 3.47 times as likely as White non-Hispanic households to have incomes less than 60% SMI. Black non-Hispanic households are 3.36 times as likely as White non-Hispanic households to have incomes less than the poverty level; Hispanic households are 3.23 times as likely as White non-Hispanic households to have incomes less than the poverty level.

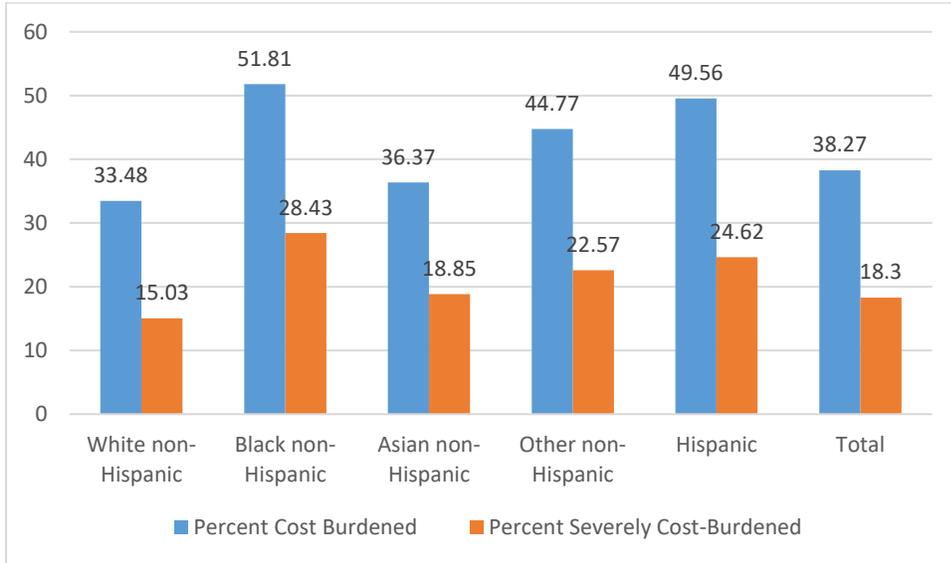
⁶⁷⁶ Source: 2014-2018, ACS 5-year, IPUMS USA, University of Minnesota, www.ipums.org; the SCRCOG is defined here as the 5 PUMAs that encompass the SCRCOG (00902, 00903, 00904, 00905, 00906) and include data from three towns (Seymour, Ansonia and Derby) that are not part of the SCRCOG.

XVIII. Percent Of Households Living Below Various Income Thresholds By Race, SCRCOG 2018⁶⁷⁷



⁶⁷⁷ *Id.*

XIX. Percent Of Households That Are Cost Burdened and Severely Cost Burdened By Race, SCRCOG 2018 ^{678, 679}

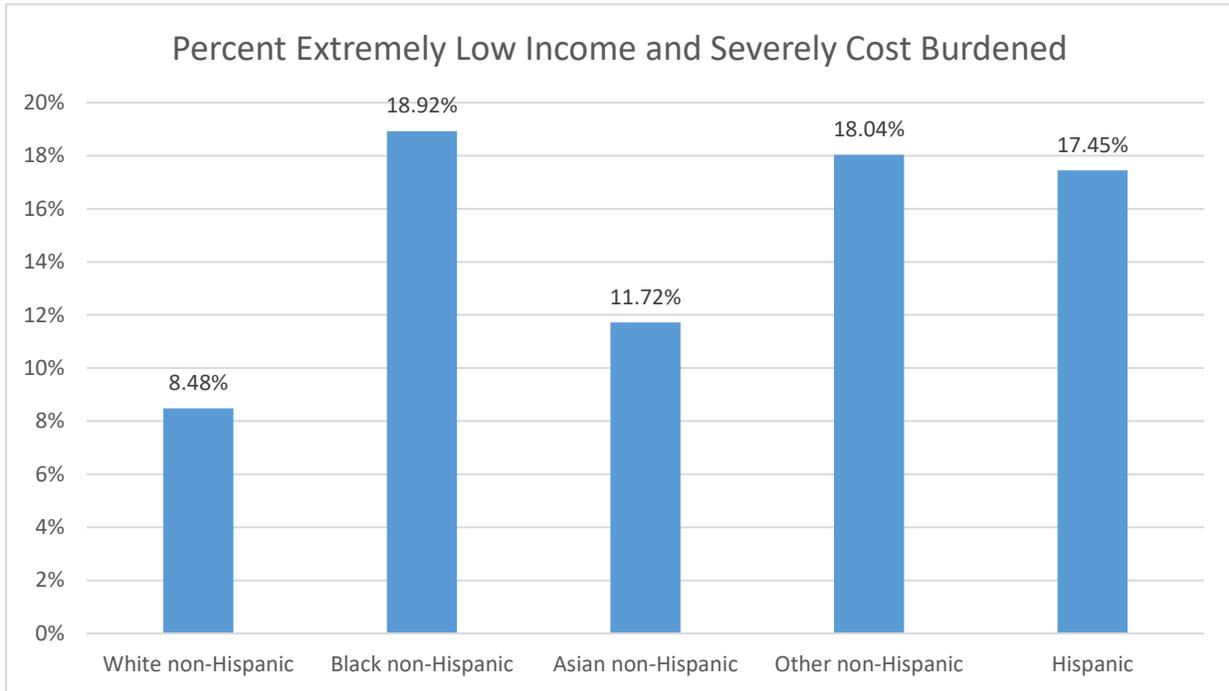


Black non-Hispanic households are 2.14 times as likely as White non-Hispanic households to be cost burdened; Hispanic households are 1.95 times as likely as White non-Hispanic households to be cost burdened. Black non-Hispanic households are 2.25 times as likely as White non-Hispanic households to be severely cost burdened; Hispanic households are 1.85 times as likely as White non-Hispanic households to be severely cost burdened.

⁶⁷⁸ "Cost-burdened" is defined as a household that pays greater than 30% of household income towards housing costs (rent, mortgage, utilities etc.); "Severely Cost Burdened" is defined as a household that pays greater than 50% of household income towards housing costs.

⁶⁷⁹ Source: 2014-2018, ACS 5-year, IPUMS USA, University of Minnesota, www.ipums.org; the SCRCOG is defined here as the 5 PUMAs that encompass the SCRCOG (00902, 00903, 00904, 00905, 00906) and include data from three towns (Seymour, Ansonia and Derby) that are not part of the SCRCOG.

XX. Percent Of Households That Are Extremely Low Income and Severely Cost Burdened By Race, SCRCOG 2018 ^{680, 681}



⁶⁸⁰ "Severely Cost Burdened" is defined as a household that pays greater than 50% of household income towards housing costs. "Extremely Low Income" is defined as a household that earns less than 30% of Area Median Income.

⁶⁸¹ Source: 2014-2018, ACS 5-year, IPUMS USA, University of Minnesota, www.ipums.org; the SCRCOG is defined here as the 5 PUMAs that encompass the SCRCOG (00902, 00903, 00904, 00905, 00906) and include data from three towns (Seymour, Ansonia and Derby) that are not part of the SCRCOG.

XXI. Race And Income Of Regional Housing Choice Voucher Households, 2019⁶⁸²

	Elm City Communities (New Haven Housing Authority)	New Haven County (all voucher administrators)
Vouchers reported	4,427	14,857
Black Non-Hispanic	55%	42%
Native American Non-Hispanic	0%	0%
Asian or Pacific Islander Non-Hispanic	0%	0%
Hispanic	37%	38%
White Non-Hispanic	9%	19%
Household income per year	\$17,665	\$17,272
% very low income (<50% AMI)	94%	95%
% extremely low income (<30% AMI)	76%	78%

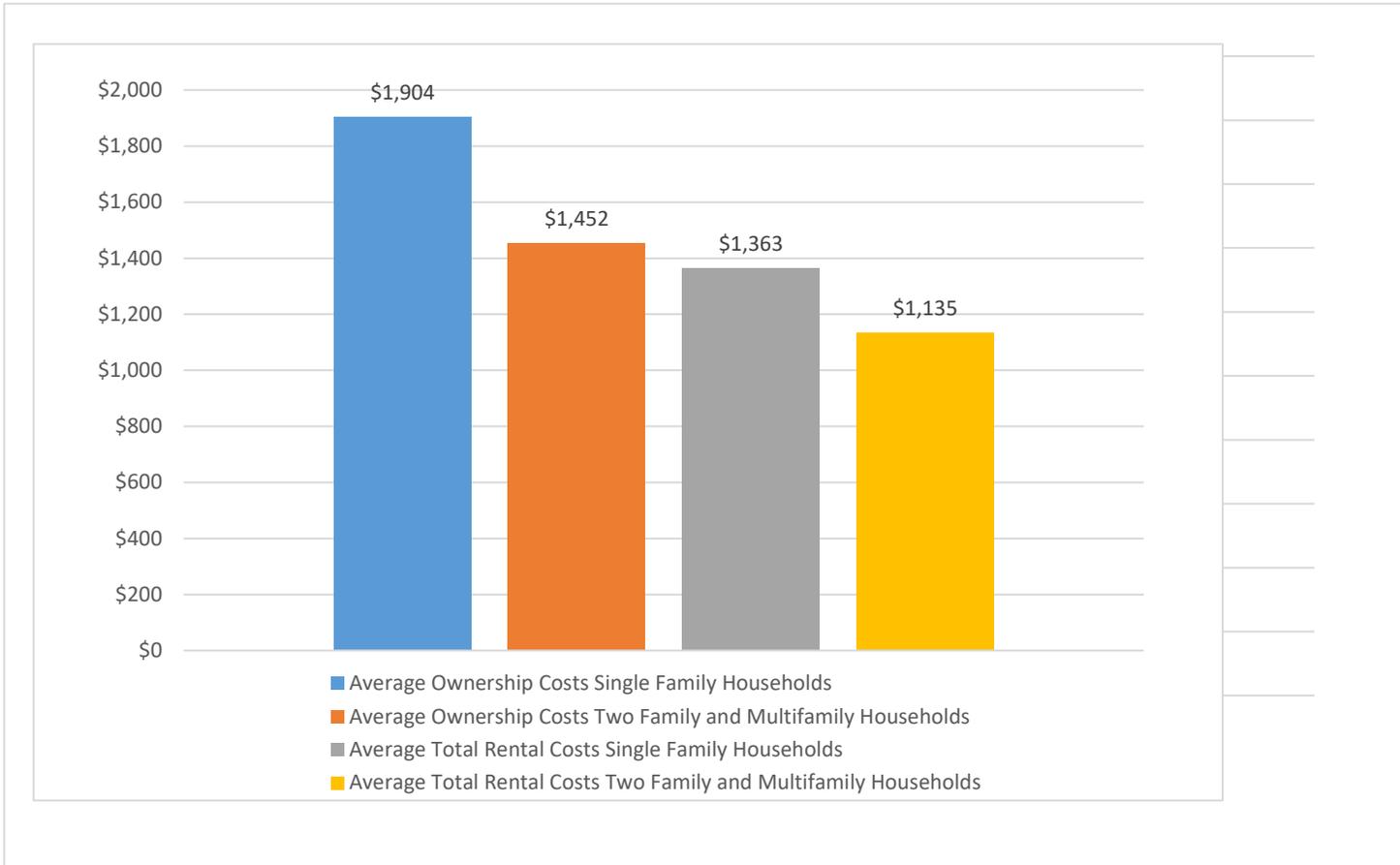
⁶⁸² Source: *Picture of Subsidized Households*, Department of Housing and Urban Development, Office of Policy Development and Research; https://www.huduser.gov/portal/datasets/assthsg.html#2009-2019_query.

XXII. Percent Of Households In Various Income Thresholds That Are In Multi-Family (3+) Structures, SCRCOG⁶⁸³

	Percent Multi-Family (3+)
Less than the federal poverty threshold	68.79%
Households earning less than 30% of AMI	66.17%
Households earning less than 50% of AMI	60%
Households earning less than 60% of AMI	57.25%
Households earning less than 60% of SMI	55.50%

⁶⁸³ Source: 2014-2018, ACS 5-year, IPUMS USA, University of Minnesota, www.ipums.org; the SCRCOG is defined here as the 5 PUMAs that encompass the SCRCOG (00902, 00903, 00904, 00905, 00906) and include data from three towns (Seymour, Ansonia and Derby) that are not part of the SCRCOG.

XXIII. Monthly Housing Costs By Number Of Units In Structure And Renter Versus Owner, SCRCOG 2018⁶⁸⁴



Owner Single-Family Households	\$1903.84
Owner Two-Family and Multi-Family (3+) Households	\$1452.12
Renter Single-Family Households	\$1363.09
Renter Two-Family and Multi-Family (3+) Households	\$1134.73

⁶⁸⁴ Source: 2014-2018, ACS 5-year, IPUMS USA, University of Minnesota, www.ipums.org; the SCRCOG is defined here as the 5 PUMAs that encompass the SCRCOG (00902, 00903, 00904, 00905, 00906) and include data from three towns (Seymour, Ansonia and Derby) that are not part of the SCRCOG.

XXIV. Mean and Median Household Income Of Multi-Family Renters, SCRCOG 2018⁶⁸⁵

	Median Income	Mean Income
Multi-Family Renters	\$37,029	\$49,321
All other households	\$87,327	\$113,337

⁶⁸⁵ *Id.*

XXV. Percent Of Households In Structures With Two Or More Units, That Are Renters And Low Income By Income and Race, SCRCOG 2018⁶⁸⁶

	Low Income (less than 60% of AMI), Two or More Units in Structure, and Renter Households	All Other Households
White non-Hispanic	11.11	88.89
Black non-Hispanic	39.81	60.19
Asian non-Hispanic	16.6	83.4
Other non-Hispanic	34.42	65.58
Hispanic	39.82	60.18

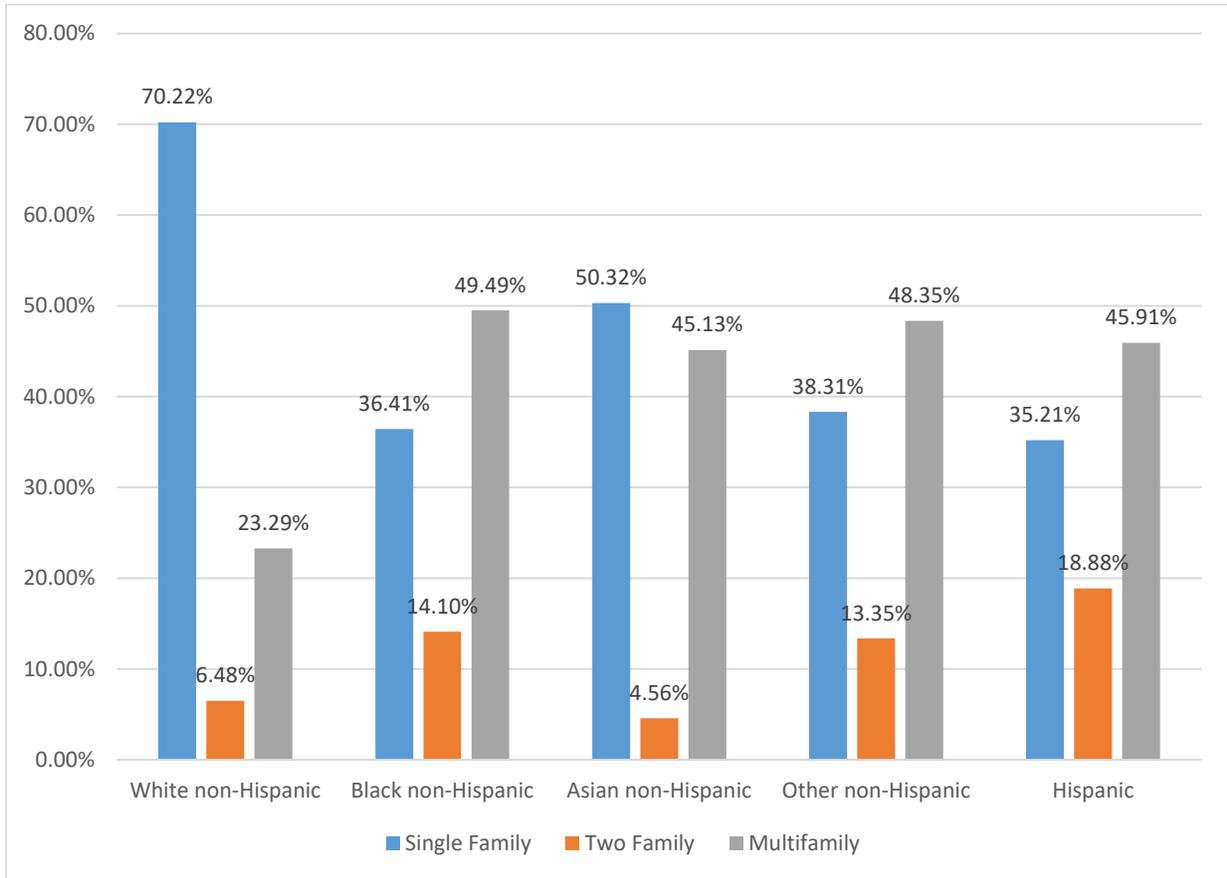
	Very Low Income (less than 50% of AMI), Two or More Units in Structure, and Renter Households	All Other Households
White non-Hispanic	9.38	90.62
Black non-Hispanic	35.84	64.16
Asian non-Hispanic	13.78	86.22
Other non-Hispanic	33.53	66.47
Hispanic	33.99	66.01

	Extremely Low Income (less than 30% of AMI), Two or More Units in Structure, and Renter Households	All Other Households
White non-Hispanic	5.73	94.27
Black non-Hispanic	21.11	78.89
Asian non-Hispanic	9.28	90.72
Other non-Hispanic	20.5	79.5
Hispanic	19.12	80.88

	Less than 60% of SMI, Two or More Units in Structure, and Renter Households	All Other Households
White non-Hispanic	10.82	89.18
Black non-Hispanic	39.94	60.06
Asian non-Hispanic	17.47	82.53
Other non-Hispanic	37.9	62.1
Hispanic	41.11	58.89

⁶⁸⁶ *Id.*

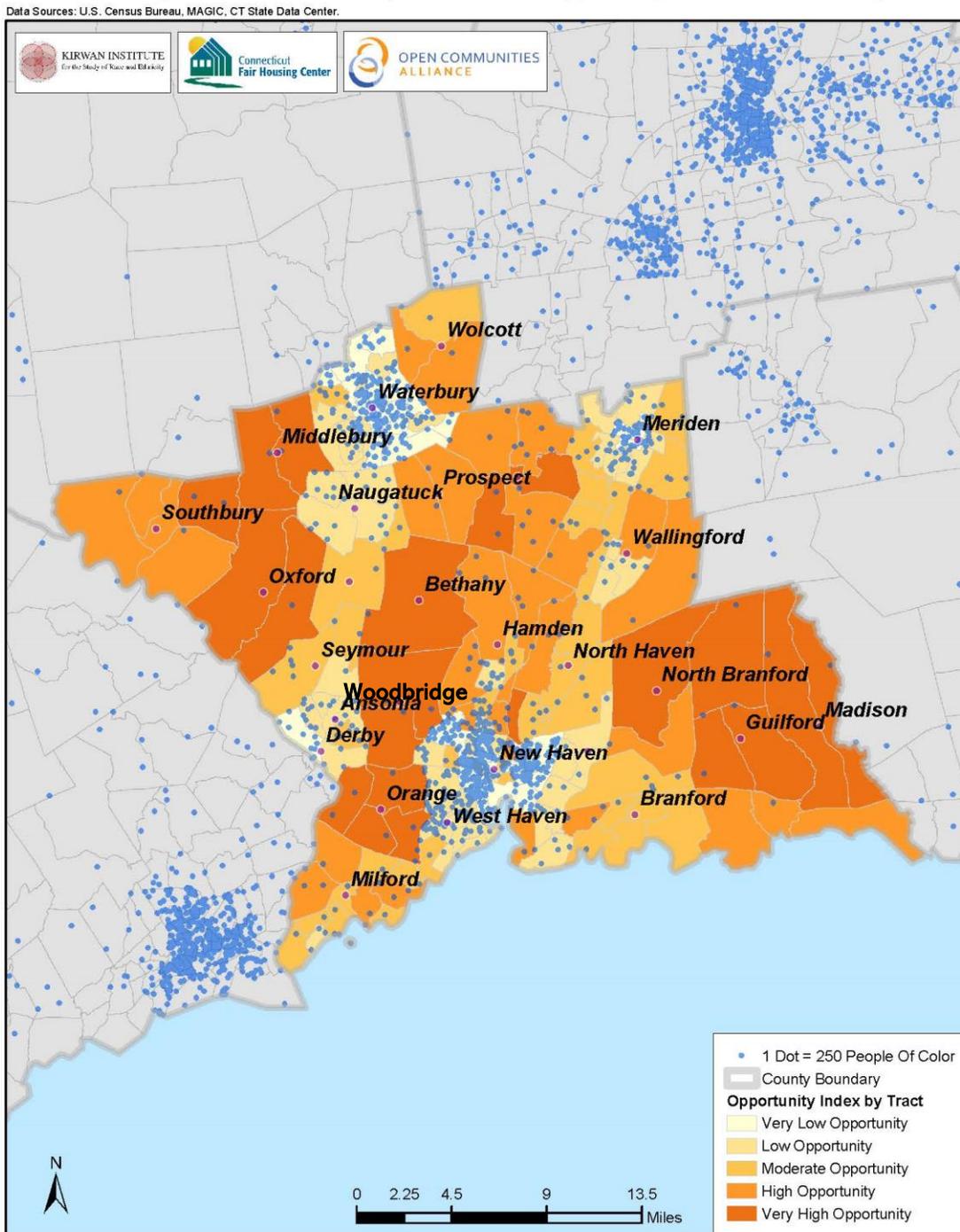
**XXVI. Percent of Households In Single Family, Two Family And Multifamily Structures
By Race, SCRCOG 2018⁶⁸⁷**



⁶⁸⁷ *Id.*

XXVII. New Haven County Opportunity And People Of Color⁶⁸⁸

Map of Distribution of People of Color and Opportunity in New Haven County



⁶⁸⁸ For information on the opportunity mapping methodology visit: https://www.ctoca.org/ct_opportunity_map.

XXVIII. Households with Children & Non-Senior Households Analysis⁶⁸⁹

Households by Number of Children:

Households by Number of Own Children, Connecticut 2018		
	Households	Proportion
0	824,275	60.28
1	255,866	18.71
2	196,903	14.4
3	68,614	5.02
4	16,816	1.23
5	3,601	0.26
6	1,029	0.08
7	177	0.01
8	81	0.01
9+	12	0
Total	1,367,374	100

Households by Number of Own Children, SCRCOG 2018		
	Households	Proportion
0	153,452	63.77
1	43,904	18.25
2	29,062	12.08
3	10,319	4.29
4	3,047	1.27
5	720	0.3
6	94	0.04
7	29	0.01
8	8	0
9+	0	0
Total	240,635	100

Households Earning Less than 60% of SMI by Number of Own Children, Connecticut 2018		
	Households	Proportion
0	281,582	62.3
1	71,486	15.82
2	58,821	13.01
3	28,815	6.38
4	8,498	1.88
5	2,055	0.45
6	651	0.14
7	73	0.02
8	16	0
9+	0	0
Total	451,997	100

Households Earning Less than 60% of SMI by Number of Own Children, SCRCOG 2018		
	Households	Proportion
0	55,829	64.69
1	13,417	15.55
2	9,970	11.55
3	5,142	5.96
4	1,495	1.73
5	412	0.48
6	31	0.04
7	0	0
8	0	0
9+	0	0
Total	86,296	100

⁶⁸⁹ Source: 2014-2018, ACS 5-year, IPUMS USA, University of Minnesota, www.ipums.org; the SCRC is defined here as the 5 PUMAs that encompass the SCRC (00902, 00903, 00904, 00905, 00906) and include data from three towns (Seymour, Ansonia and Derby) that are not part of the SCRC.

Households Earning Less than 60% of AMI by Number of Own Children, SCRCOG 2018		
	Households	Proportion
0	58,891	70.05
1	11,926	14.19
2	7,788	9.26
3	3,915	4.66
4	1,240	1.47
5	278	0.33
6	31	0.04
7	0	0
8	0	0
9+	0	0
Total	84,069	100

Households Earning Less than 50% of AMI by Number of Own Children, SCRCOG 2018		
	Households	Proportion
0	48,792	70.4
1	9,705	14
2	6,100	8.8
3	3,389	4.89
4	1,060	1.53
5	232	0.33
6	31	0.04
7	0	0
8	0	0
9+	0	0
Total	69,309	100

Households Earning Less than 30% of AMI by Number of Own Children, SCRCOG 2018		
	Households	Proportion
0	27,489	73.6
1	4,476	11.98
2	2,955	7.91
3	1,493	4
4	741	1.98
5	166	0.44
6	31	0.08
7	0	0
8	0	0
9+	0	0
Total	37,351	100

Households that are Extremely Low Income and Severely Cost Burdened by Number of Own Children (Fair Share Need), SCRCOG 2018		
	Households	Proportion
0	19,152	70.47
1	3,524	12.97
2	2,463	9.06
3	1,342	4.94
4	572	2.1
5	112	0.41
6	13	0.05
7	0	0
8	0	0
9+	0	0
Total	27,178	100

Households by Age of Head of Householder:

Households by Age of Head of Householder, Connecticut 2018		
	Households	Proportion
Below 65	1,010,913	73.93
65 or Above	356,461	26.07
Total	1,367,374	100

Households by Age of Head of Householder, SCRCOG 2018		
	Households	Proportion
Below 65	179,175	74.46
65 or Above	61,460	25.54
Total	240,635	100

Households Earning Less than 60% of SMI by Age of Head of Householder, Connecticut 2018		
	Households	Proportion
Below 65	301,987	66.81
65 or Above	150,010	33.19
Total	451,997	100

Households Earning Less than 60% of SMI by Age of Head of Householder, SCRCOG 2018		
	Households	Proportion
Below 65	59,184	68.58
65 or Above	27,112	31.42
Total	86,296	100

Households Earning Less than 60% of AMI by Age of Head of Householder, SCRCOG 2018		
	Households	Proportion
Below 65	56,384	67.07
65 or Above	27,685	32.93
Total	84,069	100

Households Earning Less than 50% of AMI by Age of Head of Householder, SCRCOG 2018		
	Households	Proportion
Below 65	46,449	67.02
65 or Above	22,860	32.98
Total	69,309	100

Households Earning Less than 30% of AMI by Age of Head of Householder, SCRCOG 2018		
	Households	Proportion
Below 65	25,895	69.33
65 or Above	11,456	30.67
Total	37,351	100

Households that are Extremely Low Income and Severely Cost Burdened (Fair Share Need) by Age of Head of Householder, SCRCOG 2018		
	Households	Proportion
Below 65	20,129	74.06
65 or Above	7,049	25.94
Total	27,178	100