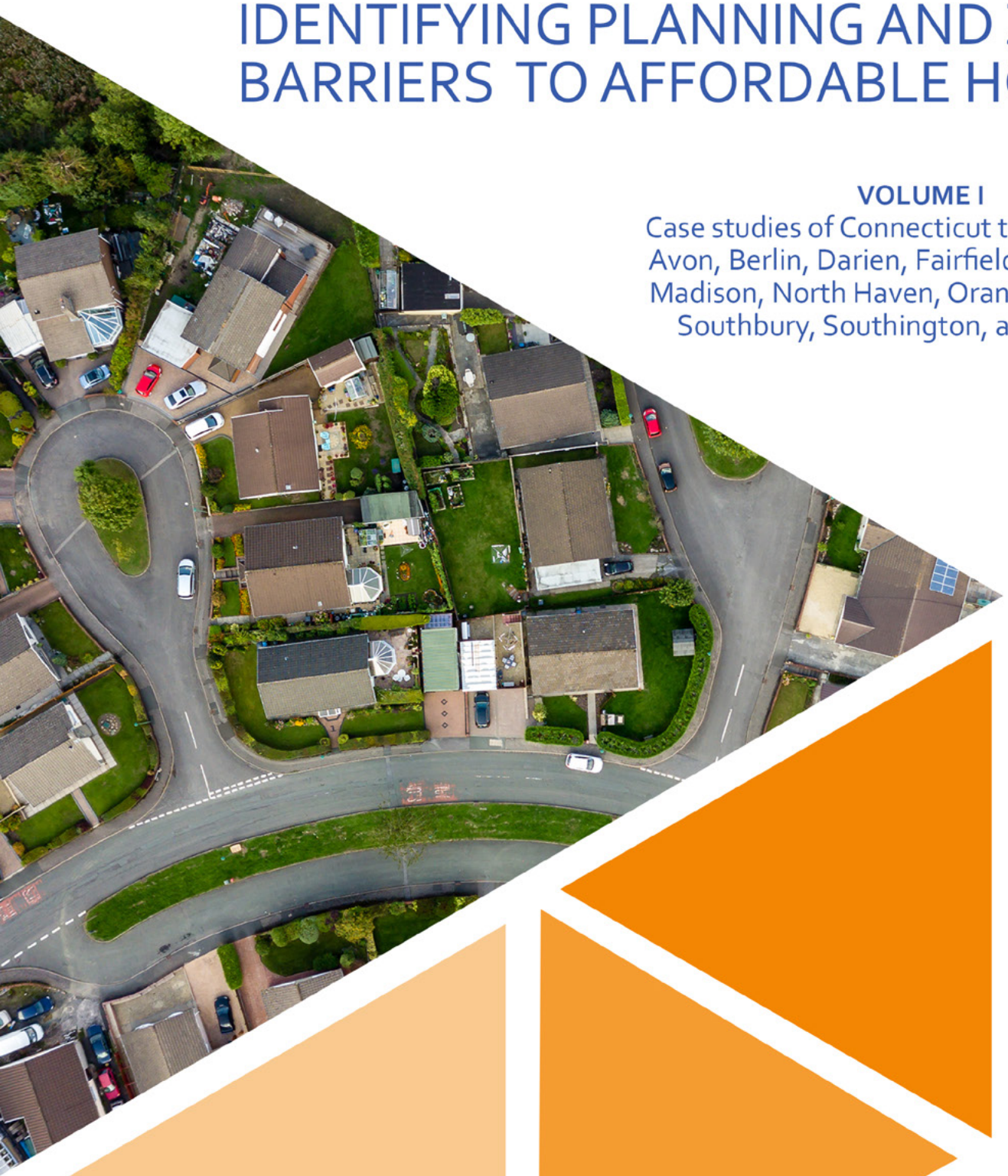
# ZONING FOR EQUITY:

## IDENTIFYING PLANNING AND ZONING BARRIERS TO AFFORDABLE HOUSING



**VOLUME I**

Case studies of Connecticut towns including Avon, Berlin, Darien, Fairfield, Glastonbury, Madison, North Haven, Orange, Ridgefield, Southbury, Southington, and Westport

JUNE 2021

OPEN COMMUNITIES ALLIANCE

*Acknowledgements*

We would like to thank the following individuals for their contributions of expertise and research assistance:

Mark K. Branse, Counsel, Halloran Sage
Richard Freedman, President, Garden Homes Management
Craig Minor, Planner (AICP)
Timothy S. Hollister, Partner, Hinckley Allen

Students from the University of Pennsylvania and University of Connecticut School of Law

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Sanya Rashad
John Saylor
Henry Sherck
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Open Communities Alliance would like to thank the U.S. Department of Housing and Urban Development's Fair Housing Initiatives Program, which made the development and publication of this report possible. The work that provided the basis for this publication was supported by funding under a Cooperative Agreement with the U.S. Department of Housing and Urban Development. The substance and findings of the work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the Government.

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Open Communities Alliance is a 501(c)(3) Connecticut-based civil rights non-profit working with an urban-suburban interracial coalition to advocate for access to opportunity, particularly through promoting balanced affordable housing development, including in thriving communities.

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## INTRODUCTION

Connecticut is a state of great extremes. It is one of the wealthiest states in the nation.[1] It also hosts some of the starkest income disparities by geography.[2] It boasts exceptional educational outcomes, but also some of the greatest educational disparities based on race, ethnicity, and income.[3] It is home to titans of industry, yet also hosts exceptionally high unemployment disparities based on race and ethnicity.[4] Municipal rules and practices that erect barriers to multifamily and affordable homes, including through town planning documents and zoning ordinances themselves, and the application of these policies by town staff and commissions, can play a central role in driving and solidifying these great social justice divides.[5]

Practices limiting the balanced development of affordable homes across regions also hobble the state economically. Connecticut is ranked second to last in housing production and is one of the top ten least affordable states in the country; its housing, segregation, and poverty concentration crises have serious implications for its overall economic growth.[6] The lack of affordable housing has contributed to Connecticut's stagnant population growth over the last ten years and, relatedly, continues to disincentivize businesses from staying in Connecticut or relocating to the state.[7] All of these factors contribute to Connecticut's ranking as one of the worst states for long-term fiscal stability in the United States.[8]

### Towns Reviewed

Avon
Berlin
Darien
Fairfield
Glastonbury
Madison
North Haven
Orange
Ridgefield
Southbury
Southington
Westport

In this report, Open Communities Alliance assesses the planning and zoning practices of 12 towns that have low levels of affordable housing relative to both the regional need for such housing and to the affordable housing supplies of other municipalities, and that have less diversity compared to the state as a whole. Future volumes analyzing the planning and zoning practices of other towns are planned for the coming years. Through these analyses, we seek to achieve at least the following two goals:

1. Identify an illustrative, not exhaustive, set of planning and zoning mechanisms which may be impeding or blocking the development of multifamily and affordable housing; and
2. Highlight shortcomings of current policies ostensibly intended to facilitate multifamily or affordable housing, thereby providing municipalities and those advocating for changes at the municipal and state levels guidance on potential areas for improvement to help towns and the state as a whole meet their affordable housing needs.

To do this, we take a deep dive into the inner workings of planning and zoning in the selected towns. However, many of these towns' land use policies and practices, as well as their planning precepts, are not unique. Rather, their planning documents and zoning ordinances simply serve as examples from which we can identify common practices that can result in excluding a sector of the housing market that serves moderate and lower-income families.

***Note on Terminology:*** *Throughout this report references to "affordable housing" encompass housing that is affordable as the result of government housing investments, deed-restricted to be affordable, and naturally affordable to families earning 80% of area median income or below (roughly $80,000/year for a family of four). While multifamily housing may be "luxury," this report addresses policies that restrict the development of multifamily housing even if they do not expressly pertain to affordable housing because most affordable housing requires and comes in the form of multifamily housing development (and, thus, impeding multifamily development also hinders affordable housing development).*

## SUMMARY OF FINDINGS

Attempts to analyze the impact of zoning ordinances on housing, segregation, and other factors have proliferated in recent years, in part due to the widespread acknowledgement that zoning has long had a fundamental role to play in the development of our separate and unequal society. Each study takes a different approach, which makes sense given the national scope of the issue, the potentially infinite variables to investigate, and the multitude of purposes behind such a study. As stated above, the purposes of this inquiry are to identify some ways that planning and zoning may act to impede multifamily and affordable housing development, and to highlight how existing multifamily and affordable housing policies may fall short. By doing so, this study aims to inform municipalities around the state – and the changemakers within them – in order to help motivate and craft the solutions that are so clearly needed in Connecticut. These purposes guided our methods, leading us towards a depth of analysis that we believe is necessary to fully reveal the nuanced mechanics of the several hundred pages of rules and regulations that comprise a town's planning documents and zoning code.

Each town that was studied is different – a fact that led the researchers to decide that quantitative comparisons across towns would be nearly impossible or, worse, misleading. However, every town in this report has erected and maintains barriers to their own ability to grow, to diversify their housing, and to welcome new community members. This summary serves as a description of both a number of the impediments that are all-too-common among the towns we studied, but also of the broader lessons that we learned along the way.

It is often difficult to point to a single policy and say without a doubt that it contributes to exclusion, or that it prevents multifamily or affordable housing. We recognize, of course, that planning and zoning are not the sole determinants of a town's housing and demographic diversity (or lack thereof). And it is often a confluence of policies, practices, and conventions that collectively can help explain some of the reasons for the lack of robust housing choice in these towns.

The latter observation drove us to look not only at zoning codes, but also at towns' primary planning documents, their Plans of Conservation and Development ("POCDs"). These can illuminate a town's vision for its future development, as well as its understanding of how it arrived at the present. POCDs also offer insight into the motivations for the policies encompassed in zoning regulations, and they may provide recommendations for zoning parameters or requirements. And more broadly, POCDs provide a window into the "thinking" of a town, a critical piece of the puzzle when it comes to explaining zoning's purpose and impact.

Thus, in each town we strove to develop a deep understanding of how the POCDs and zoning regulations independently function and mutually interact in order to answer several questions: What can be built? Where can it be built? What is the process at the town level? What are some of the ways that these documents separately and jointly might impede multifamily and/or affordable housing? What insights do they provide that could help explain the low levels of racial, economic, and housing-type diversity we see in these towns?

The data used throughout these analyses are all publicly available, generally from the Census or Connecticut State Agencies. The full data compendium is publicly available on Open Community Alliance's website.

### Lesson 1: Where there is(n't) a will, there is(n't) a way

The role of the town planning documents (POCDs) is, in important part, to lay out the general guiding principles that will inform a town's zoning and development policies for the ensuing decade (and perhaps beyond). That is why it was so concerning that the POCDs we reviewed often reflected little urgency to undertake the large-scale measures that are necessary to help substantially address the dual crises of segregation and the lack of affordable housing. Instead, POCDs are frequently undergirded by the desire to preserve the status quo and remain "New England Style Single-Family Towns." Towns are at times quite explicit in POCDs that multifamily housing should be geographically or otherwise constrained, recommending measures with the apparent purpose of ensuring that multifamily housing does not negatively impact single-family homeowners.

Many of the POCDs' discussions specific to affordable housing that we reviewed were similarly limited in their stated goals. Often the affordable housing needs discussed were those of certain subsets of the population – such as the elderly, "empty nesters," or young professionals – or those of locals, rather than the broader regional needs for affordable housing. Towns often seemed fixated on reaching 10% affordable housing – in order to either avoid developers invoking the Affordable Housing Land Use Appeals Procedure (Connecticut General Statutes ("C.G.S.") § 8-30g), which can facilitate multifamily development, or to obtain a moratorium from that law – without exploring whether local and regional considerations speak to a greater need for affordable housing.

Towns may be able point to parts of their POCDs that concern themselves with affordable housing or race, or zones (often a tiny fraction of land) that allow for multifamily housing (often mostly at low densities and requiring a special permit), but much more is needed in order to truly facilitate housing choice in these predominantly (often overwhelming) white and wealthy communities.

### Lesson 2: Zoning often imposes significantly more bureaucratic obstacles in the way of multifamily than single-family housing, and planning and zoning commissions generally have wide latitude in reviewing multifamily proposals

One likely contributing factor to the lack of multifamily housing in many of these towns is the lengthy and discretionary approval process that is frequently required for most or all multifamily housing proposals. This may come in the form of requiring a special permit or zone change for most multifamily uses. Regardless of the specifics, the result tends to be that in order to build multifamily housing, developers must undergo burdensome submission and review processes (almost always involving a public hearing) that are marked by a high degree of uncertainty and cost.

By contrast, the town studies contained herein consistently found that single-family homes are permitted throughout large segments of town "as-of-right," meaning subject only to administrative approval by the town's zoning department, with no public hearing or discretionary review. Most of the towns that we reviewed have little or even zero land area where anything other than the least intensive forms of multifamily housing is allowed "as-of-right," with even two-family homes often largely barred.

The discretionary review processes that are so often imposed on most or all multifamily proposals are spelled out differently in each town's regulations, but they usually require town's Planning and Zoning Commissions ("P&Zs") to consider a laundry list of often subjective factors that could be detrimental to multifamily applications – especially if the surrounding neighborhood is nearly all single-family or if a public hearing will be held, as it almost invariably will, because it provides a forum for the type of opposition that is typical to such

proposals. Examples of vague and subjective criteria that P&Zs may be charged with evaluating include the impact on the aesthetics, scale, and/or "character" of a neighborhood; the extent to which the application is "in harmony with" surrounding uses; or the proposal's consistency with the broad purposes of the town's planning and zoning. Zoning regulations also often require P&Zs to consider the threat of damaged property values, which due to a common misconception that multifamily housing lowers nearby property values, may pose a serious challenge to multifamily housing.

While these processes can infuse multifamily development with uncertainty and risk, they also frequently leave little doubt as to the substantial work needed to be done to obtain an approval. Submissions often need far more than would be required for single-family development, including traffic impact studies, environmental studies, water and waste management plans, and so forth. Nor should the costs (such as legal fees) associated with even a relatively non-contentious public hearing be underestimated.

It would not be hard to imagine a situation where a potential multifamily builder decides that it is not worth the time, money, and risk that an onerous application and lengthy discretionary review process would take, with no certainty that they will ever attain an approval.

### Lesson 3: Little land area is devoted to, or even allows, multifamily housing

Single-family housing tends not only to dominate the housing stock of the towns we reviewed, but also the current and potential land use. Conversely, multifamily housing of any kind, but particularly at higher densities, only occupies a small – sometimes tiny – proportion of the land in a number of the towns we reviewed. In fact, multifamily housing is often precluded from being built on much of the land in towns by zoning regulations that set aside large segments of the town for single-family homes, open space, or other uses. Many of the town zoning maps and maps from POCDs that were included throughout the analyses visually demonstrate this stark reality. Of particular note are the "Future Land Use" maps that appear in a number of POCDs and are featured in several of our analyses, as these help illustrate how planning acts to rule out multifamily from wide areas of town.

Some patterns emerge for where towns decide to allow multifamily housing. Often towns only permit denser development around one or two town centers or "villages" – aiming to "protect" less dense single-family or rural areas that can make up the vast majority of towns. As will be discussed in more detail below, the frequently limited areas with water and sewer service may be targeted for multifamily housing or may even be the only areas in which towns allow for most such housing. Multifamily home construction may also be relegated to smaller portions of land that are zoned for commercial or industrial uses (and sometimes even only on upper floors in these zones). And quite a few towns limit at least a portion of their multifamily uses to areas abutting particular thoroughfares or near transit centers.

Thus, multifamily housing not only generally faces greater scrutiny than single-family housing, but also, unlike the builder of a single-family home, the multi-family/affordable housing developer may be compelled to compete for access to land with business, institutional, or other uses that tend to be similarly concentrated in (or restricted to) the above-described areas. This could limit multifamily and affordable housing development if housing developers are outbid by those seeking to construct other uses (which may be more remunerative than affordable housing). This also could drive up land prices in a way that either limits the amount of multifamily that is built (by making multifamily less feasible to build) or makes such housing less affordable. In some commercial districts, the rent revenue needed to make a project economically feasible favors commercial over residential uses. Moreover, these areas tend to be already fairly developed or occupied by commercial or industrial uses, which can have a similarly limiting effect on potential multifamily development.

### Lesson 4: Large-lot single-family zoning is a consistent issue, but lot and parcel size requirements for multifamily proposals also present development and affordability challenges

Requiring large minimum lot sizes has long been considered a main driver of the high costs of single-family homes. And unsurprisingly, our analyses found numerous instances where large swaths of town were set aside for large-lot single-family zoning. While this report is predominantly concerned with the affordability levels that can be attained via the economies of scale generated by denser development, minimum lot sizes that make single-family housing even more expensive should not be ignored (and may raise the costs of all housing types in town by artificially inflating property costs – despite the ample demand for smaller lots and ample supply of developers for such projects – and by consuming large amounts of land).

Less discussed but no less important is the extent to which multifamily housing is also often subjected to onerous minimum lot or parcel sizes – indeed, these can often be enormous. In many towns, the required lot size increases for multifamily uses both within and across zones. When regulations require large or extremely large acreages for a multifamily development to occur, they hinder such development by reducing the total number of lots that can be developed for multifamily and increasing the amount of land that must be purchased or assembled for a multifamily housing development to exist at all.

### Lesson 5: Strict density limits and numerical caps frequently operate to prevent substantial multifamily development, and planning reinforces such restrictions

There are several types of direct density limits that towns employ to restrict the amount of multifamily housing that can be produced. We found towns that limit the number of units per acre, units per lot, units per square foot of open space or other uses, and so forth. There are even examples of towns placing fixed ceilings on the total multifamily or affordable units that could be constructed in a specific district, pursuant to a particular zoning regulation (either within a given area or throughout the entire town), within a certain amount of time, and so on (and often in combination). Density limits and numerical caps on multifamily and affordable housing require little explanation as to how they reduce the amount of such housing in town – limiting potential development is their express purpose.

A perhaps less obvious yet consistent finding of this study is that such regulations reflect planning that is guided by either warped senses of what constitutes "density" or open opposition to higher density residential uses in much of town. As to the former, many of the POCDs referenced in this study deem single-family homes on demonstrably large lots to constitute "medium density" or even "higher density" areas. Towns can hardly plan for density if they fail to properly identify it.

As for hostility to density, towns frequently speak of the supposed threats to the "character" or "integrity" of single-family areas presented by all but de minimis multifamily uses, and of the need to aggressively control density to ensure larger development only occurs in "appropriate" (often highly limited) areas. Indeed, multifamily housing appears to be treated by some towns as closer to non-residential uses than residential uses. Such towns may require stringent safeguards and buffers to separate multifamily from (or reduce its intrusion into) single-family residential neighborhoods, while permitting higher densities in commercial areas and town centers.

### Lesson 6: Infrastructure is regularly weaponized against multifamily housing

Despite the fact that modern septic and well technologies allow for the development of multifamily housing – particularly smaller scale multifamily – the zoning regulations reviewed for this study contain numerous examples of multifamily housing provisions mandating that such housing be served by public water and public sewer. Such requirements can profoundly reduce the amount of land available to multifamily development when such services only cover small areas of town (as they often do). The report includes a number of service area maps to illustrate just how limiting these regulations can be. Even in towns with larger water and sewer infrastructure networks, requiring connection to public water and sewer may still reinforce other regulations that direct multifamily to more developed commercial and mixed-use areas and cordon off less developed single-family areas that are more likely to be off sewer.

As is so often the case, infrastructure's suppressing effect on land for multifamily development is a result of planning as well as zoning. POCDs often explicitly state that the town shall direct multifamily housing to areas with what the town deems to be adequate infrastructure. And several POCDs go a step further by refusing to expand water or sewer operations, such as by mapping out and remaining committed to "sewer avoidance areas" across huge stretches of town.

### Lesson 7: Many towns appear to favor age-restricted housing or housing for smaller households over housing for families

Our analyses frequently encountered examples of Towns taking measures to encourage elderly housing over non-age-restricted multifamily or affordable housing. The favoritism for senior housing came in numerous forms.

At the most fundamental level, we cataloged a number of zones where the only permissible form of multifamily development is age-restricted housing – including zones specifically adopted for such housing or in which the only other permitted uses are single-family homes. We also highlighted many ways that elderly housing was incentivized or made easier to develop than non-age-restricted housing even where both types are permitted. For example, towns may allow elderly multifamily housing to be constructed at higher densities or on smaller lots than other multifamily housing; allow elderly housing as a stand-alone use rather than being required to be above retail, without doing so for non-age-restricted multifamily; or may otherwise give senior housing advantages withheld from non-age-restricted multifamily uses. And we repeatedly saw seniors' or "empty nesters'" affordability concerns prioritized by planning documents that were often silent as to broader regional need for affordable housing. We also noticed that data from towns and the state regularly showed that large proportions of town's affordable or multifamily housing stocks were age restricted.

But while age-restricted housing and planning focused on the need of seniors (often local seniors) is an important and apparently common way that even what little multifamily may be allowed to be developed is made inaccessible to low-income families, it is not the only such mechanism. Several towns prohibit or limit the number of units with above a certain number of bedrooms (usually one or two) in some of their non-age-restricted multifamily provisions. This can greatly reduce the supply for, or outright exclude, even moderately sized families. Relatedly, some POCDs speak of the need to build housing for "young couples" or "singles," leaving behind larger households and families.

### Lesson 8: Towns regularly rely on accessory dwelling units and other zoning tools that reinforce the single-family status quo and have limited potential to generate robust levels of affordable housing or promote integration

Many of the towns included in this study promote accessory dwelling units ("ADUs"), sometimes touting them in planning and zoning documents as affordable housing provisions. But our analysis revealed a number of ways that ADUs are unlikely to provide a large repository of affordable units or to serve a broad cross-section of the low-income population, including but not limited to the following: (a) requirements that owners reside on the same lot as the ADUs, sometimes even requiring them to be incorporated into the principal dwelling; (b) no obligations or incentives to construct ADUs; (c) little or no incentive to rent any ADUs that may be constructed, much less to do so at affordable levels or to affirmatively market rentals; and (d) restrictions on the number of bedrooms or occupants within ADUs that preclude their use by any but the smallest of families.

Finally, reliance on ADUs would appear to reflect, and reinforce, a fundamental mindset shared by many towns: single-family neighborhoods are inviolate and off limits for any other form of residential development, regardless of scale or density. Hence, a number of the ADU provisions that we came across expressly required that ADUs not disturb the single-family character of the town (or, as noted, be built within single-family units). This is a recipe for simply continuing the status quo.

For these and other reasons, towns' reliance on ADUs as providing an avenue for generating meaningful levels of affordable housing or promoting integration seems highly likely to be misplaced.

Our analyses encountered other examples of affordable housing provisions that are limited in their reach. Prime examples are planning and zoning that promote single-family affordable housing or homeownership affordable housing opportunities. Such housing is generally out-of-reach for lower-income families that require more deeply affordable multifamily rental opportunities.

# WHY ANALYZE PLANNING AND ZONING?

## Exclusionary Planning and Zoning Practices Help Drive Patterns of Housing Segregation

It is critical to undertake a deep dive into municipal planning and zoning practices because of the role that land use restrictions play in housing segregation. Connecticut is one of the most segregated states in the nation - and that segregation comes in the form of separation by race, ethnicity, and income.[9]

## Harms of Segregation

The harms that flow from housing segregation are extensive and challenging to fully detail. The impact is felt first and foremost by lower income families, who are disproportionately Black and Hispanic[10], single-parent headed (particularly single-mother), and/or include a member with a disability.[11] These groups, all of which fall under the protection of our state and/or federal fair housing civil rights laws, are disproportionately lower income and therefore have a disproportionate need for affordable homes.[12]

### Federal Fair Housing Act Protected Classes

- Race – Black or white
- Color – skin tone
- National Origin – country of an individual's origin or the country from which the individual's ancestors came
- Religion – Limitation based on religious or spiritual beliefs
- Sex – gender (likely to be held to include sexual orientation and gender identity) [13]
- Handicap/disability
- Familial Status – presence of children under 18; pregnancy; persons in the process of getting legal custody

### Additional Protected Classes under Connecticut's Fair Housing Law

- Gender Identity or Expression
- Lawful Source of Income – e.g, using a Housing Choice Voucher/Section 8 or the Rental Assistance Program
- Age (except minors)

The impact felt by lower income Black and Hispanic families is particularly important to highlight and comes in at least two forms. First, lower income families who would like a wider range of housing options, including outside of higher poverty areas, have limited affordable housing choices. The social justice implications of this limitation are particularly acute after assessing the web of opportunities typically available in towns with few affordable units (often featuring planning and zoning that may impede multifamily housing) as compared to towns with more affordable units (and likely with zoning practices more welcoming of a range of housing types).[14]

Second, for families invested in staying in a particular community that is currently under-resourced[15], the lack of affordable housing in neighboring wealthier towns (whose zoning may limit the availability of such housing) means that government subsidized housing is more likely to be overwhelmingly located in the resource-isolated community; this, in turn, contributes to poverty concentration and its spillover effects on schools, social services, and municipal sustainability.[16] Thus, greater balance in the location of subsidized units would both avoid further concentrating poverty and open greater housing choices.

Segregation also has implications for both struggling and active urban housing markets. In disinvested urban communities with limited demand at higher-income levels of the housing market, like parts of Bridgeport or Hartford, substantial housing market power frequently falls into the hands of undercapitalized (or, worse, irresponsible) housing providers serving a captive lower-income population.[17] This, coupled with insufficient resources dedicated to housing code enforcement by underfunded municipalities, may lead to an array of truly unacceptable living conditions that endanger residents' health and well-being.[18]

Conversely, in cities with hot housing markets, like parts of New Haven, truly affordable housing becomes a scarce resource and longtime community members can face rising displacement pressures as higher income home seekers take up units and drive up housing prices.[19]

In addition to the challenges segregation poses for Black and Hispanic families and cities, predominantly white suburban communities and the state as a whole are harmed by Connecticut's segregated landscape in a number of ways, such as in the context of public education. Residential segregation generates public school segregation, which means that children of all races and ethnicities across the state are put at a disadvantage.[20] While there has been much commentary on the harmful In addition to the challenges segregation poses for Black and Hispanic families and cities, predominantly white suburban communities and the state as a whole are harmed by Connecticut's segregated landscape in a number of ways, such as in the context of public education. Residential segregation generates public school segregation, which means that children of all races and ethnicities across the state are put at a disadvantage. While there has been much commentary on the harmful effect of educational segregation on Black and Hispanic children, particularly with regard to whether Black and Hispanic students gain access to schools with resources equivalent to those of predominantly white schools, the great benefits of diverse learning environments to all students is less discussed but of comparable import.[21]

A comprehensive body of research demonstrates that attending schools with a diversity of students promotes innovation, critical thinking, and better learning.[22] Children who have had the opportunity to attend diverse schools exhibit fewer racial prejudices and hold fewer stereotypes, giving them the cultural competency essential for success in increasingly diverse workplaces. [23]

### Planning and Zoning Practices That Limit Multifamily and Affordable Housing Have Contributed Significantly to Our Housing Affordability Crisis

Planning and zoning practices that severely limit or outright block the development of multifamily and affordable homes helped propel and now limit Connecticut's ability to contend with its affordable housing crisis. In 2020, with the assistance of David Kinsey, a nationally recognized planning expert affiliated with Princeton University, Open Communities Alliance produced an estimate of Connecticut's need for affordable housing.[24] The assessment concluded that over 474,040 households in Connecticut, or 35% of all households, contribute more than a third of their income towards housing, the standard measure of whether housing is unaffordable to a family.[25]

Even considering just households at lower income levels that are facing more severe levels of housing burden, the need is staggering. There were a reported 135,740 households who earn 30% of the Area Median Income (approximately $30,000 for a family of four) and are severely housing cost burdened, meaning that they are paying more than 50% of their income towards housing costs.[26] These families do not include households receiving government assistance for housing.[27]

| Need: Low Income and Cost Burdened Households<br>Source: Fair Share Housing Model for Connecticut, 2020, available at https://www.ctoca.org/fairshare. | | | |
|---|---|---|---|
| | Households | Cost Burdened<br>(paying more than 30% of income on housing) | Severely Cost Burdened<br>(paying more than 50% of income on housing) |
| Households | 1,354,715 | 474,040 | 220,695 |
| Below 80% AMI | 570,270 | 376,850 | 208,130 |
| Below 50% AMI | 386,670 | 293,940 | 188,010 |
| Below 30% AMI | 214,745 | 167,495 | 135,740 |

These households are currently going to extreme lengths to support their housing needs by paying huge portions of their already-stretched incomes towards housing costs, with many doubling up with other households and/or "couch surfing" with friends and family.[28] These strategies for dealing with housing affordability challenges result both in households forgoing other important expenses, like healthy food and medicine, and in households being forced to survive in unstable housing situations that often make it extremely difficult to be successful in school and employment. Housing unaffordability contributes to many lower income families falling deeper into financial instability as they pay for essential housing costs and cannot possibly save for investments in homeownership, education, startup businesses, unexpected health expenses, and retirement. [29]

### Others Harmed by the Shortage of Affordable Housing

In addition to creating inequities and a host of challenges for lower income Black and Hispanic families, planning and zoning practices that limit multifamily and affordable housing can contribute to housing shortages that have deep effects on all other groups who need affordable housing. These groups include seniors on fixed incomes, younger people at the beginning of their careers, the significant number of single-parent households, and households with a member with a disability.[30]

Allowing the diversity represented by these groups is also important to the fabric of our state and reflects our values and priorities. However, to the extent that this study has revealed town planning and zoning that appear to inordinately focus on these groups without seeming to adequately account for regional affordable housing need or the critical importance of promoting racial integration, such single-minded focus is misplaced. Diversity requires inclusiveness and taking into account the needs of all groups that require increased access to affordable housing in higher opportunity areas.

### By Assessing Planning and Zoning Barriers we can Position Ourselves to Design Informed Solutions

A fuller assessment of the barriers to diversely located affordable housing gives towns and those interested in making planning and zoning more welcoming of multifamily and affordable housing the information essential to crafting solutions. Even based on this initial review of 12 towns, we have learned a number of lessons that we are confident will help point toward meaningful policy solutions.

Through this assessment, we have seen both recurring and unique rules, policies, and strategies that may pose barriers to affordable housing development. Applicable law is unambiguous in commanding towns to zone and plan for housing diversity, including to encourage and promote multifamily housing and housing affordable for low- and moderate-income households, taking into account regional need (see, e.g., C.G.S. § 8-2(a)). But what

is absent from the current regulatory landscape are specific, enforceable expectations around planning and zoning defined by the State to promote balanced regional development of critically needed affordable homes. (C.G.S. § 8-30g, while an important tool for facilitating affordable housing, establishes a fixed 10% threshold for immunity regardless of regional need.)

To that end, Open Communities Alliance has proposed a new system, modeled on a successful process in New Jersey, to ensure Connecticut can meet the need for affordable housing while incorporating local perspectives. Embodied in H.B. 6611 proposed during the 2021 legislative session, Fair Share Planning and Zoning assesses the statewide need for affordable housing, allocates that to regions, and then distributes that regional base among towns based on a variety of factors that collectively account for their capacity to support and their current supplies of such housing. Each town is then entrusted with the task of planning and zoning to reach this goal. The town-level assessments in this report provide a roadmap for towns by highlighting some of the practices that should be addressed. Municipalities must bring their own expertise and ingenuity to the process of re-imagining their planning and zoning to foster greater inclusion and diversity.

*What is Zoning?*

Zoning is a legal structure for governing the use of land in a municipality. The authority to zone is delegated from a state to a town and is authorized under the U.S. Constitution's police power. In its 1926 touchstone zoning case, Euclid v. Ambler, the U.S. Supreme Court held that municipal oversight of zoning is constitutional as long as it has a "substantial relation to the public health, safety, morals, or general welfare" and is "not clearly arbitrary and unreasonable."[31]

## Legal Framework

*Source of the Power to Zone*

Zoning is a power delegated by the state of Connecticut to towns, generally in accordance with the terms of the Zoning Enabling Act, C.G.S. § 8-2. [31]

The type of zoning widely used in Connecticut, and all across the nation, is called "Euclidean" zoning in reference to a 1926 U.S. Supreme Court case that established the constitutionality of zoning ordinances and confirmed the type of zoning powers typically executed by zoning commissions today. These include (but are not limited to) the power to set residential and commercial zones, establish minimum lot sizes, and regulate building heights.

While at the Supreme Court level the *Euclid* decision appears squarely grounded in the use of zoning powers to protect residents' health and safety, in the 1920s it was also standard practice to use zoning to exclude certain groups – especially if they were not white, were members of certain immigrant groups, or were lower income.[33] This mindset is evident in the lower court opinion in the *Euclid* case. There, Judge Westenhaver stated unabashedly,

> [t]he blighting of property values and the congesting of population, whenever the colored or certain foreign races invade a residential section, are so well known as to be within the judicial cognizance.[34]

In Connecticut, even in the 2020s, zoning creates barriers to the development of the affordable housing disproportionately needed by Black, Hispanic, and other low-income families. On both sides of the political aisle, zoning in many Connecticut towns is considered some of the most restrictive in the nation. Both the Libertarian Cato Institute and the left-leaning Brookings Institution point to Connecticut as a poster child for over-restrictive zoning practices.[35]

### *Laws that Apply to Planning and Zoning*

Planning and zoning practices in Connecticut are subject to a number of state and federal laws. It is important to look at both zoning rules and planning tools and policies because both reflect municipal strategies regarding current development goals and the future direction of the town. (Note that although there is often confusion as to the distinction between "planning" and zoning – a confusion that may be increased given that most towns have a combined planning and zoning commission – it is important to avoid conflating the two. The planning and the zoning powers are separate, as described below.) The primary legal guidance with regard to affordable housing is found in the following sources.

- *C.G.S. § 8-2, the Zoning Enabling Act.* In Connecticut, most towns opt to oversee their zoning in accordance with the Zoning Enabling Act, C.G.S. § 8-2.

  The Zoning Enabling Act lays out town powers and obligations with regard to zoning. These include authority over Euclidean considerations, like building heights and lot sizes, and permit consideration of other issues, like soil types and environmental considerations.

  The Act also includes several very clear provisions addressing affordable and multifamily housing. These include the following excerpts:

  > *Such 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 . . . .*
  >
  > *[Such regulations] . . . 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.*

Despite these strong laws, numerous zoning codes – including those reviewed in this report – contain significant barriers to the development of multifamily and affordable housing.

- ***State Planning Requirements.*** The state of Connecticut has established a two-tiered planning process involving municipal Plans of Conservation and Development ("POCDs"), developed pursuant to C.G.S. § 8-23 and updated every 10 years. These, in turn, should comport with a State POCD, with the provisions governing that document outlined in C.G.S. § 16a-27.

  With regard to affordable and multifamily housing, municipal POCD obligations under C.G.S. § 8-23 largely reiterate the obligations under C.G.S. § 8-2.

- ***Federal and State Fair Housing Acts.*** Federal and state fair housing laws, combined, contain three provisions relevant to exclusionary zoning. These are as follows:

    - A prohibition against intentional discrimination, including zoning policies or practices that can be shown to intentionally keep out particular groups protected by the laws. Intentionality can be indicated by a combination of factors including coded statements and a town's history.

    - A protection against laws, policies, and practices that have a disparate impact on a particular group protected by fair housing laws, and/or which perpetuate racial segregation, and cannot be justified as necessary to a substantial, legitimate, non-discriminatory government interest. These are policies that statistically and unjustifiably could cause harm to a protected group or have the effect of perpetuating segregation in or around a town. In the zoning context, prime examples are policies that limit the development of affordable housing needed by lower income households, which are disproportionately Black and Hispanic.

    - For towns in Connecticut that directly receive certain federal funding from the U.S. Department of Housing and Urban Development ("HUD"), and towns that indirectly receive such funding through the receipt of federal HUD funds that flow through the state, the federal Fair Housing Act's Affirmatively Furthering Fair Housing provision may apply to zoning and planning activities, as this provision generally requires that government entities take intentional steps to counter the history of segregation

While these laws are powerful, they are evidently not a meaningful consideration in the zoning and planning of some towns, and are infrequently enforced in court in Connecticut in the zoning context either by developers or others with standing to sue.

- ***Connecticut Affordable Housing Land Use Appeals Procedure, C.G.S. § 8-30g.*** The State passed C.G.S. § 8-30g in 1989 as a land use law designed to support affordable housing development.[36] At its core, the law gives developers proposing to build qualifying housing (as described below) a leg up in court if they appeal a town's rejection of such a proposal. That "leg up" is two-fold, in that the application is exempt from local zoning and subdivision regulations and that the burden of proof is shifted to the municipality – rather than the developer needing to prove that the town did something wrong, the town must show they had a substantial public health or safety reason for denying the proposal. For a development to qualify under the law, it must be one of two types of housing proposals:

    - "Assisted housing" proposals for housing that receives or will receive certain government financial assistance to support low- and moderate-income housing or certain rental assistance such as a housing voucher; or

    - "Set-aside development" proposals which, at a minimum, must have no less than 15% of the units affordable to households at 60% or below the lower of state or area median income and 15% (or the remainder of 30% of the affordable units) affordable to households at 80% of such income standards.

There are two ways a town can avoid being subject to the law. First, it can achieve the statute's threshold of having at least 10% of its housing stock constitute "affordable" units as defined by the statute – in other words, at least 10% of its housing qualifies as either "assisted housing" units (including government assisted mortgages) or as deed-restricted units within a "set-aside development," as those terms are defined above.

The other avenue to limit exposure to C.G.S. § 8-30g is for a town to achieve a moratorium from application of the statute. Towns with fewer than 20,000 people, towns that have not previously been granted a moratorium, or towns that have failed to complete a housing affordability plan as required under C.G.S. § 8-30j can qualify for a 4-year moratorium if they can demonstrate that one or more affordable housing developments have been completed in the municipality creating physical units of assisted or deed-restricted housing representing greater than 2% of all dwellings in the municipality (or equivalent housing unit points as defined by the statute). All other towns – so those that have previously achieved a moratorium, have a population of more than 20,000 people, and have completed a housing affordability plan – can qualify for a 5-year moratorium with an increase in units in affordable developments representing 1.5% of the town's overall housing stock.

### Core Planning and Zoning Concepts

To decipher a zoning ordinance and avoid getting totally lost at a zoning hearing, it is helpful to understand some frequently used terms.

- **Planning v. Zoning:** Planning refers to the overarching goals, strategies, and vision a town has for its development. In Connecticut, this is generally encompassed in the town's POCD, though other documents may contain individual planning studies (some towns even create certain neighborhood-specific POCDs). Zoning refers to the regulations that actually govern what can and cannot be built (and how it must be built) throughout a town. In theory, at least, planning and zoning should work in tandem – with planning laying out the philosophical precepts and broad goals and zoning executing the plan. Indeed, our study revealed many instances of POCDs and zoning regulations reinforcing one another.

- **Different Types of Approvals:** There are a range of approvals that various municipalities must provide (or may require) to allow for any kind of development. These can be confusing, and it is important to understand the different types of approvals.

    - **As-of-Right (or By Right) / Zoning Permit:** Zoning ordinances usually designate certain uses that can be built in particular zoning districts without special approval from the zoning commission (or combined planning and zoning commission). These uses may be said to be "as-of-right." Some zoning codes refer to these as "permitted uses" to distinguish them from "special uses." In other words, an as-of-right use will at most require the landowner to get a zoning permit from the town department handling planning and zoning issues (often the zoning enforcement officer) before a building permit can be issued. A zoning permit usually must be accompanied by a site plan describing the basic plan for the project. Single-family housing is frequently permitted as-of-right in many (or all) residential zones (and sometimes even in non-residential zones), whereas multifamily housing is usually not.

    - **Special Permit/Special Exception.** Zoning ordinances may delineate additional uses that can be constructed only after receiving a special permit or special exception granted by the zoning commission (or combined planning and zoning commission). Such permission is only granted after a public hearing or series of public hearings. Such uses also may be referred to as "special uses" in zoning codes to distinguish them from permitted uses. Affordable and/or multifamily housing provisions are often special permit or special exception uses. As such, they are subject to the discretionary review and submission procedures imposed on such applications. Such permissions also often come with additional restrictions on the number of units, density, minimum lot area, lot coverage, setbacks, connections to utilities, etc. Zoning commissions are accorded a very high level of discretion in reviewing special permit / special exception uses and can rely on very generic standards in the zoning regulations.

- Zone Text or Map Amendment. Certain uses may require an applicant to apply to the zoning commission (or its equivalent) for a change to the text of the zoning regulations and map themselves. This procedure is distinct from a special permit application, since it involves a new regulation being added to and/or a re-mapping of a portion of the town and calls for the zoning commission to act in its legislative capacity. These are likely to entail specific submission requirements and a public hearing process. Certain large-scale residential or multifamily uses, such as those contained in "planned developments" or pertaining to application of floating zones, may involve these procedures. Unless other issues are at play (such as allegations under fair housing law), courts accord local commissions the highest level of discretion available under administrative law when reviewing a commissions' actions on text or map amendment changes. As such, appeals of such actions are rarely successful.

- **Building Permit.** Building permits actually have nothing to do with zoning, but are another point at which a developer must interact with a town. Building permits are required to ensure that the construction of a permitted use meets basic building safety and aesthetic requirements. Building permits are approved through a town administrative office, usually in the form of a checklist with required sign-offs.

- **Primary or Principal v. Accessory or Auxiliary Uses:** Zones may distinguish between the primary or principal permitted use allowed in the zone, which is the main function for the lot, and accessory or auxiliary uses, which are related-but-incidental uses to the primary permitted use. For example, in a zone where a single-family residence is a primary use, a home office or pool may be an accessory use. Accessory uses may include residential uses, such as an accessory dwelling unit or a housing unit for a grounds caretaker, but these are definitionally not provisions for housing that could exist in the absence of the principal use. They are also often subject to regulations that limit bulk (height, setback, etc.), number of units, occupancy, relation to the principal use, etc., and may require separate approval via a special permit or equivalent procedure.

- **Acre v. Square Footage**. While not rocket science, zoning ordinances often measure land both in terms of square footage and acres. Jumping between the two can be confusing, so here is a chart to easily compare the measurements and provide some reference for the scale of different sizes of land. (Some towns use a "zoning acre" of 40,000 square feet because it is easier to administer.)

| Number of Acres | Quarter Acre | Half Acre | One Acre | Two Acres |
|---|---|---|---|---|
| Square Feet | 10,890 | 21,780 | 43,560 | 87,120 |
| Equivalent to | 4 Tennis Courts | 8 Tennis Courts | .75 of a football field | 1.5 football fields |

- **Single-family housing:** Single-family housing consists of individual and separate residences for occupancy by individual households. In Connecticut, such housing is typically "detached" – meaning a free-standing structure. But single-family housing can also be "attached," meaning abutting but wholly separated from (usually by a ground-to-roof wall) another single-family unit. While single-family homes can be rented or sold at market rate or as subsidized / affordable units, economies of scale are such that single-family housing is generally less conducive to affordability than multifamily housing.

- **Multifamily housing:** Multifamily housing comes in many forms, and there is no single definition for it. Towns may include two-family structures as multifamily housing or may only count buildings with at least three such units as multifamily housing. This report treats all housing with two or more primary dwelling units (i.e., excluding accessory units) as multifamily, but will distinguish between forms of multifamily housing where appropriate or where such distinctions are relevant under the zoning code. For example, towns will often be more permissive of two-family housing than of multifamily housing with more units.

- **Zoning Districts (or, more simply, "zones"):** One of the jobs of a municipal zoning commission is to designate the zoning rules in different parts of town, or zoning districts. Zoning districts come in a number of types. Below are some typical categories into which a zone may fall.

    - **Residential, often designated as R-[number]:** These are zones that permit residential development. Towns often have tiers of residential zones based on factors such as minimum lot size (for example, an "R-40" zone could be expected to roughly accord with one-acre zoning, an R-20 half-acre zoning, etc.) or the types of housing permitted – single-family, two-family, multifamily, senior housing, etc. Single-family residential zones will frequently exclude some or all forms of multifamily housing. Residential zones typically allow non-residential uses like schools, houses of worship, and certain clubs or institutional uses.

    - **Agriculture:** Zones for farming or other agricultural uses, usually with low-density residences permitted, as well.

    - **Open Space or reserved land:** Zones that essentially preclude development for the purported purposes of preserving land or natural resources.

    - **Commercial or business:** A zone in a municipality primarily dedicated to businesses such as shops, offices, and restaurants.

    - **Industrial**: A zone in a municipality dedicated to industrial uses such as manufacturing.

    - **Office:** Zones for office space or office parks.

    - **Mixed-use or town center:** Zones designed to foster both residential and commercial uses, often including above-retail apartments. These tend to be concentrated around historic town centers or transportation hubs.

    - **Overlay zones:** Zones that can be superimposed on top of other zones to permit specialized uses. Application of these zones will usually require some form of discretionary approval by the zoning commission.

    - **Planned development" or other "special" or "floating" zones:** Targeted zones that may encompass a single lot or a large parcel comprised of numerous lots, and that allow greater flexibility to develop certain types of uses (or waive certain requirements, such as those pertaining to bulk) as compared to what is called the "underlying" zoning district (the original zone). These zones generally will require some form of discretionary zoning commission review.

    - **Hybrid zones:** Typically zones that combine two or more of the above uses.

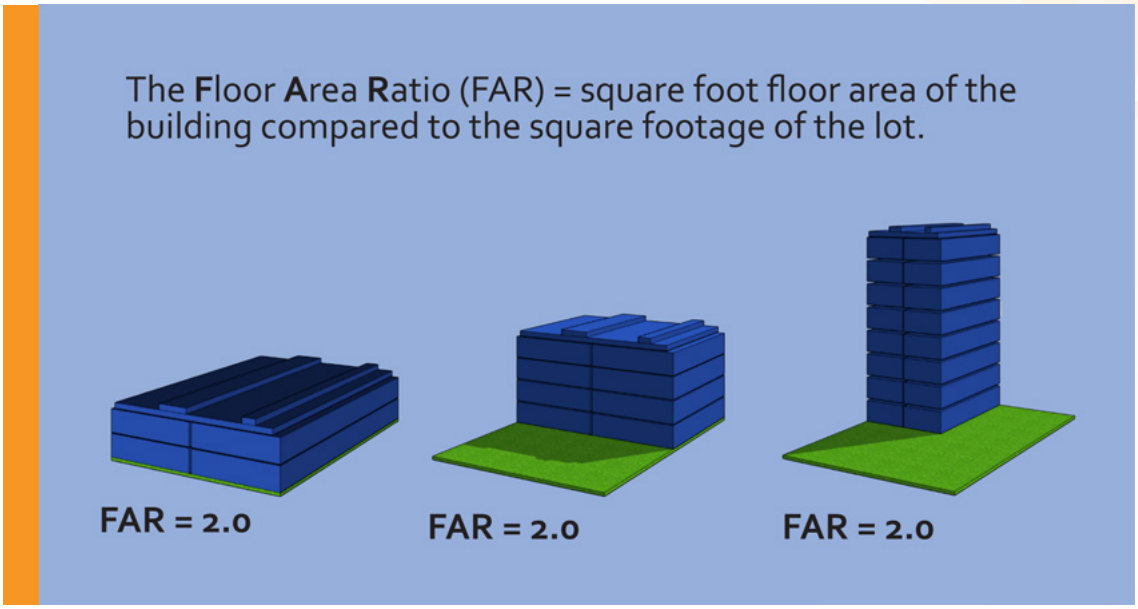
- **Density:** Density is the maximum number of units per a given benchmark (such as per acre) that may be built on lots within a particular zone of the municipality. It is commonly measured in dwelling units per acre ("du/ac"), but density limits may also take the form of units per building or per amount of open space provided on-site, etc. Generally speaking, the more units permitted per acre, the less expensive each unit can be, which is part of why the predominant (sometimes practically-townwide) single-family large lot zoning that this study found to be so prevalent can create barriers to affordability. The tables below show (but do not endorse) some typical density levels.

| Single Family Homes | Duplexes & Accessory Dwelling Units | Triplexes & Quadruplexes | 5-10 units | 10-30 units | 30+ units |
|---|---|---|---|---|---|
| Often 1 du/ac-1.5 du/ac | 2 du/ac | 3-4 du/ac | 5-10 du/ac | 10-30 du/ac | 30+ du/ac |

- **Minimum (or Maximum) Lot Size.** The minimum lot size is the smallest area of land allowed for the designated uses within a zone. For example, if a given single-family zone required a minimum lot size of a half acre, that would mean that each single-family unit would require a half-acre of land. If the zone permitted multifamily housing, the minimum lot size would be the amount of housing needed for an entire building (as opposed to per unit). Minimum lot size is related to, but is distinct from, minimum parcel size, which governs the amount of land needed for an entire housing development (in the case of subdivisions or multifamily housing). Thus, a regulation may require a minimum parcel size of, for example, 5 acres, and additionally require minimum lot sizes of a half acre for each individual unit or building. Maximum lot and parcel sizes, where applied, are the converse – they dictate the largest any given lot or parcel may be.

- **Minimum (and Maximum) Floor Area.** The minimum floor area is the minimum square footage permitted for a building of a given type in a zone. This establishes that a building cannot be smaller than a certain size. If minimum floor areas are set too high, it becomes more difficult to build housing that is affordable. A 1988 Connecticut Supreme Court case, Builders Service v. Planning and Zoning Commission of East Hampton, held that minimum floor areas must be rationally related to legitimate purposes for zoning codes delineated in C.G.S. § 8-2.[37] Maximum floor areas, where applied, represent the most square footage permitted in a building of a given type.

- **Floor Area Ratio (FAR):** The Floor Area Ratio is the square foot floor area of the building compared to the square footage of the lot. A FAR of 1.0 means that floor area may equal the lot area. FAR 5.0 means that the floor area may be up to five times as large as the lot area.




- **Bulk Regulations:** Bulk regulations are limits on the size and placement of buildings on a lot depending on the zone. Bulk regulations typically address building characteristics like height, the distance from the street (known as the setback), and lot coverage.

- **Frontage:** Frontage refers to the length of a given parcel or lot measured along a given dimension or road. Generally speaking, the more frontage that is required, the larger the lot or parcel and the more the construction costs for any new roads that may be needed within the development (and thus the greater the expense). Frontage requirements may also be used to ensure certain uses are only located in particular areas – such as along specified public roads.

- **Public Water / Sewer vs. Private Wells / Septic Systems:** There are two primary means for providing water and sewer infrastructure to residential developments. In towns (or parts of towns) that have access to public regional/municipal (or large, privately-operated) water systems and sewer systems, new housing may be connected to such systems. Where these are unavailable, developments may require either extension of / connection to such systems, or the creation of on-site wells for water and septic systems for sewage. Generally, towns have at least some portions of their towns without public water and/or sewer, and some have large areas without one or both of these infrastructural resources. Towns frequently require access to public water and sewer as a prerequisite for developing multifamily housing.

- **Occupancy Restrictions and Preferences:** Zoning regulations will sometimes impose requirements or prohibitions not on the permitted residential buildings themselves, but on those who may come to occupy them. These often take the form of age-restrictions (e.g., at least one resident must be 55+ years-old), but sometimes include limits on the number of people who may occupy units. These are distinct from, but related to, limits on the numbers of bedrooms permitted in certain developments. Some towns also impose preferences for residents meeting certain criteria in certain types of housing. For example, some towns institute residency preferences that give priority to local residents over non-residents for affordable housing developed pursuant to zoning provisions containing such preferences. Occupancy restrictions and preferences can run afoul of fair housing laws if they unjustifiably restrict the ability for protected groups (such as underrepresented racial or ethnic groups or families with children) to move into housing.

## Zoning Process: Who's Who

Typically, the players in the zoning process for an affordable or multifamily development include the following individuals and entities:

- ***The Developer/Applicant.*** The developer/applicant is the entity that acquires the rights to develop the property at issue either through outright acquisition or by purchasing an option to buy the land at some future point under certain conditions, like the receipt of zoning approval. Developers can be either for profit or non-profit. Developers typically work with a number of other partners including those with expertise in engineering, law, septic systems, design, planning, environmental issues (such as wetlands), and more.

- ***Planning and Zoning Commission.*** Pursuant to C.G.S. § 8-1, towns are allowed to establish zoning commissions that are to be composed of "electors" from the town, meaning residents able to vote in local elections. Generally, zoning commissioners are either directly elected or appointed by a town's chief executive and confirmed by its governing body. State law also provides for the creation of planning commissions (C.G.S. § 8-19), but, under C.G.S. § 8-4a, allows them to be combined with the zoning commission, which is the practice of most towns.

  The powers of combined planning and zoning Commissions include the abilities to do the following:

  - Establish, change, or repeal zoning regulations and zoning districts in accordance with the requirements of C.G.S. § 8-2. (See C.G.S. § 8-3).

  - Hear, consider, and decide upon petitions for changes to zoning regulations or zoning district boundaries. (See C.G.S. § 8-3).

  - Determine how zoning regulations should be enforced and enforce them. (See C.G.S. §§ 8-3(e) and 8-12).

  - Certify that a building's structure or use conforms with the zoning regulations. This duty may be delegated to the zoning enforcement officer. (See C.G.S. § 8-3(f)).

  - When appropriate, require, review and, if need be, modify site plans to determine conformance with zoning regulations. This power may be delegated to the zoning enforcement officer. (See C.G.S. § 8-3(g)).

  - Hear, consider, and rule upon applications for special permits or special exceptions to allow for a use not currently authorized for in the municipal zoning ordinance for the proposed location. (See C.G.S. §§ 8-2, 8-26(e)).

  - Prepare, adopt, or amend the town's POCD, which must be completed every 10 years. (See C.G.S. § 8-23).

  - Authorize municipal improvements (like widening streets and locating playgrounds) and public utilities. (See C.G.S. § 8-24).

  - Establish subdivision regulations, approve subdivisions, or waive regulations. (See C.G.S. § 8-26)

  - Approve applications for open space grants. (See C.G.S. § 7-131e(c)).

  - Oversee infrastructure plans. (See C.G.S. § 8-29).

- ***Zoning Board of Appeals.*** The Zoning Board of Appeals is an elected or appointed body consisting of five members and some non-statutorily specified number of alternates responsible for:
    - Determining appeals of decisions by the zoning enforcement officer.
    - Granting variances from the regular rules that apply in the zone where a use is proposed. For example, a homeowner might request a variance to add on to a home and build closer to the lot line than is currently allowed.
    - If delegated to it by the zoning regulations for the planning and zoning commission, deciding upon requests for a special permit or special exception allowing a use that is not as-of-right or otherwise permitted within the zoning ordinance.

- ***Other Municipal Bodies with Approval Authority.*** Depending on a parcel's location and characteristics, other municipal bodies may have authority to reject or require alterations to an affordable housing proposal. While this report does not address the role of these bodies in great depth, it is important to be cognizant of them and the roles that they can play.[38]
    - ***Inland Wetlands Commission.*** Under state law, each municipality is required to establish an Inland Wetlands Commission to regulate activities in a municipality in accordance with model regulations developed by the Department of Energy and Environmental Protection to protect inland wetlands and watercourses. Some functions of the commission may be delegated to an enforcement officer, whose decisions can be reviewed by the commission upon appeal. At least one member of the Inland Wetlands team must go through a training once a year. If a parcel proposed for development contains wetlands, the development proposal must be submitted to the local Inland Wetlands Commission. The wetlands approval process almost always happens before a planning and zoning commission hearing for a special exception / special permit, if required. This can be a costly process, both due to the initial costs of assessment and additional costs required if town and developer wetlands experts do not see eye to eye.
    - ***Historic Preservation Commission.*** State law allows for municipalities to establish Local Historic Districts ("LHD") and Local Historic Properties ("LHP") overseen by local commissions. If a property proposed for the development of affordable housing is proposed for a site designated for approval by one of the relevant commissions, it must go through an additional hearing. The historic preservation commission can impose obligations that exceed zoning requirements to, for example, preserve the historic character of the district.
    - Other State or municipal bodies with approval authority that may be relevant to an affordable or multifamily proposal include:
        - ☐ Local or Regional Water Pollution Control Authority
        - ☐ Municipal Architectural Review Board (typically advisory)
        - ☐ Flood & Erosion Control Board (if the property includes a watercourse)
        - ☐ Municipal Legislative Body (in some towns, these hear appeals of decisions on changes to zoning regulations or to the zoning map)
        - ☐ Local or Regional Health Department (reviews septic system designs up to a certain size and general compliance with the Public Health Code for new development)
        - ☐ Connecticut Department of Public Health (reviews the creation of community water and septic systems of certain sizes)
        - ☐ Connecticut Department of Energy and Environmental Protection (reviews community septic systems or potentially community water systems over a certain size)

## The Zoning Process: Step by Step

To advocate for changes to your local zoning, it is fundamental to understand the process an affordable or multifamily housing development typically goes through to gain the necessary approvals to begin construction.

**STEP 1: SITE SELECTION AND PROJECT PLANNING.** A developer will focus on several major considerations when envisioning a new multifamily or affordable housing development and where to locate it. The considerations include:

(1) Whether local zoning accommodates the proposal, including through a special permit or special exception;

(2) If the necessary infrastructure is in place or can be created without too much expense (e.g., site road access, utility connections, sewer extensions or septic systems);

(3) Apart from these considerations, is the town's overall attitude towards multifamily or affordable housing (or mixed-income communities) generally positive (or has there been vocal public support of past efforts to create housing that is more affordable);

(4) If the answer to all of the above is no, the developer may assess whether it will still be financially worthwhile to pursue the project through the C.G.S. § 8-30g affordable housing land use appeals process if it is eligible under that law (or, perhaps, though less likely, via other legal avenues); and

(5) If an affordable housing proposal requires government funding, which is especially likely to be the case if it will include some deeply affordable units (e.g., serving households at or below 50% of AMI), the developer will evaluate whether the various programs available include a priority for locations with a dearth of affordable housing.

**STEP 2: LAND RIGHTS ACQUISITION.** For the developer of multifamily or affordable housing, the next step in the process is the acquisition of land or an option to purchase land under certain conditions (such as gaining zoning approval). Prior to making a final commitment to purchase the land, a developer will often get an appraisal and commission experts to analyze the soil, topography, and environmental considerations such as wetlands. As with any vetting process, this process can be quite expensive, usually upwards of $25,000. It is also common for the property owner to require non-refundable deposits from the developer during the period of design and local review.

**STEP 3: APPLICATION FOR SPECIAL PERMIT.** Very few of the suburban towns we analyzed have significant portions of land that allow dwellings of three units or more without a special permit or special exception from the municipal zoning authority, usually the planning and zoning commission. Therefore, in almost all cases a developer of even small-scale multifamily housing will be required to go through the process of applying for a special permit or its equivalent. The process often starts with a meeting with town staff prior to submission and making revisions subject to those discussions (some towns even strongly encourage such pre-application meetings in their zoning regulations). After the submission of the application, there will be at least one public hearing – and in the case of multifamily housing, often more. To apply for a special permit or special exception, towns frequently require that developers submit some combination of documents outlining their proposal including but not limited to a site plan, a construction phasing plan, a sediment and erosion control plan, a landscape plan, a lighting plan, architectural drawings, and a traffic study. All of these submissions are also expensive – depending on the size and complexity of the proposal, generally costing between $25,000 to $100,000.

**STEP 4: PUBLIC HEARING PROCESS.** For multifamily and (perhaps especially) affordable housing proposals, the public hearing is often grueling and lengthy. It is not uncommon for the public hearing process for an affordable housing proposal to last six months or more. During this time, the developer must continue to pay on the land option or pay the mortgage on the land if it was purchased outright. Time literally is money, so the more a town delays, the greater the disincentive for developers to consider multifamily or affordable developments in the town.

Public hearings for affordable housing proposals in wealthier and whiter Connecticut towns often inspire intense opposition and limited local support. Public comments can be laced with long disproven misperceptions about the impact of affordable housing on crime level, home values, schools, municipal services, traffic, taxes and more. Stereotypes of the residents who reside in affordable housing are also a theme that can appear in opposition comments. This, despite the facts that housing throughout much of Connecticut is grossly unaffordable even for those working full time jobs at minimum wage; that "affordable" is typically defined at levels much higher than minimum wage (up to two and half times as high); and that most recipients of even the deepest levels of housing assistance are working, seniors, have a disability, are responsible for very young children, or have some combination of these traits.

**STEP 5: OTHER APPROVALS.** In addition to zoning approval, multifamily and affordable housing proposals are subject to a number of other approval processes that were previously discussed.

Significantly, even after approval from all relevant municipal bodies, a developer must continue to work in partnership with the town to ensure efficient development. Other town entities with power over building approval, utility access, and street easements, to name a few, are critical partners. And if gaining approval for a multifamily or affordable development becomes contentious, the path to a final project can be made all the more difficult and costly for a developer.

**STEP 6: APPLICATION FOR HOUSING SUBSIDIES.** If a developer seeks to include a meaningful percentage of deeply affordable units in his or her housing development, it is likely that an application for state or federal housing subsidies will be needed. Housing subsidy programs, such as the Low-Income Housing Tax Credit Program, generally require that the developer have municipal zoning approval in advance of submitting an application for subsidy assistance. By this time, a developer has likely spent over $250,000 in costs.

# Endnotes

1. *See* Bureau of Economic Analysis, *State Annual Personal Income, 2020 (Preliminary) and State Quarterly Personal Income, 4th Quarter 2020*, available at https://www.bea.gov/sites/default/files/2021-03/spi0321_3.pdf. See also Alas, Horus. "The 10 Richest States in America," U.S. News, Mar. 11, 2021, available at https://www.usnews.com/news/best-states/slideshows/10-wealthiest-states-in-america?slide=6.
2. *See* Hudson, Camara Stokes, "The Black-White Education Gap in Connecticut: Indicators of Inequality in Access and Outcomes," *Connecticut Voices for Children*, Jan. 22, 2018, available at https://ctvoices.org/wp-content/uploads/2018/01/New-Edits-NG-The-Black-White-Education-Gap-In-Connecticut-Indicators-of-Inequality-in-Access-and-Outcomes-Final-Copy-1.pdf.
3. *See* Connecticut Department of Housing, *Connecticut Analysis of Impediments to Fair Housing Choice*, 2015, p. 56, available at https://portal.ct.gov/-/media/DOH/AnalysisofImpediments2015pdf.
4. *See* id. at 111-115.
5. *See* id. at 104.
6. *See* Zonta, Michela, "Expanding the Supply of Affordable Housing for Low-Wage Workers," *Center for American Progress*, Aug. 10, 2020, available at https://www.americanprogress.org/issues/economy/reports/2020/08/10/488313/expanding-supply-affordable-housing-low-wage-workers/.
7. *See* U.S. News, *Long-Term Fiscal Stability Rankings*, 2021, available at https://www.usnews.com/news/best-states/rankings/fiscal-stability/long-term.
8. *See* Connecticut Department of Housing, *Connecticut Analysis of Impediments to Fair Housing Choice*, 2015, pp. 74-82, available at https://portal.ct.gov/-/media/DOH/AnalysisofImpediments2015pdf.
9. *See* Connecticut Department of Housing, *Connecticut Analysis of Impediments to Fair Housing Choice*, 2015, p. 3, available at https://portal.ct.gov/-/media/DOH/AnalysisofImpediments2015pdf.
10. The word "Hispanic" is used throughout this Complaint to refer to people who identify themselves as "Hispanic or Latino," as defined by the Census Bureau. The use of this term is not intended to suggest that the word "Hispanic" is preferable to terms such as "Latino" or "Latinx."
11. *See* Connecticut Department of Housing, Connecticut Analysis of Impediments to Fair Housing Choice, 2015, p. 3, available at https://portal.ct.gov/-/media/DOH/AnalysisofImpediments2015pdf.
12. *See* id.
13. Following the U.S. Supreme Court's decision in *Bostock v. Clayton Cty.*, 140 S. Ct. 1731 (2020) (ruling that a comparable provision of Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment on the basis of sexual orientation and gender identity), the U.S. Department of Housing and Urban Development announced that it will administer and enforce the Fair Housing Act to prohibit discrimination in housing on the basis of sexual orientation and gender identity, and courts are likely to follow suit. *See* U.S. Department of Housing and Urban Development, "HUD to Enforce Fair Housing Act to Prohibit Discrimination on the Basis of Sexual Orientation and Gender Identity," Feb. 11, 2021, available at https://www.hud.gov/press/press_releases_media_advisories/hud_no_21_021. *See* also U.S. Department of Housing and Urban Development, Office Fair Housing Employment and Equal Opportunity, I*mplementation of Executive Order 13988 on the Enforcement of the Fair Housing Act*, Feb.

11, 2021, available at https://www.hud.gov/sites/dfiles/PA/documents/HUD_Memo_EO13988.pdf.

14. *See* Open Communities Alliance, *Connecticut Opportunity Map*, 2021, available at https://www.ctoca.org/ct_opportunity_map.
15. On the other hand, lower income Black and Hispanic families wishing to live in communities that are currently higher poverty may want to do so for a variety of reasons, including a multigenerational connection to a community; involvement with cultural institutions; and concerns, both based on personal experience and based on assumptions made without direct experience, about the ability of whiter, wealthier communities to be genuinely welcoming and inclusive or a variety of other considerations. *See*, e.g., Leonhardt, David, "Middle-Class Black Families, in Low-Income Neighborhoods," *The New York Times*, Jun. 24, 2015, available at https://www.google.com/url?q=https://www.nytimes.com/2015/06/25/upshot/middle-class-black-families-in-low-income-neighborhoods.html; Shapiro, Eliza, "'I Love My Skin!' Why Black Parents Are Turning to Afrocentric Schools," *The New York Times*, Jan. 8, 2019, available at https://www.nytimes.com/2019/01/08/nyregion/afrocentric-schools-segregation-brooklyn.html; Eligon, John and Gebeloff, Robert, "Affluent and Black, and Still Trapped by Segregation," *The New York Times*, Aug. 20, 2016, available at https://www.nytimes.com/2016/08/21/us/milwaukee-segregation-wealthy-black-families.html.
16. *See*, e.g., Boggs, Erin and Dabrowski, Lisa, *Out of Balance: Subsidized Housing, Segregation and Opportunity in Connecticut*, Sep. 2017, available at http://www.ctoca.org/outofbalance.
17. *See*, e.g., Lurye, Rebecca, "Hartford prepares for start of rental licensing program aimed at uncovering negligent landlords, hires new blight director," *Hartford Courant*, Apr. 7, 2021, available at https://www.courant.com/community/hartford/hc-news-hartford-blight-housing-changes-20210407-cnhdbpon4jfqxgri3jn53rroz4-story.html.
18. *See* id.
19. *See* "Mapping Displacement and Gentrification in the New York Metropolitan Area," *Urban Displacement Project*, available at https://www.urbandisplacement.org/maps/ny.
20. *See*, e.g., Ayscue, Jennifer, Frankenberg, Erica, & Siegel-Hawley, Genevieve, "Research Brief No. 10: The Complementary Benefits of Racial and Socioeconomic Diversity in Schools," *The National Coalition on School Diversity*, Mar. 2017, available at https://school-diversity.org/pdf/DiversityResearchBriefNo10.pdf.
21. *See* id.
22. *See* id.
23. *See* id.
24. *See* Kinsey, David N., Fair Share Housing Model for Connecticut 2020, Nov. 2020, available at https://www.ctoca.org/fairshare.
25. *See* id.
26. *See* id.
27. *See* id.
28. *See* Mazzara, Alicia, Sard, Barbara, and Rice, Douglas, "Rental Assistance to Families with Children at Lowest Point in Decade," *Center on Budget and Policy Priorities*, Oct. 18, 2016, p. 3, available at https://www.cbpp.org/sites/default/files/atoms/files/5-24-16hous.pdf.
29. *See* Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing* 2020, Dec. 2020, pp. 35-36, available at https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2020_Report_Revised_120720.pdf.
30. *See* Connecticut Department of Housing, *Connecticut Analysis of Impediments to Fair Housing Choice*, 2015, p. 3, available at https://portal.ct.gov/-/media/DOH/AnalysisofImpediments2015pdf.
31. *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926).
32. The zoning authority of some towns derives from Special Acts of the Legislature.
33. *Ambler Realty Co. v. Vill. of Euclid*, 297 F. 307, 313, 316 (N.D. Ohio 1924), rev'd 272 U.S. 365 (1926).
34. *Ambler Realty Co.*, 297 F. at 313, rev'd 272 U.S. 365 (1926).

35. *See*, e.g., Brown Calder, Vanessa. "Zoning, Land-Use Planning, and Housing Affordability." *Cato Institute*, Oct. 18, 2017, available at https://www.cato.org/policy-analysis/zoning-land-use-planning-housing-affordability; Rothwell, Jonathan. "Housing Costs, Zoning, and Access to High-Scoring Schools." Brookings Institute, Apr. 2012, available at https://www.brookings.edu/wp-content/uploads/2016/06/0419_school_inequality_rothwell.pdf.
36. See Tondro, Terry J., "Connecticut's Affordable Housing Appeals Statute: After Ten Years of Hope, Why Only Middling Results?", 23 W. New Eng. L. Rev. 115 (2001), p. 115 n.3, available at https://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1161&context=lawreview.
37. *See Builders Serv. v. Planning and Zoning Comm'n of East Hampton*, 208 Conn. 267, 306 (Conn. 1988).
38. *See* C.G.S § 8-5.

# Town Analyses

# Core Planning and Zoning Documents for 12 Towns

Below are links for each town to three critical documents in evaluating their planning and zoning: the zoning code, the most recent Plan of Conservation and Development ("POCD"), and the zoning map. Links to other documents cited in a given town (such as prior POCDs or recent amendments to zoning codes / maps) shall be provided in that town's individual report.

In addition, each report relies upon the "Town Data Compendium" that has been made publicly available on Open Communities Alliance's website at the following address: http://www.ctoca.org/zoning_for_equity.

## Avon

Zoning Code:
https://library.municode.com/ct/avon/codes/charter,_ordinances_and_selected_regulations?nodeId=PTIICOOR_APXDZO

Plan of Conservation and Development:
https://www.avonct.gov/planning-community-development/pages/2016-plan-of-conservation-and-development-effective-december-1

Zoning Map:
https://www.avonct.gov/sites/g/files/vyhlif151/f/uploads/toazoningmap_rev_feb_2017_aquifprotection_feb28_2017.pdf

## Berlin

Zoning Code:
https://www.town.berlin.ct.us/egov/documents/1570046240_93286.pdf

Plan of Conservation and Development:
https://www.town.berlin.ct.us/egov/documents/1557412865_25538.pdf

Zoning Map:
https://www.town.berlin.ct.us/egov/documents/1597239785_83822.pdf

## Darien

Zoning Code:
http://www.darienct.gov/filestorage/28025/28547/28935/ZONING_REGULATIONS_COMBINED_THROUGH_AMENDMENT_%2379_With_Appendix_F.pdf

Plan of Conservation and Development:
http://www.darienct.gov/filestorage/28565/28567/28890/29006/POCD_ALL_061016_RFS.pdf

Zoning Map:
http://www.darienct.gov/filestorage/28025/28547/28935/Zoning_Map_-_effective_08-11-2019.pdf

## *Glastonbury*

Zoning Code:
https://www.glastonburyct.gov/home/showdocument?id=13782

Plan of Conservation and Development:
https://www.glastonburyct.gov/home/showpublisheddocument/26579/636790984008100000

Zoning Map:
https://www.glastonburyct.gov/home/showpublisheddocument?id=30716

## *Fairfield*

Zoning Code:
https://www.fairfieldct.org/filestorage/10726/11028/12431/Zoning_Regulations.pdf

Plan of Conservation and Development:
https://www.fairfieldct.org/filestorage/10726/11028/12429/20922/POCD.pdf

Zoning Map:
https://www.fairfieldct.org/filestorage/10726/11028/12429/17562/ZoningMap.pdf

## *Madison*

Zoning Code:
https://www.madisonct.org/DocumentCenter/View/327/Zoning-and-Subdivision-Regulations-PDF

Plan of Conservation and Development:
https://www.madisonct.org/351/Plan-of-Conservation-Development

Zoning Map:
https://www.madisonct.org/DocumentCenter/View/332/Districts-Zoning-Map-PDF

## *North Haven*

Zoning Code:
https://cms1files.revize.com/revize/northhavenct/Document%20Center/Government/Town%20Departments/Land%20Use/LND20070205ADOPTEDREGSrev1.pdf

Plan of Conservation and Development:
https://cms1files.revize.com/revize/northhavenct/Document%20Center/Government/Town%20Departments/Land%20Use/PCD20170817WebQuality.pdf

Zoning Map:
https://northhavenct.mapgeo.io/datasets/properties?abuttersDistance=100&latlng=41.383447%2C-72.862594&panel=themes&themes=%5B%22zoning%22%5D&zoom=12

## *Orange*

Zoning Code:
https://ecode360.com/8844845

Plan of Conservation and Development:
https://www.orange-ct.gov/DocumentCenter/View/117/2015-Plan-of-Conservation-and-Development-PDF

Zoning Map:
https://www.orange-ct.gov/DocumentCenter/View/118/Orange-Zoning-Map-PDF

## *Ridgefield*

Zoning Code:
https://www.ridgefieldct.org/planning-and-zoning/pages/zoning-regulations

Plan of Conservation and Development:
https://www.ridgefieldct.org/sites/g/files/vyhlif4916/f/uploads/ridgefield_adopted_2020_pocd_with_maps_rfs.pdf

Zoning Map:
https://www.ridgefieldct.org/sites/g/files/vyhlif4916/f/uploads/zoningmap-feb2018_1.pdf

## *Southbury*

Zoning Code:
https://library.municode.com/ct/southbury/codes/code_of_ordinances?nodeId=PTVZORE

Plan of Conservation and Development:
https://www.southbury-ct.org/filestorage/20556/20567/20590/Southbury_2012_POCD.pdf

Zoning Map:
https://server2.mapxpress.net/webdata/southbury/mapgallery/Zoning.pdf

## *Southington*

Zoning Code:
https://www.southington.org/Planning%20&%20Zoning%20Dept/Zoning%20Regulations/Zoning%20Regulatons_Complete%20set%20revised%20to%2012.15.20.pdf

Plan of Conservation and Development:
https://www.southington.org/Planning%20&%20Zoning%20Dept/2016%20Plan%20of%20Conservation/Adopted_POCD_Effective_060416_RFS.pdf

Zoning Map:
https://www.southington.org/Zoning%20Map%20-%20October%201%202020.pdf

## *Westport*

Zoning Code:
http://online.encodeplus.com/regs/westport-ct/doc-viewer.aspx?secid=664#secid-664

Plan of Conservation and Development:
https://www.westportct.gov/government/departments-a-z/planning-and-zoning-department/2017-plan-of-conservation-and-development

Zoning Map:
https://www.westportct.gov/home/showpublisheddocument/17986/636934866377170000

# Avon

## Overview

Avon is a town of 18,312 people[1] in Hartford County. The town's Plan of Conservation and Development ("POCD") attributes Avon's "very desirable set of characteristics which make it a highly sought after place to live" in large part to "adherence to, and the successful implementation of, land use policies contained in earlier Plans of Conservation and Development."[2] But this boast overlooks the fact that Avon is segregated, lacks affordable housing, and maintains planning and zoning policies that appear to pose significant impediments to multifamily and affordable housing development.

## Summary of Findings

- ***Only 0.8% of Avon is Black – fewer than 150 people – with a marked absence of Hispanics and low-income households, as well.***
- ***Avon's Plan of Conservation and Development ignores segregation, denies impact of zoning on affordability, and commits to maintaining status quo.***
- ***The town's land use is dominated by large lot, detached single-family zoning (only 4.6% of land is occupied by multifamily uses).***
- ***Single-family housing is as-of-right in residential areas, yet multifamily housing always requires discretionary planning and zoning commission approval – including a public hearing.***
- ***Several affordable and multifamily zones favor homeownership or elderly housing, or target smaller households.***
- ***Avon imposes onerous parcel size and density provisions on multifamily special exceptions.***

## Demographics Overview: Avon lacks Black, Hispanic, and low-income people

| Key Demographic Data | Avon | Hartford County | Connecticut |
|---|---|---|---|
| Total Population | 18,312 | 893,561 | 3,575,074 |
| % White, Non-Hispanic | 78.7% | 61.1% | 66.9% |
| % Black, Non-Hispanic | 0.8% | 12.9% | 9.9% |
| % Hispanic, Any Race | 4.9% | 18.0% | 16.1% |
| % Asian, Non-Hispanic | 13.1% | 5.3% | 4.5% |
| % Population Below Poverty | 3.4% | 10.8% | 9.9% |
| Median Household Income | $131,130 | $75,148 | $78,444 |
| Grand List Per Capita | $199,685 | $121,150 | $160,428 |
| *For data sources, see the report's Town Data Compendium.* | | | |

The population data reproduced in the table above reveal high levels of racial segregation in Avon. Less

than 1% of the town is Black[3] – which translates to *fewer than 150 people* – even though 12.9% of Hartford County as a whole is Black.[4] Hispanics are also underrepresented, accounting for just 4.9% of Avon's population when they make up 18% of the county. Meanwhile, the town is disproportionately white (78.7%, as compared with 61.1% in the county) and Asian (13.1% vs. 5.3% for Hartford County).[5]

Avon's racial imbalance is matched by its lack of economic diversity. While 10.8% of Hartford County lives below the poverty line, just 3.4% of Avon residents do. As the POCD notes, Avon's median income is "substantially higher" than the county median, or even the marginally higher state median.[6]

## *Plan of Conservation and Development cites importance of population data, yet ignores race and segregation*

The demographic data above raise serious concerns regarding exclusion of low-income and of-color households. The POCD (perhaps euphemistically) suggests that the "population of every community is somewhat unique" in ways that necessitate "an understanding of various community characteristics" to "fully understand the present and future needs of Town residents" (note that this does not mention regional need).[7] Yet despite proceeding to evaluate a variety of demographic data in pursuit of this "understanding" – pertaining to age, income, educational attainment, and employment – the POCD does not even look at the racial composition of the town, much less address or acknowledge Avon's segregation.[8] Turning of a blind-eye to who is being kept out is all the more alarming in light of Avon's awareness that the economic landscape in the Capitol Region is not what it once was, with Avon and its fellow "suburban communities hav[ing] taken on a more dominant role" and having "become an employment center, shifting jobs from the core of Hartford to suburban areas."[9]

## *Housing Stock Overview: Clear need for affordable and multifamily options*

| Key Housing Data | Avon | Hartford County | Connecticut |
|---|---|---|---|
| Total Housing Units | 7,384 | 379,602 | 1,516,629 |
| % Affordable (C.G.S. § 8-30g) | 4.1% | 14.4% | 11.7% |
| Median Home Value (Owned) | $383,200 | $240,600 | $275,400 |
| % Single-Family | 84.4% | 61.3% | 64.3% |
| % Two-Family | 0.5% | 7.8% | 8.2% |
| % 3-9 Units | 6.0% | 15.8% | 14.1% |
| % 10-19 Units | 1.2% | 4.4% | 3.8% |
| % 20+ Units | 7.9% | 10.2% | 8.8% |
| % Mobile Homes | 0.0% | 0.6% | 0.8% |
| 2001-2017 Permits | 1,007 | 25,219 | 117,821 |
| % Permits Single-Family | 83.7% | 69.1% | 68.7% |
| % Permits 5+ Units | 10.8% | 25.8% | 27.5% |
| *For data sources, see the report's Town Data Compendium.* | | | |

Avon's housing stock heavily favors single-family homes over multifamily options. Nearly 85% of Avon homes are single-family, as compared with 61.3% in Hartford County and 64.3% in the state.[10] This appears to be an enduring trend. More than 83% of building permits issued by the town from 2001 to

2017 (the last year for which data is available) were for single-family construction – exceeding both the county and state by about 15%.[11]

Avon's housing supply lags behind the county and state equivalents at all higher-occupancy levels. This is especially true in the two-family to 19-unit building range, which comprise less than 8% of all Avon homes while making up more than a quarter of both the county and state's housing supplies.[12] While the town's share of 20-or-more unit buildings is closer to (but still lower than) the county and state levels, this in no way shows an abundance of *affordable* housing.[13] Instead, as the town's own data on non-single-family uses demonstrate, *by far* the most common form of multifamily housing in Avon are condominiums. The POCD reported 1,896 condominium units as compared with 297 non-age-restricted rental apartments (and 419 age-restricted or assisted living units).[14]

Indeed, and as is often the case, segregation is accompanied by a lack of affordable housing in Avon. Only 4.1% of housing in Avon qualifies as affordable under the State's Affordable Housing Appeals Procedure (C.G.S. § 8-30g), falling far below both the county (14.4%) and statewide (11.7%) levels.[15] Nor does Avon's market-rate housing seem to provide ample opportunity for moderate income households. The median home in Avon is more than $140,000 more expensive than the median home in Hartford County and more than $100,000 more expensive than the state median.[16] The POCD highlighted data that showed that nearly two-thirds of Avon's housing stock costs more than $300,000.[17]

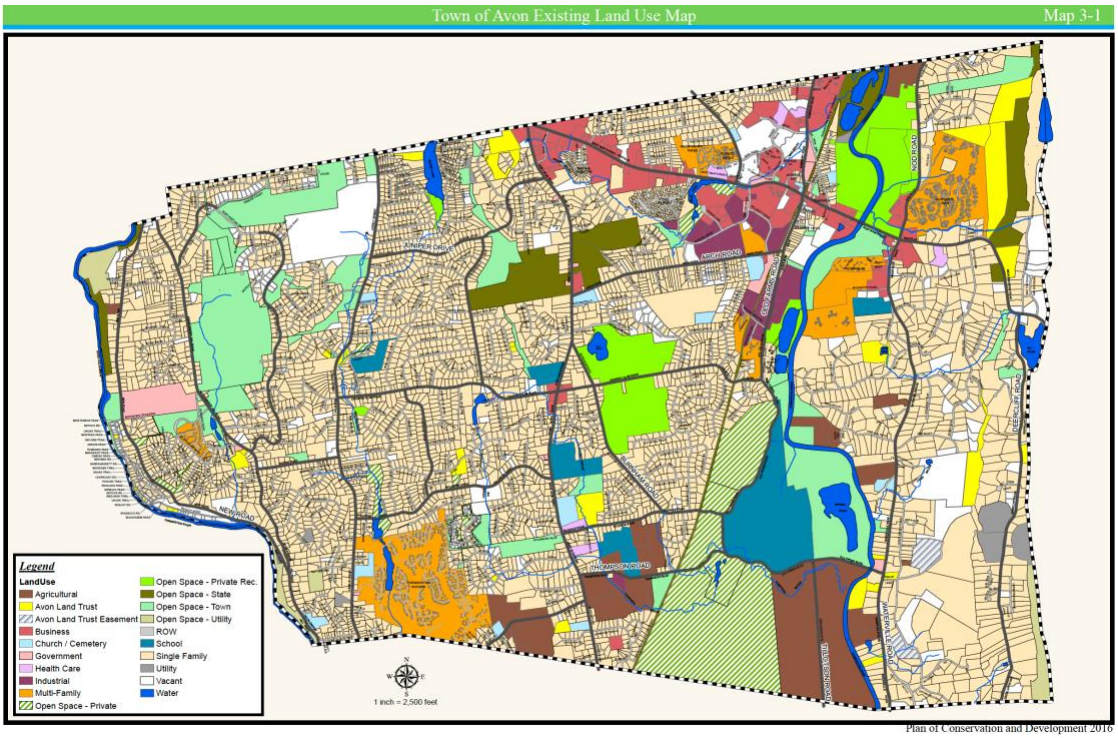
## *Avon's planning denies the role of zoning in impeding affordability and does not seek to significantly expand the multifamily and affordable housing stocks*

Simply put, Avon's housing supply is lopsided in favor of single-family and unaffordable options. But rather than planning for change to promote inclusion, the POCD – the "framework" meant to "guide the Planning and Zoning Commission and the Residents of Avon in making decisions regarding to land use"[18] – shifts blame for the lack of affordability away from the town's planning and zoning. The POCD acknowledges (as any observer must) that Avon's affordable housing stock is "substantially less" than the State's 10% threshold (in reference to C.G.S. § 8-30g).[19] In light of this shortfall, the town "supports the construction of affordable housing units in Avon."[20] But this does not seem to have caused the town to reassess its zoning: "It is the [planning and zoning] Commission's belief that, to date, private developers have proposed a limited number of affordable units, not because of perceived zoning policies or actions of the Commission, but rather due to economics."[21] Avon, in other words, does not appear willing to recognize that its zoning may have helped create impediments to affordability.

It is perhaps of little surprise, then, that the POCD sets Avon on the path of continuity rather than substantial reform. The first of the POCD's housing "Policies" (defined as "specific statements" to be "used as a basis for decision making and achieving objectives"[22]) states that "[i]t is desirable to maintain the current ratio of single-family housing to multifamily housing."[23] Nor does the POCD call for a large increase in affordable housing – instead merely encouraging multifamily applications "to include a *modest number* of affordable housing units."[24] This appears to be a recipe to retain the status quo.

The town's lack of ambition seems to reflect broader sentiment in the town. A "statistically valid," 70-question survey[25] revealed that 67% of Avon residents think that the "current ratio" of single-family to multifamily homes is "about right," and the majority of those surveyed believe that "encouraging the development of more moderately priced homes" is either "not too important or not important at all."[26]

## *Land Use Overview: Single-family dominates, with little available land for multifamily or affordable housing*




*Source: POCD Map 3-1, "Existing Land Use Map."*

The POCD's "Existing Land Use Map," reproduced above,[27] makes visible what the housing data suggested: single-family housing reigns supreme in Avon. The beige areas that dominate the map are single-family uses, whereas the handful of orange parcels are "Multi-Family." The POCD also provided a numerical analysis of land uses, finding more than ten-times the amount of land in town was dedicated to single-family residences (7,207 acres or 48.2% of the town) than multifamily residences (687 acres, or 4.6% of Avon).[28] Even assuming this accurately reflected the distribution (*i.e.*, ignoring the likely undercount of single-family due to the "attached" issue flagged above), that is a stark imbalance.

The same analysis found just 935 acres – only 6.5% of the town – was "Vacant Land" (and some of this already small subset "is either difficult to develop or prohibited from development due to natural resource constraints").[29] The POCD noted that winning support for development will be challenging: "The Commission is also aware that in many instances residents sentiments are in opposition to new development to maintain community character."[30] While the POCD conceded that the planning and zoning commission ("commission") does "not legally have the right to simply stop development," it assured readers that the "Town, of course, has the option to purchase private property and limit development, such as the Town's decision to purchase the 317-acre Fisher Farm in 2002 and protect it as open space."[31] The POCD targeted another 932 acres for acquisition and preservation as open space, compounding scarcity concerns.[32]

## *Large-lot single-family districts overwhelm other zones in Avon*

The outlook for affordable housing is just as grim when one looks at how land is zoned in Avon. While the zoning map can be difficult to discern on its own,[33] the POCD provides numerical analyses of town acreage by zone in Table 3-2, which is reproduced to the right.

| | ZONE | # OF ACRES | % OF TOWN |
|---|---|---|---|
| Residential | Residential 15 (R15) | 50 | 0.3 |
| | Residential 30 (R30) | 2,054 | 13.7 |
| | Residential 40 (R40) | 4,696 | 31.4 |
| | Rural Residential (RU2A) | 3,143 | 21.0 |
| | | | |
| Business | Office Park (OP) | 53 | 0.4 |
| | Neighborhood Business (NB) | 24 | 0.2 |
| | Commercial Specialized (CS) | 80 | 0.5 |
| | Commercial Retail (CR) | 170 | 1.2 |
| | Commercial Park B (CPB) | 47 | 0.3 |
| | Commercial Park A (CPA) | 56 | 0.4 |
| | Avon Village Center (AVC) | 108 | 0.7 |
| | | | |
| Industrial | Industrial Park (IP) | 370 | 2.5 |
| | Industrial (I) | 143 | 0.9 |
| | | | |
| | Educational Land (EL) | 872 | 5.8 |
| | | | |
| | Agricultural (A) | 295 | 1.9 |
| | | | |
| | Recreation and Open Space (ROS) | 2,807 | 18.8 |
| | **TOTAL** | **14,968** | **100%** |

**Table 3-2** How Land is Zoned

*Source: POCD, at 24.*

Nearly two-thirds of the town falls into single-family zones with minimum lot sizes ranging from 30,000 square feet (roughly 70% of an acre; R30 zone) to 40,000 square feet (92% of an acre; R40 zone) to 2 acres (RU2A zone).[34] Such large-lot, single-family zoning is a classic driver of high housing costs.[35] By contrast, just 1% of town is in either the smallest-lot residential zone (the R-15, which still imposes more than one-third acre lot sizes[36]) or in the "Avon Village Center" ("AVC") that the POCD claims was created out of recognition for the demand for, *among other things*, "smaller housing units in a safe, walkable environment."[37]

## *Bureaucratic Hurdles: No multifamily is permitted as-of-right, instead requiring burdensome review processes, unlike single-family in residential zones*

There is not one square-inch of Avon in which the zoning code allows for multifamily housing as-of-right – meaning without having to first obtain a special exception or a zone change from the commission. In the "Residential and rural zones," the only "Permitted uses" are "Single-family dwelling" and farming,[38] whereas multifamily homes may only be developed if "authorized by the Commission as a special exception."[39] Even adding an accessory dwelling unit ("ADU") requires a special exception,[40] notwithstanding the POCD's suggestion that the "Commission may wish to consider regulatory changes that would permit the establishment of an accessory apartment as of right."[41] The same is true for every non-residential and floating zone in which anything above single-family housing is permitted.[42]

Finally, the town's density-boosting overlay zones – the "Transfer of Development Rights" ("TDR")[43] and the "Attainable Housing Overlay Zone" ("AHOZ") – require a special exception or a zone change, respectively.[44] The latter is especially noteworthy because the AHOZ appears to be the *only* rental inclusionary provision in the zoning code, requiring 20% deed-restricted affordable units (at 80% of area median income, as determined by the U.S. Department of Housing and Urban Development) that can be either rental or homeownership (as is discussed below, the only other inclusionary housing provision for planned residential developments includes the possibility only for "moderately-priced" *homeownership* opportunities).[45] So the town is placing procedural roadblocks from in the way of its only inclusionary housing mechanism for affordable rentals that it does not for single-family housing.

These special exception and zone change requirements for multifamily uses make such housing both more costly and risky to build. A critical source of both burden and risk is the public hearing process imposed on all applications other than site development plans (special exceptions and zone changes are specifically enumerated as distinct forms of applications from site development plans).[46]

Certain zones entail even more layers of subjective review. For example, "[a]ll new construction and substantial reconstruction activities" in the AVC are "reviewed by an architectural or design professional designated by the Commission."[47] The AVC also requires special permits for all "individual development block" proposals therein – or "Avon Center Design District" ("ACDD") applications – review of which take into account factors like "the level of integration" of the ACDD with the rest of the AVC.[48]

While the zoning code oddly does not define the requirements for "permitted uses," (like single-family homes in residential zones) it is clear they do not require these procedures. And the POCD suggests that they are subject to far less interference from the commission, noting that in contrast to when the commission is "given a certain degree of discretion through its regulations when reviewing applications for development, uses that are "permitted 'as of right'" present circumstances where "there is very little discretion given to the Commission and an application must be approved if all regulatory standards are satisfied."[49] As noted above, in sharp contrast with multifamily housing, single-family housing is a permitted use in every residential zone.[50]

## *Commission special exception and zone change review is highly discretionary*

Both procedures also grant the commission a high degree of discretion that make it easier for the commission to vote down proposals than if there were fewer or more concrete standards of review. For example, the commission is required to reject special exception applications that are not "in conformance" with the "general criteria" of § VIII,[51] which include such vague considerations as the following: whether the location, size, and intensity of the proposed use is in "harmony with the orderly development of the area" and surrounding uses; whether the proposed use "will not hinder or discourage appropriate use of adjoining lots"; whether the proposed use "will not alter the essential characteristics of the area or adversely affect property values;" and whether the proposed use "will not conflict with the purposes of these regulations."[52] The commission also has broad authority when reviewing zone changes to reject proposals that are inconsistent with the POCD "and the purposes of these regulations" – which, again, is especially of note given that a zone change is needed for AHOZ.[53]

AHOZ review is also marked by subjective assessments. That zone places "creating additional housing opportunities" on equal footing with "promoting the appropriate development and protection of Avon's historic areas" and requires proposals to meet "a high level of architectural character" – stressing "[t]his consideration will be an important part of the review and granting of any approval."[54] The assessment pursuant to this provision is guided by such amorphous metrics as whether housing "enhance[s] the general character and add[s] to the architectural desirability of a historic New England town," and whether "monotony" and "[m]onolithic building forms" are avoided.[55] Such aesthetic criteria leave much to the discretion of the commission and are difficult to challenge in the event of a denial.

### *Inadequate Provisions: Avon targets a number of its multifamily housing provisions to homeowners, the elderly, and non-families*

Several of Avon's zones limit who can benefit from any generated multifamily housing. In the PRD, it is renters who are left behind, since the provision is framed entirely in terms of homeownership. The PRD requires all "moderately priced homes" to "be occupied by the initial purchaser until subsequent sale," sets "Sale price" limits to "ensure that homes shall be purchased by families with moderate incomes," and calls for monitoring "Unit sales."[56] The town maintains the PRD's focus on homeownership even though it knows renters tend to earn much less than homeowners,[57] and even though the PRD is meant to assist "low- and moderate-income families" generally, not just those who can afford to buy a home.[58]

Comparing the PRD with the "Planned Elderly Residential Development" ("PERD") special exception reveals another disfavored group: non-elderly affordable housing seekers. The PRD only allows for two-family units and such units may comprise no more than 10% of the total housing, while the PERD allows for multifamily housing in general without any ceiling on the number of such units.[59] The PRD allows for 3.75 units per acre on a minimum lot of 15 acres if a "moderately-priced housing component" is included (or 3.0 units per acre on a minimum lot of 30 acres, if not); by contrast, the PERD permits more than double the units per acre (8) and can be built on much smaller lots (5 acre minimum).[60] Tellingly, the only difference in the stated purposes of these zones is that the PRD is targeted toward "low- and moderate-income families" in general, whereas the PERD is intended "to meet the special needs of the elderly and the handicapped."[61] (Note that PERD and PRD are almost always *both* allowed in a given district, so the difference in their treatment in the zoning code cannot be attributed to the underlying zones in which each special permit is available.[62])

Some of Avon's multifamily provisions also discourage housing for families. For example, the AVC (which the POCD highlighted in discussing the need to "[e]xtend housing opportunities and design choices to accommodate a variety of household types and needs"[63]) blocks many families from its 500 units by requiring that "[a]ll dwelling units generally shall have two bedrooms or fewer."[64] This follows from the AVC's "Purpose," which includes promoting housing "that meet[s] the needs of smaller households and families."[65] This also is of a piece with the POCD's observation that the "predicted drop in school-age population . . . should result in a very favorable situation" for Avon, allowing it "to continue to offer a top tier educational system and high quality services, while maintaining a modest tax rate."[66]

What is striking about Avon's failure to account for the needs of a broader cross-section of those who need affordable housing is that it knows there is a problem. The POCD "recognizes" both the "important demographic and societal changes" that made it "prudent" to "encourage the development of smaller, single-family homes and multi-family units in order to meet expected demand;" and, more specifically, that there was a "growing population of people in both the baby boomer generation and the millennial generation who, in many instances, are seeking alternatives to large lot single-family home living."[67] Other groups, including those disfavored by the zones described above, also seek such alternatives.

## *Lot Size: Almost categorically large lot sizes, as well as burdensome minimum parcel sizes for several multifamily special*

Large lot sizes are required for residences in virtually every corner of Avon, regardless of whether the district is primarily residential or mixed-use. With the exception of the R-15 zone (which, as can be seen above, is applicable to just 0.3% of the town[68]), every single mapped zone that allows for residences in some form or fashion requires at least 30,000 square feet (more than two-thirds of an acre) per lot.[69] Nor does the AHOZ relax lot size standards, instead adopting those applicable to the underlying zone (unless a waiver is granted by special permit).[70]

Additionally, a number of the town's multifamily and affordable housing special exceptions – recall that Avon never allows multifamily without a special exception or zone change[71] – impose huge minimum parcel sizes. Below are some examples.

- The "Multiple Dwelling Development" special exception for "Residential and rural zones" and the Commercial Park B zone requires 5 acres.[72]

- Applicants seeking to use the TDR (transfer of development rights) special exception also require at least 5 acre parcels.[73]

- PRD (planned residential development) special exceptions (which are allowed in the "Residential and rural," "Office Park," "Commercial-Retail," "Industrial Park," and "Restricted Industrial Park," zones) *require 15 acres* even if a "moderately-priced housing component" is included (and double that if not).[74]

## *Density: Onerous limits on density may deter special exception applications*

Hand-in-glove with Avon's large lot and parcel sizes are strict limits on density. Naturally, this issue is most glaring in single-family districts, where the most permissive zoning still only allows for 2.2 "families/acre" of *developable* land (which may be less than the amount of land on the parcel, depending on its features) and the strictest provides for just 0.3 families per acre.[75]

But of perhaps greater concern is that Avon's multifamily special exceptions only allow for highly limited density. The "multiple dwelling" special exception only allows for 4 units per acre, with the TDR bonus only bumping multifamily density up to a maximum of 8 units per acre.[76] The PRD is more restrictive – only allowing for 3.75 units per acre if a moderately-priced housing component is included (or just 3 units per acre if not).[77] Not even the age-restricted PERD relaxes these standards greatly, still requiring 8 units per acre.[78] The AVC governs density in a different manner, limiting "total residential development" to 500 units.[79] Using the POCD's tabulation of AVC acreage, this translates to about 4.6 units per acre.[80]

That these are meager densities may be obvious, but also is underscored by the AHOZ's more generous density provisions. The AHOZ – which as previously mentioned, is an optional overlay zone requiring owners to proactively seek a zone change that is highly dependent on subjective aesthetic review[81] – permits up to 20 units per acre for multifamily or mixed-use housing, 10 units per acre for townhouses and duplexes, and 6 units per acre for purely single-family development.[82] What is noteworthy about these densities is not merely that they exceed all other multifamily and affordable housing provisions in

the zoning code, but that the above-cited multifamily special permit density provisions are all either exceeded by or closer to the single-family AHOZ density (6 units per acre) than the analogous two-family or multifamily density in the AHOZ. This shows just how restrictive the special exception densities are.

The commission appears to know that the density levels provided for in all but the AHOZ may not be enough to entice developers to pursue special exceptions. The POCD recounted that even though "the economics" of the TDR provisions were taken into account in drafting the regulation, "no applications have been received by the Commission to date."[83] As such, the POCD reasoned that there "may be a need to amend the Zoning Regulations to make this option more attractive," and specifically suggested "added density" as one means of doing so.[84] Given that the TDR density is the 8 units per acre that represents the highest non-AHOZ density in Avon, it stands to reason that these levels may be dampening enthusiasm for special exception applications under other multifamily regulations, as well.

## *Conclusion*

All told, Avon's zoning structure appears to severely constrain pathways for the town to host its fair portion of the over 27,000 affordable units needed in the Hartford region.[85] To meet its municipal fair share of 1,274 units,[86] the town must undertake a concerted reimagining of its planning and zoning.

| Avon 10-Year "Fair Share" Allocation (Units) | Capitol Region "COG"[87] 10-Year Regional Need Estimate (Units) |
|---|---|
| 1,274 | 36,498 |

*For data sources, see the report's Town Data Compendium.*

[1] *See* Town Data Compendium, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[2] Town of Avon Plan of Conservation and Development 2016-2026 ("POCD"), Nov. 15, 2016, at 2, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[3] All references to racial groups in this analysis are shorthand for "non-Hispanic" members of that group. Conversely, all references to "Hispanic" are meant to capture Hispanics of any race.
[4] *See* Town Data Compendium.
[5] *See id.*
[6] *See id.* for the current data. For the POCD acknowledgment that Avon's median income in 2016 was "substantially higher than Hartford County and the State of Connecticut," *see* POCD, at 17.
[7] POCD, at 15.
[8] *See id.*
[9] *Id.* at 1.
[10] *See* Town Data Compendium.
[11] *See id.*
[12] *See id.*
[13] *See id.*
[14] *See* POCD, at 68 (featuring Table 7-4).
[15] *See* Town Data Compendium.
[16] *See id.*
[17] *See* POCD, at 18 (containing Table 2-11).
[18] *Id.* at 10 and 4, respectively.
[19] *Id.* at 73.
[20] *See id.* at 72-73.
[21] *See id.* at 73.

[22] *Id.* at 10.
[23] *Id.* at 77.
[24] *Id.* at 73 (emphasis added).
[25] *Id.* at 7.
[26] *Id.* at 72.
[27] The map is not included in the body of the POCD, but is instead posted separately on the town's website, available here: https://www.avonct.gov/sites/g/files/vyhlif151/f/file/file/pocd2016_map3-1_town_of_avon_existing_landuse_map_1.pdf.
[28] *See* POCD, at 20.
[29] *See id.* at 22.
[30] *Id.* at 3.
[31] *Id.*
[32] *See id.* at 47 (including Table 5-6).
[33] The town's zoning map is available on Avon's website, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[34] *See* Town of Avon Zoning Regulations ("Zoning Code"), at § IV(A)(6) (showing minimum lot sizes for R30, R40, and RU2A zones), a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[35] For the single-family nature of these districts, *see id.* at § IV(A)(1) (listing only "Single-family dwelling" and farming as permitted uses in the zone without recourse to a special exception procedure).
[36] *See id.* at § IV(A)(6).
[37] POCD, at 72.
[38] Zoning Code, at § IV(A)(1).
[39] *Id.* at § IV(A)(4). The relevant special exceptions are "Multiple Dwelling Developments" ("MDD"), "Planned Residential Developments" ("PRD"), "Planned Elderly Residential Developments" ("PERD"), and "Conversion of existing buildings to residential uses of not more than two dwelling units." *See id.* at §§ IV(A)(4)(j), and (l)-(n), respectively. The "Cluster Developments" special exception (§ IV(A)(4)(k)) does not actually allow for anything other than single-family uses. *See id.* at § IX(B)(3) (permitting single-family dwellings, various recreational uses such as playgrounds and parks, and accessory uses such as garages and pools in any "Cluster Development"). Nor are nursing homes (§ IV(A)(4)(e)) properly considered multifamily housing, given that they are state-licensed medical and treatment facilities.
[40] *See id.* at § IV(A)(4)(q).
[41] POCD, at 77.
[42] *See* Zoning Code, at §§VI(A)(3)(a) and (c) (allowing for PRD and conversion of an existing building to not more than a 5-family structure; (b) also allows for state-licensed assisted living facilities, nursing homes and other rehabilitative and medical uses, but as noted *supra* in endnote 39, these should not be deemed multifamily uses); VI(C)(3)(c) and (f) (providing special exception in Commercial-Retail zone for PRD and "work/live" units, the latter of which can only be multifamily in buildings with multiple businesses due to a requirement, stated at § VI(C)(3)(f)(iv), that the "number of residential units may not exceed the number of separate bona fide commercial uses. (i.e. 1:1)" in a building); VI(D)(3)(c) (containing same multifamily provisions as Commercial-Retail zone in Commercial-Specialized zone); VI(F)(3)(a) (allowing MDD by special exception in Commercial Park B zone); VI(G)(3)(a) and (b) (providing for PRD and PERD by special exception in Industrial Park zone; this zone also allows for nursing homes by special exception, but as previously discussed, those are not properly deemed multifamily uses); VI(J)(2)(c) and (d) (providing same special exception multifamily uses as Industrial Park zone in Restricted Industrial Zone; this zone also allows for nursing homes by special exception, but again such uses are not multifamily housing); and VI(I)(5)(a)(12)-(13) (establishing "Mixed use development" as the only allowed use in AVC, and establishing that use as a "special permit" – meaning that there are no "permitted uses" in this district – which may include, *inter alia*, "Multifamily residential units" and "Elderly housing units"). *See also id.* at §§ VI(I)(6)(b) and VI(6)(f)(1) (requiring special permit for each AVC "individual development block").
[43] The TDR creates a complicated procedure for transferring development rights for areas designated for preservation by the commission to areas "identified by the Commission as being appropriate for multi-family development." *Id.* at §IX(F)(1). As noted, *infra*, at 42, the TDR density bonus still does not permit for substantial levels of density.

[44] *See id.* at §§ IX(F)(2) (requiring for TDR that a "special exception application shall be filed with the Commission") and IX(G)(1) (delineating as first step in the "overall process for development within a AHOZ" the need to make "a zone change application to the Zoning Commission in accordance with Section X.A. of these regulations"). *See also id.* at § IX(G)(6)(a) (applying underlying zone's dimensional standards in AHOZ overlay, unless applicant obtains "special permit" in order to "[f]acilitate the creation of housing opportunities as provided in this section").
[45] *See id.* at §§ IX(G)(7)(a) and (c)(3). For discussion of the planned residential development as a homeownership provision, *see, infra*, at 41.
[46] *See* Zoning Code, at §§ X(A)(1) ("The Commission shall hold a public hearing on all applications except site development plans.") and X(A)(1)(a)-(c) (listing the requirements for site development plans, special exceptions, and zone changes as three distinct forms of applications to the commission).
[47] *Id.* at § VI(4)(b).
[48] *See id.* at §§ VI(I)(6)(b) and (f)(1).
[49] POCD, at 3.
[50] *See* Zoning Code, at § IV(A)(1).
[51] *Id.* at § X(A)(1)(b).
[52] *Id.* at § VIII(A)-(C) and (I).
[53] *Id.* at § X(A)(1)(c).
[54] *Id.* at §§ IX(G)(1) and 9), respectively.
[55] *Id.* at §§ IX(9)(a)(1)-(2) and (c)(1).
[56] *Id.* at §§ IX(3)(a)-(c).
[57] *See* POCD, at 65 (citing median household incomes for homeowners and rents in Avon, with renters being less than half of homeowners).
[58] Zoning Code, at § IX(C)(1)
[59] *See id.* at §§ IX(C)(4)(a) (containing cited PRD regulations) and (D)(3)(A) containing cited PERD regulations).
[60] *See id.* at §§ IX(C)(5)(a)-(b) (containing cited PRD regulations) and (D)(4) (containing cited PERD regulations).
[61] *Id.* at §§ IX(C)(1) (containing PRD purposes) and (D)(1) (containing PERD purposes).
[62] PRD and PERD are both allowed as special exceptions in all of the various "Residential and rural zones" (*see id.* at §§ IV(A)(4)(12)-(13)), as well as the "Industrial Park" zone (*see id.* at §§ VI(G)(3)(a)-(b)) and the "Restricted Industrial Zone" (*see id.* at §§ VI(J)(4)(c)-(d)). The only zones in which PRD, but not PERD, is a special exception are the "Office Park" zone (*see id.* at § VI(A)(3)(a)) and the "Commercial-Retail" zone (*see id.* at § VI(C)(3)(c)).
[63] POCD, at 119.
[64] Zoning Code, at § VI(I)(6)(a).
[65] *Id.* at § VI(I)(2)(f).
[66] POCD, at 19.
[67] *Id.* at 72 and 119, respectively.
[68] *See*, *supra*, at 39 (reproducing Table 3-2 from the POCD).
[69] *See* Zoning Code, at §§ IV(A)(6) (providing minimum lot sizes for RU-2a (2 acres), R-40 (40,000 square feet), R-30 (30,000 square feet) and R-15 (15,000 square feet) residential and rural zones); VI(A)(4) (requiring 40,000 square feet as minimum lot size in "Office Park" zone); VI(B)(4) (requiring 60,000 square feet in "Neighborhood Business" zone); VI(C)(4) (requiring 60,000 square feet in "Commercial-Retail" zone); VI(D)(4) (requiring 30,000 square feet in "Commercial-Specialized Zone"); IV(F)(4) (requiring 5 acres in "Commercial Park B" zone); VI(G)(4) (requiring 40,000 square feet in "Industrial Park" zone); VI(I)(6)(k)(1) (requiring 5 acres for each ACDD that is developed within the AVC, unless the provision is waived by the Commission due to "special circumstances"); and VI(J)(5) (requiring 40,000 square feet in "Restricted Industrial Zone").
[70] *See id.* at § IX(G)(6) (adopting all "dimensional standards" of underlying zone unless a special permit is granted).
[71] *See*, discussion of "Bureaucratic Hurdles," *supra*, at 39.
[72] *See id.* at § IX(A)(4).
[73] *See id.* at § IX(F)(6).
[74] *See id.* at § IX(C)(5)(a)-(b).
[75] *See id.* at §§ IV(A)(5) (delineating density provisions) and III(D) (providing "Developable land calculation" for determining density pursuant to § IV(A)(5), including considerations regarding flood plains, inland wetlands, watercourses, and slopes).

[76] *See id.* at §§ IX(A)(4) (providing MDD density) and IX(F)(2)-(3) (showing TDR may "only be used to increase the number of units permitted as a multiple dwelling unit development" and that the increase caps at 8 units per acre).
[77] *See id.* at § IX(C)(5)(a)-(b).
[78] *See id.* at § IX(D)(4).
[79] *Id.* at § VI(I)(6)(i)(6)(a).
[80] *See* POCD, at 24 (featuring Table 3-2, that shows 108 acres dedicated to AVC, and is reproduced, *supra*, at 39).
[81] *See* discussion of AHOZ, *supra*, at 39.
[82] *See* Zoning Code, at § IX(G)(5)(a)-(f).
[83] POCD, at 76.
[84] *Id.*
[85] *See* Town Data Compendium.
[86] *See id.*
[87] "COG" is shorthand for "Council of Governments." There are 9 COGs in Connecticut, which are meant to serve as "planning regions" to "provide a geographic framework within which municipalities can jointly address common interests." *See* State of Connecticut, *Regional Councils of Government (COGs) in Connecticut*, available at https://portal.ct.gov/OPM/IGPP-MAIN/Responsible-Growth/Regional-Planning-Organizations-RPO.

# Berlin

## Overview

Berlin sits below New Britain at the southern edge of Hartford County, and is connected by CT Rail to New Haven, Hartford, and Springfield.[1] The town's most recent Plan of Conservation and Development ("POCD") proclaimed that "Berlin made a remarkable transformation of housing types and diversity" over the prior decade.[2] Unfortunately, this claim ignores the fact that Berlin is deeply segregated, and that its planning and zoning continue to restrict a limited supply of multifamily and affordable housing.

## Summary of Findings

- ***Berlin is "extremely homogenous" in terms of race (88.7% white, 1.0% Black, 5.5% Hispanic).***
- ***Town's focus on proximity to C.G.S. § 8-30g "goal" overlooks lack of non-elderly, rental C.G.S § 8-30g affordable units, which represent only 1.8% of the town's overall housing stock.***
- ***Berlin's planning is focused on concentrating multifamily in certain areas, separate and apart from any single-family neighborhoods.***
- ***While single-family housing is allowed as-of-right (zoning permit) in all residential zones, no multifamily housing of three-or-more units is allowed as-of-right anywhere – and it is banned except for elderly housing or accessory dwelling units in many zones.***
- ***Lot size and water/sewer mandates are more demanding for affordable and multifamily housing than they are for single-family housing.***
- ***Certain multifamily provisions impose highly limiting site eligibility or occupancy standards.***

## Demographics Overview: Berlin admits it is extremely homogenous

| Key Demographic Data | Berlin | Hartford County | Connecticut |
|---|---|---|---|
| Total Population | 20,484 | 893,561 | 3,575,074 |
| % White, Non-Hispanic | 88.7% | 61.1% | 66.9% |
| % Black, Non-Hispanic | 1.0% | 12.9% | 9.9% |
| % Hispanic, Any Race | 5.5% | 18.0% | 16.1% |
| % Asian, Non-Hispanic | 3.4% | 5.3% | 4.5% |
| % Population Below Poverty | 4.5% | 10.8% | 9.9% |
| Median Household Income | $101,127 | $75,148 | $78,444 |
| Grand List Per Capita | $167,472 | $121,150 | $160,428 |
| *For data sources, see the report's Town Data Compendium.* | | | |

Berlin's lack of diversity is immediately evident from the data presented above. The town is nearly 90% white[3] and only 1% Black.[4] These figures reveal profound segregation both on their face, and when

compared with the proportions for Hartford County (61.1% white, 12.9% Black) and Connecticut (66.9% white, 9.9% Black).[5] Berlin also falls well short of county and state in terms of Hispanic population, with its 5.5% Hispanic representation being less than a third of the county and state levels.[6] Such racial isolation has long marked Berlin. The 2013 POCD that boasted of a "transformation" in diversity also acknowledged that "the community remains extremely homogenous," *i.e.*, almost entirely white.[7]

This enduring racial and ethnic segregation is accompanied by a skewed economic makeup. The percentage of people living below the poverty level in Berlin is less than half of that in the county and state, while the median household income is more than $20,000 higher than it is in the county and state.[8]

## *Housing Stock Overview: A lack of multifamily or rental housing*

| Key Housing Data | Berlin | Hartford County | Connecticut |
|---|---|---|---|
| Total Housing Units | 8,584 | 379,602 | 1,516,629 |
| % Affordable (C.G.S. § 8-30g) | 9.3% | 14.4% | 11.7% |
| Median Home Value (Owned) | $283,300 | $240,600 | $275,400 |
| % Single-Family | 81.7% | 61.3% | 64.3% |
| % Two-Family | 6.8% | 7.8% | 8.2% |
| % 3-9 Units | 4.6% | 15.8% | 14.1% |
| % 10-19 Units | 1.9% | 4.4% | 3.8% |
| % 20+ Units | 4.8% | 10.2% | 8.8% |
| % Mobile Homes | 0.2% | 0.6% | 0.8% |
| 2001-2017 Permits | 1,411 | 25,219 | 117,821 |
| % Permits Single-Family | 72.1% | 69.1% | 68.7% |
| % Permits 5+ Units | 27.0% | 25.8% | 27.5% |
| *For data sources, see the report's Town Data Compendium.* | | | |

As of 1974, Berlin self-identified as a "single-family residential suburb of Hartford and New Britain."[9] This remains the case. More than 81% of units in Berlin are single-family, as compared with 61.3% in the county and 64.3% in the state.[10] Other than two-family (where it still underperforms), Berlin has roughly half (or less) the percentage of every multifamily housing type as the county and state. Thus, even though Berlin has issued a greater percentage of permits for 5+ unit housing than the county or state of late,[11] its single-family character stands. The POCD confirmed as much when it framed the town's purported "remarkable achievements in diversification" of housing by emphasizing that Berlin "remain[ed] primarily single-family occupied."[12] This appears likely to hold true today, as there were *zero* non-single-family housing permits issued during the most recent six-year period for which there is data (2012-2017; and the 72 multifamily permits in 2011 were the first such permits issued since 2006).[13]

Berlin also offers relatively few rental opportunities, which are critical for lower income households. Just shy of 85% of occupied housing in Berlin is owner-occupied, more than 20% higher than both the Hartford County (64.1%) and Connecticut (66.1%) homeownership rates.[14] Here, too, there is no argument from the POCD. In fact, the town Committee responsible for the 2013 POCD explicitly affirmed its belief "that owner-occupied housing should continue to be the predominate tenure of housing" in Berlin.[15]

## *Only a fraction of Berlin's housing is non-elderly and affordable rental housing*

| Berlin Multi-Family Project Type | # Units | # units post 2001 | % Post 2001 |
|---|---|---|---|
| *Affordable Apartments Age Restricted* | 468 | 398 | 85% |
| *Age Restricted Condos Market Rate* | 327 | 327 | 100% |
| Subtotal Age Restricted | 795 | 725 | 91% |
| *Affordable Apartments Not Age Restricted* | 88 | 88 | 100% |
| *Condos Market Rate* | 573 | 174 | 30% |
| *Planned Unit Developments* | 57 | | 0% |
| Subtotal Not Age Restricted | 718 | 262 | 36% |
| **Total Units** | **1513** | **987** | **65%** |

*Source: POCD, at 1-16.*

Despite having a little more than 9% of its housing qualify as affordable under the Affordable Housing Land Use Appeals Procedure ("C.G.S. § 8-30g"),[16] a closer look at the data reveal that most of Berlin's C.G.S. § 8-30g affordable housing is age-restricted. The 1,513 multifamily units in the POCD table reproduced here almost exactly matches the current Census estimate of 1,570 non-single-family units.[17] This alignment makes sense, given the fact noted above that no multifamily permits were approved from 2012 to 2017.[18] The table thus remains relevant, and it makes clear that a fraction of multifamily is non-age-restricted and affordable. Just 88 units – *less than 6%* – of the listed multifamily is "Affordable Apartments Not Age Restricted."[19] If one were to assume that the 57 units in "Planned Unit Developments" were non-age-restricted affordable (everything else is labeled market-rate and/or elderly), that would still yield less than 10% of the multifamily stock in the table.[20]

The POCD recognized the shortage of non-senior affordable units. It warned that while 11.3% housing growth from 2000-2009 "looks like a large increase," examining "what exactly was built – predominantly multi-family age restricted housing – is critical to understanding the actual change."[21] And though it cited "workforce housing" (one 72-unit project, the other 16) to argue that "Berlin made great strides in a short amount of time," it later admitted that this "recent venture" had only "added somewhat to Berlin's small number of apartments that are not age-restricted."[22]

State data confirm Berlin's paltry supply of non-senior affordable housing. The C.G.S. § 8-30g list shows the same 556 units of "Government Assisted" affordable housing as the POCD table, and the same 468 age-restricted versus 88 units open to families and seniors alike.[23] So non-elderly households are cut-off from 84% of the governmentally assisted housing ("government assisted" units are about three-quarters of all affordable housing in Berlin[24]). The State does not provide age breakdowns for the other C.G.S. § 8-30g housing types, but even if every other unit were *not* age-restricted, *at least* 61.7% of the town's housing qualifying as "affordable" under the statute would be limited to seniors.[25]

Non-senior low-income *renters* have even fewer options. Of the 202 C.G.S.§ 8-30g-eligible units that are affordable but not "Government Assisted," 138 are mortgages.[26] Removing these and age-restricted units leaves a *maximum* of 20.1% of the town's C.G.S § 8-30g affordable units as affordable non-elderly rentals – *representing and just 1.8% of all of Berlin's housing*.[27]

Two unbuilt-but-approved projects will not rectify this imbalance. A request for qualifications ("RFQ") for the 2023 POCD cited approvals of an 88-unit Metro Realty and 50-unit Berlin Housing Authority ("BHA") project as potentially "increase[ing] the town's [affordability] percentage to more than 10%[,] but these projects are both at the stage of securing financing."[28] The BHA project is for senior housing, which can add nothing to the non-age-restricted supply.[29] If just the other 88 units proceeded, it would only 28.4% of C.G.S. § 8-30g affordable housing would be non-elderly rentals (or 2.8% of all housing).[30]

Berlin underappreciates the need for affordable housing by fixating on C.G.S. § 8-30g. The POCD

touted that "Berlin needs only approximately 150 new units until reaching the ten percent affordable housing goal" in order to "keep a community immune from C.G.S. §8-30g suits," and advocated for continuing "efforts to diversify housing" *specifically because* the 10% threshold "is a constantly moving target."[31] The above-cited RFQ stated Berlin "is 56 units short of the 10% goal."[32] Berlin is so focused on C.G.S. § 8-30g that its "Neighborhood affordable housing development" ("NAHD") special permit "shall cease to be applicable where it has been determined that the Town is exempt from . . . §8-30g."[33]

A more holistic accounting of the true need for affordable housing in Berlin is provided by the Open Communities Alliance's estimate of the town's fair share of regional need for affordable housing. As shown below, that calculation reveals that rather than contenting itself with the 56 units it claims to need to reach the C.G.S. § 8-30g threshold, Berlin should be striving to facilitate over 1,100 such units.[34]

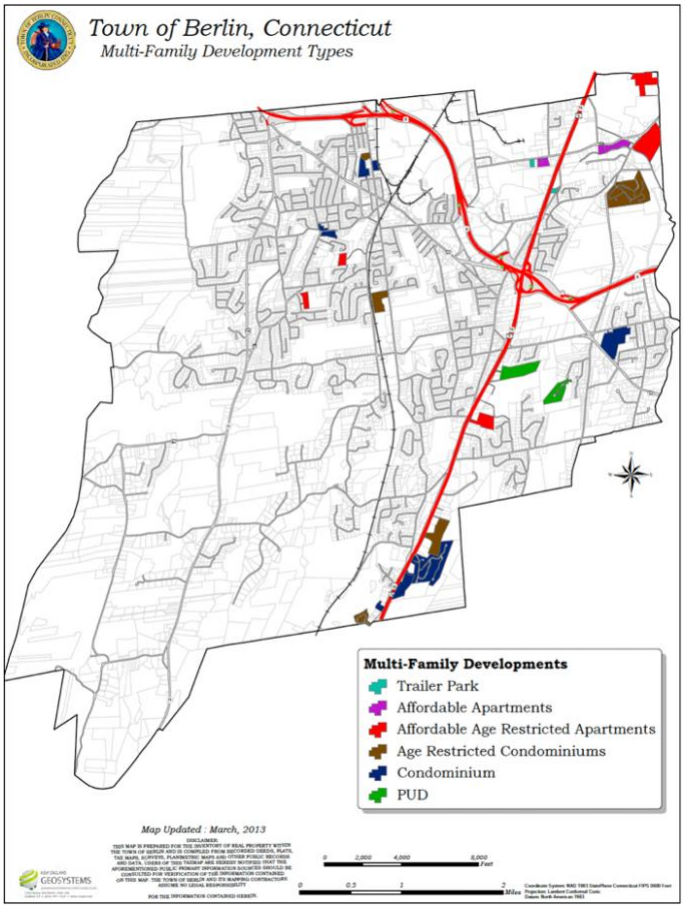
| Berlin 10-Year "Fair Share" Allocation (Units) | Capitol Region "COG"[35] 10-Year Regional Need Estimate (Units) |
|---|---|
| 1,104 | 36,498 |

*For sources, see the report's Town Data Compendium.*

## *Land Area: Few existing multifamily sites, with planning to keep multifamily concentrated in certain areas and separate from single-family neighborhoods*

The map to the right shows the handful of multifamily sites in Berlin. Note how few "Affordable Apartments" there are – just two sites – as compared with several each for "Affordable Age Restricted Apartments" and condominiums (age-restricted or not).[36]

Far from planning to open up more of town to multifamily development, Berlin appears intent on continuing to isolate multifamily housing to certain areas, separate and apart from single-family neighborhoods. The very first "polic[y] to govern future residential development in Berlin" listed in the POCD had the stated aim of preserving "the integrity of existing neighborhoods," noting that in "established, sound, single-family areas, multi-family development should not be permitted" unless "special circumstances" would "eliminate the potential adverse impacts on the neighborhood."[37] In other words, the POCD frames most multifamily housing as a threat to single-family areas, and opposes broader integration of housing types.




*Source: POCD (unpaginated maps section at rear of document).*

The POCD followed through on this overarching vision with more specific goals to keep multifamily development away from the town's existing single-family supply. For example, the POCD sought to "[c]oncentrate most new multifamily development in the vicinity of the train station."[38] And even within this area "centered upon the railroad crossing," the POCD promised that "[e]xisting single-family residential neighborhoods will be preserved" since they are "stable neighborhoods that have been in existence for many years," with "new multi-family residential uses [to] be developed at infill locations as part of the redevelopment of properties in need of revitalization."[39]

## *Bureaucratic Hurdles: Multifamily housing not allowed as-of-right anywhere in Berlin, often banned; single-family homes as-of-right in all residential zones*

Multifamily housing faces much steeper procedural hurdles than single-family housing in Berlin. Single-family housing is allowed as-of-right – subject only to the issuance of a zoning permit[40] – in *all* residential zones in Berlin, as well as several "special" districts[41] (such as the Mountain Reserve zones mapped onto "environmentally sensitive hilly areas of Berlin"[42]). By contrast, multifamily housing, which is defined by the zoning code as containing three-or-more units,[43] is *not allowed by right anywhere* in Berlin. Even two-family housing is only allowed by right in R-7, which appears to be mapped onto just a few (perhaps as few as three) small areas near commercial uses in the north and the Berlin Turnpike in the south.[44]

Many single-family-by-right zones *do not even allow by special permit* two-family or multifamily housing, except for age-restricted developments or accessory dwelling units ("ADU"). These include:

1. **R-86 and R-21**: Special permits required for:
    a. "Housing for elderly," which are age-restricted;[45]
    b. "Open Space Subdivisions" ("OSS") and "Design Open Space Developments" ("DOSD"), which explicitly adopt the uses and permitted number of units of the underlying zones;[46]
    c. Neighborhood affordable housing development ("NAHD"), which is single-family;[47] and
    d. ADUs, which do not offer robust multifamily options for reasons noted below.[48]
2. **MR-1**: Same as R-86 and R-21, except excludes DOSD and NAHD.[49]
3. **R-15**: Allows "housing for elderly" and ADUs by special permit.[50]
4. **R-11 and "Office Professional" zone ("OP")**: Only has "housing for elderly" special permit.[51]

Where allowed, non-age-restricted multifamily almost always needs a special permit or zoning change.[52] The only exceptions are for two-family dwellings in R-7 and for Workforce Housing Development ("WHD"). R-7 is discussed above, and WHD does little to expand avenues for affordability because it is limited to lots in just a few zones that must meet exacting criteria and abut certain roads (it also is only for "assisted housing" under C.G.S. § 8-30g(a)(3), which means WHD is only available if a proposal either is able to obtain government subsidy or will include residents with housing vouchers).[53]

Even WHD requires a site plan,[54] and the town's site plan, special permit, and zone change procedures are more burdensome than applying for zoning permits. Zoning permits just require applicants to submit basic facts about a parcel and proposal to the zoning enforcement officer.[55] As noted above, this is all that is required for single-family development.[56] By contrast, site plans require that detailed information (addressing, *inter alia,* traffic, utilities, and stormwater management) be submitted to the commission.[57] And critically, the town *may* (site plans) or *must* (special permits, zone changes) hold a public hearing.[58]

## *Lot size: Often enormous minimum lot and parcel size requirements, especially for affordable and multifamily housing*

Large lot sizes pose a significant challenge to affordability throughout Berlin. The above-referenced MR (Mountain Reserve) districts and the town's "single-family residential" zones (R-86, R-43, R-21, and R-15) that occupy so much of Berlin outside of its northwestern commercial corner and the strips of land along its major arterial roads[59] require minimum lots ranging from a third of an acre to almost two acres in single-family zones, and to 3 acres for single-family in MR.[60] Large-lot single-family zoning reflects, at least in part, a deliberate aesthetic choice. The POCD enshrined as one of the "policies to govern future residential development within Berlin" the need to "[r]ecognize, as one segment of the town's housing demand, the desire for large single-family lots."[61]

Berlin often *massively* increases minimum lots for multifamily, as shown in the table below.[62]

| Zone | Single-Family Minimum Lot Size (Acres) | Multifamily (3+ Unit) Minimum Lot Size (Acres) | % Increase from Single-Family to Multifamily |
|---|---|---|---|
| Mountain Reserve-2 | 3 | 60 | 1900% |
| Planned Residential-1 | 0.99 | 20 | 1926% |
| Planned Residential-2 | 0.48 | 7 | 1352% |
| Planned Residential-3 | 0.26 | 5 | 1836% |
| Planned Office Residential | 0.48 | 3 | 522% |
| *See citations to the Zoning Code in endnote 62.* | | | |

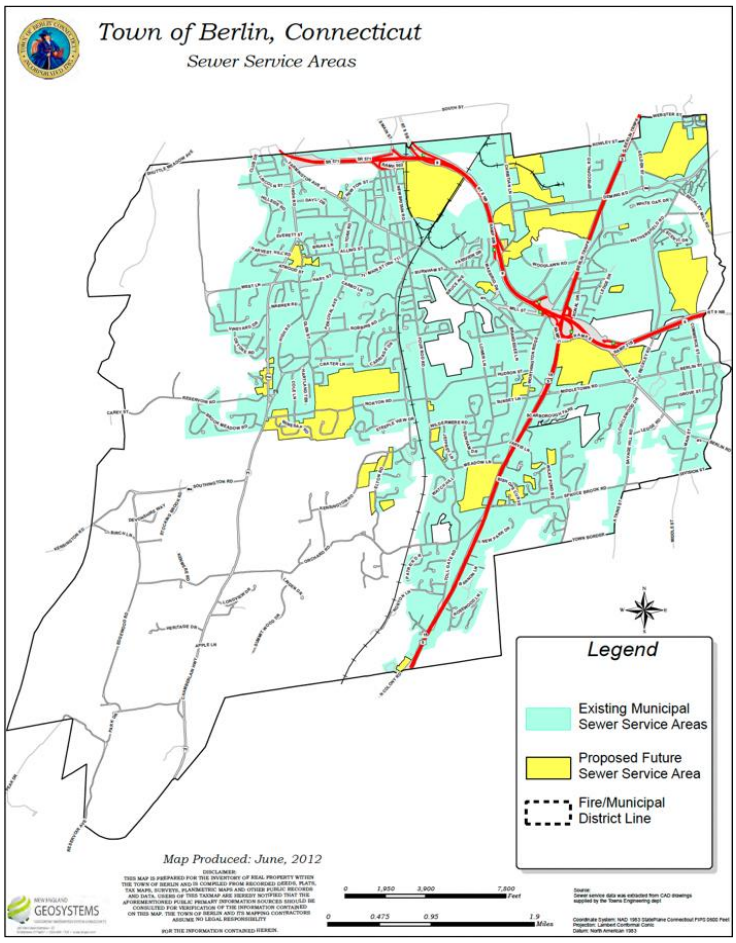
Even when it does not increase lot sizes for multifamily, the zoning code often imposes huge minimum *parcel* sizes. For example, while the single-family-only "neighborhood affordable housing" special permit (the NAHD, supposedly intended to incentivize affordable housing[63]) allows average lot sizes that are half the size of the general single-family standards, it nonetheless requires at least 10 acres of "land to be developed."[64] Nor is the NAHD the only affordable or multifamily provision to require large parcels. The "workforce housing" provision (the WHD) requires either 5-8 acre parcels in BT-1, or 11-13 acre parcels in R-43;[65] the "Berlin Turnpike Development" zone ("BTD") may only be applied on contiguous 10 acre parcels;[66] and Commercial Core District-2 ("CCD-2") only allows up to 10 units per acre for above-retail units if the parcel is 4 acres or larger (otherwise, the cap is 4 units per acre).[67]

## *Infrastructure: Affordable and multifamily zoning is often tied to access to public water and sewer*

While none of the as-of-right single-family housing in Berlin is required to be connected to public water and sewer, several of the town's multifamily and affordable housing provisions impose this mandate. For reference, the sewer service map is reproduced here (water service is available in essentially the same areas).[68] Examples of affordable and multifamily provisions with such requirements include:

- NAHD special permit (which has the stated purpose of creating affordable single-family housing);[69]
- WHD (the "workforce housing" for C.G.S. § 8-30g "assisted housing" on select BT-1 and R43 sites);[70] and
- Special permit multifamily housing in POR, PR, and MR-2.[71]

As the map at right shows, requiring connections to public water and sewer
renders a large swath of the western and southern area of town ineligible for these and other multifamily and affordable housing provisions with such limits, even if those areas were zoned or rezoned in such a way that otherwise would allow for them. Single-family housing is permitted as-of-right throughout almost all of these unsewered areas.[72]

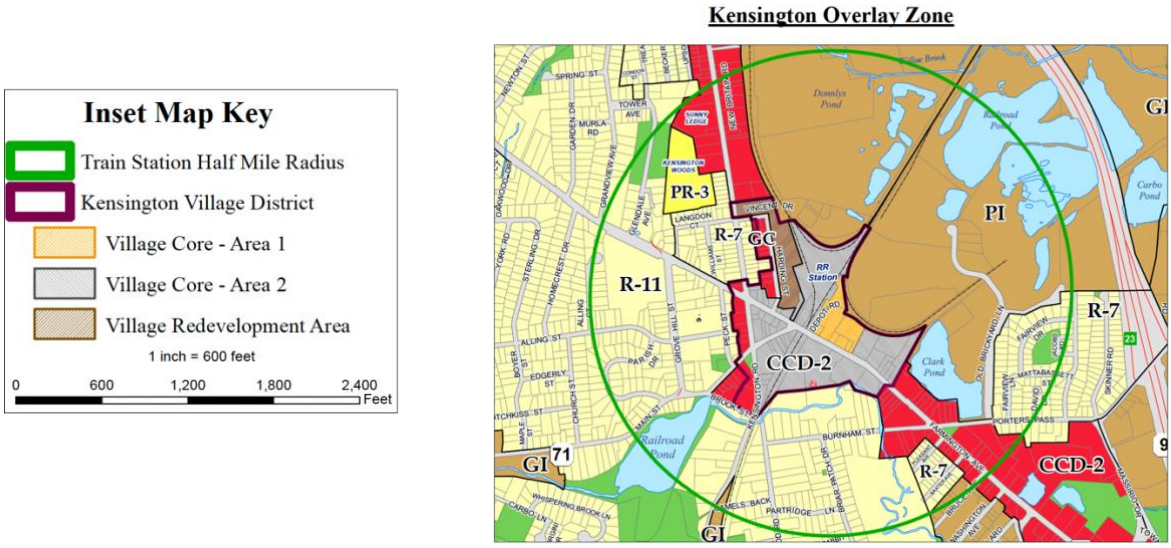



*Source: POCD (maps section at rear of document).*

Berlin has openly stated both that it is not seeking to significantly expand water and sewer service and that it has long used restrictions on these service areas to limit where development (meaning non-single-family development, clearly) may occur. Per the POCD, "Berlin [has] worked to balance property owner rights and desires with the potential for greater benefits from development" via "a combination of incentives (such as zoning changes) and restrictions (such as utility service area limits)."[73] The POCD supported "continuing the policy of a utility service area boundary" as "a critical tool to be sure that development is able to be absorbed in those areas" that the town deems "best able to handle change."[74]

This practice dates back to the first POCD (then just called a "Plan of Development") in 1959, since which time "Berlin has voiced concern about the range of housing types and densities within the community, focusing on the limited areas served by public water and sewer," and having "[f]rom that time" onward "zoned for a variety of densities but . . . always guided by the utilities' reach."[75]

## *Site Location Limitations: Few sites for many of Berlin's densest provisions*




*Source: Zoning Map (containing Kensington Overlay Zone inset map and key).*

Berlin severely restricts the usability of some of the densest multifamily provisions in its zoning code by setting highly-specific site eligibility criteria. The "Village Core – Area 1" of the Kensington Overlay ("KO") zone, shown in orange in the portion of the zoning map reproduced above, is a key example. While Area 1 allows for mixed use development containing the highest multifamily density expressly listed in the zoning code – 26 units per acre – the map shows that only a few parcels on Farmington Avenue could possibly take advantage of it.[76] A zoning change in January 2019 only added two abutting lots to Area 1, so now only around 10 parcels *may* be eligible for 26 units per acre of multifamily housing (and only if they meet other criteria, like a 1 acre minimum lot).[77] The majority of the Kensington Overlay remains in "Village Core – Area 2" and "Village Redevelopment" areas that allow for just 6 units per acre.[78]

The second-highest density spelled out in the zoning code (and the highest specifically for affordable housing) is also limited in its potential applicability. WHD proposals, which must qualify as C.G.S. § 8-30g "assisted housing,"[79] can have 15 units per acre, but only if they meet the following criteria:

- They must be located in a "Berlin Turnpike Zone-1" ("BT-1") district;
- They must be on parcels of between 5 and 8 acres;
- They must have access to public water and sewer;
- They must have 500 feet of frontage on a public street other than the Berlin Turnpike.[80]

The zoning map shows that there are very few areas zoned BT-1 to begin with,[81] all located along the Berlin Turnpike, with the added criteria further winnowing down eligible parcels. Nor does the "alternative" eligibility criteria for parcels in R-43 (or, as of Aug. 2020, partially in R-43 and partially in "Office Technology" zones) address this limited supply – both because the criteria are, if anything,

more demanding for such parcels (requiring contiguous 11- to 13-acre parcels with access to public water and sewer and 900 feet of frontage on State Route 160); and because unlike in BT-1 WHD proposals, density for R-43 WHD developments is limited to 8 units per acre. [82]

Finally, one of the few multifamily uses that does not contain a stated cap on units per acre – and thus could allow for even greater density than the provisions above – is limited to a particular set of buildings. Namely, the special permit for conversion of "certain existing industrial and educational buildings" can only be used for renovating "existing multistory buildings served by public water supply and sanitary sewer and erected before 1950."[83] It is unlikely that there are a plethora of such buildings, especially since replacement of deteriorated buildings cannot take up more than 25% of the square footage of the renovated part of the conversion, meaning these buildings must be old and outmoded for their original uses *and yet* almost entirely salvageable.[84]

## *Inadequate Provisions: Multifamily zoning often favors seniors or limits bedrooms in ways that hinder access to housing for families*

Perhaps unsurprisingly given how much of Berlin's multifamily supply is senior housing,[85] the zoning code gives several advantages to elderly over non-age-restricted multifamily housing. The clearest example of this has already been highlighted above, which is the fact that the only multifamily housing permitted in several single-family-as-of-right zones (namely the R-86, R-21, R-15, R-11, MR-1, and OP districts) is "Housing for the Elderly."[86] In the "Office Technology-2" zone, *the only housing permitted at all* is "Adult housing" that requires one 55+ year-old resident and prohibits any residents under 18.[87]

Other provisions impose less onerous requirements on age-restricted multifamily housing than they do on non-age-restricted multifamily. The regulations for converting old multistory buildings require fewer square feet of lot area per unit for "congregate senior housing" than they do for other multifamily (1,500 sf. per unit versus 2,000) and exempt congregate senior housing from the prohibition against constructing new residences (other than for replacement structures) on excess land after conversion.[88] In both of the Commercial Core Districts, the only free-standing multifamily housing that is permitted is age-restricted housing, with all other multifamily in these zones required to be above other uses.[89]

Relatedly, there are several multifamily provisions that make it much more difficult for low-income families (or any but the smallest of such families) to benefit from them by limiting units with more than certain numbers of bedrooms. In the KO zone, multifamily units in Area 1 must be at least 70% one-bedrooms, while KO Area 2 *bans* anything above one-bedroom units, and the KO Village Redevelopment Area permits no more than 20% of units to have more than two bedrooms.[90] The BTD floating zone only grants an increase to 8 units per acre for developments with 20% deed restricted units (from 4 units per acre, otherwise) if one of the following bedroom restrictions applies: (a) there are *no* units with more than one bedroom in the development; or (b) if a building has 10 units per floor, no more than 20% of the units are two-bedrooms, with no apparent allowance for more than two bedrooms.[91] The BTD bedroom limits seem tied to a preference for elderly housing (and, importantly, current residents), since the "Purposes" of the floating zone include "providing opportunities for current Berlin residents to age in place."[92]

Lastly, though not a multifamily housing provision given that it does not pertain to principal dwelling units, the town's ADU special permit also merits discussion since it combines both age restrictions *and* occupancy limits that render it incapable of assisting almost all moderate- and low-income families. Unless the ADU is deed-restricted to be rented to be affordable (no more than 30% of income) to

certain households (those earning no more than 80% of the area median income for a two-person household, as defined by the U.S. Department of Housing and Urban Development), it can only be occupied by 55+ year-olds.[93] And if the owner files a covenant to rent the ADU as an affordable unit, it still can only be occupied by a maximum of two persons.[94] (In any event, since ADUs are *required to be built within an owner-occupied single-family home*, it is highly unlikely that many homeowners will choose to create ADUs at all, much less rent out a part of their home as an affordable unit.[95])

## *Conclusion*

Berlin is racially and economically segregated, with a severe shortage of non-age-restricted, rental housing that is affordable to moderate- and lower-income families. As noted above, Open Communities Alliance estimates that Berlin needs to build more than 1,100 additional affordable units over the course of this decade if it is to be able to meet its "fair share" of the regional need for affordable housing. Yet the town's planning and zoning appear to erect barriers to the creation of the multifamily and affordable units.

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[1] *See* Hartford Line CT Rail Service Map, available at https://www.hartfordline.com/route_stations/.

[2] Town of Berlin Plan of Conservation and Development, effective Sept. 1, 2013 ("POCD"), at 1-15, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.

[3] All references to racial groups in this analysis are shorthand for "non-Hispanic" members of that group. Conversely, all references to "Hispanic" are meant to capture Hispanics of any race.

[4] *See* Town Data Compendium, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.

[5] *See id.*

[6] *See id.*

[7] POCD, at 1-17.

[8] *See* Town Data Compendium.

[9] POCD, at 3-34.

[10] *See* Town Data Compendium.

[11] *See id.*

[12] POCD, at 1-19.

[13] *See* Town Data Compendium.

[14] *See id.*

[15] POCD, at 5-8.

[16] *See* Town Data Compendium. *See also* Town of Berlin Request for Qualifications Bid # 2021-18 regarding 2023 POCD and Affordable Housing Plan ("2023 POCD RFQ"), at 2, available at https://www.town.berlin.ct.us/egov/documents/1616766211_69126.pdf (citing same 9.3% affordable figure).

[17] *See* Town Data Compendium (citing 2015-2019 United States Census Bureau data, the most updated information available).

[18] *See id. See also*, *supra*, at 48 (citing same data regarding lack of recent multifamily housing permits).

[19] POCD, at 1-16 (featuring "Berlin Multi-Family Project Type" table reproduced above).

[20] *See id. See also* Town Data Compendium (providing figure for current total units in Berlin).

[21] POCD, at 1-14 to 1-15.

[22] *Id.* at 1-16 and 5-9, respectively.

[23] *See* Town Data Compendium. *See also* POCD, at 1-16 (containing multifamily housing table reproduced above).

[24] *See* Town Data Compendium.

[25] *See id.*

[26] *See id.*

[27] *See id.*

[28] 2023 POCD RFQ, at 2.

[29] *See* Drzewiecki, Erica, "Berlin moves closer to building affordable senior housing on Percival Avenue," *New Britain Herald*, May 20, 2021 (reporting the Berlin Town Council voted for the town to apply for state funding for "construction of a 50-unit senior housing complex" at 143 Percival Avenue, describing the project as "long-awaited affordable senior housing" that has been delayed due to lack of funding), available at http://www.newbritainherald.com/article/view/article_id/390836/headline/berlin-moves-closer-to-building-affordable-senior-housing-on-percival-avenue/section/NBH-Berlin+News. *See also* Leukhardt, Bill, "Berlin Approves 50 More Units of Senior Housing," *Hartford Courant*, Feb. 12, 2015 (reporting that planning and zoning commission approved a "50-unit senior-housing complex" BHA special permit application for 143 Percival Avenue), available at https://www.courant.com/community/berlin/hc-berlin-elderly-housing-0213-20150212-story.html.

[30] *See* Town Data Compendium.

[31] POCD, at 1-20.

[32] *See* 2023 POCD RFQ, at 2.

[33] Town of Berlin Zoning Regulations ("Zoning Code"), as amended through Sept. 28, 2019, at § V(A)(9)(d)(xvii), a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.

[34] *See* Town Data Compendium.

[35] "COG" is shorthand for "Council of Governments." There are 9 COGs in Connecticut, which are meant to serve as "planning regions" to "provide a geographic framework within which municipalities can jointly address common interests." *See* State of Connecticut, *Regional Councils of Government (COGs) in Connecticut*, available at https://portal.ct.gov/OPM/IGPP-MAIN/Responsible-Growth/Regional-Planning-Organizations-RPO.

[36] POCD, at "Multi-Family Development Types" map, reproduced above.

[37] *Id.* at 5-9 to 5-10.

[38] *Id.* at 5-10.

[39] *Id.* at 4-6, and 4-11 to 4-12.

[40] *See* Zoning Code, at § XIV(D)(1) (showing zoning permit required for any development in Berlin).

[41] *See id.* at §§ V(A)(2)(a) (permitting "Single-family detached dwellings" as "a matter of right" in all "Single-family residential" zones – which are R-86, R-43, R-21, and R-15), V(B)(2)(a) (same in "Single and two-family residential" zones – which are R-11 and R-7), V(C)(2)(a) (same in "Planned Residential" zones – PR-1, PR-2, and PR-3), VIII(A)(2)(a) (allowing "Single-family detached dwellings" in Planned Office Residential ("POR") zone "by right"), VIII(B)(2)(a) (adopting as-of-right uses from single-family residential zones for both Mountain Reserve ("MR") districts – MR-1 and MR-2), and VIII(C)(2) (adopting R-15 "as a matter of right" uses to the "Office Professional" ("OP") district).

[42] *Id.* at § VIII(B)(1) (defining the Mountain Reserves districts' "Purpose").

[43] *See id.* at § II(B) (defining "Dwelling, multifamily").

[44] *See id.* at § V(B)(2)(b). *See also* Town of Berlin Zoning Map ("Zoning Map"), updated through Mar. 2016, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31. A list of map changes since the zoning map was last updated ("Recent Map Amendments") reveal no additional R-7 districts. That list is available from Berlin here: https://www.town.berlin.ct.us/egov/documents/1610374752_9935.pdf.

[45] *See* Zoning Code, at § V(A)(3)(i). *See also id.* at § XI(Q)(1) (confirming such units must be "for the elderly").

[46] *See id.* at §§ V(A)(8)(d)(ii) (providing that "the total number of dwelling in an OSS and DOSD shall be no greater than the number of building lots that would otherwise be allowed in the district in which the land is located"), V(A)(8)(e)(i)(1) (showing OSS adopts "principal and accessory uses in the applicable zoning district) and V(A)(8)(e)(ii)(1)-(2) (same for DOSD, except adds "Single-family attached dwellings").

[47] *See id.* at § V(A)(9)(a) and (b)(i).

[48] *See* discussion of ADUs, *infra*, at 55–56.

[49] *See* Zoning Code, at § VIII(B)(3).

[50] *See id.* at §§ V(A)(3)(i) and (6)(a), respectively.

[51] *See id.* at §§ V(B)(3)(a) (adopting for R-11 only § V(A)(3) and (4) special permit uses, but excluding OSS and DOSD therefrom, leaving housing for the elderly as only residential special permit use) and VIII(C)(3) (adopting for OP "uses permitted by special permit in the R-15 district as provided for in Section V.A.3 and Section V.A.4," the referenced provisions excluding OSS and DOSD from application in R-15, thus leaving only housing for the elderly).

[52] *See id.* at §§ V(C)(2)(a) and (4)(j) (showing "Planned Residential" zones – PR-1 through PR-3 – allow "Single-family detached dwellings" as a matter of right, but require special permit and site plan approval for "Multifamily developments"); VI(I)(2), (3)(f), and (4) (providing for no residential uses subject just to site plan approval in Commercial Core District zones, but allowing for multifamily of up 4 units per acre in both Commercial Core District zones and up to 8 units per acre subject to certain criteria in the Commercial Core District-2 zone); VIII(A)(2)(a) and (3)(l) (permitting "Single-family detached dwellings" pursuant to R-21 standards "by right" in POR, but requiring site plan and special permit for multifamily development); VIII(B)(2)(a) and (4) (adopting single-family residential districts' as-of-right uses for MR-2, while requiring special permit and site plan for "Multifamily dwelling developments"); VIII(F)(3)(a)(ii), (b)(i), and (c)(i) ( (requiring site plan and special permit approval any time "a property owner wishes to utilize the provisions" of the Kensington Overlay ("KO") district, with such provisions including multifamily options); VIII(G)(2)(c)(ii)-(iii) ("A Planned Development District may only be established by approval of," *inter alia*, both a "Text Amendment Application" and a "Zone Change application"); VIII(H)(4)(b) and (9)(d) (subjecting any application seeking approval of a use pursuant to the "Berlin Turnpike Development" ("BTD") floating zone to site plan and special permit review, including for mixed use developments with residential components); and XI(D)(1) and (2)(a) (requiring special permit for conversion of "existing multistory buildings served by a public water supply and sanitary sewer and erected before 1950" to uses including multifamily).

[53] *See* discussion of "Site Location Limitations," *infra*, at 54. *See also* Zoning Code, at § XI(BB)(1) (defining "Workforce Housing Development" as multifamily housing that "qualifies as an 'assisted housing' development" under C.G.S. § 8-30g(a)(3)) and C.G.S. § 8-30g(a)(3) (defining "Assisted housing").

[54] *See* text of Aug. 2020 amendments to WHD provisions in Zoning Code ("WHD Amendment"), at §§ XI(BB)(3), available at: https://www.town.berlin.ct.us/egov/documents/1600781953_1386.pdf.

[55] *See* Zoning Code, at § XIV(D)(2)(a).

[56] *See*, *supra*, at 51, n. 41-42.

[57] *See* Zoning Code, at § XIII(A)(6).

[58] *See id.* at §§ XIII(A)(8) ("The Commission may hold a public information meeting or public hearing on an application for site plan approval."), XII(C)(1) (requiring that planning and zoning commission "shall hold a public hearing on all applications for a special permit"), and XIV(E)(5) (same for "all proposed amendments to these regulations or to the zoning map").

[59] *See* Zoning Map. Note that while some of the pale yellow areas are R-11 and R-7, the vast majority are the above-referenced single-family residential zones.

[60] *See* Zoning Code, at §§ V(A)(10) (providing single-family residential zones' minimum lot sizes as follows: R-86 – 86,000 sf. (1.97 acres); R-43 – 43,000 sf. (0.99 acres); R-21 – 21,000 sf. (0.48 acres); and R-15 – 15,000 sf. (0.34 acres)) and VIII(B)(2)(b) (providing minimum lot size for single-family in MR zones).

[61] POCD, at 5-9 to 5-10.

[62] *See* Zoning Code, at §§ VIII(I) (providing MR-2 minimum lot sizes), V(C)(7) (providing minimum lot sizes in PR zones), V(C)(7) n.1-3 (applying R-43, R-21, and R-11 minimum lot sizes for single-family detached in PR-1, PR-2, and PR-3, respectively – for PR-3, also for two-family detached).

[63] *See id.* at § V(A)(9)(a) (listing as purpose of "Neighborhood affordable housing development" district "to permit and regulate the development of affordable, detached single-family dwellings").

[64] *Id.* at §§ V(A)(9)(d)(ii) (setting parcel minimum) and (iii) (listing required minimum and average lot sizes).

[65] *See* WHD Amendment, at §§ XI(BB)(3)(a) and (4) (providing lot size minimum for WHD in BT-1 and for alternative locations wholly or partially in R-43, respectively).

[66] *See* Zoning Code, at § VIII(H)(3)(b).

[67] *See id.* at §§ VI(I)(4) (allowing 10 units per acre if 4 acre parcel) and VI(I)(3)(f) (showing 4 unit-per-acre base).

[68] *See* POCD (containing an unpaginated appendix of maps at the end of the document, featuring "Sewer Service Areas" and "Water Service Area" maps that show these infrastructural networks are essentially coextensive).

[69] *See* Zoning Code, at § V(A)(9)(d)(ii). *See also id.* at § V(A)(9)(a) (providing purpose of NAHD).

[70] *See id.* at §§ XI(BB)(3)(a) (requiring "access to public water and sewer" for WHD in BT-1), XI(BB)(4) (same for "Alternative eligible location" in R43), and XI(BB)(1) defining "Workforce Housing Development" as multifamily housing that "qualifies as an 'assisted housing' development" under C.G.S. § 8-30g).

[71] *See id.* at § VIII(D)(1)(f).

[72] *Compare* POCD (containing sewer and water services maps) and Zoning Map (showing vast majority of unsewered area is either a single-family residential or an MR zone). *See also* Zoning Code, at §§ V(A)(2)(a) (allowing detached single-family "as a matter of right" in single-family residential zones) and VIII(B)(2)(a) (adopting single-family zone as-of-right uses to MR zones).

[73] POCD, at 4-1.

[74] *Id.* at 4-5.

[75] *Id.* at 5-6.

[76] *See* Zoning Code, at § VIII(F)(3)(a)(ii)(6). *See also* Zoning Map (identifying "Village Core – Area 1" in orange in KO inset map reproduced above).

[77] *See* Recent Map Amendments, at 1 (showing Jan. 2019 KO map change that added "two properties" to KO Area 1, but left majority of KO in Area 2 and Village Redevelopment District). *See also* Zoning Map (providing parcel boundaries within KO that allow for estimating number of lots in Area 1). *See also* Zoning Code, at § VIII(F)(3)(a)(ii)(6) (establishing 1 acre minimum lot size for multifamily Area 1).

[78] *See* Zoning Code, at §§ VIII(F)(3)(b)(i)(5) (permitting 6 units per acre in KO Area 2) and VIII(F)(3)(c)(i)(2) (same for Village Redevelopment Area). *See also* Zoning Map (showing, in KO inset, that majority of KO is not Area 1) and Recent Map Amendments (showing this remains the case).

[79] *See* Zoning Code, at § XI(BB)(1).

[80] *See id.* at § XI(BB)(3)(a) (delineating site eligibility standards) and (b) (providing density limits).

[81] *See* Zoning Map.

[82] WHD Amendment, at § XI(BB)(4).

[83] Zoning Code at XI(D)(1).

[84] *See id.* at § XI(D)(2)(d) and (e)(i) (allowing for replacing structures that are "inappropriate" for conversion due to reasons including their "physical condition," and imposing square footage limit for such replacements, respectively).

[85] *See* discussion in "Only a fraction of Berlin's housing is non-elderly and rental affordable housing," *supra*, at 49.

[86] *See* discussion of "Bureaucratic Hurdles," *supra*, at 51. *See* also Zoning Code, at § XI(Q)(1) (explaining that "Housing for the Elderly" may include "attached dwellings such as apartments, garden apartments, and town houses").

[87] Zoning Code, at §§ VII(A)(2)-(5) (showing "Adult housing" special permit as only permitted residential use in Office Technology-2 zone) and XI(AA)(2)(a)(i) and (vi) (containing age requirements for such housing).

[88] *See id.* at §§ XI(D)(2)(b)(i) (providing congregate senior housing lot area per unit), XI(D)(2)(a)(i) (same for all other residential uses in conversion), and XI(D)(3) (banning new construction on excess land "[w]ith the exception of congregate senior housing facilities and replacement structures").

[89] *See id.* at §§ VI(I)(3)(j) (permitting "Multifamily dwelling units . . . for persons 55 years of age or older" without imposing an above-retail or non-ground-floor restriction), VI(I)(3)(f) (allowing by special permit for multifamily "if not located at street level or on the first floor of a building") and VI(I)(4) (creating a CCD-2 special permit for denser multifamily housing than is otherwise allowed for in the district, but only "provided that the first floor area of the building . . . consist[s] entirely of stores and shops for the conduct of retail business or personal service business").

[90] *See id.* at §§ VIII(F)(3)(a)(ii)(4), (b)(i)(3), and (c)(i)(1), respectively.

[91] *See id.* at §§ VIII(H)(6)(d)(ii)-(iii).

[92] *Id.* at § VIII(H)(1)(b).

[93] *See id.* at § XI(T)(2)(b).

[94] *See id.*

[95] *See id.* at § XI(T)(2)(a) and (c).

# Darien

## Overview

Darien is well-connected to the greater metropolitan region and wealthy, with a median income nearly triple that of the state, and an average owner-occupied home value of over $1.4 million.[1] Darien is a self-described "residential suburb within the New York City metropolitan region with over 7,000 housing units and more than 20,000 residents," as well as "an employment center with over 7,000 daytime jobs."[2] Despite its placement in a thriving regional economy, the lack of housing diversity is extraordinary. Below is a description of some of the key ways in which the town's planning and zoning policies and efforts include impediments to multifamily and affordable housing.

## Summary of Findings

- ***Darien is extraordinarily white and wealthy, with little multifamily (single-family homes represent 90.8% of all housing) or C.G.S. § 8-30g affordable housing (just 3.6% of housing).***
- ***Large-lot, single-family zoning, with planning hostile to expanding multifamily areas.***
- ***No multifamily housing is permitted as-of-right or by special permit in any residential zone except by overlay zones that often are for highly limited areas and impose other restrictions.***
- ***Only as-of-right multifamily is above-commercial apartments in tiny portions of town with limited potential impact on supply.***
- ***Special permit and other procedures required for most multifamily are burdensome, with planning seeking to increase those burdens.***
- ***Parking requirements that treat multifamily unfavorably to single-family.***

## Demographics Overview: Darien is extraordinarily white and wealthy.

| Key Demographic Data | Darien | Fairfield County | Connecticut |
|---|---|---|---|
| Total Population | 21,742 | 943,926 | 3,575,074 |
| % White, Non-Hispanic | 87.7% | 61.7% | 66.9% |
| % Black, Non-Hispanic | 0.8% | 10.6% | 9.9% |
| % Hispanic, Any Race | 4.1% | 19.7% | 16.1% |
| % Asian, Non-Hispanic | 5.5% | 5.3% | 4.5% |
| % Population Below Poverty | 4.0% | 8.9% | 9.9% |
| Median Household Income | $232,523 | $95,645 | $78,444 |
| Grand List Per Capita | $556,761 | $256,323 | $160,428 |
| *For data sources, see the report's Town Data Compendium.* | | | |

Although the Town's Plan of Conservation and Development ("POCD") refers to Darien as a "diverse

and balanced community,"[3] both the demographics and housing stock data tell a different story. Darien is very racially segregated. The town is almost 88% white,[4] compared to 62% for Fairfield County as a whole and 67% for the state of Connecticut.[5] Fewer than one percent of Darien residents are Black, compared to 11% for Fairfield County and 10% or Connecticut as a whole.[6] Finally, while 16%of Connecticut residents and 20% of Fairfield County residents are Hispanic, only four percent of Darien residents are.[7]

Additionally, while the population continues to increase, Darien has seen a trend of net out-migration since the 1970s.[8] Especially notable is the sharp decline in residents between 20 and 34 years of age – a demographic that is especially sensitive to housing prices – as well as a much slower rate of growth in the age 55 and older population due to more of this demographic moving away from rather than into Darien.[9] The Town acknowledges that this may have something to do with the lack of affordable housing options: "Darien may not be 'gaining' young people (ages 20 to 35) because they cannot find housing that is affordable and meets their needs. Darien may be 'losing' older residents (ages 55 and over) because they also cannot find housing that meets their needs (fewer maintenance responsibilities and more amenities within walking distance)."[10] Thus it seems clear that the planning and zoning policies that are in place are insufficient to bring about the needed level of housing diversity.

## *Housing Stock Overview: Manifest lack of multifamily and affordable housing*

| Key Housing Data | Darien | Fairfield County | Connecticut |
|---|---|---|---|
| Total Housing Units | 7,278 | 372,565 | 1,516,629 |
| % Affordable (C.G.S. § 8-30g) | 3.6% | 9.6% | 11.7% |
| Median Home Value (Owned) | $1,471,700 | $428,500 | $275,400 |
| % Single-Family | 90.8% | 64.1% | 64.3% |
| % Two-Family | 2.2% | 8.3% | 8.2% |
| % 3-9 Units | 3.8% | 12.5% | 14.1% |
| % 10-19 Units | 0.5% | 3.5% | 3.8% |
| % 20+ Units | 2.5% | 11.1% | 8.8% |
| % Mobile Homes | 0.0% | 0.4% | 0.8% |
| 2001-2017 Permits | 976 | 33,530 | 117,821 |
| % Permits Single-Family | 69.7% | 55.4% | 68.7% |
| % Permits 5+ Units | 24.6% | 40.7% | 27.5% |
| *For data sources, see the report's Town Data Compendium.* | | | |

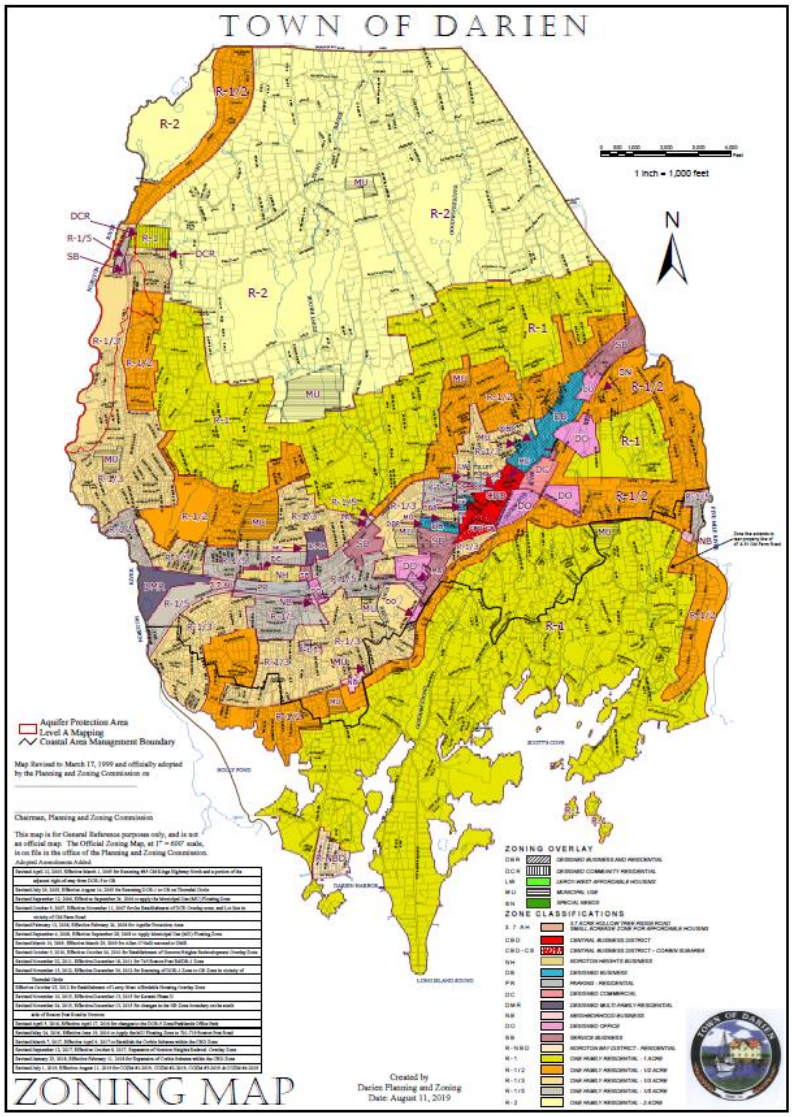
There are several areas of housing diversity where Darien is remarkably lacking. Darien has less than half the proportion of renters as in Connecticut as a whole (15% compared to 32%) and one-fifth the proportion of multifamily compared to the State (7% to 35%) according to the 2016 POCD.[11] The proportion of housing units that qualify as affordable under the affordable housing land use appeals procedure (C.G.S. § 8-30g) in Darien (3.4%) is half that of Fairfield County.[12]

Darien has also experienced remarkably little housing growth in recent history. According to the 2016 POCD, "Over the last two decades, Darien has been adding an average of about 20 housing units per year."[13] Unsurprisingly, this sluggish growth rate is also true of multifamily housing. Between 2001 to 2017 (the most recent year for which data is available), Darien only issued permits for 240 units of

housing in 5+ unit buildings – which translates to less than 14 units a year.[14] Such a job-rich environment (recall that Darien is home to more than 7,000 daytime jobs[15]) with such slow growth in housing suggests that there are barriers in place preventing additional housing development.

## *Land Area: Overwhelmingly single-family planning and zoning*

Darien's 2016 POCD suggests that lack of land is the principal barrier to the creation of more housing, describing the 20-units-per year "growth rate [as] a reflection of the fact that there is little undeveloped land in Darien so net housing growth occurs primarily through redevelopment of existing properties."[16] However, the town need look no further than its zoning regulations to find a plethora of impediments to and restrictions on creating diverse housing options.




*Source: Town of Darien Zoning Map ("Zoning Map")*

Residential Districts in Darien (R-2, R-1, R-1/2, R-1/3, R-1/5, R-Norton Bay District ("R-NBD")) allow detached single-family homes as-of-right (meaning simply requiring a zoning permit from the town zoning enforcement officer), but do not allow multifamily housing *either* as-of-right *or* by special permit.[17] Leaving aside overlay zones that either only serve specific populations such as those with an "intellectual disability" (rather than permitting unrestricted multifamily housing)[18] and those that permit multifamily housing in only isolated areas of residential zones (as discussed below[19]), the cumulative land area that could be used for multifamily residential uses in Darien, therefore is extraordinarily small. For context, other than within the narrow multicolored band that coincides with the I-95 / Metro-North corridor near the center of Darien's zoning map (reproduced to the above) and a few small zones scattered elsewhere, virtually all of the land falls into one of these residential districts. Indeed, the town's own GIS data shows that the unavailability of multifamily (with the limited exception of the geographically-bounded overlay zones referenced above) effectively eliminates the overwhelming majority of land area in Darien from creating more efficient, less expensive, denser multifamily housing.[20]

## *Lot Size: Not just single-family, but large-lot zoning throughout most of town*

Note that the single-family zoning which occupies so much of Darien's land area often mandates large minimum lot sizes. The zoning map shows that the northern half of Darien is dominated by the R-2 zone that comes with a massive two-acre minimum lot size, with most of the remainder occupied by the R-1 zone and its onerous one-acre minimum.[21] Almost everything south of the narrow multi-zone band in roughly the center of town is either R-1 or the (still quite demanding) half-acre zoning required in the R-1/2 zone.[22] In other words, almost all of town requires huge lots, substantially increasing housing costs.

Residential Districts in Darien (R-2, R-1, R-1/2, R-1/3, R-1/5, R-NBD) allow single family homes as of right (simply requiring a zoning permit from the town zoning enforcement officer), and do not allow multifamily housing *at all* – neither as-of-right, nor even by special permit.[23] The cumulative land area that could be used for multifamily residential uses in Darien, therefore is extraordinarily small. This eliminates the overwhelming majority of land area in Darien for potential housing growth through creating more efficient, less expensive, denser multifamily housing.[24]

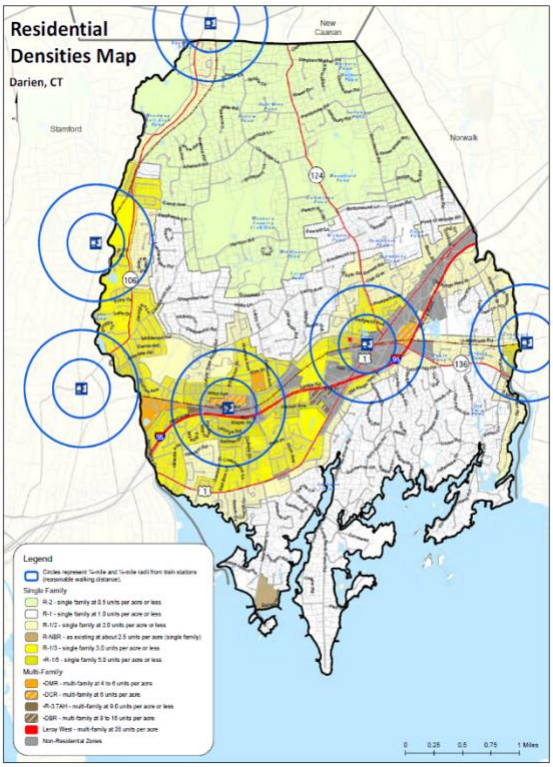
## *Planning expressly opposed to expanding multifamily areas*

This obstructionism toward multifamily in most of Darien is part of the Town's planning structure. The 2016 POCD outlined Darien's "basic organizational pattern of higher densities in and near downtown Darien and Noroton Heights business district and a reduction of in density as distance from these centers increase."[25] The 2016 POCD makes clear that it is a priority of the town and the Commission to "Continue to maintain the character of Darien as a residential community which is primarily comprised of lower-density single-family neighborhoods," and to "minimize impact on surrounding residential neighborhoods."[26]

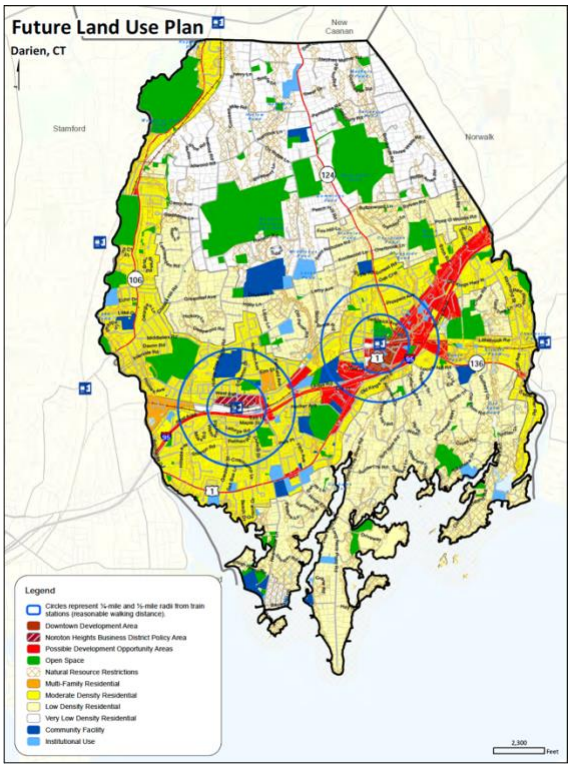
At times, Darien's hostility toward increasing the supply of multifamily housing has been even more explicit. In 2008, the Darien Planning and Zoning Commission's chairman referred to multifamily housing as "a virus" that, once allowed in small amounts threatened to spread.[27]

Lastly, even though the town sees its remaining developable land as limited, it is not prioritizing that land for dense housing options. Instead, Darien is keen on acquiring land, but only, it seems, in pursuit of increasing the amount of preserved open space in town: "Darien will seek to acquire land for open space whenever possible and appropriate."[28] The 2016 POCD suggests that the town create a land acquisition fund,[29] and it has already acquired a "right of first refusal" in case any of the three golf courses is put on the market.[30]

## *Density: Planning advocating strict and unexplained density limits*




*Source: 2016 POCD, at 99 (featuring Residential Densities Map).*




*Source: 2016 POCD, at 163 (featuring Future Land Use Plan).*

The 2016 POCD's Residential Densities Map, reproduced above on the left, demonstrates that Darien has planned for little density in the vast majority of town. Everything that is either light green (R-2 zone) or white (R-1 zone) allows for no more than 0.5 or one unit per acre, respectively.[31] As can be seen by comparing the Residential Densities Map with the 2016 POCD's "Future Land Use Plan," reproduced above on the right, these zones are equated with "Very Low" (white-shaded) and "Low" (pale yellow) density residential areas. One need not measure the precise percentage of land in Darien in such zones to see that they cover most of the map.

The "Moderate Density Residential" areas in the Future Land Use Plan (bright yellow) underscores yet another concern. These areas, concentrated in the center and northwest / southeast edges of town, are those where Darien deems "existing development patterns, soil and infrastructure capacity" to be "generally suitable for residential development at densities greater than 1.0 units per acre."[32] This indicates the unfounded stance that the majority of Darien is not suitable for greater than one unit per acre. Nowhere does the 2016 POCD explain why this is the case, other than the many references to preserving the "character" of the town. (It is worth noting that the justification often raised by towns of lack of water and sewer infrastructure is largely unavailable to Darien. The vast majority of town has access to water service (as shown by the water service map included in the POCD,) and more than 70% of Darien is serviced by sewer – including "Very Low" and "Low" density areas.[33])

Further, deeming *any* density above one unit per acre to be "moderate" indicates the strong preference for large-lot, single-family housing over any form of denser development. Indeed, even in the downtown areas, the 2016 POCD contemplates ways to further restrict density, suggesting that, "to

enable and manage residential development in the downtown area, the zoning regulations might be modified to: limit the overall density (maximum number of units per acre)."[34]

## *Inadequate Provisions: Limited potential impact from above-business units*

Darien's above-business apartment provisions do little to expand opportunity for multifamily in town. The zoning code allows dwelling units on upper floors of a building as-of-right in small, highly developed, commercial zones ("Central Business District" ("CBD"), CBD-Corbin Sub-Area, ("CBD-CS"), "Service Business" ("SB")).[35] Several other commercial zones allow for dwelling units on either the second or "upper" floors by special permit.[36]

There are several reasons why these are unlikely to generate significant quantities of multifamily development, including the following:

- These zones are almost entirely isolated to a narrow stretch along I-95.[37] That alone ensures that they can have no impact throughout the vast majority of town.

- The above-retail uses are subject to the zones' bulk regulations, which can significantly impede the amount of housing that is developed.

    - Such regulations include the limit to two-story buildings in all but the NH zone (which only allows for 3) and the *de minimis* area contained in the CBD-CS.[38] The 2016 POCD recognizes that these height restrictions unnecessarily limit development, suggesting that "additional building height may be necessary."[39] This finding is supported by a study completed in 2013 on the Route 1 corridor, which argues that even allowing a full third floor would "help provide for housing."[40] Currently, one additional story may be permitted, at the discretion of the Commission, and only if a development provides "one or more on-site, public plazas or parks."[41]

    - The potential for these zones to provide meaningful density is further curtailed by the restrictions limiting how much of a parcel that buildings can cover, ranging from about one third of the parcel in the NH zone to only one-fifth in the DC, DB and NB zones.[42]

- As noted, most of these are special-permit provisions.

- By definition, above-business requirements mean that Multifamily cannot exist on its own as a use.

## *Bureaucratic Hurdles: Obstacles even in zones supposedly open to multifamily*

Everywhere else in Darien other than the commercial zones, if multifamily is allowed at all, it must undergo an extensive special permit process.[43] According to the zoning code, uses that require a special permit "possess characteristics of such unique and special forms that each specific use shall be considered as an individual case."[44] As such, they require public notice, public hearing, and authorization of the Commission.[45]

The application process for a special permit use is extensive, including a site plan (which itself is a large undertaking, as descried below), a comprehensive traffic report,[46] as well as any other information the

Commission sees fit to require.[47] In considering special permit applications, the Commission is guided by the zoning code to consider a number of factors which may lead to denials of multifamily housing. For example, the Commission must find that the application is "in harmony with the appropriate and orderly development of the district in which it is located," which could discourage multifamily in a predominantly single-family town.[48] Further considerations, such as whether the proposed use might "impair the value" of nearby land,[49] increase congestion,[50] protect the environment,[51] could be used to discourage multifamily residential uses.

The site plan application process, which is not required for single-family uses,[52] requires a meeting with the Architectural Review Board, which shall make comments and recommendations to ensure that the use is "of such character as to harmonize with the neighborhood and surrounding uses, and to preserve and improve the appearance and beauty of the community."[53] The Commission has further discretion to refer the site plan to any Town department or other agency to submit a report on the application,[54] to require an impact analysis of storm drainage, sanitary sewers, traffic, site disturbance, water, air or noise pollution and/or parking,[55] or to require "any other information" the commission deems necessary.[56] Additional discretionary hurdles include the requirement that the Fire Marshal approved the site plan.[57]

Lastly, although some multifamily housing could be permitted using floating zone overlays (which are subject to their own sets of site and locational requirements[58]), the only way to do so would be to change the zoning map, and this would also require public notice and hearing.[59]

## *Planning committed to protecting character, adding to procedural impediments*

Instead of recommending a reduction in bureaucratic hurdles, the 2016 POCD emphasized efforts to preserve community character that could increase the bureaucratic burden on development by suggesting that the town "adopt regulations to consider scenic areas and resources as part of any land use application."[60] Further the POCD suggests that the town "consider extending the design review to multi-family residential development, mixed uses, and institutional uses."[61] The POCD also promoted architectural regulation which favors existing uses and potentially discourages multifamily housing: "Buildings that do not reflect the established scale and style of local architecture negatively affect community character."[62]

In a town where the established scale is overwhelmingly one unit per large lot,[63] architectural oversight guided by such language could inhibit diverse housing options. Indeed, single-family is accorded deferential treatment with regards to these recommended design provisions. According to the 2016 POCD, "Darien will maintain a design review process (for other than single-family residential development) to ensure that buildings and sites contribute to overall community character."[64]

Even in the downtown area where the town plans to "encourage appropriate development," a planning emphasis on aesthetics and a continuity of scale may pose challenges to significantly increasing multifamily and affordable housing.[65] For example, the POCD continues to emphasize a "particular sensitivity to scale and density,"[66] and reiterates that "as was stated in the 2006 POCD, the overall philosophy has been to keep development consistent with the small-town New England character of Darien."[67] The 2016 POCD recommends establishing a village district in the downtown area, which pursuant to Section 8-2j of the Connecticut General Statues, may require additional levels of review for developments.[68]

## *Site Location Limitations: Overlay zone site eligibility often stringently regulated*

Given that no multifamily is allowed as-of-right or by special permit in residential zones, overlay zones are the only way to develop multifamily housing in such areas. But such zones are often extremely narrowly bounded in terms of where they may be applied. Below are some illustrative examples.

- The "Leroy-West Affordable Housing Overlay Zone" occupies *just one-fifth of an acre* within the R-1/5 District.[69]

- The "3.7 Acre Hollow Tree Ridge Road Small Acreage Zone for Affordable Housing" ("R-3.7AH") is governed by nine pages of the Zoning Code that regulate the development of a single parcel.[70] The Zoning Code reasons that the zone is well separated from any single family residential neighborhoods by railroad tracks and an inter-state highway allows "a broader choice of housing types to address the needs for affordable housing while still preserving the predominant single family residential character of Darien."[71]

- The "Designed Multi-Family Residential" (DMR) Zone, is required to "be within walking distance of the Noroton Heights Shopping Center and the Noroton Heights train station."[72] And while the DMR is intended to address needs for affordable housing, its potential use is further restricted by the presumed negative impact of affordable housing on single-family neighborhoods: "it will not be adjacent to, and in no case, shall the new units adversely impact existing or potential single family residences."[73] In light of such particular locational specifications, it unsurprising that the DMR appears to exist on just two parcels.[74]

## *Density: Some multifamily overlay zones also have strict density caps*

Darien's overlay zones, which require a zoning change, special permit (recall that both zoning changes and special permits require public hearings[75]), and site plan approval – as well as to be connected to sewer and water[76] – are often explicitly restricted using a cap on the number of units allowed per acre (in addition to other limits that restrict building types and that may prevent the most cost-effective construction). Below are some examples.

- The "Designed Business and Residential" ("DBR") zone is a transitional district (overlayed on the DB commercial zone), separating commercial areas from the single family residential homes that surround them.[77] Multifamily housing is allowed at the modest density of eight units per acre on two-acre lots, but the town provides a potential increase for both senior housing and moderate income housing that favors senior housing over non-age-restricted housing.[78] If senior housing, the density may be increased to 12 units per acre, whereas moderate income housing only receives a bump to 11 units per acre. [79] But critically, and in addition to the uncertainty of approval inherent to the special permit process, *even these density levels are not guaranteed*. The Zoning Code makes clear that "[a]ll regulations hereunder pertaining to density and intensity of development are maximum levels of development and the Commission, in its discretion, may further limit development to reflect site specific conditions."[80] (Note, too, that even the slightly augmented density levels are unavailable to many families with children, in light of bedroom size caps imposed in this zone.[81])

- Despite the auspices of encouraging multifamily, the DMR not only requires a special permit for multifamily and affordable housing while allowing single-family as-of-right,[82] but also only allows a paltry density of up to four units per acre for multifamily and up to six units per acre for affordable housing.[83] The density limitations, in addition to bulk requirements of 2.5 stories 28 feet in height, maximum building coverage of 20% of the lot area, and maximum floor area ratio of 0.20, significantly constrain what a developer can do.[84]

- The "Designed Community Residential" ("DCR") zone employs both lot-size and building density limits, allowing condominiums on ten acre lots (another hefty impediment) that are limited to just six units per acre and four units per building.[85]

- The R-3.7AH is limited to nine units per net acre (or a total potential of 33 housing units).[86]

## *Parking Requirements Drive Up the Cost of Multifamily Development*

Multifamily housing in Darien is saddled with heightened parking requirements relative to single-family development, which can increase the cost of development and housing. While single-family housing is subject to a maximum of a two-spaces-per-unit parking minimum, almost all multifamily zones require at least 2.5 spaces per unit, and sometimes more.[87]. Furthermore, a number of multi-family zones require expensive enclosed garage parking.[88] A 2015 study of parking in Darien recommended "modifying the zoning regulations to consider using lower parking requirements in the downtown area."[89] However, there still remain unnecessarily strict parking requirements that favor single family uses over multifamily ones.

## *Conclusion*

Darien's 311 pages of zoning regulations appear to be among the most limiting of multifamily and affordable development of those encountered in this study of Connecticut towns, and they contain a complexity which make them difficult to analyze. Nonetheless, what is clear is that the impediments to generating the type of housing choices that are needed in Darien are myriad. The Open Communities Alliance estimates that Darien's Fair Share of the regional affordable housing need is 1,271 units of affordable housing in the next ten years.[90] In order to accomplish this, the impediments embedded in the planning and zoning of Darien must be addressed.

| **Darien 10-Year "Fair Share" Allocation (Units)** | **Combined Metropolitan & Western "COGs"[91] 10-Year Regional Need Estimate (Units)** |
|---|---|
| 1,271 | 35,365 |

*For sources, see the report's Town Data Compendium.*

[1] *See* Town Data Compendium, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[2] Town of Darien, Plan of Conservation and Development, adopted May 24, 2016 ("2016 POCD"), at 17, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[3] *Id.*
[4] All references to racial groups in this analysis are shorthand for "non-Hispanic" members of that group. Conversely, all references to "Hispanic" are meant to capture Hispanics of any race.
[5] *See* Town Data Compendium.

[6] *See id.*
[7] *See id.*
[8] *See* 2016 POCD, at 18.
[9] *See id.* at 22.
[10] *Id.* at 103.
[11] *See id.* at 24.
[12] *See* Town Data Compendium.
[13] 2016 POCD, at 24.
[14] *See* Town Data Compendium.
[15] *See* 2016 POCD, at 17.
[16] *See id.* at 24.
[17] *See* Town of Darien Zoning Regulations ("Zoning Code"), as amended through Mar., 1, 2020, at appendix F. Schedule of Residence District Regulations, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31. *See also id.* at §§ 402-405 (including no multifamily uses among principal, special permit, or accessory uses in R-2, R-1, R-1/2, R-1/3, and R-15) and 412-415 (adopting same permitted uses for R-NBD).
[18] *See, e.g.*, *id.* at §§ 451-455 (creating "Special Needs Housing Overlay Zone" that, by special permit only, allows for the construction of up-to 6-unit housing restricted to "persons [that] have an intellectual disability" in residential districts).
[19] *See*, *infra*, at 68.
[20] *See* Darien GIS Map, MapGeo Parcel Viewer & Abutter Notifications: https://darienct.mapgeo.io/
[21] *See* Town of Darien Zoning Map ("Zoning Map"), amended through Aug. 11, 2019, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31. *See also* Zoning Code, at Appendix F: Schedule of Residence District Regulations and § 406 (providing residential zone area and bulk requirements, including minimum lot size).
[22] *See id.*
[23] *See* Town of Darien Zoning Regulations ("Zoning Code"), as amended through Mach, 1, 2020, at appendix F. Schedule of Residence District Regulations
[24] *See* Darien GIS Map, MapGeo Parcel Viewer & Abutter Notifications: https://darienct.mapgeo.io/
[25] *See* 2016 POCD, at 98.
[26] *See id.* at 98.
[27] Lisa Prevost, *Housing Lawsuit Alleges Bias*, N.Y. TIMES (Dec. 8, 2011), https://www.nytimes.com/2011/12/11/realestate/connecticut-in-the-region-housing-lawsuit-alleges-bias.html.
[28] *See* 2016 POCD, at 48.
[29] *See id.* at 52.
[30] *See id.*
[31] *See id.* at 99 (containing "Residential Densities Map").
[32] *Id.* at 162.
[33] *See id.* at 146 (containing water service map) and 147 (containing sewer service map and stating over 70% of town is sewered).
[34] *Id.* at 81.
[35] *See* Zoning Code, at Appendix F: Schedule of Business District Regulations.
[36] *See id.* (listing such provisions for the "Neighborhood Business," "Designed Business," "Designed Commercial," and "Noroton Heights Business" zones).
[37] *See* Zoning Map.
[38] *See* Zoning Code, at Appendix F: Schedule of Business District Regulations. *See also id.* at §§ 233 and 738.1 (providing for greater height restrictions in CBD-CS) and Zoning Map (showing CBD-CS is a tiny triangle bounded by Boston Post Road, Corbin Drive, and I-95).
[39] 2016 POCD, at 78.
[40] *See id.*
[41] Zoning Code, at § 746, note c.2.
[42] *See id.* at Appendix F: Schedule of Business District Regulations
[43] *See id.*

[44] *Id.* at § 1001.
[45] *See id.*
[46] *See id.* at § 1003.d.
[47] *See id.* at. § 1003.f.
[48] *Id.* at § 1005.a.
[49] *Id.* at § 1005.b.
[50] *See id.* at § 1005.d.
[51] *See id.* at § 1005.g.
[52] *See id.* at § 1022.
[53] *Id.* at § 1023.4.
[54] *See id.* at § 1023.5.
[55] *See id.* at § 1024.8.
[56] *Id.* at § 1024.9.
[57] *See id.* at § 1025.2.
[58] *See* discussion of "Site Location Limitations," *infra*, at 68.
[59] *See* Zoning Code, at § 1111.
[60] 2016 POCD, at 39.
[61] *Id.* at 42.
[62] *Id.*
[63] *See* discussions of "Land Area" and "Lot Size," *supra*, at 63 and 64, respectively.
[64] 2016 POCD, at 42.
[65] *Id.* at 70.
[66] *Id.*
[67] *Id.* at 71.
[68] *See* C.G.S. § 8-2j.
[69] *See* Zoning Code, at § 595.
[70] *See id.* at § 541.
[71] *Id.*
[72] *Id.* at § 521
[73] *Id.*
[74] *See* Zoning Map.
[75] *See* discussion of "Bureaucratic Hurdles," *supra*, at 66.
[76] *See* Zoning Code, §§ 433(c) (requiring public water and sewer service for "Active Senior Residential Overlay Zone"), 453(c) (same "Special Needs Housing Overlay Zone"), 502 (same for "Designed Business and Residential" overlay zone), 572(a) (same for "Designed Community Residential" overlay zone), and 594(b) (same for "Leroy – West Affordable Housing Overlay Zone").
[77] *See id.* at § 501.
[78] *See id.*
[79] *See id.* at § 504.
[80] *Id.* at § 515.4.
[81] *See id.* at § 504.
[82] *See id.* at §§ 523-524.
[83] *See id.* at §526.
[84] *See id.* at § 525.
[85] *See id.* at § 575.
[86] *See id.* at § 544.
[87] *See id.* at §904. *See also id.* at §§ 512(a), 528.3(a), 577.2(a) (requiring "one additional parking space" beyond the 2.5 spaces per unit in the "Designed Business and Residential" ("DBR"), DMR, and DCR zones).
[88] *See id.* at §§ 512(a), 528.3(a), 577.2(a) (requiring such garages in DBR, DMR, and DCR).
[89] 2016 POCD, at 134.
[90] *See* Town Data Compendium.
[91] "COG" is shorthand for "Council of Governments." There are 9 COGs in Connecticut, which are meant to serve as "planning regions" to "provide a geographic framework within which municipalities can jointly address

common interests." *See* State of Connecticut, *Regional Councils of Government (COGs) in Connecticut*, available at https://portal.ct.gov/OPM/IGPP-MAIN/Responsible-Growth/Regional-Planning-Organizations-RPO.

# Fairfield

## Overview

Fairfield is a wealthy town of about 60,000 residents[1] located along I-95 and Route 15 and served by the Greater Bridgeport Bus Transit system and three train stations along the Metro North New Haven Rail Line with commuter access to New York City. About half of its workers are in a managerial or professional occupation.[2] Despite its location in a vibrant regional economy and its proximity to the largest city in Connecticut (Bridgeport), Fairfield has a stunning lack of social, economic, and housing diversity. One can look to the planning and zoning policies of Fairfield to find an important piece of the explanation for this distorted demographic and housing landscape, as these documents impose significant impediments to the development of affordable and multifamily housing.

- ***Black, Hispanic, and low-income households are underrepresented in Fairfield.***
- ***Little availability of or increase in multifamily and affordable housing (just 2.5% of units qualify as affordable under C.G.S. § 8-30g).***
- ***Nonetheless, planning targets controlling growth and stopping multifamily areas' expansion.***
- ***Single-family housing faces many fewer procedural impediments than multifamily housing.***
- ***Nowhere in town is a five-or-more unit development allowed as-of-right, and only the smallest residential zone allows up to four-unit buildings as-of-right.***
- ***Lot size, height, and parking restrictions are often more restrictive for multifamily proposals than for single-family proposals.***
- ***Several of Fairfield's principal means for generating multifamily are constrained in their ability to generate multifamily housing.***

## Demographics Overview: Black, Hispanic, and low-income people are disproportionately underrepresented in Fairfield

| Key Demographic Data | Fairfield | Fairfield County | Connecticut |
|---|---|---|---|
| Total Population | 61,740 | 943,926 | 3,575,074 |
| % White, Non-Hispanic | 84.3% | 61.7% | 66.9% |
| % Black, Non-Hispanic | 1.9% | 10.6% | 9.9% |
| % Hispanic, Any Race | 6.9% | 19.7% | 16.1% |
| % Asian, Non-Hispanic | 4.4% | 5.3% | 4.5% |
| % Population Below Poverty | 5.2% | 8.9% | 9.9% |
| Median Household Income | $139,122 | $95,645 | $78,444 |
| Grand List Per Capita | $270,928 | $256,325 | $160,428 |
| *For data sources, see the report's Town Data Compendium.* | | | |

That Fairfield is racially segregated is undeniable, even by the town. Fairfield's 2016 Plan of Conservation and Development ("POCD") quickly acknowledged and then dismissed the town's lack of racial and ethnic diversity as an issue: "Although the majority of Fairfield residents are white, the town is gradually becoming more racially and ethnically diverse."[3] This statement cited to a table that showed the Black[4] population as having increased from 1.04% to 1.83% between 2000 and 2010, and the Hispanic population increasing from 2.34% to 5.05% in that period.[5] In other words, the very data the POCD cited to undercuts any suggestion that Fairfield had become meaningfully diverse.

Nor has Fairfield become racially integrated over the course of the following decade. The Black population of Fairfield increased by an *almost imperceptible 0.07%* to 1.9% from 2010 to 2020, and the Hispanic population increased by less than two percentage points to 6.9% of the total.[6] As can be seen in the table above, Fairfield's prevalence of White residents and dearth of Black and Hispanic residents of is stark when compared to Fairfield County and Connecticut.[7] But the racial isolation in Fairfield is even more obvious when compared to its neighbor to the east, the City of Bridgeport, which is 20.1% White, 32.3% Black and 40.8% Hispanic.[8] In relative terms, Fairfield is four-times Whiter than Bridgeport, whereas Bridgeport is about six-times more Hispanic and *17 times* more Black than Fairfield.[9]

Low-income households also are underrepresented in Fairfield. The town's poverty rate of 5.2% is lower than the county and state rates of 8.9% and 9.9%, respectively.[10] Fairfield's median household income is more than $40,000 higher than the county's and more than $60,000 higher than the state median.[11]

## *Housing Stock Overview: Little multifamily and affordable housing*

| Key Housing Data | Fairfield | Fairfield County | Connecticut |
|---|---|---|---|
| Total Housing Units | 22,160 | 372,565 | 1,516,629 |
| % Affordable (C.G.S. § 8-30g) | 2.5% | 9.6% | 11.7% |
| Median Home Value (Owned) | $611,500 | $428,500 | $275,400 |
| % Single-Family | 85.8% | 64.1% | 64.3% |
| % Two-Family | 6.4% | 8.3% | 8.2% |
| % 3-9 Units | 4.2% | 12.5% | 14.1% |
| % 10-19 Units | 1.0% | 3.5% | 3.8% |
| % 20+ Units | 2.4% | 11.1% | 8.8% |
| % Mobile Homes | 0.1% | 0.4% | 0.8% |
| 2001-2017 Permits | 1,698 | 33,530 | 117,821 |
| % Permits Single-Family | 73.5% | 55.4% | 68.7% |
| % Permits 5+ Units | 19.5% | 40.7% | 27.5% |
| *For data sources, see the report's Town Data Compendium.* | | | |

As with racial demographics, the POCD downplays the need for a greater range of housing choices in Fairfield. The POCD describes Fairfield in the following way: "The community is diverse with housing types ranging from multi-family dwellings on quarter acre or smaller lots in the Shore Area to large single-family homes on two-acre lots in Greenfield Hill."[12] This characterization belies the extreme prevalence of single-family homes (and, as will be seen, zoning to encourage single family on large lots). The vast majority of Fairfield's over 22,000 housing units (85.8%) consist of single-family homes,

while only 2.4% consist of units in buildings of 20 or more units.[13] The equivalent percentages for the county are 64.1% and 11.1%, respectively, which sheds light on the imbalance in the town's supply.

The lack of multifamily and single-family housing are accompanied by two related features of the local housing market that pose serious challenges to increasing racial and economic diversity. First, housing costs in Fairfield *far exceed* even the lofty baseline of Fairfield County – with the median home value of $611,500 and median monthly gross rent of $1,886 surpassing the county equivalents by $183,000 and $387, respectively.[14] Second and obviously in light of the forgoing, affordable housing is in short supply. Just 2.5% of the town's housing supply qualifies as affordable under the Affordable Housing Land Use Appeals Procedure (C.G.S § 8-30g) – as compared with nearly 10% of the county housing supply.[15]

## *Despite a lack of housing development, planning targets controlling growth*

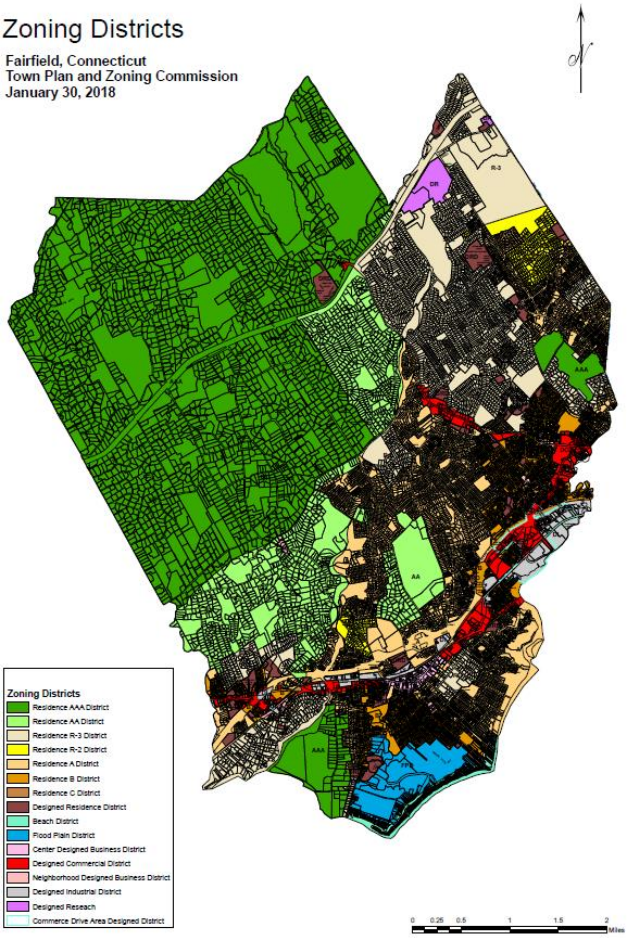
Over the last seventeen years for which construction permit data are available (2001-2017), Fairfield simply has not built many housing units of any kind, especially considering its size and access to powerful regional economies. Between 2001 and 2017, Fairfield permitted 1,698 units of housing, or less than 100 units per year.[16] The permits that have been issued have disproportionately been single-family homes in both absolute and relative terms. Nearly three-quarters of permits (73.5%) from 2001-2017 were for single-family homes, which compares with 55.4% and 68.7% of permits countywide and statewide. Conversely, the 450 permits for units in multifamily housing (including two-family homes) represent just 26.5 such permits per year.[17] This is clearly insufficient to overcome the town's pronounced shortage of such housing.

Nor has the growth that has occurred been uniform. The POCD described how population growth from 1980 to 2013 was largely concentrated in the northern and western areas of town.[18] These areas are almost entirely zoned for large-lot single-family residences (virtually the entire northwest third of Fairfield is zoned for the AAA Residence District, which permits single-family detached dwellings with a two-acre minimum lot[19]), lending credence to concerns that denser development has been restricted. Indeed, several of the town's multifamily and denser single-family areas are remnants of patterns established in the post-World War I era.[20]

Notwithstanding the above – and the POCD's observation that even if the total projected units permitted under existing zoning were two be constructed, this would only result in about 1,000 more units and "will not significantly increase the population"[21] – the POCD stokes fear of denser growth and rather than proposing to allow more density on existing land and proposes measures that would further limit the availability of land for building homes: "The pace of development for small and mid-size parcels has recently accelerated dramatically. Oversized yards are being subdivided and developed, as are many 'vacant lots' and old fields. This informal open space is disappearing rapidly. Once developed it is gone forever. Fairfield should fund the Land Acquisition Commission to aggressively buy up as many of the remaining parcels as possible while they still exist."[22] The town has already acquired and manages over 1,100 acres of open space, siting benefits such as not having to provide supporting infrastructure as well as the "numerous intangible benefits derived from better quality of life and higher property values associated with living in an area that is not and will not be developed to the absolute maximum."[23]

## *Land Area: Overwhelmingly single-family zoning throughout Fairfield*

Just like the housing stock, most of the land area in Fairfield is dedicated to single family homes. The residential zones which allow more than single family structures as of right are the smallest two residential zones (the B & C zones that are clustered around the I-95 corridor),[24] and the also small commercial and industrial zoning districts that may allow some form of multifamily.[25] Together these represent a tiny fraction of the land area of the town. (While the zoning map reproduced at right might be difficult to discern, what is immediately apparent are the single-family (various shades of green and beige) zones occupy a huge chunk of the map.)



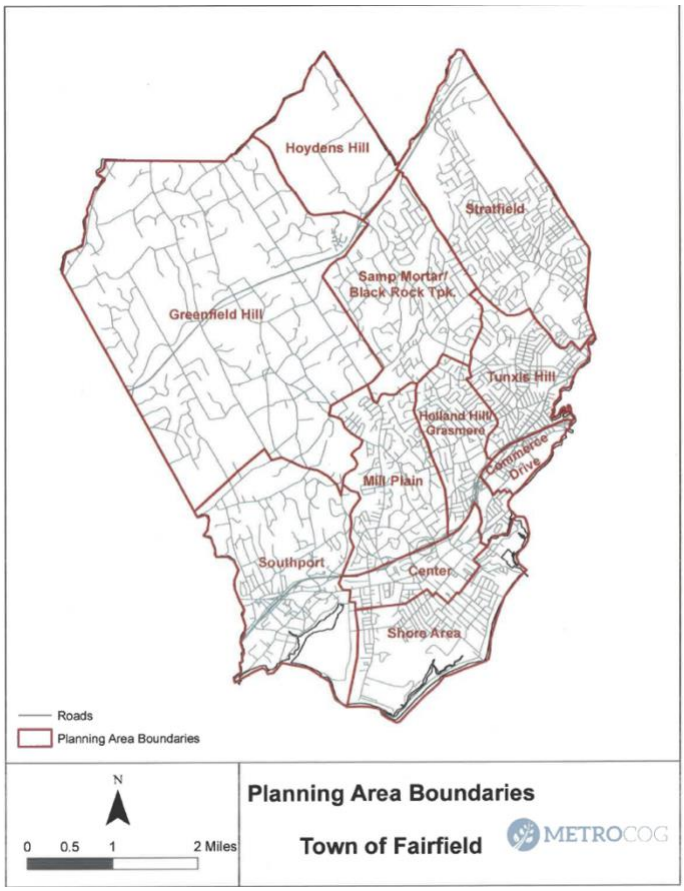

*Source: Zoning Map.*

## *Planning often focused on preventing further density in large areas of town*

The town's planning reinforces efforts to restrict expansion of density and development. As can be seen in the Fairfield neighborhood map on the next page, Greenfield Hill is the largest neighborhood in the Fairfield. The POCD describes it as, "essentially a residential area composed primarily of two-acre wooded lots with large single-family colonial-style homes and substantial areas of public and private open space."[26] The POCD recommends that "Zoning Regulations which would increase permitted density of development should be discouraged in order to preserve the character of the area."[27] Beyond discouraging the density, the POCD adds that, "Undeveloped areas should be examined for potential acquisition by the Town or designation as open space."[28]

Similarly, the POCD states that the Stratfield Hill neighborhood uses Neighborhood Designed Business Districts to "provide safeguards against over development."[29] The POCD warns that "the character of this area, and the Town, in general, would be altered dramatically if the Fairchild-Wheeler Golf Course or Brooklawn Country Club properties were to be developed for other uses," and recommends preventative measures such as "Town acquisition of these properties," and "modification of the underlying R-3 zoning to decrease permissible density."[30]

The POCD even contemplates reducing the currently allowed levels of density in some areas, treating multifamily as a threat. The Shore Area Neighborhood is considered to have "a density of development so unusual it warrants its own regulatory scheme (the Beach District)."[31] The Shore Area Management Plan sets out several goals related to the density of the area, including: "[e]nsuring that the intensity of development does not increase," and, "disallow[ing] any further incursion of multi-family development in the shore area."[32] The POCD warns that due to environmental considerations, "a reduction in density along the shore should be considered."[33]



*Source: 2016 POCD, at 41.*

In others where the POCD is amenable to more housing, it makes clear that it is not seeking to let such development bleed across boundaries. The Center neighborhood, the POCD states that, "Housing development may be an appropriate alternative in the area between the turnpike and the railroad if and when existing commercial use is no longer viable," and that, "additional housing opportunities in the Center should be encouraged through existing mixed-use provisions of the Zoning Regulations."[34] However the commercial zones are far smaller than residential ones, and the POCD recommends "resist[ing] expansion of commercial districts."[35]

## *Bureaucratic Hurdles: Fewer procedural barriers for single-family than multifamily housing proposals*

The zoning application process similarly favors development of single-family homes, or in select small areas, slightly higher densities. As a threshold matter, it is important to understand the benefits that accrue to applications for residential construction that do not require a Special Exception or a Special Permit. Such proposals can simply submit a plan drawing to the zoning enforcement officer, showing that it conforms to the zoning code.[36] The zoning enforcement officer can then issue a certificate of zoning compliance, permitting the activity.[37]

There is no residential zone that allows a simple zoning permit process for housing with more than four units per structure.[38] In five of the seven residential zones, comprising the majority of land area in Fairfield, only single-family homes are allowed by this process; one relatively small residential district (B) allows single and two-family housing by this process; and finally, an extremely small residential district (C) allows up to four-unit construction by this process, in addition to less dense housing types.[39]

Single family homes are also subjected to less oversight in other ways, such as the exemption from Coastal Site Plan Review[40] and from submitting an erosion and sedimentation control plan, which must be certified by the Town Plan and Zoning Commission ("Commission") for any development which disturbs more than a half-acre.[41]

## *Further bureaucratic hurdles in certain multifamily and affordable housing provisions*

Any other form of multifamily housing other than the B and C zone uses requires either the much more rigorous special permit or special exception processes or an application for a zoning change. The application process for a special permit, which is required for any multifamily building in the three designed business districts or any established "Designed Residence District" ("DRD"),[42] requires submitting a site plan with an extraordinary level of detail – including "a list and description of the plan materials to be used," a bicycle and pedestrian plan [and] architectural plans.[43] It also requires the holding of a public hearing, after which the Commission has the discretion to approve the application based on myriad potentially subjective considerations.[44] These considerations include not only aesthetic preferences, such as the exterior building material and color; but also whether the "[a]rchitectural Plans shall be of such a character as to harmonize with the neighborhood, to accomplish a transition in character between areas of unlike character, to protect property values in the neighborhood, to preserve and enhance the appearance and beauty of the community, and to avoid undue traffic congestion."[45]

The process for requesting a zoning change, which is required for designating any eligible area as a DRD and thereby taking advantage of the above-reference multifamily special permit,[46] is even more complex and potentially uncertain. A multifamily developer must simultaneously submit an application for a District change and a Special Permit use for the proposed development, as well as "such additional information as the Commission may deem reasonably necessary to make a decision on the application."[47] This open-endedness of the application process combined with a public hearing and discretionary authority by the Commission can deter developers from applying in the first place.

Affordable housing is given additional requirements in the Zoning Code with respect to the administration and enforcement of the zoning regulations, as follows: "Any petition for an amendment of the Zoning Regulations or for a change in the Zoning Map in connection with an Affordable Housing Application shall be accompanied by a conceptual site plan, prepared by a Connecticut licensed professional engineer, describing the proposed development's total number of housing units and their arrangement on the property and the proposed development's roads and traffic circulation, sewage disposal, storm drainage and water supply."[48]

## *Lot Size: Large lot sizes, sometimes increasing as units are added*

Most single-family zones have sizeable minimum lot requirements. For example, in the AAA District, which appears to be the largest residential district by land area,[49] the minimum lot size is a massive two acres.[50] The clear majority of residentially zoned land in Fairfield (comprising zones AAA, AA, R-3, and R-2) impose at least one-third acre minimum lot sizes for single-family housing.[51] Put simply, large-lot single-family zoning is the norm.

Fairfield also marshals differential lot sizes for multifamily to effectively neutralize the impact of some of the provisions that ostensibly allow for such housing. For example, while two-unit structures are allowed in the B District and up-to-four-unit structures are allowed in the C district by zoning permit,[52] minimum lot size increases with the number of allowable units in a way that renders the multifamily uses little different from single-family in terms of the total potential housing that can be developed. In the B district, the minimum lot size for a single-family home is 6,000 square feet (for a possible seven units on one acre), but the minimum lot size for a duplex is 9,000 square feet, yielding a potential for four duplexes or eight units on one acre – gaining just one more unit on a one-acre parcel.[53] In the C District, the minimum lot size for single-family dwellings is 5,000 square feet, which steadily increases to 7, 500 for two-family, 10,000 for three-family, and 12,500 for four-family.[54] Assuming a one-acre parcel, this means that increasing to from single-family four-family, rather than quadrupling the potential housing to be developed, would only go from 8 units to 13 units.

## *Height restrictions and parking requirements disfavor multifamily homes*

Fairfield's zoning regulations advantage single family housing as a use over multifamily homes in a number of ways. Single family neighborhoods are actually allowed greater height than districts which allow some modest multifamily density. In the four districts with the largest lot size requirements that only permit single family dwellings (AAA, AA, R-3 and R-2) buildings are allowed a maximum of three stories or 40 feet, while in the districts with smaller lot size requirements and/or that allow multiple unit structures (A, B, and C) the height limit is 2.5 stories or 32 feet.[55] The Zoning Code allows one to build a three-story, 40 foot tall single family home throughout most of Fairfield, but does not allow construction of a three story multifamily structure as of right anywhere in town. Multifamily seems to be explicitly targeted by these differential regulations, as the POCD recommends the "Continuation of current limitations on the maximum height of buildings and prevention of high-rise apartments."[56] Similarly, buildings with greater density require more parking spaces per unit. Developments for one-to-four families require two spaces per family, developments for five to 10 families require 2.5 spaces per family and developments for 11 or more families require three spaces per family.[57]

## *Inadequate Provisions: Several of the town's multifamily provisions are hampered by restrictions that appear likely to limit multifamily development*

According to the POCD, Fairfield, "recognizes the obligation to provide affordable housing and should continue to pursue appropriate options to supply affordable housing, in all areas of Town."[58] However, several of the policies that the town is relying on to produce multifamily and affordable housing are hindered in their effectiveness in a number of ways that compound one another. A few examples suffice to show the interplay of these various restrictions.

**A) Designed Residence District:** The DRD has the stated purpose of providing "for flexibility in site design and housing construction which will provide a variety of housing opportunities including the encouragement of elderly and affordable housing."[59] But using a DRD requires a special permit from the Commission (or a zoning map amendment for a new DRD),[60] and density in the DRD is limited by the four-unit maximum in any single building (unless the Commission agrees to adjust it, which it can only do if the DRD is in certain zones),[61] severely constraining the types of multifamily buildings that can benefit from a DRD. In 2014, the Fairfield Affordable Housing Committee submitted an Affordable Housing Plan to the town government that recommended that the town consider amending the DRD regulations to allow more than four dwelling units in a building, yet the restriction remains.[62]

Other restrictions and requirements further limit the DRD multifamily production that is achievable, such as the following:

- There are a range of per-acre density limits based on the underlying zones, with a number being quite restrictive – such as no more than 0.5, 1.0, and 3.2 units per ace in the AAA, AA, and R-3 residential zones, respectively, that collectively occupy much of the town.[63]

- For developments in the Designed Industrial District or Designed Business Districts (which potentially allow for among the highest densities under the DRD regulations[64]) uses of the DRD must be at least four miles apart.[65]

- In the Designed Commercial and Residence C zones (which allow for the highest DRD densities if certain criteria are met), the parcel that is changed to a DRD must abut a state highway – a severely limiting factor, especially in the already small C District.[66]

- The DRD requires large minimum lot sizes in residential zones, ranging from 30 acres in the AAA, to 10 acres in the AA, to 2 acres in the R-2, and 1 acre in each of the A, B, and C zones.[67]

- The Designed Business, Designed Industrial, and Designed Commercial zones that allow higher DRD densities (as noted above) *also* obviously allow for non-residential enterprises. This means that the densest DRD housing often must compete with business and other interests to acquire parcels, which could significantly limit the potential application of DRD in these zones.[68]

**B) Designed Business Districts:** Any potential for developing density in the small portions of land designated as Designed Business Districts is mitigated not only by modest size of the zones and the competition for land by commercial uses, but also by requirement that all housing must be part of a commercial use, with additional limits on the square footage, number of floors that can be used for residential, several pages of architectural design standards, submission of a traffic study, and finally, the requirement for a special permit approval process.[69]

**C) Accessory Dwelling Units ("ADUs"):** The town's ADU regulation has the stated purpose of "address[ing] the identified need of providing and preserving affordable and secure housing for all the population of the Town, while preserving the appearance and character of the Town's neighborhoods."[70] As discussed in the general introduction of this report, ADU provisions are unlikely to generate meaningful amounts of affordable housing. This is especially true in Fairfield since owners cannot simply submit an application to the zoning enforcement officer, but rather must submit an application and receive a permit from the Commission, which can require that any application be submitted for formal site plan review.[71]

**D) Commerce Drive Station**: The POCD demonstrated the significant hopes the town has for developing the Commerce Drive Station Area into a mixed-use community oriented around transit, however, it notes that this transition "will take a generation or more."[72] In the meantime, it recommended preserving and upgrading the town's existing Pre-WWII multifamily housing stock, mixed use (commercial combined with residential use) development, and "promot[ing] the utilization of Residence C zoning for rental units."[73] If Fairfield has placed its near-term hopes in the multifamily and affordable development potential of ADUs and the single smallest residence district, that may help explain the lack of affordable and multifamily housing in the town.

Moreover, in this Commerce Drive Station where the POCD (for a change) argued that the benefits of population growth might outweigh the impacts, it did so in a way that targeted specific demographics that do not reflect the diverse need for affordable housing in the region. The POCD stated that "population growth can have some negative impacts on the community," but assured the reader that, "the benefits of transit-oriented and compact residential development will outweigh these by providing a net increase in tax revenue to the town, by providing housing options for the town's college graduates, young professionals, workforce, and empty-nesters."[74] The recommendations outline specific policies that could ensure occupancy by these desired types of people: "Residential uses… should be located within multifamily buildings and constructed at a minimum density to support transit, should consist of a range of unit types from duplexes and townhouses to apartments and condos, [and] should consist of a range of sizes with a focus on single bedroom units and studios to target young professionals and empty-nesters."[75] The POCD even went so far as to acknowledge that this redevelopment will likely result in a *loss* of affordable housing and only offered the weak and non-specific corrective measure of having "new residential development . . .incrementally replace some level of the affordability projected to be lost."[76]

## *Conclusion*

The various ways that Fairfield's planning and zoning appear to restrict multifamily and affordable housing development are all the more problematic given how far Fairfield has to go to meet its "Fair Share" of regional affordable housing need. According to the Open Communities Alliance, Fairfield, due to its relative wealth and income, as well as lack of income diversity and multifamily housing, should produce over 2,000 units of affordable housing over the next 10 years. Accomplishing this feat will require a significant shift in the planning and zoning policies of the town.

| **Fairfield 10-Year "Fair Share" Allocation (Units)** | **Combined Metropolitan & Western "COGs"[77] 10-Year Regional Need Estimate (Units)** |
|---|---|
| 2,064 | 35,365 |

*For data sources, see the report's Town Data Compendium.*

[1] *See* Town Data Compendium, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[2] *See* Town of Fairfield, Plan of Conservation and Development, adopted Nov. 15, 2016 ("2016 POCD"), at 12, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[3] *Id.* at 8.
[4] All references to racial groups in this analysis are shorthand for "non-Hispanic" members of that group. Conversely, all references to "Hispanic" are meant to capture Hispanics of any race.
[5] *See* 2016 POCD, at 8, "Table I B, "Racial/Ethnic Characteristics."
[6] *See* Town Data Compendium.
[7] *See id.*
[8] *See id.*
[9] *See id.* (providing data from which these relative figures were derived).
[10] *See id.*
[11] *See id.*
[12] 2016 POCD, at 2.
[13] *See* Town Data Compendium.

[14] *See id.*
[15] *See id.*
[16] *See id.*
[17] *See id.*
[18] *See* 2016 POCD, at 9.
[19] *See* Town of Fairfield Zoning Regulations ("Zoning Code"), at § 5.1.1, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31. *See also* Town of Fairfield Zoning Map ("Zoning Map"), a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[20] *See, e.g.*, 2016 POCD, at 45, §§ II.3.3-II.3.4 (describing "smaller areas used for post-World War I multi-family housing" in the Holland Hill/Grasmere neighborhood and "a high concentration of two, three, and four-family dwellings" in the Tunxis Hill area that "was developed during the first wave of population growth after World War I" and "[a]s a result, most of its subdivision layouts pre-date the establishment of planning and zoning regulations").
[21] *Id.* at 74.
[22] *Id.* at 72.
[23] *Id.* at 81.
[24] *See* Zoning Code, at § 5.1.1 and Zoning Map.
[25] *See, e.g.*, Zoning Code, at §§ 12.3.16, 12.4.18, and 12.4.4 (allowing by special permit for above-ground-floor units in the three "Designed Business Districts") and Zoning Map (showing these districts concentrated in similar area as Residence B and C districts).
[26] 2016 POCD, at 42.
[27] *Id.*
[28] *Id.*
[29] *Id.* at 43.
[30] *Id.*
[31] *Id.* at 48.
[32] *Id.* at 85.
[33] *Id.* at 74.
[34] *Id.* at 51.
[35] *Id.* at 46, 47.
[36] *See* Zoning Code, at § 2.21.1.
[37] *See id.* at § 2.21.4.3(a).
[38] *See id.* at § 5.1.1.
[39] *See id. See also* Zoning Map.
[40] *See* Zoning Code, at § 2.14.2(5).
[41] *See id.* at § 37.3.
[42] *See id.* at §§ 12.3.16, 12.4.18, and 12.4.4 (allowing by special permit for above-ground-floor units in the three "Designed Business Districts"); *see also id. at* §§ 10.4.2 and 10.9 (allowing by special permit for up to four units per building in a designed residence district).
[43] *See id.* at § 25.
[44] *Id.* at § 25.7.
[45] *Id.* at §§ 25.7.3 and 25.7.7, respectively.
[46] *See id.* at § 10.3 (defining "underlying districts" for purposes of DRD as those that "existed prior to the amendment of the zoning map establishing the Designed Residence District" and describing certain areas as not eligible for DRD "designation," collectively suggesting availability of designation process in other areas by map change).
[47] *Id.* at § 25.8.
[48] *Id.* at § 2.44.
[49] *See* Zoning Map.
[50] *See* Zoning Code, at § 5.1.1.
[51] *See* Zoning Code, at § 5.1.1 and Zoning Map.
[52] *See* Zoning Code, at § 5.1.1.

[53] *See id.*
[54] *See id.*
[55] *See id.* at § 5.2.2.
[56] 2016 POCD, at 73.
[57] *See* Zoning Code, at § 28.6.1.
[58] 2016 POCD, at 74.
[59] Zoning Code, at § 10.2
[60] *See id.* at §§ 10.4 (requiring special permit for DRD), 10.1 (creating one DRD), 10.3 (demonstrating that DRD was created via amendment to zoning map) and 10.6.12 (referencing design standards applicable as to certain zoning map amendments to create a DRD, further suggesting all applications to create a new DRD require map amendments).
[61] *See id.* at §§ 10.9.1 (setting general four unit maximum per building) and 10.9.2 (allowing for Commission adjustment in Designed Business, Designed Industrial, or Residence B and C zones).
[62] *See* "Diversifying Fairfield's Housing Portfolio: Taking Control of Our Future," Affordable Housing Committee, Town of Fairfield, Nov. 2014, at 40, available at https://www.fairfieldct.org/filestorage/10726/11008/13302/18266/20316/AHC_Final_Report_103114.pdf.
[63] *See id.* at §§ 10.6.1 to 10.6.3. *See also* Zoning Map
[64] *See id.* at §§ 10.6.7 (allowing for up to 17 units per acre in the Designed Industrial and Designed Business zones if certain criteria are met) and 10.6.12 (allowing for up to 30 units per acre in the Designed Commercial District if certain criteria are met).
[65] *See id.* at §§ 10.6.7, and 10.7.
[66] *See id.* at §10.6.12.
[67] *See id.* at §§ 10.6.1 to 10.6.6. Note that the zoning code appears to have erroneously omitted a minimum lot size for the R-3 district.
[68] *See id.* at §§ 10.6.12, and 10.9.2.
[69] *See id.* at §§ 12.3.16, 12.10.3, 12.10.4, and 12.2.
[70] *Id.* at § 6.1.
[71] *See id.* at § 6.4.
[72] 2016 POCD, at 66.
[73] *Id.* at 45.
[74] *Id.*
[75] *Id.* at 67.
[76] *Id.*
[77] "COG" is shorthand for "Council of Governments." There are 9 COGs in Connecticut, which are meant to serve as "planning regions" to "provide a geographic framework within which municipalities can jointly address common interests." *See* State of Connecticut, *Regional Councils of Government (COGs) in Connecticut*, available at https://portal.ct.gov/OPM/IGPP-MAIN/Responsible-Growth/Regional-Planning-Organizations-RPO.

# Glastonbury

## Overview

Glastonbury is an inner ring suburb of about 35,000 residents[1] just southeast of Hartford, in the heart of central Connecticut. With a land area of 52.5 square miles, it is one of the largest towns in the state, and borders ten towns in the region.[2] It is also one of the wealthier towns in the state and in Hartford County.[3] Unfortunately, Glastonbury's planning and zoning policies present significant impediments to the construction of affordable and multifamily homes necessary to welcome a broader cross-section of the state to the town.

## Summary of Findings

- ***Black, Hispanic, and low-income households are underrepresented – for example, Glastonbury is 2.1% Black and 5.1% Hispanic, while Hartford County is 12.9% Black and 18.0% Hispanic.***
- ***Glastonbury has almost exclusively issued permits for single family homes in recent history, with 97.5% of all permits being for single-family from 2001-2017 (most recent year with data).***
- ***The majority of C.G.S. § 8-30g affordable housing is either age-restricted or mortgages, leaving a maximum of 2.2% of all housing as non-age-restricted, C.G.S. 8-30g affordable rental units.***
- ***There is no as-of-right multifamily zoning in Glastonbury, and there often are extensive bureaucratic hurdles for developing multifamily housing.***
- ***Glastonbury frequently imposes severe density limits and massive tract sizes on multifamily housing.***
- ***The town has implemented a number of supposed affordability measures that fail to serve the needs of low-income renters or families.***

## Demographics Overview: Glastonbury is racially and economically segregated

| Key Demographic Data | Glastonbury | Hartford County | Connecticut |
|---|---|---|---|
| Total Population | 34,564 | 893,561 | 3,575,074 |
| % White, Non-Hispanic | 80.9% | 61.1% | 66.9% |
| % Black, Non-Hispanic | 2.1% | 12.9% | 9.9% |
| % Hispanic, Any Race | 5.8% | 18.0% | 16.1% |
| % Asian, Non-Hispanic | 8.7% | 5.3% | 4.5% |
| % Population Below Poverty | 3.6% | 10.8% | 9.9% |
| Median Household Income | $120,837 | $75,148 | $78,444 |
| Grand List Per Capita | $178,362 | $121,150 | $160,428 |
| *For data sources, see the report's Town Data Compendium.* | | | |

Glastonbury is demonstrably segregated, with remarkably small Black and Hispanic[4] populations relative to Hartford County and the state.[5] Glastonbury is also one of the wealthiest municipalities in the Hartford County, with a median income more than 60% higher than the county's, and a poverty level approximately one third that of the county.[6]

The town's 2018 Plan of Conservation and Development ("2018 POCD") underscored two other demographic trends -- slow population growth and an ageing population – and suggested that these can be, in part, attributed to "high real estate values" and the "dwindling quantity of developable land."[7] While both issues could potentially be ameliorated by loosening land use regulations to facilitate denser development and more diversity among the housing stock, including multifamily, rental and affordable homes, the town's planning documents suggest that there may not be much internal impetus to do so.

## *Housing Stock Overview: Single-family dominance has intensified with time*

| Key Housing Data | Glastonbury | Hartford County | Connecticut |
|---|---|---|---|
| Total Housing Units | 13,987 | 379,602 | 1,516,629 |
| % Affordable (C.G.S. § 8-30g) | 5.7% | 14.4% | 11.7% |
| Median Home Value (Owned) | $348,000 | $240,600 | $275,400 |
| % Single-Family | 83.3% | 61.3% | 64.3% |
| % Two-Family | 2.4% | 7.8% | 8.2% |
| % 3-9 Units | 6.1% | 15.8% | 14.1% |
| % 10-19 Units | 1.2% | 4.4% | 3.8% |
| % 20+ Units | 6.0% | 10.2% | 8.8% |
| % Mobile Homes | 0.9% | 0.6% | 0.8% |
| 2001-2017 Permits | 1,087 | 25,219 | 117,821 |
| % Permits Single-Family | 97.5% | 69.1% | 68.7% |
| % Permits 5+ Units | 0.9% | 25.8% | 27.5% |
| *For data sources, see the report's Town Data Compendium.* | | | |

Glastonbury's 13,987 units are largely (83.3%) single-family homes, which is already out-of-step with the county and state housing markets (which are each less than 65% single-family).[8] Glastonbury is characterized not just by single-family zoning in general, but *large-lot* single family in particular. This imbalance has appeared to deepen, not improve, in recent history. Between 2001 and 2017 (the last year for which the following data are available), 97.5% of the units in Glastonbury that were issued permits were single-family homes, while less than one percent of permitted units – *just 10 units in 17 years, less than a unit per year* – were in buildings with five-or-more units.[9] Even if all other non-single-family permits were included, the number of permits amounts to just 27 units in 17 year, or *fewer than two multifamily unit permits per year.*[10] This represents an astounding absence of allowance for multifamily development over nearly two decades.

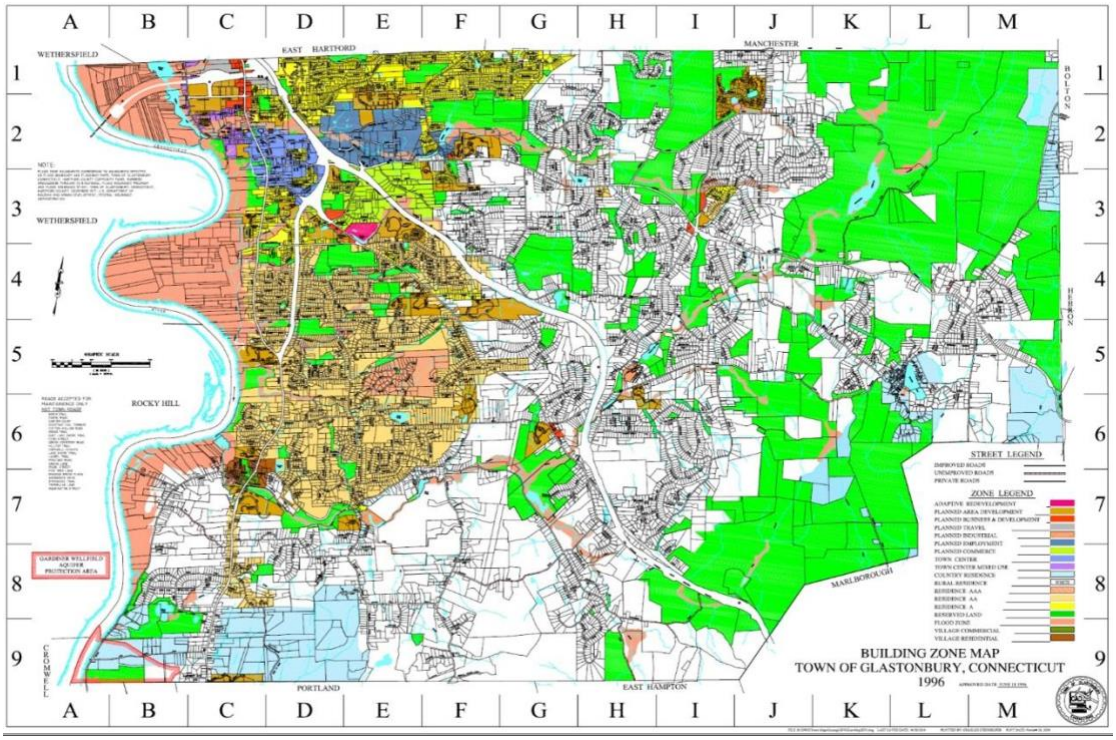
## *Little by way of non-age-restricted, rental affordable housing in Glastonbury*

Affordable housing is in short supply in Glastonbury. Just 5.7% of Glastonbury units qualify as affordable pursuant to the state's Affordable Housing Land Use Appeals Procedure (C.G.S. § 8-30g), less than half of both the county (14.4%) and state (11.7%) percentages.[11]

But these figures may *understate* the severity of the shortage that confronts low-income families in need of affordable rental housing. That is because more than 60% (477 units) of the 781 units that meet C.G.S. § 8-30g's affordability standards are either age-restricted "government assisted" units (346) or subsidized mortgages (131).[12] Removing these age-restricted units and subsidized mortgages reveals barely more than 300 rental units that qualify as affordable under C.G.S. 8-30g in Glastonbury – *or just 2.2% of all housing in town*.[13] Since the State data do not provide information as to whether any of the non-"government assisted" units are in age-restricted housing, the figure might actually be lower.

In fact, most of the affordable housing that is available to families seeking rentals is part of a single development, Welles Village, which was originally built to support defense workers in World War II.[14] This longstanding development appears to comprise roughly two-thirds (199) of the remaining 304 C.G.S. § 8-30g affordable units – suggesting how little has been added in the ensuing decades.[15]

## *Land Area: Single-family zoning in most of town, with no as-of-right multifamily areas*




*Source: Town of Glastonbury Zoning Map ("Zoning Map")*

Single-family housing is allowed "as a matter of right" (which means not requiring application to either the town planning and zoning commission for a special permit or the zoning board of appeals for a special exception, and with no public hearing requirement[16]), in every residential zone in town[17] – *i.e.*, the following zones:

- "Country Residence" ("CR"), the blue-shaded areas in a few southern and western portions of the town's zoning map, reproduced above;
- "Rural Residence" ("RR"), the extensive white-shaded area covering much of town;
- Residence AAA, which appears to be a single peach-shaded area in the center-west (surrounded by pale orange);
- Residence AA, the aforementioned pale-orange area that occupies a large chunk of the center-east of town;
- Residence A, the bright yellow that is most prevalent in the center-north of town;
- "South Glastonbury Village Residential" ("VR"), a small cluster of dark brown above the RR in the southwest; and
- "Town Center Mixed Use" ("TCMU"), the string of lighter purple parcels in the northwest.

These collectively comprise much (if not most) of the land in Glastonbury – certainly most of the land apart from the voluminous "Reserved Land" (bright green in the zoning map) zone that prohibits commercial, industrial, and residential development.[18] By contrast, multifamily housing is not permitted as-of-right *anywhere* in town.[19]

## *Bureaucratic Hurdles: Complex and potentially self-contradicting zoning*

The observations in the prior section were not easily made because of how challenging it can be to navigate Glastonbury's zoning regulations. The complexity and, at times, apparent lack of internal consistency of the zoning code's 200 pages not only make the type of analyses contained in this report difficult, but also may understandably deter applicants seeking to avoid contentious debates on procedural requirements for developing anything but single-family or other as-of-right uses.

For example, a chart in Section 5 of the Zoning Code outlines the permitting process that is required for each type of use in the residential zones. Confusingly, the chart lists two-family housing as requiring only a zoning permit in nearly every residential zone, implying that duplexes are not subject to more rigorous special permit and public hearing requirements.[20] However a footnote specifies that two-family homes are only permitted, "if existing on the effective date of these Regulations," meaning that new construction of two-family homes are not allowed solely with a zoning permit from the town.[21]

While the above represents ambiguity, the same schedule of permitted uses provides an example of apparent contradictions embedded in the zoning code. The Section 5 table would also suggest that the VR zone allows two-family housing without a special permit approval without excluding new housing construction (there is no footnote for this zone).[22] However, buried in the regulations for the VR zone is the requirement that "new two family residential uses… shall require a Special Exception from the Zoning Board of Appeals," which requires a public hearing and discretionary approval.[23] This seeming inconsistency may present issues for determining the required procedures for developing two-family housing in this zone – in other words, it might add uncertainty and risk to proposals for such housing.

## *Most residential areas require onerous multi-phase procedure for multifamily*

Multifamily and affordable home construction is kept on a short leash in much of Glastonbury by zoning regulations that utilize floating or overlay zones and limited mixed-use zones that often require lengthy discretionary approval processes. The primary floating zone that can potentially allow more than single-family uses is the Planned Area Development Zone ("PAD").[24] A PAD is *the only way* to build multifamily homes (other than two-family) in the CR, RR, AAA, AA, and A zones --or all but the tiniest residential zones.[25]

The approval process for a PAD requires many lengthy and burdensome steps, including the following:

- The PAD application process begins with the submission of a Preliminary Development Plan to the Planning and Zoning Commission ("Commission") *and* the Town Council.[26] These bodies can either hold a single joint public *or* two separate public hearings, with both approaches requiring notification in a locally distributed newspaper and by mail to owners of property within 500 feet of the property in question.[27] Based on the public hearing, the applicant may make changes to the plan.[28] However, if substantial changes are made, the Commission can require the applicant to resubmit a Preliminary Development Plan and start the public hearing process anew.[29] After the public hearing(s) process, the applicant must submit a Final Development Plan.[30] The Final Development Plan requires an extraordinary amount of information. The plan must include a boundary map, proposed land uses, dwelling unit densities, the number of rooms within units, building intensities, pedestrian and vehicular circulation patterns, parking, open space, easements, landscaping, utilities, building plans, schematic floor plans, building materials, "relation to existing and future land uses in the surrounding area," and "any other information which the commission may reasonably require."[31] Final Development Plans also must include statements from the Fire Marshall, Town Sanitarian, Town Engineer, Sewer Commission, Community Beautification Committee, Conservation Commission, and "any other advisory committee whose opinion is deemed appropriate by the Commission and Town Council."[32]

- At this point, if the Commission deems that the application is complete, it makes a recommendation on all or part of the application.[33] The applicant can then submit both their Final Development Plan along with the Commission's recommendation to the Town Council to request a zone change for the property.[34]

- The Council may decide to require additional documents with "explanatory statements or descriptive material" appended thereto as it sees fit.[35] The Council then holds *another* public hearing, and afterwards, may make a determination to approve or deny the zoning change and development plan.[36] If the Council approves both the zoning change and development plan, it may also impose "changes, limitations, restrictions or conditions," as well as time limits to the Final Development Plan, as it considers appropriate.[37]

If the application includes affordable homes, the Zoning Code requires the Commission and Town Council to exercise discretion based on several subjective criteria that, given common misconceptions about affordable housing, could serve as an impediment to approval. Specifically, the Commission is directed to evaluate "the nature and type of surrounding development," "preservation of existing neighborhoods," "lighting," and "protect[ing] the property values of surrounding neighborhoods."[38] In this context, any likely spurious claim that the proposed affordable housing may lower property values

could lead to qualified applications being denied. Further, the Zoning Code instructs the Town Council to evaluate projects based on whether the "development will be in keeping with the general interest and spirit of the Glastonbury Building-Zone Regulations and comprehensive plan," which leaves open the possibility of subjective interpretation of two documents which strongly favor single family, low-density uses.[39]

## *Other zones also impose steep obstacles to multifamily development*

The PAD regulations are by no means the only instance of arduous processes being required for multifamily housing approvals. For example, the Town Center ("TC") and TCMU zones, both of which appear to occupy a very small acreage within the highly-developed commercial area in the northwest corner of town,[40] require a special permit, public hearing process, and design review approval for any multifamily development.[41] The Design Review Approval process represents another level of discretion that allows the Commission to weigh in subjectively on considerations that could be detrimental to multifamily home construction. By way of illustration, the Commission may make stipulations to "protect or promote… property values and the environment in the area as a whole" and "overall neighborhood compatibility."[42] The Commission also must consider, *inter alia*, the size and intensity or the proposed uses; "the existence of other uses of the same kind or character in the neighborhood"; the effect on that neighborhood; "the overall effect on values and utilization of neighborhood properties"; the "preservation of the character of the neighborhood"; and the number and type of units in residential uses.[43]

## *Dimensional Restrictions: Single-family exempt from certain floor area ratios*

The TC zone also provides another illuminating example of burdens being placed on multifamily but not single-family housing – the former is subjected to floor area ratio requirements imposed on non-residential uses, but not the latter. The relevant regulation reads as follows: "Maximum floor area ratio (FAR) shall be 0.5 for all commercial, multifamily residential and mixed use buildings. FAR shall not apply to single family and two-family dwellings."[44] There are two noteworthy aspects to this regulation.

First, the floor area ratio ("FAR") maximum of 50%, (meaning that the total area of all of the square footage in the building, *i.e.*, the sum of every story's square footage, cannot exceed half of the square footage of the lot size) does not apply to single family homes or duplexes.[45] This is especially strange because all TC uses are subjected to the same height requirements.[46] Second, it is revealing that any multifamily other than two-family housing is effectively treated as akin to a *non-residential use* by this regulation. In any event, in the TC, FAR acts as a limiting factor on the potential for denser multifamily housing while developers are free to build huge amounts of floor area for single-family homes.

## *Density: Multifamily density is often highly restricted*

The zoning code severely restricts residential density throughout the town. This reality is captured well, albeit perhaps unwittingly, by the 2018 POCD, which refers to a "the medium density area" that is "primarily comprised of single-family homes on a minimum of one acre."[47] That single-family homes on one acre lots could be considered medium density speaks to the sparsity of dense housing in Glastonbury. It also shows that Glastonbury's outlook on density is misaligned with reality. According to a national survey of subdivision developments by the National Association of Homebuilders, the median net residential density for single-family subdivisions was 3.2 units per acre, over three times what Glastonbury considers medium density.[48]

Turning to the zoning code, the PAD regulations – which, as described above, represent the *only* avenue for producing multifamily housing other than two-family units throughout most of the residential land in town[49] – provide for *de minimis* levels of density, generally ranging from 0.5 units per acre to a maximum of just three units per acre.[50] Even the higher end of this spectrum (which is only possible in the Residence A and VR districts[51]) would still be akin to single-family zoning based on the study cited above.

Nor do the density bonuses for PADs where 20% of units are homeownership affordable housing (there seems to be no such bonus for affordable *rental* housing) – which, in any event, are only available in the A and AA zones – meaningfully change the situation, since they only allow for 5 units per acre (A) and 6 units per acre (AA).[52] For a sense of how non-dense this is, note that elderly housing is granted a far larger density increase relative to housing that is available to families, allowing up to 11 units per acre.[53] Note, too, that small to medium multifamily housing development, sometimes referred to as "missing middle" housing, is often between 30 and 50 units per acre or more.[54]

Other zoning districts that allow for more than single family uses are also highly restricted. For example, the very TCMU zone also only allows for multifamily (by special permit) of up to six units per acre.[55]

## *Lot Size: Massive tracts required for multifamily*

The minimum acreage requirements for contiguous tracts in a PAD inhibit substantial multifamily development (especially since, again, these represent the only way to achieve multifamily above two-family in a number of zones[56]). The *smallest* allowable contiguous acreage for a PAD in a residential zone is 10 acres in the A and AA zones, increasing to 15 acres for AAA, 20 for RR, and 25 for CR.[57] This requirement is reduced for PADs where 20% of units are affordable housing, but only for non-rental affordable housing, only in the A and AA zones that already require the smallest minimum tract sizes, and only to a still substantial three and a half acres.[58] In non-residential zones, the minimum contiguous lot size is five acres.[59]

Not only does this restrict development opportunity to companies capable of purchasing an enormous amount of land, but this limits the number of parcels that can be combined to achieve such a large and, importantly, *contiguous* land area. To wit, according to the 2018 POCD, "residential lots of greater than two acres exist but are fewer in number."[60]

This challenge is perhaps made more difficult by the actions taken by the town to acquire land to prevent it from being developed, which may have resulted in even fewer large contiguous tracts being available than would otherwise be the case. A town fund was created in 1988 for the Town to purchase open space and has thus far been used to acquire over 1,550 acres.[61]

## *Inadequate Provisions: Narrow supposed affordability measures*

Even some of the measures that Glastonbury expressly frames as attempting to promote affordable housing fail to reach large segments of the neediest populations. A critical example that has already been discussed comes in the PAD "Affordable Dwelling Unit" provisions. (While the PAD regulations (which, at the risk of repetitiveness, *are the only form of more than two-family housing in a number of residential* zones[62]) purport to encourage affordable housing through incentives such as reducing the minimum contiguous acreage required and (marginally) increasing permissible density,[63] the type of

affordable housing that qualifies for these benefits in a PAD is severely restricted. An "Affordable Dwelling Unit" in the PAD is defined as "an owner occupied residential dwelling," for households with income up to 80% of the Area Median.[64] The monthly housing costs for these households can be up to 40% of their gross monthly income – meaning that, in 2021, affordable housing in a PAD could cost a family of four as much as $2,663 per month.[65] This "affordable" housing is clearly out of reach for a large segment of the low-income population.

The only section of the zoning code outside of the PAD regulations that explicitly references affordability concerns is the special permit procedure for accessory dwelling units ("ADUs"). The "Statement of Purpose" for the ADU special permit announces that the "Town of Glastonbury recognizes the public need for the provision of a variety of housing types including efficient and affordable housing," but expressly restricts the groups whose need is being recognized to "singles, couples, single parents with one child, elderly and new households."[66] The critical low-income cohort that is carved out from the statement of purpose is all but the smallest of families. Nor does the town rely solely on the statement of purpose to achieve this end, as ADU occupancy is capped at three persons (meaning only a single parent with two children or a couple with one child could occupy the unit).[67]

Moreover, Glastonbury's ADU provisions suffer from many of the characteristics that more generally render ADUs rather ineffective affordability tools – such as failing to mandate that ADUs be rented out at all (much less affordably so) and apparently requiring that units be built within owner-occupied residences (few homeowners are likely build an apartment within their homes for non-family members).[68] The towns ADUs are thus not only wholly incapable of serving more than three-person low-income families, they also are unlikely to be added to the open affordable housing market at all.

## *Conclusion*

The many impediments to multifamily and affordable housing construction in Glastonbury must be weighed against the tremendous need for such housing in town. The Open Communities Alliance has estimated that Glastonbury requires 1,550 additional units of affordable housing over the next 10 years in order to meet its "fair share" of regional affordable housing need.[69]

| Glastonbury 10-Year "Fair Share" Allocation (Units) | Capital Region "COG"[70] 10-Year Regional Need Estimate (Units) |
|---|---|
| 1,550 | 36,498 |

*For data sources, see the report's Town Data Compendium.*

[1] *See* Town Data Compendium, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[2] *See* Town of Glastonbury, Plan of Conservation and Development (2018-2028), ("2018 POCD"), at 9, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[3] *See* Town Data Compendium (containing, *inter alia*, median household income data for all Connecticut municipalities).
[4] All references to racial groups in this analysis are shorthand for "non-Hispanic" members of that group. Conversely, all references to "Hispanic" are meant to capture Hispanics of any race.
[5] *See* Town Data Compendium.

[6] *See id.*
[7] 2018 POCD, at 11.
[8] *See* Town Data Compendium.
[9] *See id.*
[10] *See id.*
[11] *See id.*
[12] *See id.*
[13] *See id.*
[14] *See* Housing Authority of the Town of Glastonbury, "Welles Village" information page, available at http://www.glastha.org/programs.htm.
[15] *See* Town Data Compendium.
[16] *See* Town of Glastonbury Building-Zone Regulations ("Zoning Code"), amended as of Feb. 18, 2019, at §§ 5.4 (distinguishing "as a matter of right" uses from applications to the town planning and zoning commission for special permits or to the zoning board of appeals for special exceptions) and 14.5 (requiring public hearings where required by statute or for as the planning and zoning commission may require for any applications to it, neither of which implicates as of right uses), a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[17] *See id.* at §§ 4.1-4.15 and 4.5.1.
[18] *See* Zoning Map, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31. *See also* 2018 POCD, at 36 ("Commercial, industrial and residential development in areas classified as Reserved Land is not permitted.").
[19] *See* Zoning Code, at §§ 4.1-4.15 and & §4.5.1.
[20] *See id.* at § 5, Table of Permitted Uses.
[21] *Id.*
[22] *See id.*
[23] *Id.* at §§ 4.16.4.d (regarding requirements for VR zone) and 13.8 (requiring public hearing and discretionary approval).
[24] *See id.* at § 4.12.
[25] *See id.* at § 5, Table of Permitted Uses. *See also* Zoning Map (demonstrating relative sizes of residential zones).
[26] *See id.* at § 4.12.4(a).
[27] *See id.*
[28] *See id.*
[29] *See id.*
[30] *See id.* at § 4.12.4(b).
[31] *Id.* at §§ 4.12.4(b)1 to 4.12.4(b)16.
[32] *Id.* at §§ 4.12.4(b)18 to 4.12.4(b)24.
[33] *See id.* at § 4.12.4(b).
[34] *See id.*
[35] *Id.*
[36] *See id.*
[37] *Id.* at §§ 4.12.4 and 4.12.6.
[38] *Id* at §§ 4.12.3(2).d to 4.12.3(2).i.
[39] *Id.* at § 4.12.5(f).
[40] *See* Zoning Map.
[41] *See* Zoning Code, at §5.4, Table of Permitted Uses.
[42] *Id.* at § 12.3.
[43] *Id.* at §§ 12.4(a)(1)-(2), 12.4(a)(5), 12.4(a)(9), and 12.5.a.2.
[44] *Id.* at § 4.13.6.b
[45] *See id.*
[46] *See id.* at § 4.13.6.e.
[47] 2018 POCD, at 13.
[48] *See* National Association of Home Builders, "Typical American Subdivisions," Oct. 3, 2016, available at: https://www.nahbclassic.org/generic.aspx?sectionID=734&genericContentID=253886.

[49] *See* discussion of "Most residential areas require onerous multi-phase procedure for multifamily," *supra*, at 88.
[50] *See* Zoning Code, at § 4.12.3.c(1).
[51] *See id.*
[52] *See id.* at § 4.12.3(2)(b) (providing density bonuses for "affordable dwelling units" and delineating standards for "purchasing an affordable dwelling unit"). *See also id.* at § 4.12.3(c) (defining "Affordable Dwelling Unit" in PAD regulations as "an owner occupied residential dwelling").
[53] *See id.* at § 4.12.3c(1)a.
[54] *See* Missing Middle Housing, "Multiplex: Medium" information page, available at https://missingmiddlehousing.com/types/multiplex-medium.
[55] *See* Zoning Code, at § 4.18.2.
[56] *See id.* at § 5, Table of Permitted Uses.
[57] *See id.* at § 4.12.2.
[58] *See id.* (allowing for reduced minimum tract size for a PAD in an A or AA zone that "devotes 20% or more units as Affordable Dwelling Units" as that term is defined by the PAD regulations). *See also id.* at § 4.12.3(c) (defining "Affordable Dwelling Unit" as only pertaining to homeownership units).
[59] *See id.* at § 4.12.2.
[60] 2018 POCD, at 14.
[61] *See id.* at 17.
[62] *See* Zoning Code, at § 5, Table of Permitted Uses.
[63] *See id.* at §§ 4.12.2 and 4.12.3.c(1), respectively.
[64] *Id.* at § 4.12.3.c.
[65] *See id. See also* HUD User FY 2021 Income Limits Documentation System, available at https://www.huduser.gov/portal/datasets/il/il2021/2021summary.odn. According to the HUD Income Limits, 80% AMI for a family of four is $79,900 per year, housing with monthly homeownership cost of up to $2,663.
[66] Zoning Code, at § 6.11.1.
[67] *See id.* at § 6.11.3.b.
[68] *See id.* at §§ 6.11.2 (providing for creation of ADU "as an integrated part of said single family dwelling," seemingly requiring ADUs to be within single-family residences), 6.11.3(e) (requiring that creation of ADU to "retain the appearance and character of the structure as a single family dwelling," further suggesting ADUs may not be separate structures), and 6.11.3(g) (requiring owner-occupancy). *See also id.* at § 6.11 (containing no requirements that ADUs be rented out or affordable).
[69] *See* Town Data Compendium.
[70] "COG" is shorthand for "Council of Governments." There are 9 COGs in Connecticut, which are meant to serve as "planning regions" to "provide a geographic framework within which municipalities can jointly address common interests." *See* State of Connecticut, *Regional Councils of Government (COGs) in Connecticut*, available at https://portal.ct.gov/OPM/IGPP-MAIN/Responsible-Growth/Regional-Planning-Organizations-RPO.

# Madison

## Overview

Madison is a wealthy coastal town in the southeastern corner New Haven County, known for having the State's longest public beach in Hammonasset State Park.[1] In addition to having beautiful beaches, the town is bisected by interstates I-95 and Route 1 in the south and is served by the Shore Line East branch of CT Rail.[2] Unfortunately, Madison's planning and zoning policies appear to inhibit the production of multifamily and affordable housing, impeding access to the town's natural beauty and regional connectivity for low-income families.

## Summary of Findings

- ***Madison is profoundly segregated – 91.2% white, while just 0.4% Black and 2.5% Hispanic.***
- ***Affordable housing is almost non-existent, with no more than 35 non-age-restricted rental units that qualify as affordable under C.G.S. § 8-30g, amounting to 0.4% of housing in town.***
- ***Madison allows single-family homes as-of-right nearly everywhere (mostly requiring very large lot sizes), while multifamily housing is not allowed as-of-right anywhere.***
- ***The process for most multifamily approvals required by the zoning code is onerous and allows for subjective discretion by the Planning and Zoning Commission.***
- ***Madison's planning has sought to limit the spread of multifamily housing and to preserve undeveloped land as such rather than making use of it for multifamily development.***
- ***Multifamily often subjected to stringent density and site eligibility restrictions.***
- ***A number of multifamily provisions disfavor non-Madison residents or families, including via explicit residency preferences or caps on bedrooms or occupants.***

## Demographics Overview: Madison is highly segregated

| Key Demographic Data | Madison | New Haven County | Connecticut |
|---|---|---|---|
| Total Population | 18,113 | 857,513 | 3,575,074 |
| % White, Non-Hispanic | 91.2% | 62.9% | 66.9% |
| % Black, Non-Hispanic | 0.4% | 12.5% | 9.9% |
| % Hispanic, Any Race | 2.5% | 18.1% | 16.1% |
| % Asian, Non-Hispanic | 2.4% | 4.0% | 4.5% |
| % Population Below Poverty | 3.1% | 11.7% | 9.9% |
| Median Household Income | $113,798 | $69,905 | $78,444 |
| Grand List Per Capita | $231,368 | $117,554 | $160,428 |
| *For data sources, see the report's Town Data Compendium.* | | | |

Madison is a deeply segregated, overwhelmingly white[3] community, with every other racial group being underrepresented – often *dramatically* so. More than 91% of Madison residents are white, a vastly higher proportion than the 62.9% of New Haven County and 66.9% of Connecticut as a whole that is white.[4] Conversely, *just 0.4% of Madison is Black*, far below the Black populations of the county (12.5%) and the state (9.9%).[5] Similarly, 2.5% of Madison residents are Hispanic, while Hispanics represent more than 18% and 16% of the county and state, respectively. [6] Finally, the 2.4% of Madison residents that are of Asian falls short of the analogous percentages for the county and state (4.0% and 4.5%, respectively).[7] These are stark levels of racial segregation, indeed.

The town's intense racial segregation is paralleled by a lack of economic diversity. Madison's 3.1% poverty rate is significantly lower than the county (11.7%) and state (9.9%) poverty rates.[8] Both the town's median household income and grand capita list per capita substantially exceed the county and state levels.[9] In sum, Madison is disproportionately white and wealthy.

## *Housing Stock Overview: Shockingly little multifamily or affordable housing, with almost nothing for families in need of affordable rental housing*

| **Key Housing Data** | Madison | **New Haven County** | **Connecticut** |
|---|---|---|---|
| Total Housing Units | 8,204 | 367,053 | 1,516,629 |
| % Affordable (C.G.S § 8-30g) | 1.7% | 13.0% | 11.7% |
| Median Home Value (Owned) | $428,600 | $248,600 | $275,400 |
| % Single-Family | 92.3% | 58.9% | 64.3% |
| % Two-Family | 1.1% | 9.7% | 8.2% |
| % 3-9 Units | 5.5% | 16.5% | 14.1% |
| % 10-19 Units | 0% | 4.3% | 3.8% |
| % 20+ Units | 1.1% | 10.0% | 8.8% |
| % Mobile Homes | 0% | 0.5% | 0.8% |
| 2001-2017 Permits | 505 | 21,398 | 117,821 |
| % Permits Single-Family | 99.6% | 66.6% | 68.7% |
| % Permits 5+ Units | 0% | 29.3% | 27.5% |
| *For data sources, see the report's Town Data Compendium.* | | | |

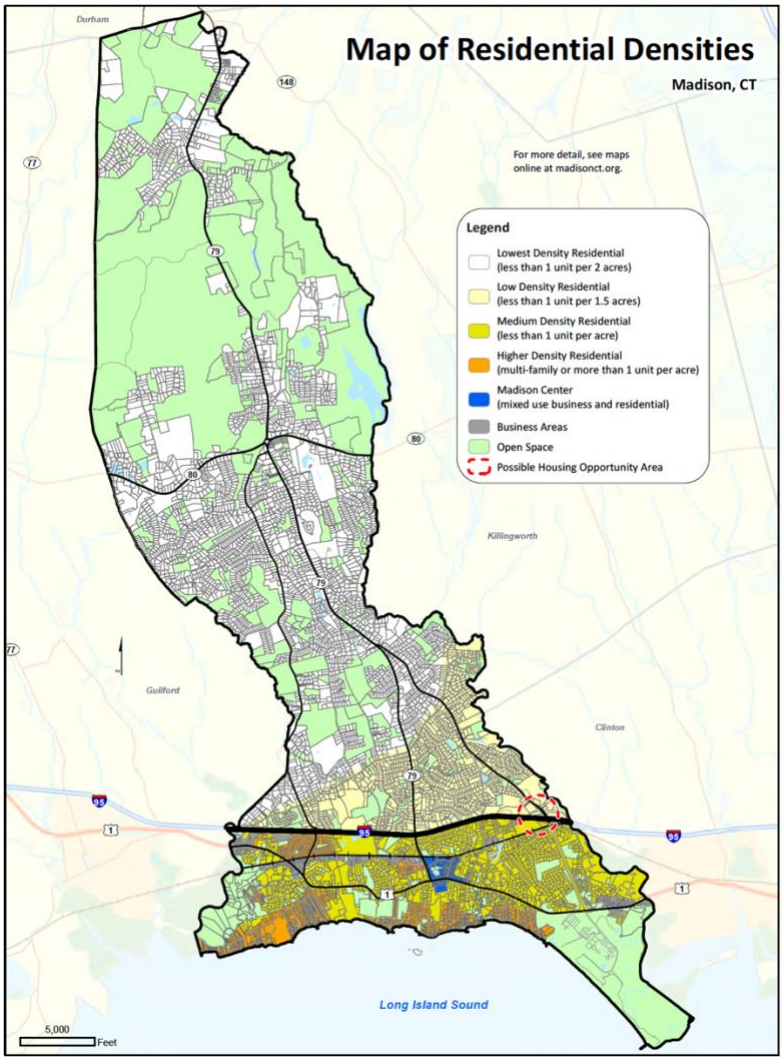
Madison's housing stock appears to be as imbalanced as its demographic profile. Over 92% percent of homes in Madison are single-family, while only 1.1% of units are in buildings containing 20 or more units.[10] This is widely misaligned with the county and state housing stocks, which both have less than 65% single-family homes and upwards of 8.5% units in buildings with at least 20 dwellings.[11] This trend in Madison's housing stock has continued or even worsened in the last 17 years for which data are available (2001 to 2017) – when *99.6% of construction permits* that were issued were for single-family units – *i.e.*, every single permit except for a two-family building in 2003; *zero* permits were issued in that period for buildings of three or more units.[12]

Relatedly and of even more concern, Madison has almost no affordable housing. While this is true in general – with just 136 units (1.7% of the total housing stock) qualifying as affordable under the State's Affordable Housing Land Use Appeals Procedure (C.G.S. § 8-30g),[13] there is an especially short supply of

affordable housing that is neither age-restricted nor mortgages. Almost two-thirds of all C.G.S. § 8-30g affordable housing in Madison consists of a single 90-unit, age-restricted development (Concord Meadows).[14] If one were to additionally remove all of the subsidized mortgages from the C.G.S. § 8-30g supply, that would leave a *maximum* (since data as to age-restrictions is only available for "government assisted" units) of *just 35 units – or 0.4% of all housing Madison* – as C.G.S. § 8-30g affordable housing available for low-income families in need of rental opportunities.[15] That is a vanishingly small supply.

## *Land Area: Dominance of (and commitment to) large-lot, single-family zoning*

That Madison is characterized by large-lot, single-family housing is clear from the density map in the town's most recent Plan of Conservation and Development, from 2013 ("2013 POCD"), reproduced to the right. (Note that the town's zoning map appears to have been last amended in 2011, so this map remains relevant.[16]). The map shows that *everything* north of I-95 is either open space (green shading), "Low Density Residential" (pale yellow triangle just north of I-95) of "less than 1 unit per 1.5 acres," or "Lowest Density Residential" (white-shading) of "less than 1 unit per 2 acres."[17] Even in the approximately fifth of the town that appears to be south of I-95, the vast majority of land is either "Medium Density Residential" (bright yellow) which, despite the name, is for "less than 1 unit per acre" or open space (green).[18] This leaves an extremely small amount of Madison for "Higher Density Residential"(the orange) that broadly includes not just multifamily, but *any* housing over one unit per acre.[19]




*Source: 2013 POCD, at 45.*

Madison appears committed to keeping multifamily isolated to a tiny portion of town. The 2013 POCD recommended maintaining "the existing single-family residential density pattern of Madison" and discouraging "multi-family (and/or higher density) developments in areas outside Madison Center" (which is the tiny patch of blue in the center of the southern portion of the map) unless there is some significant community benefit that will result." [20]

## *Lot size: Zoning dedicated to large-lot, single-family norm*

Madison has gone to the extreme length of expressly stating its views of the importance of, specifically, *large lot* single-family zoning into its zoning code. The stated purpose of the town's various "Single Family Residence Districts" (R-1 through R-5) apparently entirely located south of I-95[21] states that the town's planning and zoning commission ("Commission") "finds that lot sizes of 40,000 square feet and larger would best serve the public interest in all of the Residence Districts."[22] This means the Commission is of the view that a *minimum* of 40,000 square feet (roughly one acre) should be the norm for these residence districts. Indeed, the Commission, while recognizing the existence of some smaller lot sizes within certain of the single-family zones (R-3 through R-5), makes clear it is not "permitting further creation of such smaller Lots."[23]

The affirmation of large lot sizes is even stronger, though less explicitly endorsed, in the two "Single Family Rural Residence Districts" ("RU") that blanket almost all of Madison north of I-95[24] The smaller of the two – the RU-2 that is occupies a tringle stretching along the north side of I-95, beginning at the highway in the west and extending north above the Killingworth border in the east,[25] requires 60,000 square feet for each lot.[26] The vast RU-1 that covers virtually all of the remainder of Madison north of I-95 and the RU-2[27] is even more demanding, imposing an 80,000 square foot minimum lot size.[28]

## *Available land, yet planning that prioritizes preventing land from being developed, even though residents underscored housing need*

Madison's stated desire to limit the expansion of multifamily does not appear to be due to lack of opportunity. While the 2013 POCD claimed that Madison had a shortage of developable land,[29] the "Land Use Summary" from that document, reproduced to the right, estimated that there were at least 2,571 acres – or about 11% of the town – that was either vacant or "under-developed" (meaning residentially zoned, but not used to its full development potential under current zoning).[30]

**MADISON LAND USE SUMMARY**

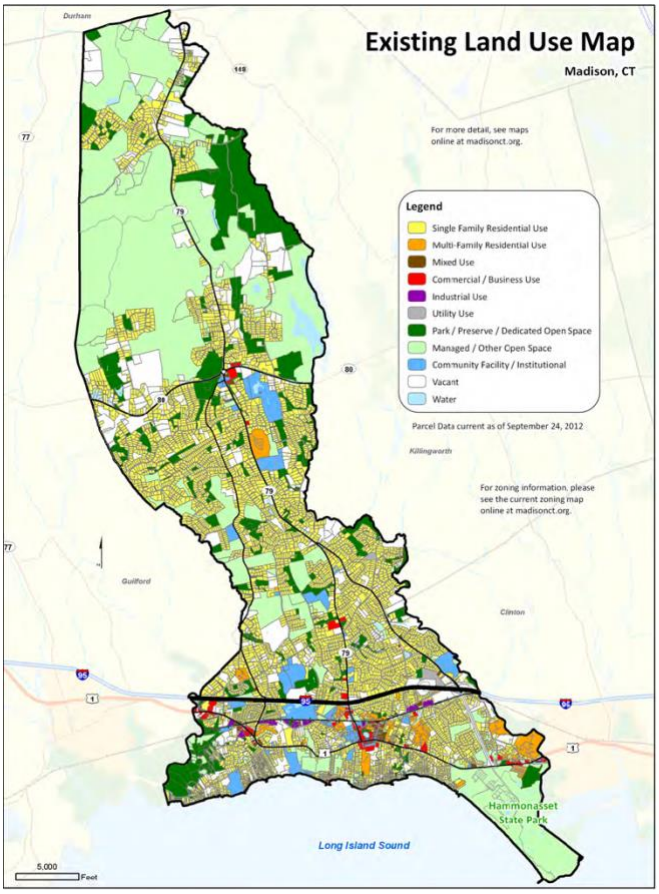
| Use | Acres | Percent of Total Land |
|---|---|---|
| Residential | 8,170 | 35% |
| Business / Industry | 261 | 1% |
| Community Facility / Institutional Uses | 635 | 3% |
| Dedicated / Managed / Other Open Space | 10,315 | 44% |
| Public Utility / Transportation / Roads / Water | 1,611 | 7% |
| **Developed / Committed** | **20,993** | **89%** |
| **Vacant / Under-Developed** | 2,571 | 11% |
| **Total Land Area** | **23,564** | **100%** |

Planimetrics (Totals may not add due to rounding.)

*Source: 2013 POCD, at 8.*

Based on the figures in the town's land use summary, this represented enough land to increase the existing residential land use by almost one-third, if it were to be developed as residences.[31] And the existing land use map, reproduced to the right, shows that the vacant land (white-shading) was distributed throughout town, including in some seemingly large parcels and clusters (especially in low-density areas north of I-95).

All of this suggests that there was, in fact, an appreciable amount of available land for in Madison. Yet rather than capitalize on this land to increase housing opportunity, the town prioritized ensuring undeveloped land remained as such. The 2013 POCD's "key focus" on "[p]reserving and enhancing community character underscored "retaining undeveloped land as long as possible."[32] Elsewhere, the 2013 POCD advocated for the town to continue the policy of promoting "the retention of undeveloped land in residential zones" specifically.[33] As the reference to *continuing* the policy implied, this prioritization of preventing development was not new in 2013. Some of the town's prior efforts included acquiring and converting the Griswold Airport into a park and creating a Committee for Land Acquisition.[34] The town's success at expanding undeveloped open space can be demonstrated by comparing the 2013 POCD with the 2000 Plan of Conservation and Development ("2000 POCD"). While the 2000 POCD recorded a combined total of 4,603 acres of dedicated and other managed open space,[35] this had more than doubled to 10,315 acres by the time of the 2013 POCD.[36]




*Source: 2013 POCD, at 9.*

Nor had the town's emphasis on precluding development dissipated by 2013. The 2013 POCD called for Madison "to put monies in the open space fund each year for the purchase of open space," and to "develop and maintain an inventory of potential land acquisitions."[37] The 2013 POCD also asserted the view that "the amount of land classified as open space makes a significant contribution to Madison's character and provides significant fiscal stability to the town."[38]

What is perplexing about Madison's emphasis on keeping land from being developed (particularly in residential areas, as noted above) is that the residents surveyed for the 2013 POCD appeared to indicate that a lack of housing and affordable housing were greater concerns. Specifically, a randomized survey of residents resulted in 6.4% of respondents identifying "New housing / affordable housing / growth/ increasing population / population changes" as the "Most important issue facing the town of Madison," with just 2.0% of residents choosing "Environment / open space" instead.[39] In the same survey, "72 percent of respondents agreed that Madison should look at ways to address the need for housing which is more affordable (for residents of any age)."[40]

## *Bureaucratic Hurdles: Single-family allowed as-of-right in all residential zones, while multifamily is only available through burdensome mechanisms.*

In the seven residential zones that collectively make up almost the entirety of Madison – the R-1 through R-5 in the small portion of town south of I-95, and the two RU zones that occupy the vast majority of Madison north of I-95[41] – single-family housing is allowed as-of-right, which appears to not even require a zoning permit (given that "Permitted Uses, As of Right" in these zones are distinguished from "Permitted Uses, Zoning Permit Required").[42] Meanwhile, multifamily housing is not allowed as-of-right, or by zoning permit as a principal use.[43] ("Accessory apartments" are allowed by zoning permit; but even if such a unit is built, it is unlikely to be multifamily housing, as discussed later.[44])

There are only two types of procedures for potentially developing multifamily housing in residential zones (these are also of limited utility even if approved, as will be discussed in relevant part in other sections), and both entail substantial procedural burdens and are cabined to narrow areas.

**A) Special Exception Areas**. The first general avenue is through the various "Special Exception" areas created by Section 4B of the zoning code that allow ofr either garden apartments or planned residential cluster developments. It is difficult to identify the precise zones such areas are located in, as they are defined with reference to roads and physical boundaries without specifying underlying zones.[45] However, they appear to correspond to the "Special Exception Areas" on the zoning map, which suggests both that such zones are a) concentrated south of I-95, and b) cover a tiny fraction of town.[46]

To the extent any of these may fall within residential areas, the procedures they entail as special exceptions is quite onerous and highly discretionary, including but not limited to the following:

- A public hearing process;[47]
- Site plan review;[48]
- The ability of the Commission to require "impact studies" at their discretion, paid for by the applicant;[49]
- Mandatory referral to the Advisory Committee on Community Appearance to render its opinion on the building materials used, lighting, walkways and landscaping;[50]
- Architectural review to ensure uses "harmonize with the neighborhood" and "preserve the appearance of the community";[51]
- Critically for the potential impacts on the amount of multifamily housing that can be yielded from special exceptions, the Commission may require "[L]ot sizes and setbacks in excess of the district standards" as it deems "necessary for the particular use;"[52] and
- Any other additional conditions or safeguards that the Commission may deem necessary to accomplish such ends as protecting property values.[53]

These extensive requirements are not imposed on as-of-right single-family.

**B) Uses Requiring Map Changes**. There are three other provisions that may permit some form of multifamily or affordable housing in residential districts, but only after application for a zoning map change. These are the "Affordable Housing District" ("AHD"),[54] the "Housing Opportunity District" ("HOD"),[55] and "Planned Development Districts" ("PDDs").[56] These, too, involve a public hearing process[57] and submission requirements such as site plans, development plans and/or master plans that are not imposed on single-family as-of-right housing.[58]

## *Density: Significant and varying forms of density regulations across virtually all multifamily and affordable provisions*

Madison limits permissible density in its multifamily and affordable housing zoning in a variety of ways. While a full discussion would be too cumbersome, below is an illustrative sampling.

- The "Downtown" and "Rural Shopping" districts contain one of the only non-special exception or map change principal multifamily uses in Madison in the form of allowing (subject to site plan review) "Residential apartments located above the first story of any building if [the first] floor is a commercial use."[59] However, this seemingly permissive provision is *extremely* limited in terms of its potential density, allowing no more than *four bedrooms* (not units) *per lot* (not floor) in both types of zone.[60] (Note that these provisions are also limited insofar as they are only available in a fraction of town (just 1% of town is in *any* business or industrial area) [61] that appears unlikely to increase (the 2013 POCD recommended that Madison "[m]aintain existing business zone boundaries in order to help prevent business 'creep'" into other areas).[62])

- The various "Special Exception Areas" for specific and narrow areas (sometimes individual parcels or a few blocks in area)[63] that potentially allow multifamily garden apartments or planned residential cluster developments impose a variety of density caps involving both unit and bedroom regulations. While these vary, the special exception for garden apartments in an extremely small area in the Downtown District[64] provides a useful example. This special exception imposes a maximum of 8 units per building, while allowing for no more than *16 bedrooms* per acre *and* requiring that the *average bedrooms per acre* not exceed 12 for any lot.[65] These restrictions – combined with requirements for 100 feet of frontage on a public highway, three-acre minimum lots, a two-story maximum, and two parking spaces per unit[66] – significantly limit the number of units which can be built *and* may reduce the number of eligible lots. To illustrate: hypothetically, a developer could, on an eligible three-acre lot, construct 20 garden apartments comprising four two-bedroom units, four three-bedroom units, and 12 one-bedrooms units, so long as those buildings are able to be constructed in two-story structures, with 40 parking spaces on a parcel of that size; but even if there were such a site, it would still lead to a residential density of *less than seven units per acre* – a density which is attainable and common for single-family neighborhoods with relatively small lot requirements.

- The above-discussed provisions requiring zoning map changes all allow for only limited density. For example, AHD only allows up to 8 units per acre for "Multi-Family Development," but only in the residential zones south of I-95 and only if 60% of units are affordable, presenting financing challenges.[67] That even this does not represent a significant amount of density is revealed by the AHD provisions itself, which impose the *exact same* maximum (subject to the same requirements) for *single-family detached* AHD proposals.[68] This already meager density provision only diminishes further for the zones above I-95 and for developments with less affordable housing (which may be more financially feasible).[69] The other map change uses are comparably limited. HOD appears to only allows for an even lesser density of six units per acre,[70] while PDD allowing just barely more at 10 units per acre.[71]

- The multifamily special exception in the commercial district and nearby "Transition" district regulates density with respect to the required on-site commercial uses – restricting multifamily floor area to 200% of the commercial floor area.[72]

## *Site Location Limitations: Restricted eligibility for floating affordability zones*

Madison has acknowledged that even though the town "has had 'affordable housing' provisions in the zoning code since 1990," citing the HOD (Housing Opportunity District) discussed above, "these have rarely been used."[73] Indeed, there seem to be only two HOD zones on the zoning map (each beng a single parcel).[74] Nor does the AHD (Affordable Housing District) fare any better, as it seems to only be mapped in one location on the zoning map (again representing a single rezoned parcel of land).[75] This hardly amounts to much by way of "increase [to] the diversity of the Town's housing stock," the stated aim of the AHD (similar language describes the purpose of the HOD).[76]

While perhaps the stringent density limits applicable to the HOD and AHD help explain why they have not been as widely used,[77] these zones are also highly limited in term of *where* they can be applied. This is especially true for the HOD. According to the zoning code, an HOD development shall "not be more than 3,000 feet from a collector road, arterial road and controlled access road" as such roads are designated on a map in the 2000 POCD.[78] Based on the map referenced in the 2000 POCD, there appear to be only four places in Madison where those three types of road might all come within 3,000 feet of one another, severely limiting the applicability of the HOD zone.[79] Note, too, that within these narrow areas, HOD is further limited to parcels of no less than four and no more than five acres.[80]

The AHD does not contain as specific of a limitation, but it is nonetheless constrained in its availability based on a requirement imposed *only* on multifamily AHD proposals. Namely, that "[s]uch developments shall be permitted only in areas that can be served with public water."[81] That this single requirement, uniquely imposed on multifamily AHD proposals, may have an outsized effect on the usage of this provision is suggested by the observation in the 2000 POCD that "most Madison residents rely on private wells," with only "about one-third of the town's population . . . served by public water."[82]

## *Inadequate Provisions: Affordable housing provisions that either give express preference to local residents or are unlikely to be rented to families*

Several of Madison's provisions ostensibly geared at promoting greater certain forms of diversity contain requirements that may actively work against that goal more broadly. The perhaps most egregious example comes in the AHD, which is meant to increase the diversity of housing types,[83] but implements a form of local residency preference that implicates its potential for augmenting racial diversity. The "Administration" regulations for this zone mandate that families applying to any affordable housing generated pursuant to the AHD "shall be selected on the basis of the following categories of priority," with "Other residents of Madison" and "Children of residents of Madison" preceding in priority the bottom rung of "All others" (regardless of residence).[84]

Although there are three categories before Madison residents (for various town service volunteers or employees) and all Madison employees are prioritized over children of Madison residents,[85] the critical fact is as follows: other than any such qualifying employees (who may well be likely to be from Madison), *no resident from outside of Madison can obtain an AHD affordable housing unit if residents of Madison (or their children) apply and are eligible*. Given the staggeringly segregated state of Madison – recall that over 91% of its residents are white[86] – this represents a substantial potential impediment to the AHD's integrative potential.

A number of the town's multifamily and affordable housing measures directly or effectively keep out another critical demographic group: families. On the most explicit end, there are any number of multifamily uses that prohibit above a certain number of bedrooms, effectively foreclosing all but the smallest of families from accessing such housing. Examples of such restrictions can be found among the "Special Exception" uses delineated for particular areas in Section 4B, such as one planned residential cluster special exception that is perhaps ironically intended to create up to four "family units," and yet requires that each "family unit shall contain not more than two bedrooms."[87] (Similar provisions can be found among the "garden apartment" special exceptions.[88]) There is also a two bedroom cap in the multifamily special exceptions for the commercial and "Transition" zones,[89] a similar special exception in the "Downtown" zones,[90] and even the HOD that is meant to "promote diversity of housing types and housing opportunities" in Madison.[91]

A final example is the "accessory apartment" (or accessory dwelling unit, "ADU") provision alluded to earlier, which presents both direct and indirect limits on the availability of units to families. Even though the town claimed to have enacted the ADU regulations in recognition of the fact that the "need for affordable housing affects various segments of Madison's population"[92] (as an important sidenote, this statement of purpose also appears to reflect an inward rather than regional focus), no more than three people can occupy any ADU.[93] This, on its face, keeps out any family of four or more.

But the ADU regulations also unlikely to promote "multifamily" housing in the *literal* sense of the word for other, less explicit reasons. Chief among these subtler impediments to occupancy of ADUs by families are the simple facts that homeowners are required to live on the premises of the ADU (or even in the same dwelling, if it is an internal ADU) and are in no way obligated to rent out the units.[94] Thus, to the extent any homeowners may choose to build ADUs (and there appears to be little reason to expect an appreciable number to do so), it is at least as likely that they will use them to house family members as it is that they will choose to become private landlords to strangers.

## *Conclusion*

Madison is confronted by a disturbing amount of segregation and absence of affordable housing. Open Communities Alliance has estimated that Madison must build nearly 2,000 additional units of affordable housing over the next decade in order to meet its "fair share" of the regional affordable housing need. [95] Given the various impediments embedded in the town's planning and zoning to multifamily and affordable housing, significant changes to the status quo appear to be needed to bring about this amount of affordable housing.

| Madison 10-Year "Fair Share" Allocation (Units) | South Central Region "COG"[96] 10-Year Regional Need Estimate (Units) |
|---|---|
| 1,995 | 25,889 |

*For data sources, see the report's Town Data Compendium.*

[1] *See* State of Connecticut Department of Energy and Environmental Protection, "Hammonasset Beach State Park" informational webpage, available at https://portal.ct.gov/DEEP/State-Parks/Parks/Hammonasset-Beach-State-Park.

[2] *See* CT Rail, "Shore Line East" homepage (listing towns served by rail service), available at https://shorelineeast.com/index.php.

[3] All references to racial groups in this analysis are shorthand for "non-Hispanic" members of that group. Conversely, all references to "Hispanic" are meant to capture Hispanics of any race.
[4] *See* Town Data Compendium, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[5] *See id.*
[6] *See id.*
[7] *See id.*
[8] *See id.*
[9] *See id.*
[10] *See id.*
[11] *See id.*
[12] *See id.*
[13] *See id.*
[14] *See id.*
[15] *See id.*
[16] *See* Town of Madison Zoning Map ("Zoning Map") (stating that map was "Amended Effective March 1, 2011"), a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31. The zoning map is difficult to read even when full-sized (other than clearly demonstrating that virtually all of town north of I-95 falls into one of two "Rural Residence Districts," as discussed in more depth below). It proved even more difficult to decipher when it was attempted to be imported to this report. As such, this report will make reference to that map, but does not reproduce it.
[17] Madison Town Plan and Zoning Commission, 2013 Plan of Conservation and Development ("2013 POCD"), at 45 (featuring "Map of Residential Densities"), a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[18] *Id.*
[19] *Id.*
[20] 2013 POCD, at 40.
[21] *See* Zoning Map.
[22] Town of Madison Zoning Regulations ("Zoning Code"), amended through Oct. 2019, at § 3.1, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[23] *Id.* at § 3.1.
[24] *See* Zoning Map.
[25] *See id.*
[26] *See* Zoning Code, at § 5.6(a) (stating that the minimum lot area shall be "60,00" square feet, but this is clearly a typo). *See also* 2013 POCD, at 45 (containing residential densities map that shows the RU-2 corresponds to 1 unit per 1.5 acres, or roughly a 60,000 square foot minimum lot size).
[27] *See* Zoning Map.
[28] *See* Zoning Code, at § 5.5(a).
[29] *See* 2013 POCD, at 6 (referencing the likelihood of "modest housing growth in the future" due to "the decreased land availability").
[30] *See id.* at 8.
[31] *See id.*
[32] *See id.* at 11.
[33] *Id.* at 22.
[34] See *id. at* 20.
[35] *See* Town of Madison 2000 Plan of Conservation and Development ("2000 POCD"), at 13, available at https://portal.ct.gov/lib/csc/pendingproceeds/docket_390/bulk_file/madison_(plan_of_conservation___development).pdf.
[36] *See* 2013 POCD, at 8.
[37] *Id.* at 20.
[38] *Id.*
[39] *Id.* at 10.
[40] *Id.* at 46.

[41] *See* Zoning Map.
[42] *See* Zoning Code, at §§ 3.2 - 3.4 (delineating as-of-right, zoning permit, and special exception uses in R-1 through R-5 zones), and 5.2 - 5.4 (adopting largely same uses for RU zones, with no added residential provisions).
[43] *See id.*
[44] *See* discussion of accessory apartments in "Inadequate Provisions" section, *infra*, at 101.
[45] *See, e.g.*, Zoning Code, at § 4.1.6 (allowing for "Garden Apartments" in "the area bounded on the west by Durham Road; on the north by Bradley Road and Railroad Avenue; on the east by Scotland Avenue; and on the south by the Boston Post Road, with the exception of the S-1 District on the north side of the Boston Post Road between Wall Street and Scotland Avenue").
[46] *See* Zoning Map.
[47] *See* Zoning Code, at § 4.3.
[48] *See id.* at § 4.2.2.
[49] *See id.* at § 4.2.4.
[50] *See id.* at § 4.3.
[51] *Id.* at § 4.4.5.
[52] *Id.* at § 4.4.4.
[53] *See id.* at § 4.4.2.
[54] *See id.* at § 26.1.1.
[55] *See id.* at § 26A.2.
[56] *See id.* at § 32.3.
[57] *See id.* at § 17.1.
[58] *See id.* at §§ 26.10 – 26.11 (requiring detailed development plans and site plans for AHD); 26A.2 and 26A.8 (requiring site plan approval for HOD); and 32.4 – 32.5 (requiring both an extensive master plan and detailed site plan for PDD).
[59] *Id.* at §§ 6.2.2.1(c) (providing for site plan review of above-retail units in the various "Downtown" districts) and 6.3.2.1(b) (same for "Rural Shopping" districts).
[60] *See id.*
[61] *See* 2013 POCD, at 8 (featuring "Madison Land Use Summary" table with acreages and percentages of total land area). *See also* Zoning Code, at §§ 6.2 and 6.3 (including "Downtown" and "Rural Shopping" districts among the "Commercial Districts" in Madison).
[62] 2013 POCD, at 42.
[63] *See, generally*, Zoning Code, at § 4B (containing multiple examples of such highly specific areas). *See also* Zoning Map (containing several small "Special Exception Areas").
[64] *See* Zoning Code, at § 4.1.6. Using Google Earth's measurement function demonstrates this area to be approximately 114 acres (or less than 1.5% of Madison); additionally, according to Google Maps, the majority of parcels fronting on a public highway (as required for invocation of this section) seem to currently be occupied by commercial uses.
[65] *See* Zoning Code, at § 4.1.6.
[66] *See id.*
[67] *See id.* at § 26.8 (containing units per buildable acre table for "Multi-Family Developments").
[68] *See id.* at § 26.7 (containing units per buildable acre table for "Single-Family Detached Housing Under Open Space" – in other words, cluster single-family development).
[69] *See id.* at § 26.8 (containing units per buildable acre table for "Multi-Family Developments").
[70] *See id.* at § 26A.7(c).
[71] *See id.* at § 32.3.2 (containing PDD attached bulk requirements).
[72] *See id.* at § 6.15.2.
[73] 2013 POCD, at 47.
[74] *See* Zoning Map.
[75] *See id.*
[76] Zoning Code, at § 26.1. *See also id*. at § 26A.1 (describing purpose of HOD as including the goal to "promote diversity of housing types and housing opportunities in the Town of Madison").
[77] *See* relevant portion of the discussion of "Density," *supra*, at 100.
[78] Zoning Code, at § 26A.7(b).

[79] *See* 2000 POCD, at 88 (containing "Proposed Road Classification" map).
[80] *See* Zoning Code, at § 26A.7(a).
[81] *Id.* at § 26.8 (requiring service by public water only for "Multi-Family Developments" under AHD, not the single-family open space clusters).
[82] 2000 POCD, at 85.
[83] *See* Zoning Code, at § 26.1 (stating AHD's "purpose of promoting the inclusion of below-market-rate housing units" and "increas[ing] the diversity of the Town's housing stock").
[84] *Id.* at §§ 26.4(3)(d), (f) and (g).
[85] *See id.* at § 26.4(3)(a) to ( c), and (f).
[86] *See* Town Data Compendium.
[87] Zoning Code, at §§ 4.1.8.1.6 and 4.1.8.1.7.
[88] *See id.* at § 4.1.15.1.8 (applying two-bedroom limit in a garden apartment special exception).
[89] *See id.* at § 6.15.2(c).
[90] *See id.* at § 6.15.9(b).
[91] *Id.* at § 26A.7(d) (containing HOD bedroom limit) and 26A.1 (stating purpose of promoting housing diversity).
[92] *Id.* at § 24.1.
[93] *See id.* at § 24.3.4.
[94] *See id.* at §§ 24.3.1 (containing requirement that owner live on the premises) and 24.3 (listing all standards for ADUs, none of which mandate that ADUs be rented out).
[95] *See* Town Data Compendium.
[96] "COG" is shorthand for "Council of Governments." There are 9 COGs in Connecticut, which are meant to serve as "planning regions" to "provide a geographic framework within which municipalities can jointly address common interests." *See* State of Connecticut, *Regional Councils of Government (COGs) in Connecticut*, available at https://portal.ct.gov/OPM/IGPP-MAIN/Responsible-Growth/Regional-Planning-Organizations-RPO.

# North Haven

## Overview

North Haven is a self-described "thriving suburban community in the Greater New Haven area."[1] North Haven is roughly bifurcated by I-91, which connects the town to both nearby New Haven to the southeast and Hartford further to the northwest. Even though it is situated between two of the state's largest cities, the town lacks racial and economic diversity and has few affordable units. The town's planning and zoning policies present serious impediments to the production of diverse housing types.

## Summary of Findings

- ***North Haven has far fewer Black, Hispanic and low-income households than New Haven County or neighboring municipalities like Hamden and New Haven.***
- ***North Haven lacks C.G.S. § 8-30g affordable housing, with only a maximum of 1.1% of the qualifying units in town being non-age-restricted rental housing.***
- ***Single-family homes are allowed as-of-right in most of town, while multifamily housing of three or more units is not allowed "as-of-right" anywhere.***
- ***Even in the small areas where multifamily is allowed by special permit, density limits, unit caps, and other requirements restrict the amount of housing that can be built.***
- ***Overlay zones are restricted by minimum parcel sizes and site eligibility requirements.***
- ***North Haven's planning keeps single-family and multifamily separate, with multifamily largely relegated to industrial, commercial, or other non-residential zones.***

## Demographics Overview: North Haven is racially and economically segregated, with fewer people of color and low-income households than its neighbors

| Key Demographic Data | North Haven | New Haven County | Connecticut |
|---|---|---|---|
| Total Population | 23,722 | 857,513 | 3,575,074 |
| % White, Non-Hispanic | 83.5% | 62.9% | 66.9% |
| % Black, Non-Hispanic | 4.3% | 12.5% | 9.9% |
| % Hispanic, Any Race | 5.1% | 18.1% | 16.1% |
| % Asian, Non-Hispanic | 5.6% | 4.0% | 4.5% |
| % Population Below Poverty | 5.0% | 11.7% | 9.9% |
| Median Household Income | $96,598 | $69,905 | $78,444 |
| Grand List Per Capita | $185,065 | $117,554 | $160,428 |
| *For data sources, see the report's Town Data Compendium.* | | | |

That North Haven is segregated is clear from the data presented above, showing more than four-fifths of its residents are white[2] while 4.3% are Black and 5.6% are Hispanic.[3] North Haven is much whiter, less Black and Hispanic, and higher income than New Haven County and Connecticut, as shown above.[4] But the degree to which white households are disproportionately present while Black, Hispanic, and low-income households are absent is also put into stark relief when North Haven is compared with its neighbors to the west and south – East Haven, Hamden, and New Haven, as shown below.

| Race or Ethnicity | North Haven | East Haven | Hamden | New Haven |
|---|---|---|---|---|
| Total Population | 23,722 | 28,742 | 60,982 | 130,331 |
| % White | 83.5% | 74.1% | 55.6% | 29.5% |
| % Black | 4.3% | 3.6% | 24.0% | 31.2% |
| % Hispanic | 5.6% | 17.3% | 12.5% | 31.2% |
| % Asian | 5.1% | 3.6% | 5.1% | 4.9% |
| % Below Poverty | 5.0% | 8.9% | 8.8% | 26.5% |
| *For data sources, see the report's Town Data Compendium.* | | | | |

The differences are particularly pronounced as between North Haven and its larger neighbors of New Haven and Hamden, though comparisons to the more similarly-sized East Haven are also illuminating. North Haven is the whitest of these municipalities – *much* whiter than New Haven and Hamden, while marginally so as compared with East Haven.[5] While North Haven has a slightly higher Black population than also-small East Haven, it's Hispanic population is dwarfed by all three municipalities – so much so that its combined Black and Hispanic population (9.9%) is *less than half* that of fellow small town East Haven (20.9%), *less than a third* that of larger Hamden (36.5%), and less than *one-sixth* that of larger-still New Haven (62.5%).[6] North Haven also has a lower poverty rate than all three neighbors.[7] So regardless of whether the point of comparison is another small town, a larger suburb, or the city on whose periphery it lies, North Haven is clearly racially and economically segregated.

## *Housing Stock Overview: A single-family town in serious need of non-elderly rental affordable housing*

| Key Housing Data | North Haven | New Haven County | Connecticut |
|---|---|---|---|
| Total Housing Units | 9,583 | 367,053 | 1,516,629 |
| % Affordable (C.G.S. § 8-30g) | 5.4% | 13.0% | 11.7% |
| Median Home Value (Owned) | $298,300 | $248,600 | $275,400 |
| % Single-Family | 84.3% | 58.9% | 64.3% |
| % Two-Family | 0.7% | 9.7% | 8.2% |
| % 3-9 Units | 4.2% | 16.5% | 14.1% |
| % 10-19 Units | 2.1% | 4.3% | 3.8% |
| % 20+ Units | 8.7% | 10.0% | 8.8% |
| % Mobile Homes | 0.0% | 0.5% | 0.8% |
| 2001-2017 Permits | 559 | 21,398 | 117,821 |
| % Permits Single-Family | 76.6% | 66.6% | 68.7% |
| % Permits 5+ Units | 18.4% | 29.3% | 27.5% |
| *For data sources, see the report's Town Data Compendium.* | | | |

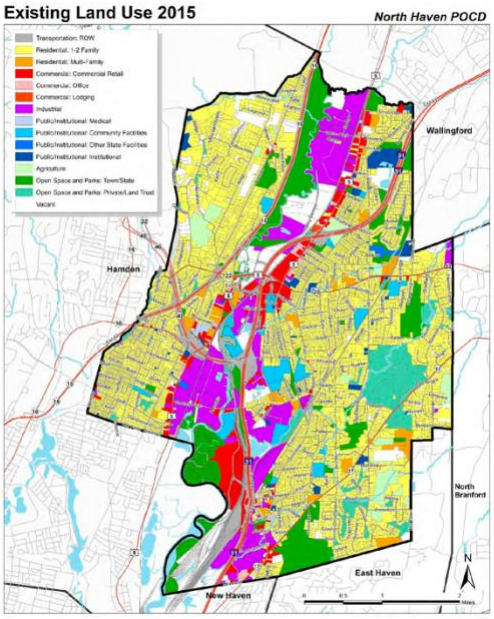
The vast majority of North Haven housing stock (84.3%) is found in single-family homes, while so-called "missing middle housing" of 2 to 9 units in a building is far below the county or state proportions, standing at 4.9% versus 26.2% in New Haven County and 22.3% in the state.[8] This trend has appeared to continue relatively unabated. Over the most recent 17 years for which there are data on housing construction permits (2001-2017), more than three fourths of the permits issued in North Haven were to build single-family houses.[9] While the town's share of units in buildings with at least 20 dwellings is in line with the state and only somewhat lower than the analogous figure for the county,[10] the data make clear this is not at all a reflection of an ample supply of affordable housing units in larger developments.

To the contrary, North Haven suffers from a shortage of affordable housing, with only 5.4% of units being affordable under the Affordable Housing Land Use Appeals Procedure (C.G.S. § 8-30g), less than half as much as either the county or state.[11] The problem is particularly acute for low-income families and renters. Nearly 94% (321 out of 343 units) of North Haven's "Government Assisted" C.G.S. § 8-30g affordable units are age-restricted.[12] Removing these and subsidized mortgages from the C.G.S. § 8-30g affordable housing supply reveals a *maximum* (since data on age-restrictions only appears to be available for the "Government Assisted" portion of the C.G.S. 8-30g supply) of 102 units that qualify as affordable under C.G.S. § 8-30g in North Haven, *or just 1.1% of all housing in town*.[13] (The lack of rental housing extends beyond the C.G.S. § 8-30g supply, with the homeownership piece of the town's housing stock (81.7%) being about 20% higher than the county's and 15% than the state's.[14])

The town is aware that a lack of housing options is an issue. A majority of respondents to a survey conducted for the town's 2017 Plan of Conservation and Development ("POCD") indicated that "some types of multifamily housing" were "needed to meet this need" presented by a "lack [of] affordable housing options."[15] The POCD recognized that affordability would be an ongoing challenge, admitting that "North Haven is not likely to reach the 10% threshold" established by C.G.S. § 8-30g (for the share of a town's housing units that must be affordable under that act to exempt a town from its procedure) "in the near future because of the sheer number of new or converted units that would be required."[16]

## *Land Area: Single-family housing dominates the landscape*

North Haven's land use is dominated by single-family homes. "Existing Land Use 2015" map from the POCD, reproduced to the right, shows (even when it is reproduced in miniature, as it is to the right) that the vast majority of town is occupied by "Residential 1-2 Family" (yellow areas), with industrial (purple), commercial retail (red), institutional (the blues), and various open space or agriculture designations (the greens) accounting for most of the rest.[17] The few orange patches represent the only multifamily areas, and they tend to be concentrated near major roadways.[18] Given how few two-family units are in town (0.7% of the housing supply),[19] the sea of yellow is a stark indication of the fact that North Haven is blanketed by single-family homes throughout almost all of ton other than the I-91 corridor that snakes through its center.[20]




*Source: POCD, at 15.*

## *Lot Size: Large lot-sizes for single-family is the norm, with some even larger lot sizes for multifamily uses within zones that also allow for single-family homes*

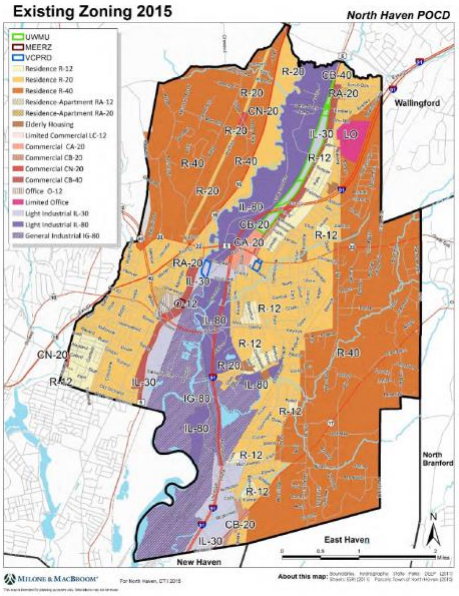
The largest zone by land area in North Haven appears from the zoning map to be the R-40, a single-family zone that requires a minimum lot size of 40,000 square feet, or approximately one acre per home.[21] The second largest zone by area seems to be the R-20, which requires about half-acre lots.[22] These large-lot, single-family zones seem to make up more than half of the town's land area.[23]

In addition to the general housing cost increases that can result from the prevalence of large-lot, single family zoning (both because such zoning increases surrounding property values and because it means less efficient use of land and therefore fewer possible units can be developed), North Haven's lot size restrictions are relevant to multifamily housing insofar as the town appears to impose more stringent requirements on such uses than it does on single-family in the same zones.

To illustrate this point, take the tiny parts of town zoned "Residence Apartment" ("RA"). For non-multifamily uses, the minimum lot size in RA-40 is 40,000 square feet, but the minimum lot size for multifamily housing *is four times* that (160,000 sq. ft.); moreover, multifamily uses in this zone require larger minimum lot widths, as well as larger front, rear, and side yards.[24] Similarly, the RA-20 requires 20,000 square foot lots for single-family homes, but requires *eight times* that for multifamily uses.[25] Throughout North Haven, the minimum lot size for multifamily ranges from about two to four acres.[26]

## *Bureaucratic Hurdles: Residential areas are effectively single-family zones, subject to minor exceptions with little potential impact on multifamily supply*

In residential districts in North Haven, which as can be seen from the POCD's "Existing Zoning 2015" map to the right, comprise the majority of town (the beige-to-rust-colored areas covering almost all of town outside of the I-91 corridor in the center that is zoned for mostly industry (purple)),[27] the only type of housing that is allowed to be built as-of-right (meaning without planning and zoning commission ("PZC") approval following a public hearing) is single-family housing.[28]




*Source: POCD, at 17.*

In the majority of land in these districts – the R-40 (darkest rust-colored area), R-20 (next-lighter shade of beige), and R-12 (lightest shade of beige) – the only other housing possible seems to be as follows:

- As-of-right conversion of single-family homes to two-family dwellings, but *only* if the dwelling was built "prior to 1930" and doing so would still comply with the district's density requirements;[29]
- Age-restricted housing operated by the Housing Authority of North Haven (requires public hearing and PZC approval);[30] and
- Age-restricted units in converted existing structures (same procedure).[31]

Thus, throughout most of town, *no non-age-restricted* multifamily can be newly constructed and the sole means for any non-elderly multifamily housing is a) limited to two-family, b) highly unlikely to be of much use given that it requires a pre-1930 unit to be available and suitable for conversion, and c) could not generate density above the governing provisions of the district, in any event (and clearly this conversion provision is little used, given the aforementioned 0.7% of units in two-family structures[32]).

In fact, the only as-of-right multifamily that appears to be permitted anywhere in town are two-family dwelling in the town's office districts.[33] That this is not a significant provision is obvious from the facts that it is only for two-family housing and only within the Office districts that make up a tiny portion of the zoning map.[34] Additionally, such housing would need to compete with the other permitted uses in these zones and (once again) two-family units are few and far between in North Haven[35] – so clearly this zone is provision has not led to a great deal of two-family units.

The "Residence-Apartment Districts" ("RA") districts in theory make it possible to build multifamily housing in residential areas, but these are only available subject to PZC approval following the applicant's submission of detailed plans for the proposal and a public hearing.[36] Note that these zones *only* subject a "permit for any multiple dwelling project," to these procedures, exempting the single-family uses that are permitted in the zone (and which do not even require site plan approvals).[37] Additionally, and perhaps most significantly, the RA zones appear from the zoning map to cover only a few (perhaps just three) extremely small areas of town.[38]

## *The few non-residential zones that permit non-age-restricted multifamily also subject it to rigorous, often highly discretionary, procedures*

In the few remaining areas of town that multifamily housing is allowed, it appears to always require a highly discretionary and potentially burdensome PZC application and public hearing process. Office Apartment ("OA") zones adopt the public hearing and submission requirements imposed on multifamily in the RA zones discussed above.[39] The Village Center Planned Residential District ("VCPRD") imposes essentially the same conditions.[40]

The Commercial CA District requires PZC approval after a public hearing for "Mixed Use Districts" that require the PZC to consider such vague factors as "the effect of the proposed use on present and future dwellings" and the proposed site planning and landscaping (without more detail for guiding the review.[41]

Finally, the Washington Avenue Multi-Use ("UWMU") zone requires the applicant to obtain a special permit from the commission following a public hearing, and requires detailed "plans for the entire project" to be submitted with the application.[42] Here, too, the PZC is charged with considering subjective "standards" such as the extent to which the location, type, character, and size of the uses are in "harmony with the development of the town" and "will not hinder or discourage the development and use of adjacent lots or impair their value;" and whether the "architectural design and style of all buildings and other structures to be erected on the lot will not conflict with the architectural design and style of adjacent properties."[43]

## *Overlay zones upon which North Haven appears to rely to promote housing diversity impose even more onerous impediments to approval and development*

North Haven acknowledges the need for some different types of housing, which it seeks to provide largely through overlay zones.[44] A salient example in North Haven is the Special Development District ("SDD") zone. According to the zoning amendments, the SDD can achieve some of the goals set forth in the POCD, "such as provision of a variety of housing types by providing for mixed use developments, [and] balancing the need for development against the preservation of the character of Town, by providing for infill development."[45] But rather than facilitating use of this provision, North Haven's zoning makes the process to establish an SDD extremely cumbersome.

For example, SDD applications must include a boundary survey by a registered land surveyor; a Stormwater Management Plan by a registered engineer, which describes impacts on the site and adjacent lots within 500 feet, and which evaluates storm events to occur within 100 years; a Traffic Impact Analysis, "together with a capacity analysis of existing streets directly affected by the proposal;" a Municipal Impact Study showing the costs and benefits to the Town; an extensive Master Plan; and a professionally prepared Shared Parking Study.[46] In addition to the applicant having to provide all of this technical documentation and analyses, the PZC may require that the applicant pay costs incurred by the Town to conduct *its own* independent, expert technical review of the application.[47]

That is only the first part of the process. In conjunction with an application to establish an SDD, the applicant must also obtain site plan approval for the proposed multifamily homes,[48] a requirement which is not required for single-family or two-family housing.[49] In this process, the Commission is required to set appropriate conditions and safeguards to achieve "a site layout that will have the minimum potential adverse effect upon the established character or potential use of any adjoining properties;" and "the reasonable screening at all seasons of the year from the view of adjacent residential properties and streets of all parking and loading areas or other features, that, in the opinion of the Planning and Zoning Commission, require such screening."[50] Multifamily proposals seeking a site plan must submit documentation with extreme specificity and detail for every aspect of the development, including design elements and materials used.[51]

The combined effect of all of these intensive submission and review standards is to make this supposedly housing-diversity promoting provision much more burdensome and costly to pursue.

## *Site Location Limitations: Massive parcel sizes and excessive site requirements*

Among the more powerful restrictions in North Haven's zoning codes are regulations limiting where overlay zones can go. The Medical Epicenter Elderly Residential Zone ("MEERZ"), which allows relatively dense (albeit age-restricted) housing is only possible if it is located "within 750 feet of a medical development at least 120,000 square feet in size affiliated with a CT licensed hospital, which development provides a variety of medical services;" is located within 2,000 feet of an existing wellness Center; and "public bus transportation passes along the street that provides the main access point to such Facility or unless such Facility is located within one-half mile of an existing or approved railroad station."[52] Unsurprisingly, it only exists in one location in town.[53]

Of perhaps greater concern given that the zone is not age-restricted are the locational limits placed on the Village Center Planned Residential District ("VCPRD"). The VCRPD is highly constrained in its

potential locations, not only by the large minimum lot size (over five acres), but also by its requirement to have "accessibility of public transportation," "the close proximity of churches, medical facilities and other commercial and recreational activities" and (most decisively) the fact that "such site shall be located in or within one quarter mile of a mixed use Commercial Area, considered by the Commission to be a transitional area."[54]

The SDD Overlay Zone, which is intended for mixed use and housing diversity, is extremely limited in potential locations by two main factors. First, according to the Zoning Amendments, "No property that is zoned residential may be changed to the SDD zone," and second, the SDD requires at least 40 buildable acres of land to permit a zoning change.[55] The elimination of residential land from consideration excludes the majority of land area in the town, and the massive lot size requirement further eliminates all but a small handful of parcels that could be developed (it also may precludes any potential developers other than large companies that can finance the purchase massive parcels), most of which likely are already occupied by commercial or industrial uses. .

## *Density: North Haven implements an array of density limitations, including few non-age-restricted multifamily units permitted per acre or per development*

Even if a proposal were to manage to overcome the procedural barriers erected by the zoning code in the handful of small districts that allow for multifamily with PZC approval, North Haven imposes an array of density and related restrictions that would be likely to significantly inhibit multifamily and affordable housing production.

In RA-Districts, the potential for multifamily and affordable housing is circumscribed by the maximum density of eight units per acre.[56] Such a density seems in keeping more with suburban single-family zones and, in any event, is much less than 40 units per acre allowed for (subject to PZC approval following a public hearing) elderly housing in residential zones (based on the 80 unit parcel maximum and two-acre parcel minimum size contained in that regulation).[57] It is also less than the 35 units per acre allowed in the MEERZ,[58] and even less than the 13.5 units per acre permitted in the Elderly Housing District[59] – suggesting a broader policy of allowing for higher densities for age-restricted than non-age-restricted multifamily proposals.

Density is further restricted in RA zones via regulations of the style and arrangement of dwellings within multifamily structures, such as a limit of 12 units per building and a limit of one front and on rear entrance for every four units.[60] (RA zones also restrict the allowable building height to two stories and 35 feet and the maximum building coverage to 15-20% of the land area of a parcel.[61]) These building restrictions can serve to reduce the feasible density for multifamily and affordable housing to even less than the maximum of eight units per acre.[62]

OA zones allow for slightly more density -- up to 10 units per acre (in two very small areas on the zoning map[63]) – but the regulations require that the density should be reduced if there are other uses on the same lot.[64] This is a likely scenario in a zone that allows commercial uses, suggesting that OA multifamily proposals often will not be able to maximize their potential density.

The VCPRD goes a little higher than OA, but still not as high as the above-discussed elderly provisions, and allows up to 12 units per acre.[65] But this zone also imposes a per parcel density cap that cuts off any proposal from yielding more than 130 units.[66] (Moreover, with a minimum lot size of over five acres, the number of undeveloped parcels that could be used for multifamily in this district is probably limited.[67])

Lastly, the Commercial CA District, only allows multifamily uses by special permit, and only as part of mixed-use developments, also requires a one-half acre lot size, that no residential units be on the first floor, a maximum building height of 35 feet, maximum building coverage of 25%, residential uses are limited to 50% of floor area (unless receiving a special approval by the Commission and agree to additional recommendations by the Fire Marshal), and minimum floor area requirements.[68] These serve as de facto limits on the density of multifamily homes.

## *Inadequate Provisions: Stringent unit limits in zones touted as promoting housing diversity*

The Town of North Haven has seemingly pegged many of its hopes for multifamily housing development on an extremely small strip of land zoned as the Upper Washington Avenue Multi-Use ("UWMU") and IL Upper Washington Avenue Multi-Use ("ILUWMU") Development zones, which are located along Washington Avenue, to the north of the I-91 interchange.[69] According to the zoning code, "the purpose of such developments shall be to provide multifamily residential development of a destiny to meet the rising demand for that type of housing in the town."[70]

Unfortunately, these zones' potential for generating multifamily housing is diminished by several factors. First, they comprise areas of only about two parcels in width on either side of Route 5.[71] Second, one is zoned for commercial uses and the other for industrial uses, meaning there is likely to be competition for land from non-residential uses.[72] Third, residential uses are subject to several limiting requirements including a lot size minimum of three to four acres, height limits of 35 and 44 feet, maximum building coverage of 35% of the lot, and bedroom limits of two per dwelling unit, that severely inhibit the viability of dense multifamily.[73] Perhaps most directly, the overall number of units in the UWMU area is capped at 300 and in the ILUWMU it is capped at 150.[74] An inclusionary zoning provision in the ILUMWU zone requires that 10% of units must be deed restricted as affordable, however, with the total dwelling units capped at 150 in this zone, this provision, if used at all is likely to only add 15 total affordable units to the Town's total.[75]

## *Dimensional Restrictions: Buffer requirement for some multifamily zones reflect a planning approach that keeps multifamily separate from single-family*

The UWMU zone, which comprises a narrow strip along the Route 5 corridor abutting single-family residential districts to the East, requires extensive measures to ensure separation of its potential multifamily uses from the single-family uses next door. Multifamily developments must provide a 25-foot buffer strip alongside lot lines and a 50-foot strip along rear lot lines if adjacent to residential property.[76] This language suggests that the town may not consider multifamily to be akin to a residential use. Further, the landscaping must be dense evergreen and of a height, type and spacing that is approved by the PZC so as to screen multifamily uses from residential zones throughout the year.[77] The PZC can also require a fence and "may hire a landscape consultant to evaluate the proposed buffer(s) at the expense of the applicant."[78] These and other regulations make clear that multifamily housing must make every concession to ensure that it does not impact single-family uses.

## *Conclusion*

The Open Communities Alliance has estimated that North Haven must facilitate the construction of more than 1,800 affordable housing units in the next ten years in order to meet its "fair share" of the regional need for such housing.[79] Given the many restrictions they impose, it does not appear to be possible to achieve this goal with the current planning and zoning policies in place in North Haven.

| North Haven 10-Year "Fair Share" Allocation (Units) | South Central Region "COG"[80] 10-Year Regional Need Estimate (Units) |
|---|---|
| 1,812 | 25,889 |

*For data sources, see the report's Town Data Compendium.*

[1] Town of North Haven 2017 Plan of Conservation and Development ("POCD"), effective Sept. 1, 2017, at 4, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[2] All references to racial groups in this analysis are shorthand for "non-Hispanic" members of that group. Conversely, all references to "Hispanic" are meant to capture Hispanics of any race.
[3] *See* Town Data Compendium, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[4] *See id.*
[5] *See id.*
[6] *See id.*
[7] *See id.*
[8] *See id.*
[9] *See id.*
[10] *See id.*
[11] *See id.*
[12] *See id.*
[13] *See id.*
[14] *See id.*
[15] POCD, at 9.
[16] *Id.* at 10.
[17] *See id.* at 15 (featuring "Existing Land Use 2015" map).
[18] *See id.*
[19] *See* Town Data Compendium.
[20] *See* POCD, at 15 (featuring "Existing Land Use 2015" map).
[21] *See* Zoning Code, at § 2.1.1.9. *See also* Town of North Haven Zoning Map, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[22] *See id.*
[23] *See* Zoning Map.
[24] *See* Zoning Code, at §§ 2.3.2.1 and 2.3.2.2.
[25] *See id.*
[26] *See id.*
[27] *See* POCD, at 17 (containing "Existing Zoning 2015 Map"). *See also* Zoning Map. The Town's zoning map available online is accessed through a third-party digital mapping service, and is less easy to read than the POCD's land use map. The maps are largely consistent with one another.
[28] *See* Town of North Haven Zoning Regulations ("Zoning Code"), effective Mar. 1, 2007, at §§ 2.1.1.1 (listing "One-family dwellings" as permitted uses without any further requirements) and 2.1.1.5 (providing for a select few othr residential uses to be developed, but only "when specifically approved by the Planning and Zoning Commission

after a public hearing"), a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[29] *Id.* at § 9.1.13.
[30] *See id.* at §§ 2.1.1.5(l).
[31] *See id.* at §§ 2.1.1.5(m).
[32] *See* Town Data Compendium.
[33] *See* Zoning Code, at § 3.2.1.2.
[34] *See* Zoning Map.
[35] *See* Town Data Compendium.
[36] *See* Zoning Code, at § 2.2.1.2(n).
[37] *Id. See also id.* at §§ 2.2.1.1 (allowing for any use permitted in the general residence districts in the RA zones), 2.1.1.1. (permitting single-family housing in the residence districts) and 10.1.1.2 (exempting single-family and two-family proposals from the zoning code's site plan approval requirements).
[38] *See* Zoning Map.
[39] *See* Zoning Code, at § 2.3.1.3.
[40] *See id.* at § 6.1.1.9.
[41] Town of North Haven Zoning Regulation Amendments April 2007 – February 2015 ("Zoning Amendments"), at Amendment 6, §4.3.4.2, available at https://cms1files.revize.com/revize/northhavenct/Document%20Center/Government/Town%20Departments/Land%20Use/LND20160106AmendmentsApril2007-February2015.pdf.
[42] *See id.* at Amendment 8, §4.4.1.38.10.
[43] *Id.* at Amendment 8, § 4.4.1.38.11.
[44] *See* POCD, at 10 (recommending that the town "provid[e] for a greater variety of housing options as part of mixed use development areas"). *See also* definition of overlay zones in "Zoning 101" portion of the introduction to this report, *supra*, at 20.
[45] Zoning Amendments, at Amendment 1, § 6.2.1.
[46] *Id.* at Amendment 1, §§ 6.2.3.1(1), 6.2.3.1(2)b, and 6.2.3.1(3)-(6).
[47] *See id.* at Amendment 1, § 6.2.6.2.
[48] *See id.* at Amendment 1, § 6.2.3.2(1).
[49] *See* Zoning Code, at § 10.1.1.2.
[50] *Id.* at §§ 10.1.2, 10.1.2.2, 10.1.2.4.
[51] *See id.* at §§ 10.1.3.1 through 10.1.3.30.
[52] Zoning Amendments, at Amendment 9, §2.4.1.3(n).
[53] *See* Zoning Map.
[54] Zoning Code, at §6.1.1.11.
[55] Zoning Amendments, at Amendment 1, § 6.2.5.1.
[56] *See* Zoning Code, at § 2.3.2.2.
[57] *See id.* at § 2.1.1.5(l).
[58] *See id.* at § 2.4.1.3(a).
[59] *See id.* at § 2.4.1.1(a).
[60] *See id.* at § 2.2.1.2.
[61] *See id.*
[62] *See id.* at § 2.2.1.2(j).
[63] *See* Zoning Map.
[64] *See* Zoning Code, at § 2.3.2.2(a).
[65] *See id.* at § 6.1.1.1.
[66] *See id.* at § 6.1.1.3.
[67] *See id.* at § 6.1.1.1.
[68] *See* Zoning Amendments, at Amendment 6, §§ 4.3.4.3(a) to (c), and 4.3.4.3(f).
[69] *See id.* at Amendment 8, §§ 4.4.1.38 and Amendment 11, 5.1.3.16.
[70] *Id.*
[71] *See* Zoning Map.
[72] *See id.*

[73] *See* Zoning Amendments, at Amendment 8, §4.4.1.38.1.
[74] *See id.* at Amendment 11, §5.1.3.16.3.
[75] *See id.* at Amendment 11, §5.1.3.16.13.
[76] *See id.* at Amendment 8, § 4.4.1.38.9.
[77] *See id.*
[78] *Id.*
[79] *See* Town Data Compendium.
[80] "COG" is shorthand for "Council of Governments." There are 9 COGs in Connecticut, which are meant to serve as "planning regions" to "provide a geographic framework within which municipalities can jointly address common interests." *See* State of Connecticut, *Regional Councils of Government (COGs) in Connecticut*, available at https://portal.ct.gov/OPM/IGPP-MAIN/Responsible-Growth/Regional-Planning-Organizations-RPO.

# Orange

## Overview

The Town of Orange is a self-proclaimed "rural and farming community"[1] of nearly 14,000 people[2] located in New Haven County, directly west of West Haven (which, until 1921, had been a part of Orange[3]). As will be seen, its zoning regulations and present circumstances are highly indicative of socioeconomic and racial exclusion.

## Summary of Findings

- ***Orange has a shockingly low Black and Hispanic population – less than 2% for each. It also has few low-income households.***
- ***Orange is dominated by large-lot, single-family zoning; no new multifamily homes are allowed as-of-right. By its own admission, the town has a low supply of affordable housing (1.4% qualifies as such under C.G.S. § 8-30g) – even relative to other towns and neighboring suburbs.***
- ***Despite ample available land (17% of the town – or 1,898 acres – is undeveloped), including in large lots, town planning demonstrates the intention to keep land undeveloped including by aggressively acquiring such land for open space.***
- ***Several multifamily zones require connections to sewer, which is largely unavailable in Orange, and the town is committed to not expanding sewer service broadly.***
- ***The town imposes some outright limits on the permitted units in zones or on parcels***
- ***Certain multifamily and affordable housing provisions are severely restricted in terms of which sites may be eligible for them – sometimes limiting eligibility to a single block or location.***

## Demographics Overview: Orange is racially and economically segregated

| Key Demographic Data | Orange | New Haven County | Connecticut |
|---|---|---|---|
| Total Population | 13,934 | 857,513 | 3,575,074 |
| % White, Non-Hispanic | 85.8% | 62.9% | 66.9% |
| % Black, Non-Hispanic | 1.9% | 12.5% | 9.9% |
| % Hispanic, Any Race | 1.6% | 18.1% | 16.1% |
| % Asian, Non-Hispanic | 8.2% | 4.0% | 4.5% |
| % Population Below Poverty | 2.6% | 11.7% | 9.9% |
| Median Household Income | $121,308 | $69,905 | $78,444 |
| Grand List Per Capita | $228,833 | $117,554 | $160,428 |
| *For data sources, see the report's Town Data Compendium.* | | | |

Orange is marked by significant levels of segregation, with an especially pronounced absence of Black[4] and Hispanic households. Orange is over 85% white and more than 8% Asian, but less than 4% of its population is either Black (1.9%) or Hispanic (1.6%).[5] The equivalent figures for New Haven County (62.9% white, 4.0% Asian, 12.5% Black, and 18.1% Hispanic) underscore the extent of the town's racial imbalance.[6]

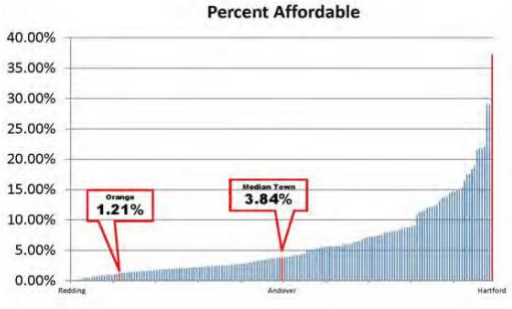
Orange is similarly devoid of low-income families. Only 2.6% of Orange households live in poverty (versus 11.7% of the county), and the town's median income is over $50,000 greater than the county's.[7]

## *Housing Stock Overview: A lack of multifamily and affordable options*

| Key Housing Data | Orange | New Haven County | Connecticut |
|---|---|---|---|
| Total Housing Units | 5,194 | 367,053 | 1,516,629 |
| % Affordable (C.G.S. § 8-30g) | 1.4% | 13.0% | 11.7% |
| Median Home Value (Owned) | $389,900 | $248,600 | $275,400 |
| % Single-Family | 90.5% | 58.9% | 64.3% |
| % Two-Family | 1.1% | 9.7% | 8.2% |
| % 3-9 Units | 2.3% | 16.5% | 14.1% |
| % 10-19 Units | 0.8% | 4.3% | 3.8% |
| % 20+ Units | 4.8% | 10.0% | 8.8% |
| % Mobile Homes | 0.5% | 0.5% | 0.8% |
| 2001-2017 Permits | 446 | 21,398 | 117,821 |
| % Permits Single-Family | 61.2% | 66.6% | 68.7% |
| % Permits 5+ Units | 37.7% | 29.3% | 27.5% |
| *For data sources, see the report's Town Data Compendium.* | | | |

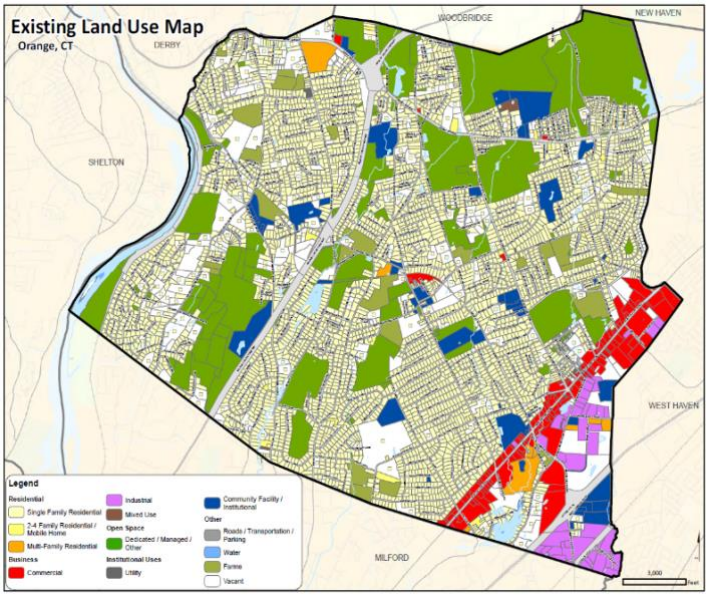
Orange itself has suggested that its housing stock may be partially responsible for its demographic homogeneity. Although the town's 2015 Plan of Conservation and Development ("2015 POCD") attributed the cause of town-wide "housing stock . . . becoming more expensive over time" solely to the "desirability of Orange," it also conceded that "[w]hile this may be perceived as beneficial to existing property owners, it is also resulting in the exclusion of people who have helped, or can help, Orange to be a more diverse community."[8]

The data corroborate the town's admission that its housing stock is largely unaffordable. Just 1.3% of the town's housing stock qualifies as affordable under the State's Affordable Housing Land Use Appeals Procedure (C.G.S. § 8-30g). Indeed, by its own estimation (as shown in the chart reproduced to the right), Orange is among the bottom half of all towns in the state in terms of affordable housing provision – falling below the *still low* median for towns (as of the 2015 POCD) of 3.84% C.G.S. § 8-30g affordable units – and severely underperforming neighboring communities




*Source: 2015 POCD, at 11.*

like West Haven (12% affordable), Derby (11%), Milford (7%) and Shelton (3%).[9] Likely related to Orange's relative unaffordability is the profound extent to which it is characterized by single-family homes – which comprise over 90% of all housing in town.[10] Again, analyses performed by the town itself corroborate the data. A map from the 2015 POCD of then-existing land uses powerfully illustrates just how little of the town is dedicated to multifamily housing of any scale (multifamily zones are in orange in the map, reproduced to the right).[11]




*2015 Orange POCD at 15.*

Although Orange recently approved a 46-unit affordable housing project,[12] that would only increase the amount of housing that is affordable to 2.1% (assuming all of the units would represent additional affordable housing units).[13]

Moreover, that recent approval is an anomaly. While Orange has added a higher percentage of permits for housing of at least five units over the 17-year period from 2001 to 2017 (the most recent year for which data are available), *all* of these approvals came *in* 2004 – meaning that in the last *13 years* for which there are data, there were *zero* such permits issued).[14] (While single-family homes can be affordable, as noted in the introduction to this report, economies of scale are such that single-family housing is generally less conducive to affordability than multifamily housing.[15])

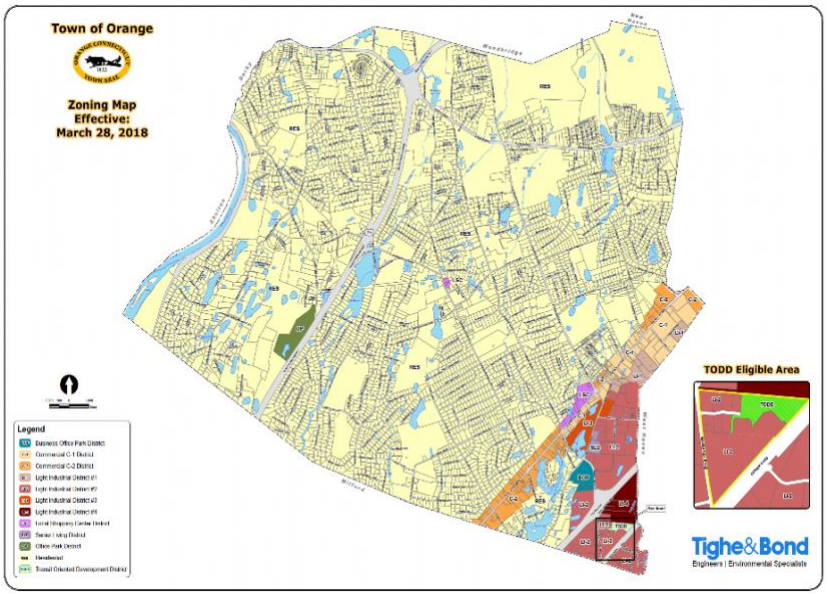
And here, too, Orange itself is aware that it is not doing enough. The town acknowledged "legal and practical reasons why Orange might want to consider diversifying its housing portfolio to include 'affordable housing'" in light of Orange falling well below the C.G.S. § 8-30g exemption threshold of 10% affordable housing, and further recognized that "there is a need for diversification of housing types" in Orange.[16]

Nor should Orange stop at aiming for the C.G.S. § 8-30g threshold, which would require the town to have about 520 units in order to meet the 10% threshold.[17] Open Communities Alliance has estimated that in order to meet its fair share of the *regional* need for affordable housing (C.G.S. § 8-30g, while an important tool for promoting affordable housing development, does not rely on any regional benchmarks in setting its threshold, instead imposing a fixed 10% minimum for exemption), Orange must add 1,006 affordable housing units in the next decade.[18]

| Orange 10-Year "Fair Share" Allocation (Units) | South Central Region "COG"[19] 10-Year Regional Need Estimate (Units) |
|---|---|
| 1,006 | 25,889 |

*For data sources, see the report's Town Data Compendium.*

## *Land Area: Striving to "protect" developable land from multifamily uses*




*Source: Orange Zoning Map.*

Orange's zoning map makes unmistakably clear that the overwhelming majority of the town is covered by a single, undifferentiated "Residential" zone (the pale yellow in the map to the right).[20] The only type of housing that can be newly constructed in this zone as-of-right (meaning without first obtaining approval by the Town Planning and Zoning Commission ("Commission") following a public hearing, instead subject only to issuance of a zoning permit[21]) is "a single detached dwelling for one family and not more than one such per lot."[22] Provisions allowing for renting out rooms within single-family homes and conversion of a tiny subset of homes (they must have existed since 1937) to two-family uses do not alter the single-family nature of this district.[23] This massive single-family zone also imposes large minimum lot sizes, with each single-family home requiring 60,000 square feet (roughly 1.4 acres).[24]

The basic fact that large-lot, single-family zoning dominates the town is a critical restriction on multifamily and affordable housing in Orange. It is also reflects a longstanding bedrock of the town's planning philosophy. The first-listed of the "RESIDENTIAL POLICIES AND GOALS" put forth in the Town's prior POCD (from 2000 – "2000 POCD") vowed to protect the dominance of single-family homes: "Maintain one acre and one and a half acre lots with single family owner occupied dwellings as the predominant housing pattern of the community."[25] (Note, also, that this language from the 2000 POCD placed a premium on ownership rather than rental housing, another baseline that presents a challenge to affordability.) The 2015 POCD acknowledged that "Orange is dominated by single-family homes" and reported that "[r]esidents are committed to *preserving* and enhancing the *character* of residential neighborhoods," drawing attention to the strong local desire to maintain the status quo.[26]

Land area is also a relevant consideration as to affordable and multifamily opportunities in another critical respect: Orange has an ample supply of developable land that could be marshalled to further affordable housing efforts in the town. The 2015 POCD estimated that 17% of the town – or 1,898 acres – was "undeveloped land that may be developed in the future."[27] The existing land use map provided in the POCD shows that there are a good number of large vacant parcels spread throughout the town.[28] However, as discussed below, narrow site requirements for various zoning districts means many of these undeveloped parcels are not eligible for multifamily housing under current zoning.[29]

Nor does the town's current planning indicate a concerted effort to rezone such vacant parcels as may exist to make way for affordable housing. Rather than appreciating unused land as an invaluable resource for expanding opportunity, the Town has "been extremely active in acquiring land and preserving it as open space," has made it a policy goal to "strive to convert" undeveloped land "into dedicated open space owned by the Town or the land trust" when appropriate to do so, and has committed to "continue efforts aimed at preserving open space in the future."[30] Indeed, as a result of the Town's assessment that "[c]]ommunity character often comes down to the perception of the amount of undeveloped land in a community," Orange "has programs in place that help retain undeveloped land as long as possible."[31]

The town's focus on stymieing development on undeveloped land that could otherwise serve as potential sites for affordable housing may reflect the much stronger emphasis Orange residents appear to place on the "open space" than on increasing housing opportunities. When residents at an initial public meeting were asked to prioritize 12 topics that might be included in a POCD, the top two considerations were community character and open space – with the issues of "residential development" and "housing diversity" falling to the 10th and 11th spots.[32]

## *Bureaucratic Hurdles: No as-of-right multifamily home construction*

Orange's zoning regulations make multifamily housing that is more likely to be accessible to lower-income families (who are disproportionately families of color) significantly more difficult to develop than single-family homes.

With the exception of two highly limited means of permitting multiple households within certain single-family homes (which, as is discussed below, are not genuine "multifamily" uses[33]), every form of multifamily allowed by the zoning code is treated either as a "special use" or similarly must undergo Commission review and an accompanying mandatory public hearing process.[34] By contrast, the "Residence District" that blankets the vast majority of Orange[35] allows a "single detached dwelling for one family and not more than one per such lot" as-of-right, without being subjected to these burdens.[36]

Some multifamily proposals face additional procedural obstacles. For example, certain multifamily provisions – such as those regarding the planned residential development ("PRD") and transit oriented development ("TOD") floating/overlay zones – entail multiple rounds of Commission review and can include multiple sets of public hearings.[37]

## *Density: Strict limits on the number of units per parcel or per zone*

Although the zoning code contains few "units per acre" restrictions, some of the town's main provisions intended to promote affordable housing are artificially limited by strict numerical caps on the units that such zones may yield. For example, the Town restricted the number of PRD units that could be approved throughout Orange between January 1992 and December 2005 to 350 units, and it continues to limit all PRD sites to no more than 50 units.[38] Similarly, the zoning code provides that no more than 250 units may be created within the entire TOD district.[39]

Orange also creates *de facto* limits on affordable and multifamily housing via other forms of density restriction. For example, the AHD does not have an express ceiling on units, but the regulations do provide "Limitations on number of AHD units to be authorized" as determined "by the floor area ratio standards" (namely 50% floor area to site ratio, with buildings to be no more than three stories tall).[40]

Sometimes these practical limits are in addition to the hard-and-fast maximums, such as the TOD overlay's requirement of 1,000 square feet of non-residential use for each multifamily unit.[41]

## *Lot size: Large lots required for single and multifamily housing*

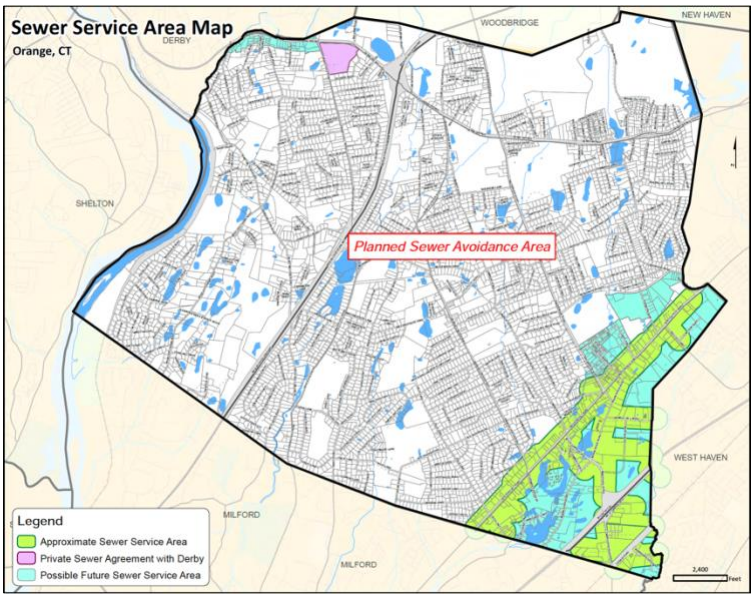
Lot sizes present challenges to achieving affordability in Orange in a number of ways. Most basically, large minimum lot sizes in residential zones drive up the cost of all housing, be it single-family or multifamily, and reduce the number of parcels eligible for development. In the "Residence" district that covers the vast majority of the town, the minimum lot size is 60,000 square feet (roughly 1.4 acres).[42] Orange is aware that this sets a high baseline level of unaffordability for the lion's share of the town. As stated in the 2015 POCD, "While the 'American dream' still includes a home on a good-sized private lot, such housing does not meet everyone's needs" and thus the "Plan recognizes that there is a need for a diversification of housing types" in Orange.[43]

And yet when it came to the task of identifying "Areas Which May Have the Potential to Help Diversify Orange's Housing Portfolio," the POCD only pointed to a small handful of areas near commercial districts, the few existing multifamily areas, and the edge of town – in other words, leaving untouched huge swaths of the town identified as "Single-Family Residential areas, Generally with a Density of 0.70 Units per Acre or Less."[44] This is consistent with the guiding principle underscored in the 2000 POCD's "Land Use Plan": "Single family homes will remain the predominate residential land use."[45]

As noted, large minimum lot sizes apply in the town's multifamily zones, as well. These range from 1.5 acres for the "Senior Living District" ("SLD") to 2 acres for both the PRD (regardless of whether it is in a residential or commercial area) and the AHD that was adopted to facilitate a CGS § 8-30g development. While the TOD overlay does not state a minimum lot size, it appears to be mapped entirely within a Light Industrial District #2 zone[46] that has a 2-acre minimum.[47]

## *Infrastructure: Multifamily tied to scarce infrastructure*

A perhaps subtle but powerful means by which the zoning regulations massively reduce the amount of land available for multifamily housing is by tying zoning districts to scarce infrastructure. An obvious example is the TOD overlay, which requires that a property be "served by an existing rail station or planned rail station," with properties that are not contiguous to such a station or an existing TOD development, and are subject to Commission denial if they do not "provide for the orderly development and expansion" of the TOD area in light of "continuity and contiguity" concerns.[48]




*Source: 2015 POCD, at 125.*

Similarly, while Orange has excellent access to public water,[49] only a fraction of the town is served by sewers (as can be seen above).[50] So the fact that higher-density and affordable housing districts like the PRD, AHD, SLD, and even the single-family "active adult community" all require either existing sewer service or connection thereto[51] represents a huge barrier to multifamily and affordable housing – that is, unless Orange were to opt to extend sewerage further.

Unfortunately, Orange has been adamant in its opposition to augmenting sewer service. The 2015 POCD noted that "[p]ractically all residential areas in Orange utilize on-site septic systems" and confirming that it was "the long-term goal of the Town to continue this approach and ensure these septic areas are 'sewer avoidance' areas in the future."[52] While the Town posited that "it may make sense to consider expanding the sewer service to include areas near the Post Road" (where such service already exists), the "Sewer Service Area Map" shows that this leads to virtually the entirety of the town being deemed a "Planned Sewer Avoidance Area."[53] Conveniently, the few "Possible Housing Diversity Areas" identified in the "Future Land Use Map" almost perfectly align with "Possible Future Sewer Service Areas," with the remainder already being served by sewer.[54]

## *Site Location Limitations: Extremely specific areas where overlays can be applied*

Some of the most stringent limitations on the development of affordable housing in Orange are provisions of the zoning code that isolate potential multifamily affordable development to small portions of town, or even specific parcels. The PRD can only be applied along certain portions of the southside of Boston Post Road and even smaller segments of streets that intersect with and are south of Boston Post Road. All of these locations are concentrated in the commercial-heavy southeast corner of the town.[55] The age-restricted SLD is limited to parcels along *one block* in the same southeast business district.[56] The newly-created AHD was explicitly adopted "to facilitate the development of multifamily apartment homes at 329 Smith Farm Road and adjacent parcels."[57]

Not only are these site requirements highly particularized, but they also pertain to areas where few sites appear to be available for development. For example, a comparison of the limitations for eligibility contained in the zoning code, the town's zoning map, and a town map of existing land uses as of 2015 show no more than a few sites vacant in the areas where PRD, AHD, or TOD projects may proceed – and these may otherwise be unsuitable for development (due to minimum lot size or other considerations).[58]

## *Inadequate Provisions: Several multifamily and affordable housing provisions are unlikely to have a meaningful inclusive impact*

There are several provisions that ostensibly promote density or affordability in Orange but that, either by design or in practical terms, will not have a strong integrative impact. Three clear examples of this are the age-restricted multifamily or higher-density single-family districts in the town – namely the SLD, the "adult active community" site, and the as-of-right allowance in the Residence District for addition of an attached accessory dwelling unit ("ADU").[59] By definition, given the age-restrictions, these provisions do not increase opportunities for affordable multifamily housing available to all who may need it. Moreover, in the "adult active community" site, multifamily is not even allowed.[60] And as to the attached ADUs, these are not separate residences, but rather a single unit that will be incorporated within an existing building.[61] Neither of these have any affordability requirements, either.

Nor are these sorts of explicit limitations on who can benefit from multifamily housing isolated to the age-restricted districts in Orange. For example, the TOD overlay does not afford any opportunities for larger households, given that it bans units of more than two bedrooms.[62]

In the Residence zone that covers most of Orange, there are two density-promoting provisions that, while not relying on the sort of explicit restrictions addressed above, are also unlikely to have a robust inclusionary or integrative effect. The first is the allowance for the "letting of rooms and/or furnishing of board to a total of not more than four persons" subject to certain conditions.[63] The other is the conversion of certain properties in the district to no more than two dwellings, again subject to enumerated conditions.[64] Both of these share an obvious weakness as inclusionary devices – they are conservative in scope (only four persons for the former, and no more than an extra unit for the latter).

But the specific conditions imposed on each further reduce their viability as integrative or inclusionary devices. As to the letting of rooms, the owner must live in the building, the rooms cannot include any cooking facilities (meaning all renters would need to use the same kitchen), and the sublet rooms cannot be in a separate accessory building.[65] Nor are there any affirmative marketing or affordability requirements for these rooms embedded within the zoning code, nor any town-provided added incentive for owners to engage in this practice. Simply put, few homeowners are likely to open up their homes to rent out a rooms, and such an arrangement is not provide independent living opportunities to those seeking affordable housing; there are no guarantees the units will be affordable or go to members of underrepresented groups; and the cap on the number of people limits the sort of households that could benefit from the arrangement. This is clearly not a true multifamily measure.

And regarding the conversions of certain single-family residences to two-dwelling homes (not to be confused with the special use provision allowing for the addition of an attached ADU, subject to age-restrictions), only a tiny subset of homes are likely to even be eligible to invoke the provision given the requirement that the single-family homes have existed since January 1, 1937.[66] For context, Orange was only home to 1,530 *people* in 1930 and just 2,009 *people* in 1940 (and, obviously, fewer units).[67] Nor has the current substantially larger population squeezed into an abundance of pre-War homes. As the 2015 POCD noted, the town's "housing mix most likely reflects Orange's growth phase in the 1960s and 1970s when there was a strong preference for single-family detached homes to house young families in suburban settings."[68] In addition to the winnowing effect from this restriction, the prohibition against structural alterations to the dwellings (beyond provision for egress) and on altering "the appearance and character of a single family dwelling" present challenges which further make challenging use of this provision.[69]

## *Conclusion*

Despite being aware of the need for more affordable housing *and* the availability of a great deal of undeveloped land, Orange's planning and zoning present significant impediments to the development of multifamily and affordable housing. It appears that Orange must reassess both its planning priorities and its zoning code if it is to have any hope of reaching the more than 1,000 additional affordable housing units it needs to provide for its fair share of regional affordable housing need.[70]

[1] Orange Town Plan and Zoning Commission, 2015 Plan of Conservation and Development ("2015 POCD"), at 48, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[2] *See* Town Data Compendium, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[3] *See* 2015 POCD, at 5.
[4] All references to racial groups in this analysis are shorthand for "non-Hispanic" members of that group. Conversely, all references to "Hispanic" are meant to capture Hispanics of any race.
[5] *See* Town Data Compendium.
[6] *See id.*
[7] *See id.*
[8] 2015 POCD, at 73.
[9] *See id.* at 11.
[10] *See* Town Data Compendium.
[11] *See* 2015 POCD, at 15 (denoting tiny subset of parcels as multifamily or "2-4 Family Residential / Mobile Home").
[12] *See* McLoughlin, Pam, "Affordable housing project approved in Orange gets praise from town officials," *New Haven Register*, Sep. 13, 2020, at 1, available at https://www.ctinsider.com/metro/nhregister/article/Affordable-housing-project-approved-in-Orange-15561215.php.
[13] Note that up to 25% of these units may not be affordable to low- and moderate-income households. *See id.*
[14] *See* Town Data Compendium.
[15] *See* discussion of "Single-family housing" in the "Core Planning and Zoning Concepts" section of the "Zoning 101" portion of the introduction, *supra*, at 19.
[16] 2015 POCD, at 73-74.
[17] *See* Town Data Compendium.
[18] *See id.*
[19] "COG" is shorthand for "Council of Governments." There are 9 COGs in Connecticut, which are meant to serve as "planning regions" to "provide a geographic framework within which municipalities can jointly address common interests." *See* State of Connecticut, *Regional Councils of Government (COGs) in Connecticut*, available at https://portal.ct.gov/OPM/IGPP-MAIN/Responsible-Growth/Regional-Planning-Organizations-RPO.
[20] *See* Town of Orange Zoning Map ("Zoning Map"), reproduced on page 3, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[21] *See* Town of Orange Zoning Regulations ("Zoning Code"), at §§ 383-19 (distinguishing "special uses" from other permitted uses, with only the former requiring approval by the planning and zoning commission pursuant to Article XIV of the zoning code), 383-14 (containing Article XIV regulation that requires public hearings for special uses), 383-2 (requiring a zoning permit from the town's zoning enforcement officer for any development to proceed), 383-4 (delineating procedures for zoning permit application, not including any requirement for public hearing) and 383-6 (listing procedure by which zoning enforcement officer may approve a zoning permit, again without requiring a public hearing), a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[22] *Id.* at § 383-26(A) (referring to "Residence District").
[23] For more details on why these do not represent meaningful efforts to increase the inclusiveness of this massive single-family district, *see* discussion of "Inadequate Provisions," *infra*, at 123–124.

[24] *See* Zoning Code, at § 383-28(A). *See also* discussion of "Lot Size," *infra*, at 122.
[25] Orange Town Plan and Zoning Commission, 2000 Plan of Conservation and Development ("2000 POCD"), at 5.
[26] 2015 POCD, at 11 and 65, respectively (emphases added).
[27] *Id.* at 34.
[28] *See id.* at 15.
[29] *See* discussion of "Site Location Limitations," *infra*, at 123.
[30] 2015 POCD, at 33-34.
[31] *Id.* at 50.
[32] *See id.* at 22.
[33] *See* discussion of "Inadequate Provisions," *infra*, at 123–124.
[34] *See* Zoning Code, at §§ 383-27(I), (M) and (N) (subjecting, in Residence District, planned residential developments ("PRD"), age-restricted attached accessory dwelling units ("ADUs"), and age-restricted denser single-family "Active adult communities" to special use provisions); *id.* at § 383-42(B) (allowing for PRD as a special use in the "C-1" commercial district); *id.* at § 383-50(B) (allowing for PRD as a special use in the "C-2" commercial district); *id.* at 383-96.21(A)-(B) (permitting special use applications for elderly assisted living facilities and senior independent living units on certain sites that qualify for "Senior Living District" designation); *id.* at § 383-236(B) (requiring public hearing process prior to Commission approval or rejection of "Assisted Housing District" applications); and *id.* at 383-217(H) (imposing special use requirements for non-ground floor multifamily residential units within "Transit Oriented Development District"). For the provisions that require Commission review and a public hearing imposed on all "special uses," *see id.* at § 383-134.
[35] *See* Zoning Map.
[36] Zoning Code, § 383-26(A) (identifying such single-family homes as "Permitted uses"). The code distinguishes "permitted uses" from "special uses"; only the latter requires "approval of the Commission." *Id.* at § 383-19(A).
[37] *See id.* at §§ 383-106(B), 383-107(B), and 383-109(A)-(B) and (D) (making a requirement of any PRD development submission of both an "initial residential development" plan that is subject to a public hearing procedure, and at least one subsequent "final residential development" plan for Commission approval that also may be subject to a public hearing); and *see id.* at § 383-220 (recommending that even prior to a formal TOD application that a developer allow for informal Commission review of the proposal, requiring a preliminary "concept plan" application subject to a public hearing for a TOD rezoning, and mandating a special permit application prior to any development within a TOD district).
[38] *See id.* at § 383-100(B) and (D).
[39] *See id.* at 383-217(H)(1).
[40] *Id.* at §§ 383-225 (stating floor area ratio is basis for limitations) and 383-226(A) (delineating standards).
[41] *See id.* at § 383-217(H)(5).
[42] *See id.* at § 383-28. There are two minor exceptions. The first is that for certain properties eligible for conversion to two-family residences, the lot size may be reduced to just shy of 1 acre (40,000 square feet). *See id.* at § 383-26(F)(2). As discussed in greater detail below (*see* discussion of "Inadequate Provisions," *infra*, at 123–124), this could only benefit a small pool of residences – those in existence as of January 1, 1937 – and not any new construction. The second is that eligibility for elderly attached ADUs is limited to properties of a minimum of 30,000 square feet. *See* Town Data Compendium. *See id.* at § 383-140. Again, this does not actually relax lot size standards for new development, just for an addition to an existing residence (and only by special use, and with age-restrictions).
[43] 2015 POCD, at 73.

[44] *See id.* at 67. *See also id.* at 131 (identifying same "Possible Housing Diversity Areas" in "Future Land Use Map").
[45] 2000 POCD, at 9.
[46] *See* Zoning Map; *see also* map provided in POCD, at 17 (identifying "TODD Overlay" on zoning map).
[47] *See* Zoning Code, at § 383-68(B). The regulations apply the larger minimum lot size when zones overlap. *See id.* at § 383-14(B) (defining "LOT AREA AND SHAPE" and stating in sub-item (3) that the larger lot area governs).
[48] *Id.* at § 383-216(B)-(C). There appears to be only one such proposed station in Orange. *See* 2015 POCD, at 90 (stating the Connecticut Department of Transportation was "investigating the establishment of a commuter train station" along the Metro-North New Haven line). *See also* Metro-North service map (demonstrating Orange still does not have train service), available at http://web.mta.info/mnr/html/mnrmap.htm.
[49] *See* 2015 POCD, at 123 (containing map showing extensive South Central Regional Water Authority service area).
[50] *See id.* at 125 (showing sewer service isolated to small sliver in the northwest and the southeast business area).
[51] *See* Zoning Code, at §§ 383-96.19(B) (SLD), 383-98(D) (PRD), 383-143.3(D) (AAC), and 383-223(D) (AHD)
[52] 2015 POCD, at 124.
[53] *Id.* at 124-125.
[54] *Compare id.* at 131 ("Future Land Use Map") with *id.* at 125 ("Sewer Service Area Map").
[55] *See* Zoning Code, at § 383-98(C); *see also* Zoning Map (showing location of roads and concentration of uses).
[56] *See* Zoning Code, at § 383-96.19(A); *see also* Zoning Map (showing location of block).
[57] Zoning Code, at § 383-222(A) (establishing the "Purpose" of the AHD).
[58] *Compare id.* at §§ 383-98(C), 383-222(A), and 383-216(B)-(C) with Zoning Map and 2015 POCD, at 15 and 19 (showing existing land use map showing vacant sites and a zoning map showing TOD eligibility area, respectively).
[59] *See* Zoning Code, at §§ 383-96.18(A) and 383-96.21(A)-(B) (enumerating SLD age-restricted residential uses); 383-143.3(A)(1)-(4) (containing AAC age-limitations and prohibition on children occupancy); and 383-140 (requiring one of the dwelling units be occupied by a person 55 years of age or older for an addition to be allowed).
[60] *See id.* at § 383-143.3(E).
[61] *See id.* at § 383-140.
[62] *See id.* at § 383-217(H)(2).
[63] *See id.* at § 383-26(B).
[64] *See id.* at § 383-26(F).
[65] *See id.* at § 383-26(B)(1), and (3)-(4).
[66] *See id.* at § 383-26(F).
[67] *See* 2015 POCD, at 6.
[68] *Id.* at 11.
[69] Zoning Code, at § 383-26(F)(1).
[70] *See* Town Data Compendium.

# Ridgefield

## Overview

Ridgefield is a Fairfield County town nestled between Danbury to the northeast and New York's wealthy Westchester County to the west. The town prides itself on being "considered a special place by its residents (and by residents of other communities as well)."[1] Despite recognizing that residents around the state appreciate its many amenities, Ridgefield's planning and zoning regulations act as barriers to welcoming a broader cross-section of the state.

## Summary of Findings

- ***Ridgefield is far whiter and richer than Fairfield County or neighboring Danbury, with far fewer Black, Hispanic, and low-income residents (87.8% white, 1.1% Black, 4.8% Hispanic).***
- ***Ridgefield has acknowledged the need for affordable housing, but there has been little change in and much resistance to multifamily and affordable housing over time.***
- ***Overwhelming majority of town is dominated by (enormously) large-lot single-family zoning (more than 91% of all residential land requires at least a two-acre lot).***
- ***Planning and zoning prioritize single-family housing; no multifamily housing is allowed as-of-right in any zone.***
- ***Most multifamily uses are restricted to tiny water and sewer service areas.***
- ***Ridgefield restricts the amount of or locations for multifamily housing in many ways.***
- ***The accessory dwelling unit provisions that have been touted by the town are patently inadequate to address affordable housing need.***

## Demographics Overview: Black, Hispanic, and low-income households left out

| Key Demographic Data | Ridgefield | Fairfield County | Connecticut |
|---|---|---|---|
| Total Population | 25,042 | 943,926 | 3,575,074 |
| % White, Non-Hispanic | 87.8% | 61.7% | 66.9% |
| % Black, Non-Hispanic | 1.1% | 10.6% | 9.9% |
| % Hispanic, Any Race | 4.8% | 19.7% | 16.1% |
| % Asian, Non-Hispanic | 4.0% | 5.3% | 4.5% |
| % Population Below Poverty | 2.0% | 8.9% | 9.9% |
| Median Household Income | $163,945 | $95,645 | $78,444 |
| Grand List Per Capita | $286,804 | $256,323 | $160,428 |
| *For data sources, see the report's Town Data Compendium.* | | | |

Ridgefield is a racially segregated, overwhelmingly white[2] community. While this is clear from data comparing the town with the rest of Fairfield County and the state (as shown above), it is also valuable to juxtapose Ridgefield with its large next-door neighbor – the City of Danbury (shown below).[3]

| Race or Ethnicity | Ridgefield | | Danbury | |
|---|---|---|---|---|
| | Population | % of Population | Population | % of Population |
| Total | 25,042 | | 84,619 | |
| % White | 21,985 | 87.8% | 42,102 | 49.8% |
| % Black | 267 | 1.1% | 7,647 | 9.0% |
| % Hispanic | 1,198 | 4.8% | 25,360 | 30.0% |
| % Asian | 1,003 | 4.0% | 5,334 | 6.3% |
| *For data sources, see the report's Town Data Compendium.* | | | | |

Regardless of whether the comparator is Danbury, Fairfield County, or Connecticut, Ridgefield is *much* whiter (almost *doubly* so than Danbury), *vastly* less Black and Hispanic, and somewhat less Asian.[4]

A similar pattern emerges in terms of socioeconomic demographics. Just 2% of Ridgefield's population lives below the federal poverty line, as compared with 9% of the county and 10% of the state, as shown above (and, additionally, 11.5% of Danbury).[5] On the other hand, Ridgefield's unusually high median income and grand list per capita – even by Fairfield County's elevated standards – reflects the fact more than half of Ridgefield's population makes $150,000 or more per year, with 41.5% of this group earning $200,000 or more in annual household income (the highest category available under the Census data).[6] For context, just 21.5% of Fairfield County and 12.6% of the state earns $200,000 or more a year.[7]

## *Housing Stock Overview: Serious lack of multifamily and affordable homes*

| Key Housing Data | Ridgefield | Fairfield County | Connecticut |
|---|---|---|---|
| Total Housing Units | 9,726 | 372,565 | 1,516,629 |
| % Affordable (C.G.S. § 8-30g) | 3.0% | 9.6% | 11.7% |
| Median Home Value (Owned) | $653,100 | $428,500 | $275,400 |
| % Single-Family | 82.9% | 64.1% | 64.3% |
| % Two-Family | 2.0% | 8.3% | 8.2% |
| % 3-9 Units | 8.2% | 12.5% | 14.1% |
| % 10-19 Units | 3.0% | 3.5% | 3.8% |
| % 20+ Units | 3.4% | 11.1% | 8.8% |
| % Mobile Homes | 0.5% | 0.4% | 0.8% |
| 2001-2017 Permits | 729 | 33,530 | 117,821 |
| % Permits Single-Family | 72.2% | 55.4% | 68.7% |
| % Permits 5+ Units | 26.9% | 40.7% | 27.5% |
| *For data sources, see the report's Town Data Compendium.* | | | |

Ridgefield housing stock is dominated by single-family homes, with 82.9% of its housing stock in single-family homes – as compared with just over 64% both in the county and statewide.[8] The converse is also true: Ridgefield lacks multifamily options. Only 6.4% of units are in structures with at least 10 units, about half of the county and state rates.[9] Recent development trends have continued to favor single-family homes, with a higher percentage of single-family permits in Ridgefield than in either the county or state (much more so than the county) and a lower percentage permits for 5+ unit buildings (with just 196 units in such buildings approved over a *17-year period* – not even 12 units a year).[10]

As would be expected given the prevalence of single-family homes, just 3.01% of housing in Ridgefield is designated as affordable pursuant to the Affordable Housing Land Use Appeals Procedure (C.G.S. § 8-30g).[11] Ridgefield's own assessment of its affordability is even lower, with the 2020 POCD stating that just 2.9% of housing in Ridgefield qualifies as affordable.[12]

The 2020 POCD cited as evidence of progress that in 2014, the town received a 4-year exemption (known as a moratorium) from C.G.S. § 8-30g,[13] but Ridgefield's own data show how little progress has been made. The 2.9% figure reported in the 2020 POCD – yielded from an estimated 276 affordable units – was only marginally higher than the 2.05% figure provided in the 2010 Plan of Conservation and Development ("2010 POCD") – yielded from an estimated 182 affordable units.[14] So even in the decade during which Ridgefield touted a moratorium as a victory, the town itself admits to have added fewer than 100 affordable units, or less than a 1% difference in the affordable housing supply.

The town in fact predicted this lack of progress. The 2010 POCD was not optimistic about the potential for substantial expansion of affordable housing, calling it "unrealistic that Ridgefield could ever realize the 10% requirement for affordable housing" set by § 8-30g.[15]

## *Local resistance to building affordable housing, despite an acknowledged need*

The town is aware of the severe need for affordable housing. The 2010 POCD cited a Housatonic Valley Council of Elected Officials (HCVEO) housing market study that calculated a need for 628 non age-restricted affordable units in Ridgefield (with nearly 1,100 affordable units, overall).[16] Although Ridgefield described this goal as "unachievable," it did not dispute the finding, arguing instead that it "supports the need to continue efforts to create affordable housing" and is "informative of the magnitude of the need for affordable housing in many western Connecticut communities."[17] The data above make clear that Ridgefield remains in dire need of affordable housing.

Despite harsh market realities, there has recently and historically been little appetite to change the status quo in Ridgefield. The 2010 POCD admitted that "it has not always easy to gain public support for building new and affordable housing."[18] Notwithstanding the continued shortage of affordable housing, the 2020 POCD reported that "65 percent of residents felt that Ridgefield has a good mix of housing options to meet most people's needs and desires."[19] Both POCDs also made clear their commitment to maintaining the prevalence of single-family housing.[20]

And in April 2021, in an open-letter to the Connecticut General Assembly opposing Open Communities Alliance's ("OCA") then-pending Fair Share bill, the chair of Planning and Zoning Commission ("Commission") wrote that while "Ridgefield is nowhere near the state mandated 8-30g threshold of 10 percent" affordable housing supply, the bill "disregard[ed] market needs" and "would require towns to build affordable housing whether the demand is there or not."[21]

The town's shocking suggestion that there may not be much demand for affordable housing flies in the face of the HCVEO study it cited in the 2010 POCD, current data on affordability, and the 2020 POCD's statement that Ridgefield is "special" to "residents of other communities," not just locals.[22]

## *Land Area: Overwhelmingly zoned for large-lot single-family homes*

Ridgefield has limited multifamily housing to a tiny fraction of the town. According to the town's own analysis in the 2020 POCD, reproduced below, just 1.9% of Ridgefield is zoned for "Higher Density Residential."[23] Note, too, that "Higher Density" is a generous term, as more than a third of this land only allows "[a]bout 2.0 units per acre."[24] Even including the half-acre lot size areas, adding in those business districts in which the residential uses are allowed (by special permit only, as discussed below[25]) only marginally increases the figure to 3.8%.[26] In stark contrast, 93.5% of Ridgefield is zoned "Low Density Residential," ranging from 0.3 units to 1 unit per acre – in other words, 1- to 3-acre zoning.[27]

| | Acres | Acres | Percent of Total Area |
|---|---|---|---|
| **Residential** | | | |
| **Low Density Residential** | | **20,901** | **93.5%** |
| R-AAA – About 0.3 units per acre | 5,887 | | |
| R-AA – About 0.5 units per acre | 13,533 | | |
| R-A – About 1.0 units per acre | 1,481 | | |
| **Higher Density Residential** | | **422** | **1.9%** |
| R-20 – About 2.0 units per acre | 160 | | |
| R-10 / R-7.5 – About 4.0+ units per acre | 56 | | |
| MFDD / CAH / CCF / ARHD / MSDD / HOD - | 206 | | |
| **Business** | | **1,020** | **4.6%** |
| CBD | 42 | | |
| B-1 – Business | 84 | | |
| B-2 – Business | 260 | | |
| B-3 – General Urban | 27 | | |
| NB - Neighborhood Business | 7 | | |
| CDD– Corporate Development | 599 | | |
| **Total** | | **22,342** | **100%** |

Planimetrics and based on Assessor database. Totals may not add due to rounding

*Source: 2020 POCD, at 16.*

Data from Ridgefield's prior POCD show that Ridgefield has done little to change this disproportionate distribution of residential land uses over the past decade. As of 2010, only 1.7% of the town was zoned for residential density above 1 unit per acre, as compared with over 87% of the town zoned for less dense residential developments.[28]

## *Lot Size: Staggeringly large minimum lots throughout almost all of town*

The 2020 POCD table cited above leaves no room for doubt that Ridgefield is a premier example of large-lot single family zoning of the kind that drives up expenses for *all* housing types. The two largest zones in the town – the RAAA and the RAA single-family districts – impose *minimum* lot sizes of 3 acres and 2 acres, respectively.[29] The data above from the 2020 POCD show that this translates to over 91% of all residentially-zoned land.[30] If the RA single-family district, with its still-substantial minimum lot

size of 1 acre,[31] is added to RAAA and RAA, the coverage jumps to 98% of the residential land.[32] This takes large-lot, single-family zoning to an extreme and presents a huge challenge to achieving affordability. This also helps explain why the median home value in Ridgefield is $653,100, more than 1.5 times greater than the Fairfield County median and nearly 2.4 times the statewide figure.[33]

## *Planning that prioritizes maintaining the dominance of single-family housing*

Ridgefield's large-lot, single-family zoning landscape did not come about by accident. The town's planning has and continues to place a premium on maintaining the predominance of single-family zoning. The 2010 POCD's "overall plan philosophy" enshrined as one of its core precepts that "Ridgefield should *always* be a community where" not only is "community character" preserved in a general sense, but specifically "the single family residential character is maintained."[34] Ridgefield reaffirmed in the 2020 POCD that it was focused on "addressing changing housing needs while retaining the predominantly (but not exclusively) single-family residential character of Ridgefield."[35] This is part of an enduring approach to housing development, as acknowledged by the 2020 POCD: "Ridgefield has focused mainly on single-family residential development for the last seven decades or so."[36]

## *Bureaucratic Hurdles: No as-of-right multifamily anywhere in Ridgefield*

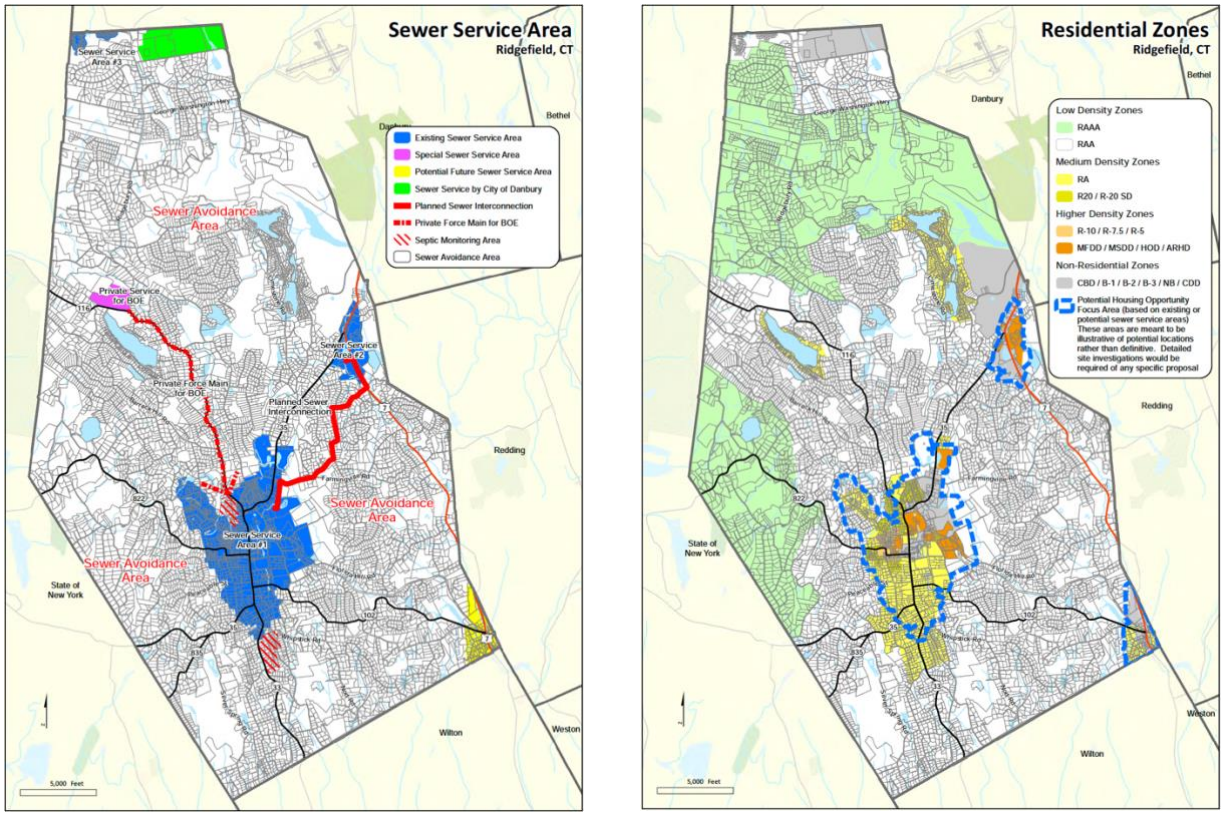
There are no zones in Ridgefield that permit as-of-right (subject only to obtaining a zoning permit from the zoning enforcement officer) any form of residential development as a principal use other than a single-family detached dwelling.[37] In other words, the only way to construct anything above a single-family residence in any zone is via a special permit application to the Commission.[38] Special permits entails a number of burdens, most notably including a public hearing process, and are subject to the "sole discretion" of the Commission in determining whether the application is "appropriate" or "suitable" (and so forth) along a number of dimensions.[39]

This is quite unlike the *de minimis* requirements placed on detached single-family housing, which as noted, may be constructed as-of-right in any of the town's "R" residential zones.[40] For such housing, the zoning enforcement officer "shall issue" a zoning permit so long as the "proposed activity is found from the Application to be in compliance with these Regulations" – without any public hearing or discretionary review with which to contend.[41]

Moreover, multifamily development proposals in many zones – including mixed-use overlay zones, Special District R-20 ("SD R-20") zones, Main Street design districts, and every business district that permits multifamily incorporation into commercial uses with a Special Permit – also require review by the town's Architectural Advisory Committee, adding further burden, expense, and uncertainty.[42]

Ridgefield has maintained procedural hurdles for multifamily development even while removing barriers to accessory dwelling units ("ADUs"). In 2019, Ridgefield amended the zoning regulations to allow for one accessory dwelling unit on each single-family parcel in any residential district, subject only to the zoning enforcement officer granting a zoning permit (and specific regulations as to the site and ADU).[43] Perhaps the town was more willing to relax standards as to ADUs specifically because they do not conflict with single-family zoning – as suggested by the zoning regulations' vague requirement that the ADU "be designed to preserve and maintain the single-family residential appearance of the subject lot and be consistent with the single-family character of the neighborhood."[44]

## *Infrastructure: Multifamily limited to small areas with public water and sewer*




*Source: POCD, at 115 (Sewer Service Area map) and 91 (Residential Zones map).*

Almost every zone that permits as a principal use densities above single-family housing conditions Commission approval of any multifamily proposal upon the project being served by public water and sewer.[45] A cursory review of Ridgefield's public water and sewer system maps (the latter of which is more limited in terms of service area and reproduced above, on the left) is all that is needed to see that this has the effect of cutting off huge swaths of the town from multifamily development.[46] The few exceptions where such access is not required – the SD R-20, B-1, Neighborhood Business, and mixed-use overlay zones – comprise a miniscule portion of the town (2.4% of Ridgefield's land area).[47] And importantly, these areas are themselves concentrated around water and sewer services.[48]

The town reaffirmed this utilities-targeted multifamily strategy last year. As shown in the map reproduced above on the right, the 2020 POCD directed "potential housing opportunity focus areas" for multifamily and affordable housing "based on existing or potential sewer service."[49] This resulted in the town identifying just three small portions of Ridgefield (where commercial and/or higher-density residences already are the dominant land uses) for multifamily and affordable housing.

The implications for the town's housing composition are clear. The 2020 POCD reiterated the conclusion that, in light of infrastructural constraints and "historic patterns of development," "the residential pattern of Ridgefield going forward will continue to be: Predominantly single-family development," with some higher density near two mixed-use "villages" within the town, "and a reduction of density as the distance from the villages increases."[50]

## *Site Location Limitations: Certain affordable provision restricted to two parcels*

Ridgefield's zoning code at times isolates multifamily to specific locations. The most extreme example is the "Housing Opportunity Development" overlay zone, which was purportedly adopted to "[i]ncrease the availability and diversity of housing units in Ridgefield" and "[e]ncourage the construction of housing that is within the economic means of moderate and low income households," and yet was expressly limited to only *two specific parcels* identified in the zoning text itself.[51]

## *Density: Even multifamily often limited in its potential density*

The density provided for in districts that allow for multifamily development with a special permit is often explicitly or functionally limited in scope, as well. For example, provisions for multifamily conversions of older single-family residences or construction of two- or three-family structures in certain zones do nothing to change underlying density requirements – meaning such projects can yield no more than 6 units per acre in the densest zones, and less than 3 units per acre in the least dense zones.[52]

It appears to be no accident that what multifamily housing Ridgefield promotes tends to be of limited density. Both of the most recent POCDs have explained that the "most appropriate types of multifamily development for Ridgefield should continue to be moderate density townhouses and garden apartments proximate to shopping and community facilities."[53]

## *Parking Requirements: A challenge in mixed-use areas, including densest zone*

As is not uncommon, parking regulations may act as an effective cap on density even when the provisions allow for more development. In Ridgefield, the risk is particularly pronounced in business districts where the zoning regulations mandate off-street parking sufficient to meet the needs of both the residential and the commercial uses.[54] This raises concerns for Ridgefield's densest zone – the mixed-use overlay zone that allows for up to 16 units per acre with a Special Permit – since it may only be applied in business districts and does not override the underlying parking requirements.[55]

## *Inadequate Provisions: Over-reliance on accessory dwelling units*

In a recent open letter addressed to the Connecticut General Assembly opposing Open Communities Alliance's then-pending Fair Share proposal, the town cited its allowance for ADUs "in residential zones by right"[56] as one of the chief pieces of evidence that "Ridgefield is a strong advocate for affordable housing."[57] But ADUs are patently inadequate to address the town's stark affordable housing needs for reasons including the following:

- Homeowners must live on the same lot as the ADU, which must be single-family.[58] *Nothing* in the zoning code mandates or incentivizes single-family homeowners to construct ADUs. There is little reason to believe an appreciable percentage of homeowners will choose to do so.

- ADUs are not required to be rental units, nor to be affordable or affirmatively marketed. Despite a town-issued "FAQ" (frequently asked questions) document stating that Ridgefield "encourages property owners to create affordable ADUs,"[59] the only incentive provided by the zoning code for such ADUs is a minor one – the waiver of permit fees for construction.[60] This

does nothing to change the above-noted fact that there is little incentive to build ADUs *in the first place*. At best, it could persuade an owner who so chooses; but it is unclear that a fee waiver would do much to convince an owner to rent out an ADU as an affordable unit rather than, say, house a relative.

- Some of the regulations regarding ADUs may be sufficiently vague (such as the mandate to "preserve and maintain the single-family residential appearance" of the lot and "character of the neighborhood") – or, conversely, potentially burdensome (such as the requirement of at least 4 parking spaces on the lot; or that ADUs on less than half-acre, unsewered lots be built within or attached to the principal dwelling) – to discourage the development of such units.[61]

- ADUs, even if built and rented as affordable units, can do *nothing* to address the needs of any but the smallest of families, since they cannot have more than two bedrooms.[62]

## *Conclusion*

Ridgefield's self-proclaimed desirability not only to residents but also to people from across the state is precisely why the town should be striving to open its doors to the disproportionately Black and Hispanic lower- and moderate-income families who are so significantly underrepresented in Ridgefield. And yet the town's planning and zoning appear to present numerous barriers to creating more multifamily and affordable housing. This is all the more concerning in light of how great the need is. OCA, taking a variety of indicia of affordable housing need into account, has estimated that Ridgefield would need to construct more than 1,500 affordable housing units over the next decade in order to shoulder its "fair share" of the regional need.[63]

| Ridgefield 10-Year "Fair Share" Allocation (Units) | Combined Metropolitan & Western "COGs"[64] 10-Year Regional Need Estimate (Units) |
|---|---|
| 1,558 | 35,365 |

*For data sources, see the report's Town Data Compendium.*

[1] Town of Ridgefield 2020 Plan of Conservation and Development ("2020 POCD"), effective Jun. 27, 2020, at 45, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[2] All references to racial groups in this analysis are shorthand for "non-Hispanic" members of that group. Conversely, all references to "Hispanic" are meant to capture Hispanics of any race.
[3] *See* Town Data Compendium, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31 (containing all of the data in both tables).
[4] *See id.*
[5] *See id.*
[6] *See id.*
[7] *See id.*
[8] *See id.*
[9] *See id.*
[10] *See id.*
[11] *See id.*
[12] *See* 2020 POCD, at 13.
[13] *See id.*
[14] *See* Town of Ridgefield 2010 Plan of Conservation and Development ("2010 POCD"), at 3-12, available at https://www.ridgefieldct.org/planning-and-zoning/pages/pocd-2010.
[15] *Id.* at 10-4.

[16] *See id.*
[17] *Id.* at 3-12 and 10-4.
[18] *Id.* at 10-1.
[19] 2020 POCD, at 86.
[20] *See* discussion of "Planning that prioritizes maintaining the dominance of single-family housing," *infra*, at 132.
[21] Letter from Ridgefield Planning and Zoning Commission Chair to Connecticut General Assembly Planning and Development Committee in opposition to Fair Share HB 6611 bill ("Ridgefield PZC Letter"), Apr. 30, 2021, available at https://news.hamlethub.com/ridgefield/politics/69424-p-z-submits-testimony-opposing-fair-share-hb-6611.
[22] 2020 POCD, at 45.
[23] *See id.* at 16 (containing chart reproduced above).
[24] *Id.*
[25] *See* discussion of business districts that permit multifamily incorporation into commercial uses with a Special Permit, *infra*, at 132.
[26] *See* 2020 POCD, at 16. The stated percentage was calculated based on dividing the sum of the acreages provided for "higher density residential" and all "business" districts other than "CDD – Corporate Development" by the total acres provided for the town. *See also* Town of Ridgefield Zoning Regulations ("Zoning Code"), at § 5 (identifying business zones that allow for multifamily by special permit), a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[27] *See* 2020 POCD, at 16.
[28] *See* 2010 POCD, at 3-22. Note that the 2010 POCD includes an "Other – Right of Way, Water Features" category that is absent from the 2020 POCD, so the 2010 figures may be even more similar to the 2020 than they appear.
[29] *See* Zoning Code, at § 3.5(A).
[30] *See* 2020 POCD, at 16.
[31] *See* Zoning Code, at § 3.5(A).
[32] *See* 2020 POCD, at 16.
[33] *See* Town Data Compendium.
[34] 2010 POCD, at 4-2 (emphasis added).
[35] 2020 POCD, at 86.
[36] *Id.*
[37] Group homes, which the zoning regulations define pursuant to State laws governing either residential facilities for children up to 18 years in age or certain special needs adults, only require a zoning permit, but are explicitly subject to state licensing regulations. *See* Zoning Code, at §§ 2.2 and 3.1(B)(2).
[38] *See id.* at §§ 3 ("Residential (R) Zones") and 4 ("Other Housing Zones & Uses").
[39] *Id.* at §§ 9.2(A)(12)(e) (requiring public hearing for any special permit application) and 9.2(A)(15) (listing numerous "Special Permit Criteria" as to which the Commission must make a finding "in its sole discretion").
[40] *See id.* at § 3.1(B)(1).
[41] *Id.* at § 9.1(A)(3)(a).
[42] *See id.* at §§ 3.2(C)(10)(b), 4.5(E)(3(b), 5.2(B), 5.3(B), 5.4(B), 5.6(B), and 5.7(B)(1).
[43] *See id.* at § 3.3(B)(2) n.9 (providing information about 2019 changes to the town's zoning).
[44] *Id.* at § 3.3(B)(2)(e)(iii).
[45] *See id.* at §§ 3.2(9)(b), 4.2(D)(1)(a), 4.3(F)(1)(a), 4.4(M), 4.5(D)(2)(h)(ii), 5.1(D)(6), 5.3(D)(11), and 5.4(D)(4).
[46] *See* 2020 POCD, at 113 and 115 (containing maps of water and sewer service areas, respectively).
[47] *See id.* at 16.
[48] *Compare* Zoning Map, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31, and 2020 POCD, at 113 and 115 (containing water and sewer service maps).
[49] 2020 POCD, at 90-91 (including map on 91). *See also id.* at 128-29 (identifying same "Potential Housing Opportunity Areas" in "Future Land Use Plan" map on 129, which "illustrates the location and intensity of future land uses that are desired").
[50] *Id.* at 87; *see also* 2010 POCD, at 10-2 (articulating same point ten years earlier).
[51] Zoning Code, at § 4.4(A)-(B).
[52] *See id.* at §§ 3.2(C)(9)-(10).

[53] 2020 POCD, at 89. *See also* 2010 POCD, at 10-2 (stating same principle).
[54] *See, e.g.*, Zoning Code, at §§ 5.1(D)(6), 5.2(D)(8), 5.3(D)(11)(b), 5.4(D)(4)(b), and 5.6(D)(6)(e).
[55] *See id.* at § 5.7(C) and (F). Note that while the zoning regulations allow for a 6-month deferral of installation of 40% of the required parking, with some portion of that 40% potentially to be excused, this may only occur with approval of the Commission – and again, does not act to relieve parking obligations.
[56] Ridgefield PZC Letter.
[57] *Id.*
[58] *See id.* at § 3.3(B)(2)(d) (requiring homeowner residence on lot) and (b) (prohibiting ADUs on multifamily lots).
[59] Town of Ridgefield Planning and Zoning Department, "Accessory Dwelling Units – FAQs," updated Oct. 2020, at 1, available at https://www.ridgefieldct.org/sites/g/files/vyhlif4916/f/uploads/accessory_dwelling_unit_faqs_updated.nov_2019_1.pdf.
[60] *See* Zoning Code, at § 3.3(B)(3)(e).
[61] *Id.* at §§ 3.3(B)(2)(e)(iii), 3.3(B)(2)(h), and 3.3(B)(2)(c)(ii), respectively.
[62] *See id.* at § 3.3(B)(2)(e)(ii). This actually represents a recent increase in the number of permitted bedrooms. *See id.* at § 3.3(B)(2)(e)(ii) n.12.
[63] *See* Town Data Compendium.
[64] "COG" is shorthand for "Council of Governments." There are 9 COGs in Connecticut, which are meant to serve as "planning regions" to "provide a geographic framework within which municipalities can jointly address common interests." *See* State of Connecticut, *Regional Councils of Government (COGs) in Connecticut*, available at https://portal.ct.gov/OPM/IGPP-MAIN/Responsible-Growth/Regional-Planning-Organizations-RPO.

# Southbury

## Overview

Southbury is the westernmost town in New Haven County, located closer to Waterbury than New Haven. Southbury's town seal reads "Unica Unaque, meaning 'The One and Only,'" due to it being "the only community in the country with the name 'Southbury.'"[1] Southbury's planning and zoning policies are also unique in some of the ways that they limit affordable and multifamily housing, but in other respects exhibit many all-too-common restrictions on such housing.

## Summary of Findings

- ***Southbury is deeply racially and economically segregated, and disproportionately elderly.***
- ***Affordable housing is in desperately short supply – there are at most seven units of C.G.S. § 8-30g non-age-restricted affordable rental housing in town, or less than 0.1% of all housing.***
- ***While single- and two-family dwellings are permitted as-of-right in much of town, no other housing is, with all of the non as-of-right multifamily housing requiring a public hearing.***
- ***Southbury imposes strict caps on certain types of multifamily throughout town.***
- ***Large lot sizes and few units per acre are permitted, even when multifamily is allowed.***
- ***Town planning is guided by keeping Southbury as it is and protecting the large-lot and single-family nature of the town's housing stock.***
- ***Recent town activities have not changed the outlook for multifamily and affordable housing.***

## Demographics Overview: Southbury is racially and economically segregated

| Key Demographic Data | Southbury | New Haven County | Connecticut |
|---|---|---|---|
| Total Population | 19,681 | 857,513 | 3,575,074 |
| % White, Non-Hispanic | 89.8% | 62.9% | 66.9% |
| % Black, Non-Hispanic | 1.4% | 12.5% | 9.9% |
| % Hispanic, Any Race | 5.3% | 18.1% | 16.1% |
| % Asian, Non-Hispanic | 2.2% | 4.0% | 4.5% |
| % Population Below Poverty | 4.6% | 11.7% | 9.9% |
| Median Household Income | $98,790 | $69,905 | $78,444 |
| Grand List Per Capita | $160,566 | $117,554 | $160,428 |
| *For data sources, see the report's Town Data Compendium.* | | | |

Southbury is deeply racially segregated, being almost 90% white[2] – a dramatic difference from New Haven County (62.9%) and Connecticut (66.9%).[3] Meanwhile Southbury is only 1.4% Black, while 12.5% of the county and 9.9% of the state is Black.[4] Hispanics make up 5.3% of the town, but 18.1% and 16.1% of the county and state. The town's Asian representation is roughly half the county and state levels.[5]

Low-income households are also underrepresented. Just 4.5% of town lives in poverty, far below the county (12.0%) and state (10.0%).[6] Southbury's Strategic Plan cited an 8.4% poverty rate, but this relied on older data (from 2011-2015; 2015-2019 data is cited here).[7] Even that data confirmed that the county and state poverty rates were higher.[8] The median household income (nearly $100,000) confirms the town's wealth, since the county and state medians fail to reach $70,000 or $80,000, respectively.[9]

## *Southbury is also unusually elderly*

While Southbury's distorted racial and economic profile is sadly common, it stands out in another area: age. The median age of 52.4 years is *more than a decade older* than the county and state medians.[10] And while about 31% of both the county and state is 55 years-old or older, more than 45% of Southbury is in this age group.[11] The town's elderliness is largely attributable to the "variety of retirement facilities" in Southbury – most notably Heritage Village, "America's first planned retirement community" and "one of New England's largest" such compounds.[12] In fact, Heritage Village's more than 3,700 residents *accounted for almost 20% of the entire town* in 2010, though the Plan of Conservation and Development ("POCD") stressed that "it is not the sole factor" for "Southbury's older age composition."[13]

This age distribution helps explain why Southbury's grand list per capita is in line with the state figure despite the town otherwise being demonstrably wealthy,[14] as recognized by the POCD. "Southbury has a much lower percentage of its residents in the labor force" and "a larger population on fixed incomes who might not be as willing (or able) to support projects or other factors that could raise property taxes."[15] It also speaks to the need for more housing for younger families, as discussed below.[16]

## *Housing Stock Overview: Little multifamily, and virtually no units of non-age-restricted affordable rental housing*

| Key Housing Data | Southbury | New Haven County | Connecticut |
|---|---|---|---|
| Total Housing Units | 8,779 | 367,053 | 1,516,629 |
| % Affordable | 1.5% | 13.0% | 11.7% |
| Median Home Value (Owned) | $325,000 | $248,600 | $275,400 |
| % Single-Family | 72.8% | 58.9% | 64.3% |
| % Two-Family | 8.7% | 9.7% | 8.2% |
| % 3-9 Units | 11.4% | 16.5% | 14.1% |
| % 10-19 Units | 1.0% | 4.3% | 3.8% |
| % 20+ Units | 5.9% | 10.0% | 8.8% |
| % Mobile Homes | 0.3% | 0.5% | 0.8% |
| 2001-2017 Permits | 685 | 21,398 | 117,821 |
| % Permits Single-Family | 94.6% | 66.6% | 68.7% |
| % Permits 5+ Units | 5.4% | 29.3% | 27.5% |
| *For data sources, see the report's Town Data Compendium.* | | | |

Southbury's housing stock is skewed in favor of single-family housing, which represents close to three-quarters of all homes in town.[17] This is a substantially greater proportion than in New Haven County (58.9%) and is higher than the 64.3% of all Connecticut homes that are single-family.[18] Southbury has far fewer units in larger multifamily structures than the county or state (18.2% of homes in 3+ unit buildings, versus 30.8% in county and 26.7% in state).[19] That this lack of multifamily dwellings may implicate housing affordability in town is suggested by the POCD's observation that "new multifamily dwelling units are likely to be sold or rented at prices less than new single-family dwelling units."[20]

The town's two-family housing supply (8.7%) is still lower than, but much closer to, the county level (9.7%), and slightly exceeds the state's equivalent (8.2%).[21] But these units are mostly inaccessible to families that cannot afford to buy a home, as just 25.8% of all occupied two-family units are rentals.[22] The lack of rental housing extends beyond the two-family housing stock, with only 14.5% of all occupied-housing being rentals – less than half of both the county (38.2%) and state (33.9) numbers.[23]

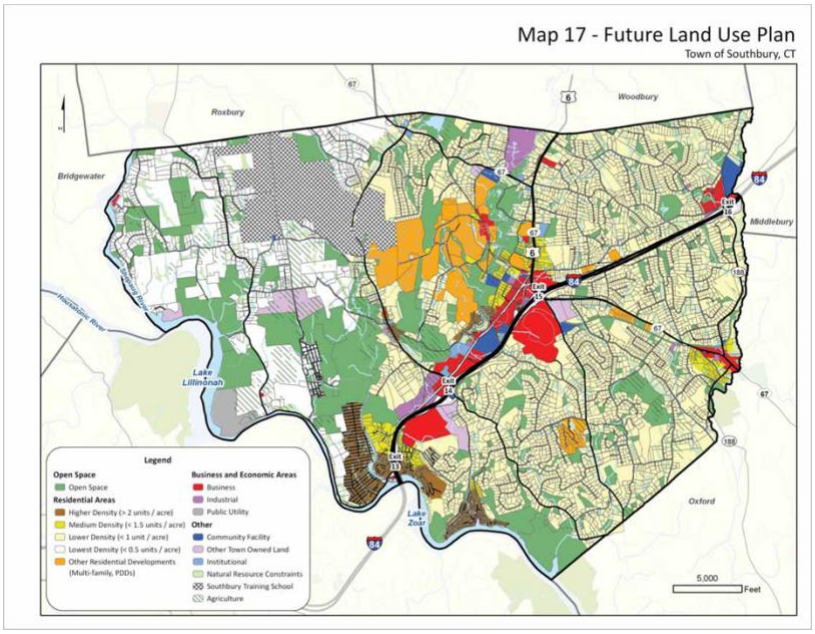
Predictably given the town's age profile, the multifamily that exists appears to be mostly reserved for seniors. Data from the POCD show that more than 81% of all of what the town counts as multifamily is contained within Heritage Village, which it acknowledges are "age-restricted housing units."[24]

And across all housing types, a critical fact is clear: Southbury sorely lacks affordable housing. Only 1.5% of units qualify as affordable under the state's Affordable Housing Land Use Appeals Procedure (C.G.S. § 8-30g), which falls far short of the county and state shares (13.9% and 11.6%, respectively).[25] The supply is even scarcer for most households, since much of the C.G.S. § 8-30g affordable housing is age-restricted. Of the 90 units that the State counts under C.G.S. § 8-30g as "Government Assisted" units (comprising more than two thirds of all the C.G.S § 8-30g units in town), *just two were non-age-restricted*.[26] And while one of the town's Selectmen pointed to 180 "desperately needed" further units that will "soon be built" (as of April 2021), these too will be "homes for seniors" (a point confirmed by town planning documents).[27]

For low-income families in need of affordable *rental* opportunities, *there are almost no units in Southbury at all*. If one removes from Southbury's 134 units that qualify as affordable under C.G.S. § 8-30g the 88 such units that are age-restricted "Government Assisted" units *and* the 39 units that are subsidized mortgages, *there remains only a maximum seven unit potentially available to low-income families seeking to rent*.[28] This is a "maximum" because there are no data available as to whether any of those seven units are also age-restricted. Even assuming none where, this translates to *less than 0.1% of the town's entire housing supply*.[29] This is a staggering lack of opportunity.

Just as concerning, Southbury has added vanishingly little multifamily and affordable housing of late. From 2001-2017 (the most recent year for which data are available), *only 37 multifamily units* (or *barely more than two per year*) were issued permits by the town – with *none* being issued from 2004 to 2017.[30] As to affordability, the current 1.47% of housing that is affordable is only marginally higher than the 1.14% figure cited in the 2012 POCD.[31] Nor is this lack of progress surprising. The POCD described the 10% threshold set by C.G.S. § 8-30g as a "sliding target since as each new market rate unit is built, additional affordable units are needed to reach ten percent," concluding [i]t is not reasonable to expect Southbury to achieve the ten percent goal" by 2022.[32]

## *Land Area: Planning guided by limiting the spread of multifamily*




*Source: POCD, at 17-3.*

The town's future land use planning map, developed as part of the POCD as "a statement of what Southbury should look like as it evolves over the long term" and reproduced above, shows that Southbury has targeted vanishingly little land for multifamily development.[33] The town planned for the vast majority of Southbury to remain covered by "lowest density" and "lower density" housing of no greater than 1 unit per acre (the beige and white on the map), with only a few concentrated areas of multifamily (orange) or "higher density" housing (brown, though this can be as low as 2 units per acre).[34] The town's zoning regulations include a schedule of zoning map changes that lists only two changes since the 2012 POCD, suggesting the town has maintained a steady vision for land use.[35]

The text of the POCD confirmed that the town's planning is dedicated to keeping single-family housing as its defining residential characteristic. One of the POCD's housing "Goals" is to "[a]ssure continuation of Southbury as a 'country' residential town characterized by single-family houses on individual lots."[36] Similarly, the "Goals" of its "Community Structure Program" direct the town to "[m]aintain the current pattern of development with core villages and outlying rural neighborhoods." The POCD only contemplates "other housing types" beyond single-family "provided the location, massing, design, and site occupancy support the single-family, country, and scenic character of the Town."[37] Not surprisingly in light of such resistance to deviating from the single-family-dominated status quo, the POCD "anticipated that future residential development will be predominantly single-family houses."[38] This was borne out by the *zero permit approvals for multifamily housing* from 2010-2017.[39]

## *Bureaucratic Hurdles: No housing over two-family as-of-right, only a few ways to develop multifamily housing under the zoning code*

Southbury permits "as a matter of right" single-family housing in all but one zone (a single commercial district).[40] This is shown by a "P" in the relevant columns of Schedule A of the zoning code, [41] and means single-family housing throughout almost all of town only requires a zoning permit (and no public hearing).[42] Leaving aside accessory dwelling units ("ADUs") for now,[43] while two-family dwellings are permitted as-of-right in most residential zones, they are prohibited in the residential zone with the lowest minimum lot sizes (where, consequently, development would be expected to be easier) and in all non-residential zones.[44] So even the least intense form of multifamily is disfavored to single-family.

By contrast, nothing above two units is permitted as-of-right anywhere in Southbury. As shown below, there are only five other zoning mechanisms for multifamily development in Southbury (one of which is age-restricted) and, importantly, *applying for any of these non-as-of-right multifamily uses entails a public hearing process*.[45] These uses are isolated to a few zones, sometimes just one. They are as follows:

1) "Dwellings containing two (2) or more units" (subject to lot and infrastructure limits): requires site plan approval and a special exception from the planning commission after a public hearing (Southbury has separate planning and zoning commissions); only allowed in one zone (R-30A).[46]

2) Two-or-more unit "elderly and/or physically handicapped persons" housing that is "owned by a Town agency or nonprofit corporation": same procedural and district limitations.[47]

3) Two-or-more units above certain businesses: same procedure, also restricted to one zone (B-1B).[48]

4) "Planned Development Unit" ("PDU") for cluster residences ("clusters"; typically single-family,[49] but may include "dwellings containing two (2) or more dwelling units") or "Multi-Family Dwelling Groups" ("MFDGs"): requires a report explaining PDU's purpose, as well as site plan approval and a special exception from the planning commission (which, again, means a public hearing); only permitted in R-80, R-60, R-40, or R-30 for clusters, and those plus M-2 for MFDGs.[50]

5) "Planned Development District" ("PDD") for same purposes as PDU (but on even larger lots, as described below[51]): same report, but also requires "a written regulation" to amend the zoning code, a zoning map change petition, plus both a less detailed "General Plan" for the PDD and "Detailed Plans" for the uses, buildings, and site development (at least as detailed as a site plan) – all of which must be approved by the zoning commission in a "legislative action to amend" the zoning code (after public hearing), with input from the planning commission; applicable in same zones as PDU.[52]

The zoning code also grants the reviewing commissions broad discretion in evaluating proposals. For example, the planning commission special exceptions (items 1-4 above) allow said commission to reject proposals that are not "in conformance with the purpose and intent" of the POCD, are not "of a character to harmonize with the neighborhood," fail to "protect property values," or do not "preserve and enhance the appearance and beauty of the community."[53]

In light of the above, the relative permissiveness of two-family compared to other multifamily may help explain why two-family is markedly better represented in Southbury than denser multifamily.[54] To the extent it does, it would be a powerful testament to the effect of permitting denser housing as-of-right.

## *Density: Strict caps for multifamily units in planned developments*

Southbury goes to the extraordinary measure of establishing limits on the number of multifamily units that may *ever* be approved as PDUs or PDDs for multifamily in clusters or MFDGs. For multifamily clusters built, "[f]rom and after the effective date" of the adoption of this portion of the zoning code, "dwellings containing two (2) or more dwelling units . . . shall not exceed 285."[55] By specifying the multifamily clusters, the zoning code is purposefully exempting from this upper bound the other form of clusters, namely those that consist "solely of single detached dwellings."[56]

The restrictions on the number MFDG units are more complicated, but still harshly confining. While the zoning code establishes the same 285 unit cap in perpetuity for "the sum of the number of dwelling units in dwellings containing two (2) or more dwelling units" in MFDGs, it adds the ambiguous qualification "minus such number as may be authorized in Residential R-30A Districts."[57] The zoning text is thus unclear as to whether the 285 ceiling needs to be *lowered* by the amount of multifamily of any sort approved in R-30A, or if MFDGs in R-30A do not count toward the maximum. If the former, then the restrictions are *even more stringent* on MFDGs than in clusters. If the latter, this is likely a minor caveat, as there were only 23 acres of "Net Buildable Land" in R-30A as of almost a decade ago.[58]

One thing that is clear, and an added barrier to PDUs and PDDs proposing MFDGs, is that there is not only an ultimate 285-unit limit (subject to the above), but also various interim limits set by both the zoning code and the POCD. The zoning code ensures that "no more than 40% of the 285 dwelling units[] shall be authorized in each of the five year periods commencing with October 1 of 1987, 1992, and 1997."[59] The POCD's MFDG technical supplement (which was incorporated into the zoning code[60]) continued this practice into the present and *reduced* the total number of units that could be built by 2022, mandating that MFDG development be "phased over time to the year 2022 such that not more than 40% of the 220-unit quota [be] built in any half calendar decade."[61]

A remarkable fact about the 220-unit cap on MFDG units by 2022 set by the POCD is that it appears to have been motivated *explicitly out of concerns that these units would be more affordable*. After observing that "new multifamily dwelling units are likely to be sold or rented at prices less than new single-family dwellings," the POCD's technical supplement on MFDGs cautioned "less cost expands the potential market" and "[p]roposals for attached dwelling projects in unbridled numbers could occur due to Southbury's regional accessibility."[62] Noting that this "would upset the growth management goals of this Plan," the POCD "found that only if all of the following basics are met, multi-family dwelling groups are considered a part of the program for housing in Southbury" – with the 220 cap being the *first* item.[63]

## *Few multifamily units permitted per acre or per development*

Southbury's discretionary procedures for building multifamily at a greater scale than two-family dwellings restrict each individual development's density in ways that significantly impede development. All of the non-age restricted mechanisms except for clusters – so the multifamily special permit in R-30A, the above-retail multifamily in B-1B, and MFDGs in PDU and PDDs – require 15,000 square feet in land area per dwelling unit, with the MFDGs and R-30As further specifying that certain types of land (such as wetlands and water bodies generally) cannot be counted toward these minimums.[64] As the POCD technical supplement's requirement regarding MFDG indicates, this translates to just 2.9 units per acre.[65] Tellingly, the age-restricted multifamily special exception is far more generous, allowing 8 units per acre,[66] even though the elderly multifamily is confined to the same R-30A zones as the non-elderly multifamily.[67]

Equally revealing is the fact that in clusters, which theoretically allow for two-family or more, the "number of dwelling units shall not exceed the number that could be established as the sum of single detached dwellings" in the underlying original zone.[68] This treats clusters as single-family housing vehicles (as suggested by the POCD's cluster technical supplement[69]) and, in any event, prevents clusters from benefiting from the economies of scale that would accrue from developing at higher densities.

Finally, both the B-1B above-retail and the town-or-non-profit-owned elderly multifamily have fixed building limits – 6 units in B-1B (reduced by one for each dwelling unit separately on the lot), and 30 units for elderly housing.[70] While the cap as to elderly housing may seem surprising, note that applying the above-discussed per unit acreage limits, non-age restricted multifamily would require over 10 acres to build such a development, versus fewer than 4 acres for elderly housing.

## *Lot size: Large-lot single-family zoning, even larger for many multifamily uses*

There can be no doubt that large-lot, single-family zoning holds sway in Southbury. "The predominant residential land use in Southbury is the single-family house on a 1½ to 3 acre lot."[71] This is, if anything, even more the case if one were to look just at potentially developable land. The POCD incorporated a "Build Out" analysis undertaken by the Council of Governments for the Naugatuck Valley that "gauge[d] how many new houses might be possible under current zoning regulations."[72] The results of that analysis, reproduced above, show that almost 95% of "net buildable land" in Southbury falls into the two largest single-family zones – the R-80 (minimum lot of over 1.8 acres) and R-60 (nearly 1.4 acres).[73]

**Southbury Build Out Results**

| Zone | Net Buildable Land (Acres) | Potential New Units |
|---|---|---|
| PDD 19 | 34 | 18 |
| R-20 | 116 | 182 |
| R-30 | 126 | 131 |
| R-30A | 23 | 25 |
| R-60 | 2,335 | 1,000 |
| R-60C | 0 | 0 |
| R-80 | 2,857 | 928 |
| TOTAL | 5,490 | 2,284 |

Sources: Southbury Zoning Regulations and COGNV.

*Source: POCD, at 3-6.*

Nor are the two largest lots the only ones with imposing minimums. The smallest minimum lot size in any zone in town is found in the R-20, and its 20,000 square-foot minimum could still only yield two single-family units on an acre.[74] Every other residential zone requires at least two-thirds of an acre, with all of the business zones being at least 40,000 square feet.[75] And all residential zones that permit interior lots (such lots are prohibited in R-20[76]) increase the minimums by 1.5 times.[77]

The baseline large lot sizes are stepped up for several multifamily uses. This is even true of the as-of-right two-family homes (which, it bears reiterating, can be conversions of single-family homes), which require 1.75 times the acreage designated in the underlying zones.[78] To put that in perspective, building a *single* two-family structure in an R-80 zone would require more than 3.2 acres for a regular lot, or 4.8 acres for an interior lot.[79] As to the more intensive uses, both the general and the age-restricted multifamily zones in R-30A require at least a 5 acre lot.[80]

PDDs do not require a "minimum" lot size, but they are only triggered if what would otherwise have been a PDU is proposed on a greater than ten-acre lot for clusters or greater than five-acre lot for MDFGs.[81] This represents another way that lot size requirements may hinder multifamily, due to the following points: (a) PDUs and PDDs have the same per acre density rules (so increasing lot size is the only way to get more units);[82] and (b) PDDs arguably have heftier review and application processes – though both PDDs and PDUs entail substantially more bureaucracy than is imposed on single- or two-family.[83]

## *Inadequate Provisions: Recent planning- and zoning-related efforts appear to maintain the status quo*

Four recent undertakings suggest that Southbury remains on the path that has led to its present state:

1) *Recent ADU Amendments*: In October 2020, Southbury loosened regulations on ADUs by, in relevant part, (a) allowing detached ADUs, (b) lowering minimum floor area, (c) removing lot minimums, and (d) ending automatic ADU termination upon sale.[84] These changes are unlikely to be impactful on affordable housing supply for at least two reasons.

   First, this did not add a previously unavailable use in Southbury. The town has permitted ADUs as-of-right in all zones in which single-family detached homes are so permitted since 1983.[85]

   Second, there is still nothing in the zoning code that makes ADUs likely to be meaningful measures for opening up access to Southbury for low-income and Black and Latino households. There are no affordability or affirmative marketing requirements for ADUs. There are no incentives or requirements to even rent ADUs. There are no incentives or requirements for current owners to construct or maintain ADUs on their properties.[86] They add only one unit.[87] Perhaps the best sign that the town's ADU zoning is not affordable housing policy is that ADUs have been as-of-right for 38 years in virtually all of town, and yet affordable housing remains almost non-existent.

2) *Southbury Training School*: The Southbury Training School ("STS") is "a residential facility for adults with intellectual/developmental disabilities" operated by the state in Southbury that once housed over 2,300 residents, but that has been closed to new residents since 1986.[88] In the 2012 POCD, Southbury recognized that the future of STS was "a delicate yet important issue that the Town must begin to plan for" – especially STS' enormous campus covers 6% of town.[89] In 2018, Southbury commissioned a study for the future of STS that included recommendations developed based on, among other things, public workshops and prior town studies.

   For present purposes, the single most important fact about the ongoing planning around STS is that non-age-restricted multifamily housing does not appear to have ever been on the table as an option, even though the study underscored that "[e]xisting sewer and water infrastructure on the STS site could support higher density housing development."[90] Instead, the site recommendations for alternatives to continuing the current institutional function of the STS have included open space and recreation, agriculture, solar panels, other institutional facilities like housing and services for veterans, and – most relevantly – *senior* affordable housing.[91] In fact, as noted earlier, the town has moved forward with rezoning a parcel of the STS to make way for "a proposed 180-unit affordable senior housing development called Pierce Hollow Village" – with the study underscoring the "long waiting list for Southbury's limited number of affordable units" and the need for additional senior units, as well as the fact that "this type of housing has broad support from the community."[92]

   The need for *non-age-restricted* affordable housing is at least as pressing, given the dearth of such units as compared to senior units in Southbury.[93] But despite the need and the capacity for density, the public workshops do not seem to have raised general multifamily as a choice.[94] That the idea of such housing was neither floated to the public nor part of the recommendations is even more puzzling in light of feedback at these same workshops that explicitly called for non-age-restricted affordable housing, such as the following: "Affordable homes for young families, not age restricted" and "Need affordable housing for young families not just professionals." It is also at odds with the

recommendation of the town's strategic plan adopted that same year (discussed in item 3, below) that the town "Increase the number of affordable housing units *for all age groups*."[95]

3) *Strategic Plan*: Also in 2018, the Board of Selectmen approved a strategic plan that is meant "to clarify the priorities for proper town governance and responsible town growth into the future" and "operate in tandem" with the POCD "in guiding us forward in a cohesive and productive manner."[96] Clearly, however broadly it may speak, a document meant to work in tandem with the POCD is not meant to upend current housing policy. The strategic plan's "Vision" also speaks in terms of protecting the status quo, emphasizing that the plan will "Preserve our town character."[97] And far from critically assessing town planning, the plan boasts that "Development and growth" have "been thoughtfully considered over the years."

   Even where the strategic plan does gently prod the town toward increasing housing opportunities, the focus is largely inward (*i.e.*, targeted toward retaining residents), on homeownership (already overrepresented in Southbury,[98] inaccessible to the lowest income families), and on how such housing can generate revenue, not promote greater integration. The plan cites a statewide housing non-profit's recommendation that towns "lure more buyers" by offering "smaller, denser, more affordable homes," including multifamily, that would allow "young professionals to put down roots, save for and buy existing homes" and seniors to downsize and thus "stay in the same community."[99]

   The strategic plan distills this advice into a finding that it "is important for Southbury to offer a wide variety of housing types," but three-of-the-four cited "wide variety" of homes target homeowners – single-family, townhomes, and condos – with the fourth ("apartments") giving no indication of necessarily being rentals.[100] Moreover, this entire discussion was motivated by the town's concern that "[n]early ALL towns in Connecticut are experiencing revenue problems because their Residential Property Grand Lists are falling or are flat," and the attractiveness of promoting other housing options being that it "will help attract and retain youth, as well as allow aging residents to stay in Southbury."[101] It seems evident that the strategic plan does not represent a grand alteration of course in favor of more truly affordable housing specifically intended to bring in a broad new cross section of the region.

4) *Resistance to Then-Pending State Housing and Zoning Legislation*: In April 2021, the Board of Selectmen issued a resolution in opposition to various housing and zoning bills that were pending in the State Legislature.[102] The resolution was explicit in endorsing not only the town's planning and zoning to date, but the current housing landscape of the state, averring "Connecticut's towns and cities successfully use local zoning and planning processes to balance private property rights, the community's interests, demands on infrastructure, housing needs and economic growth." Looking no further than the housing and demographic data in Southbury[103] – let alone other communities – this statement evinces a willful blindness to pressing affordability and segregation concerns.

   Even the two selectmen who voted against the resolution explained their opposition in a manner that failed to account for these issues. A local reporter characterized one such Selectman's comments as noting that "affordable housing isn't about moving city folks into the country," and quoted the Selectman as stating "[i]t's about having places for our younger professionals, our cops, our nurses and others."[104] The other was quoted as criticizing the resolution as being "in search of a problem that doesn't exist" since "none of the bills being discussed and debated in Hartford would require Southbury or any town to construct a single unit of housing."[105]

## *Conclusion*

Regardless of the merits of the objected-to legislation, what is clear from this analysis overall is that Southbury must begin aggressively promoting more affordable housing opportunities. As shown below, Open Communities Alliance has estimated that Southbury must facilitate the construction of more than 1,100 units in the next ten years in order to meet its share of the regional need for such housing.

| Southbury 10-Year "Fair Share" Allocation (Units) | Naugatuck Valley "COG"[106] 10-Year Regional Need Estimate (Units) |
|---|---|
| 1,158 | 17,822 |

*For data sources, see the report's Town Data Compendium.*

[1] Town of Southbury Strategic Plan – Part 1 of 2 ("Strategic Plan, Pt. 1"), unanimously approved by the Southbury Board of Selectmen on Nov. 1, 2018, at 7, available at https://www.southbury-ct.org/filestorage/20556/20610/27953/28013/Southbury_Strategic_Plan-2019-Part_One.pdf.
[2] All references to racial groups in this analysis are shorthand for "non-Hispanic" members of that group. Conversely, all references to "Hispanic" are meant to capture Hispanics of any race.
[3] *See* Town Data Compendium, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[4] *See id.*
[5] *See id.*
[6] *See id.*
[7] *See* Town of Southbury Strategic Plan – Part 2 of 2 ("Strategic Plan, Pt. 2"), unanimously approved by the Southbury Board of Selectmen on Nov. 1, 2018, at 30 (citing to 2017 "CERC Town Profile" for 8.4% poverty rate), available at https://www.southbury-ct.org/filestorage/20556/20610/27953/28013/Southbury_Strategic_Plan-2019-Part_Two.pdf. *See also* AdvanceCT and CTData Collaborative, Southbury "CERC Town Profile 2017," available at https://s3-us-west-2.amazonaws.com/cerc-pdfs/2017/southbury-2017.pdf (showing data from 2011-2015). *See* Town Data Compendium (showing data from 2015-2019). The most recent data available from the source relied on by the Strategic Plan (which was still outdated, being from 2013-2017) shows a lower poverty rate of 7.7%. *See* AdvanceCT and CTData Collaborative, Southbury "CERC Town Profile 2019," available at https://s3-us-west-2.amazonaws.com/cerc-pdfs/2019/southbury-2019.pdf.
[8] *See* AdvanceCT and CTData Collaborative, Southbury "CERC Town Profile 2017," available at https://s3-us-west-2.amazonaws.com/cerc-pdfs/2017/southbury-2017.pdf (showing data from 2011-2015).
[9] *See* Town Data Compendium.
[10] *See* United States Census Bureau, 2019 5-Year American Community Survey, Table ID S0101. Southbury data is available at the following web address: https://data.census.gov/cedsci/table?q=Southbury%20town,%20New%20Haven%20County,%20Connecticut&t=Age%20and%20Sex&g=0400000US09_0500000US09009&tid=ACSST5Y2019.S0101&hidePreview=true.
[11] *See id.*
[12] Strategic Plan, Pt. 1, at 7.
[13] Town of Southbury 2012 Plan of Conservation and Development ("POCD"), effective Dec. 31, 2012, at 3-11, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[14] *See* Town Data Compendium.
[15] POCD, at 3-14.
[16] *See infra*, at 145–146.
[17] *See* Town Data Compendium. The POCD provided a lower estimate of approximately 60% single-family units, which it claimed was in line with the State, but only did so by inappropriately deeming "attached" single-family units to be multifamily. *See* POCD, at 3-12 (featuring "Types of Housing Units" table" that defined multifamily as "including attached [single-family] & 2 family").

[18] *See* Town Data Compendium.
[19] *See id.*
[20] POCD, at B-1.
[21] *See id.*
[22] *See* United States Census Bureau, 2019 5-Year American Community Survey, Table ID S2504. Southbury data is available at the following web address: https://data.census.gov/cedsci/table?q=Southbury%20town,%20New%20Haven%20County,%20Connecticut&t=Owner%2FRenter%20%28Householder%29%20Characteristics&g=0400000US09_0500000US09009&tid=ACSST5Y2019.S2504&hidePreview=true.
[23] *See* Town Data Compendium.
[24] POCD, at 12-4 (presenting "Housing Unit Estimate" table delineating multifamily housing units by project, and oddly including Heritage Village in multifamily total rather than "Elderly Housing Total") and to 12-5 (containing quote regarding age-restricted units).
[25] *See* Town Data Compendium.
[26] *See id.*
[27] Nowak, Dan, "With Republican support, Southbury resolution back zoning 'home rule,'" *NewsTimes*, Apr. 17, 2021 (quoting Selectman Justin Bette), available at https://www.ctinsider.com/local/newstimes/article/With-Republican-support-Southbury-resolution-16107687.php. For confirmation that Pierce Hollow Village will provide 180 age-restricted affordable housing units, *see* Southbury Training School Future Use Study ("STS Study"), Apr. 23, 2018, prepared by Milone & MacBroom for the Town of Southbury Planning Commission, at 5 ("This property is the site of a proposed 180-unit affordable senior housing development called Pierce Hollow Village. The project is currently on hold due to uncertainties over state funding."), available at https://www.southbury-ct.org/filestorage/20556/20567/20590/2018_STS_Future_Use_Report.pdf.
[28] *See* Town Data Compendium.
[29] *See id.*
[30] *See id.*
[31] *See* POCD, at 3-13.
[32] *Id.*
[33] *Id.* at 17-1 (containing quote) and 17-3 (featuring "Future Land Use Plan" map reproduced above).
[34] *See id.* at 17-3 (featuring "Future Land Use Plan" map reproduced above).
[35] *See* Town of Southbury Zoning Regulations ("Zoning Code"), at Table II (listing only two changes since 2012), a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31. Note that one of these involves Pierce Hollow Village which, as noted, *supra*, at n. 27, appears to have yet to be built and would be limited to elderly housing. The other pertained to PDD #20, which the town's zoning map shows accords with a small, single parcel right by I-84, in an area with a heavy concentration of other PDD and business uses. *See* Town of Southbury Official Zoning Map ("Zoning Map"), Mar. 2018, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[36] POCD, at 12-6.
[37] *Id.* at 12-4.
[38] *Id.* at 12-4.
[39] *See* Town Data Compendium.
[40] *See* Zoning Code, at § 3, Schedule A-1.
[41] *See id.* at § 3.2.
[42] *See id.* at § 1.2 (stating that all development requires a zoning permit from the zoning enforcement officer). *See also id.* at § 14.2 (delineating process for applying for zoning permit, which has no public hearing requirement).
[43] *See* discussion of ADUs in "Inadequate Provisions," *infra,* at 145.
[44] *See* Zoning Code, at § 3, Schedule A-2 (precluding "Dwellings containing two (2) dwelling units, including conversion of an existing dwelling" in the R-20 and all non-residential zones). *See also id.* at § 4, Schedule B-1 (providing minimum lot size for all zones, including R-20).
[45] For the special exceptions described in items 1 through 3, *see id.* at §§ 3.2 (incorporating planning commission special exception procedures from § 7 of the zoning code) and 7.3 (authorizing site plan and special exception approval only "after due notice and public hearing as required by law"). For PDUs (item 4), *see id.* at § 12.4. For PDDs (item 5), *see id.* at § 12.5. Any development in the SVD also requires a special exception and public hearing

(so again, no conflict with B-1B). *See id.* at §§ 7.2.19(c) ("Any proposed use of land, buildings, and other structures in the designated SVD are subject to review and approval of a Special Exception and Site Development Plan by the Planning Commission.") and 7.3 (planning commission approval only after public hearing).
[46] *Id.* at § 3, Schedule A-3 (labeling use as "ES" for R-30A, prohibited elsewhere). *See also id.* at § 3.2 (defining requirements for uses labeled "ES" in Schedule A as site plan and special exception approval).
[47] *Id.* at § 3, Schedule A-3a.
[48] *Id.* at § 3, Schedule A-3b. Note that the so-called "Southford" area of town area has a "Southford Village District" ("SVD") and its own POCD, the latter of which states that "Multiple dwelling, such as apartments, including those over retail operations are intended to be a part of the pattern and character of village development" in certain areas of the SVD corresponding to B-1B. *See* Town of Southbury, 2006 Plan of Conservation & Development for Southford ("Southford POCD"), originally adopted in Apr. 1966 and last revised as of Sep. 30, 2006, at 39-40 (featuring table for SVD Planning Areas 4-6 showing B-1B is applicable and containing quoted language as "Special Planning Elements" for these areas), available at https://www.southbury-ct.org/filestorage/20556/20567/20590/2006_Southford_Plan_of_Development_for_Southbury.pdf. The SVD applies on "land designated on the Southbury Zoning Map as zones B-1A, B-1B, and R-30 in the Southford District," and the "provisions of this Section are in addition to the other provisions of these Regulations applicable to the District in which the use is or is to be located," with the Southford POCD only superseding in the event of conflict. *See* Zoning Code, at § 7.2.19(a) and (c). To the extent that the zoning code suggests the SVD's "Special Standards and Design Criteria as referenced in Section 7.2.19 of the Regulations . . . supersede the existing Standards in the applicable zones," *see id.* at § 2.1.6.a, this is rebutted by 7.2.19 stating they co-exist except in case of conflict. There does not seem to be conflict between the SVD and B-1B, so SVD does not appear to add any multifamily uses beyond those already permitted in B-1B.
[49] *See* POCD, at A-3 (stating, in technical supplement for cluster residences, "eligible dwellings for a cluster development can consist of two different forms of single-family dwellings and "attached dwelling units").
[50] *See* Zoning Code, at §§ 12.1, 12.1.1, 12.1.2, 12.3.1, 12.3.2(b), and 12.4.
[51] *See* discussion of lot size criteria for PDUs and PDDs, *infra*, at 144.
[52] *See* Zoning Code, at §§ 12.1, 12.1.1, 12.1.2, 12.3.1, 12.3.3, 12.3.4, 12.3.5, 12.5, and 12.5.2(b).
[53] *Id.* at §§ 7.2.1 to 7.2.2.
[54] *See* discussion of "Housing Stock Overview," *supra*, at 139, including "Key Housing Data" chart.
[55] Zoning Code, at § 12.6.1(b).
[56] *Id.* at § 12.3.2(a). Such clusters are not subject to site plan review (though still do require a special exception), but instead are governed by the town's subdivision regulations. *See id.*
[57] *Id.* at § 12.6.2(b).
[58] *See* POCD, at 3-6 (featuring chart of estimated "Southbury Build Out Results" based on developable land).
[59] Zoning Code, at § 12.6.2(b).
[60] *See id.* at § 12.6,2
[61] POCD, at B-4.
[62] *Id.* at B-1.
[63] *Id.* at B-1 to B-2.
[64] *See* Zoning Code, at §§ 3, Schedule A-3(a) (multifamily in R-30A), 7.3.5(c) (B-1B above retail), and 12.6.2(a) (MFDGs in PDUs and PDDs). For the exclusions for certain types of land from what can be counted for the purposes of satisfying density minimums in R-30A multifamily and MFDGs, *see id.* at §§ 1.7 (including exclusions from R-30A multifamily in definition of "Lot Area and Shape") and 12.6.2(a) (excluding even more land types from counting for MFDGs).
[65] *See* POCD, at B-2.
[66] *See* Zoning Code, at § 7.3.4(d).
[67] *See* items 1 and 2 in the "Bureaucratic Hurdles" discussion, *supra*, at 142.
[68] Zoning Code, at § 12.6.1(a).
[69] *See* POCD, at A-3 (listing as eligible units two forms of single-family dwellings and "attached dwelling units").
[70] *See* Zoning Code, at §§ 7.3.5(b)-(c) (B-1B above-retail multifamily) and 7.3.4(c) (elderly multifamily).
[71] POCD, at A-2.
[72] *Id.* at 3-6.

[73] The approximate percentage comes from adding the acreage for the above-referenced zones in the "Net Buildable Land" column in the chart from POCD, at 3-6, and dividing by the stated total in that chart. For the minimum lot sizes in R-80 and R-60, *see* Zoning Code, at § 4, Schedule B-1 (stating lot sizes in square feet of 80,000 for R-80, and 60,000 for R-60).
[74] *See* Zoning Code, at § 4, Schedule B-1.
[75] *See id.*
[76] *See id.*, at § 4.2
[77] *See id.*, at § 4, Schedule B-2.
[78] *See id.* at § 3, Schedule A-2.
[79] *See id.*, at § 4, Schedule B-1.
[80] *See id.* at §§ 3, Schedule A-3(a) (general multifamily) and 7.3.4(d) (town- or non-profit-owned senior housing).
[81] *See id.* at § 12.2. To the extent that clusters are predominantly single-family zones, the fact that MFDGs have lower triggering lot sizes
[82] *See* relevant discussion in "Density: Few multifamily units permitted per acre or per development," *supra*, at 142–143.
[83] *See* relevant discussion in "Bureaucratic Hurdles," *supra*, at 141–142.
[84] *See* Amendments to Zoning Code § 3.3.2 regarding Accessory Apartments, adopted Oct. 14, 2020 and effective Nov. 15, 2020. The town website indicates that these amendments have not yet been codified into the zoning code, but makes them available here: https://www.southbury-ct.org/filestorage/20556/20567/21548/22734/2020_Amendments_to_Section_3.3.2_Accessory_Dwelling_Units-Adopted_10-14-20_and_Effective_11-15-20.pdf.
[85] *See* Zoning Code, at §§ 3, Schedule A-1.1 (showing ADUs permitted as-of-right to same extent as detached single-family) and Table I (listing a July 29, 1983 amendment adding line "Accessory Apartment" regulations).
[86] In this respect, ADUs are akin to "letting rooms and/or furnishing board in a dwelling unit to not more than four (4) persons" – another use permitted as-of-right in many zones. *See id.* at § 3, Schedule A-6. There is simply little reason to believe that a meaningful number of Southbury homeowners are looking to rent
[87] *See* Amendments to Zoning Code § 3.3.2 regarding Accessory Apartments, adopted Oct. 14, 2020 and effective Nov. 15, 2020.
[88] STS Study, at 3.
[89] POCD, at 11-2.
[90] STS Study, at 5.
[91] *See id.* at 5-6.
[92] *Id.* at 5.
[93] *See* discussion of "Housing Stock Overview," *supra*, at 139–140.
[94] *See* STS Study, at C-3 (showing "Public Feedback on Residential Uses" from a June 2018 public workshop, with the only three uses that residents were surveyed on being senior rental housing, senior detached single-family housing, and standard single-family housing).
[95] Strategic Plan, Pt. 1, at 28 (emphasis added).
[96] *Id.* at 1 (showing date of unanimous approval), 10 (reproducing 2017 letter from First Selectman regarding strategic plan that laid out its intention), and 11 (reproducing 2018 letter from First Selectman discussing the interplay of the strategic plan and POCD).
[97] *Id.* at 19.
[98] *See* discussion of "Housing Stock Overview," *supra*, at 139–140.
[99] Strategic Plan, Pt. 1, at 27.
[100] *Id.*
[101] *Id.*
[102] *See* Town of Southbury Board of Selectmen Special Meeting Minutes, Apr. 7, 2021, available at https://www.southbury-ct.org/filestorage/20556/828/966/34173/34519/selectmen_04072021_minutes.pdf.
[103] *See* discussions of "Demographics Overview" and "Housing Stock Overview," *supra*, at 138–140.
[104] Nowak, Dan, "With Republican support, Southbury resolution back zoning 'home rule,'" *NewsTimes*, Apr. 17, 2021 (quoting Selectman Justin Bette). Available at https://www.ctinsider.com/local/newstimes/article/With-Republican-support-Southbury-resolution-16107687.php.
[105] *Id.* (quoting Selectman Mike Rosen).

[106] "COG" is shorthand for "Council of Governments." There are 9 COGs in Connecticut, which are meant to serve as "planning regions" to "provide a geographic framework within which municipalities can jointly address common interests." *See* State of Connecticut, *Regional Councils of Government (COGs) in Connecticut*, available at https://portal.ct.gov/OPM/IGPP-MAIN/Responsible-Growth/Regional-Planning-Organizations-RPO.

# Southington

## Overview

Southington is a town of about 44,000[1] in the southwest corner of Hartford County, ringed by four cities (New Britain directly northwest, Bristol directly north, Waterbury to the southwest, and Meriden directly Southeast). The town's 2006 Plan of Conservation and Development ("2006 POCD") endorsed its description as a "progressive city with a small town atmosphere."[2] But the town's planning and zoning appears to pose serious impediments to affordable and multifamily housing rather than facilitating progress toward greater residential integration.

## Summary of Findings

- ***Southington is a disproportionately white (89.9%) suburb surrounded by more diverse cities.***
- ***Southington has seen little affordable housing development historically or presently.***
- ***The town cements large-lot single family zoning by planning to maintain status quo, with 75% of land zoned for single-family development.***
- ***No multifamily housing permitted as-of-right in the vast majority of town.***
- ***Numerous procedural impediments to developing more than low levels of multifamily.***
- ***Southington imposes strict limits on density and the location of multifamily housing, as well as a number of other regulations that restrict multifamily housing development.***
- ***The town implements multiple forms of preferential treatment for age-restricted multifamily housing over non-age-restricted multifamily housing.***

## Demographics Overview: Southington lacks non-white and low-income people

| Key Demographic Data | Southington | Hartford County | Connecticut |
|---|---|---|---|
| Total Population | 43,781 | 893,561 | 3,575,074 |
| % White, Non-Hispanic | 89.9% | 61.1% | 66.9% |
| % Black, Non-Hispanic | 1.8% | 12.9% | 9.9% |
| % Hispanic, Any Race | 4.7% | 18.0% | 16.1% |
| % Asian, Non-Hispanic | 2.5% | 5.3% | 4.5% |
| % Population Below Poverty | 3.7% | 10.8% | 9.9% |
| Median Household Income | $94,463 | $75,148 | $78,444 |
| Grand List Per Capita | $143,347 | $121,150 | $160,428 |
| *For data sources, see the report's Town Data Compendium.* | | | |

Southington has a pronounced deficit of non-white[3] households. While that is readily apparent from comparing Southington with Hartford County and Connecticut, as shown above, it is even clearer if one compares Southington to both the cities that surround it and to nearby Hartford, as shown below.

| Race or Ethnicity | Southington | Hartford | New Britain | Waterbury | Meriden | Bristol |
|---|---|---|---|---|---|---|
| % White | 89.9% | 14.8% | 40.0% | 37.8% | 57.5% | 73.6% |
| % Black | 1.8% | 35.5% | 11.2% | 18.8% | 9.2% | 4.8% |
| % Hispanic | 4.7% | 44.3% | 43.3% | 37.4% | 29.2% | 17.3% |
| % Asian | 2.5% | 2.7% | 2.8% | 2.3% | 1.7% | 1.5% |
| *For data sources, see the report's Town Data Compendium.* | | | | | | |

The racial disparities between Southington and the cities in its orbit are striking. Southington is almost 90% white, while Hartford is less than 15% white, New Britain and Waterbury hover near 40%, Meriden falls below 60%, and Bristol below 75%.[4] By contrast, only 6.5% of Southington is either Black or Hispanic, less than a third of even Bristol's figure (22.1%), and less than *one-tenth* of Hartford's (79.8%).[5]

Southington also lacks low-income households. The town's median household income of $94,463 is more than $15,000 higher than both the county and state figures (and almost *$60,000* times higher than the city of Hartford's median income of $36,278).[6] Similarly, just 3.7% of Southington lives below the federal poverty line, as compared with 10.8% of the county, 10.0% of the state, and 28.1% of Hartford.[7]

## *Housing Stock Overview: Relatively few multifamily and affordable units*

| Key Housing Data | Southington | Hartford County | Connecticut |
|---|---|---|---|
| Total Housing Units | 18,318 | 379,602 | 1,516,629 |
| % Affordable (C.G.S. § 8-30g) | 5.4% | 14.4% | 11.7% |
| Median Home Value (Owned) | $277,000 | $240,600 | $275,400 |
| % Single-Family | 77.9% | 61.3% | 64.3% |
| % Two-Family | 6.5% | 7.8% | 8.2% |
| % 3-9 Units | 7.1% | 15.8% | 14.1% |
| % 10-19 Units | 2.8% | 4.4% | 3.8% |
| % 20+ Units | 3.2% | 10.2% | 8.8% |
| % Mobile Homes | 2.6% | 0.6% | 0.8% |
| 2001-2017 Permits | 1,971 | 25,219 | 117,821 |
| % Permits Single-Family | 94.8% | 69.1% | 68.7% |
| % Permits 5+ Units | 3.9% | 25.8% | 27.5% |
| *For data sources, see the report's Town Data Compendium.* | | | |

Southington's housing stock is largely made up of single-family homes, with its 77.9% figure outstripping the less than 65% of county and state units that are single-family.[8] The town has a lower share than the county and state of every form of multifamily housing listed above, and Southington's supply is concentrated in buildings with a smaller number of units. Southington has more units in two-family buildings (6.5%) than it does in buildings with more than 10 units (6%).[9] By contrast, both the county and state have more units in buildings with 10+ units than in two-family structures, and their shares of 10+ unit buildings (14.6% for the county and 12.6% for the state) more than double the town's supply.[10]

In addition to single-family units, Southington has more mobile homes than the county or state.[11] The town seems to consider these to be akin to multifamily, as the 2006 POCD includes mobile home parks among the "[h]igher density residential developments" in town.[12] But mobile homes have little impact on the current and future supply of multifamily and affordable housing for two reasons. First, the 473 mobile homes still only comprise 2.6% of the town's housing.[13] Second, and critically, the zoning code ensures mobile homes *cannot* play any role in *increasing* affordable and multifamily housing, since "[n]o new mobile home camps or parks shall be established or located within the Town of Southington."[14]

As might be expected given the lack of multifamily dwellings, the town has relatively little affordable housing. Only 5.4% of homes are "affordable" as defined by the Affordable Housing Appeals Procedure (C.G.S. § 8-30g), as compared with 14.4% and 11.7% in the county and state, respectively. [15]

## *An ongoing history of grossly insufficient affordable multifamily development*

The history of development patterns in Southington helps explain the absence of affordable homes even among its multifamily supply. Surveying decades of construction, the 2006 POCD observed that "[c]ondominiums have been the most popular form of multi-family development" with "condo prices on new [units] beginning to test absorption capacity at the $300,000+ price level."[16]

Recent history provides little cause for optimism, revealing stagnation in multifamily and affordable development. The 2006 POCD reported that multifamily construction "peak[ed] in the first half of the 1970s when some 979 multi-family units were added . . . in a five year period."[17] By contrast, merely 103 multifamily permits were issued in the *17 years* from 2001-2017 (the most recent year with such data).[18] Meanwhile, 1,868 single-family homes were permitted in that same period, almost 95% of all permits.[19] Nor has Southington seen a meaningful increase in affordable housing. The town planner confirmed in 2020 that the town had made little progress in building affordable housing over his 7 years in that role.[20]

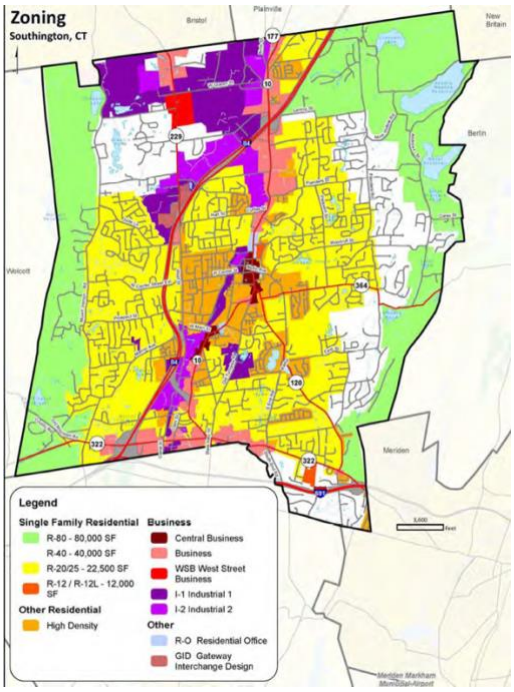
These historical and present trends are even more concerning given the great need for affordable housing in Southington. Open Communities Alliance estimates that Southington must build nearly 1,300 additional affordable units to meet its "fair share" of the regional need for affordable housing.[21]

| Southington 10-Year "Fair Share" Allocation (Units) | Capitol Region "COG"[22] 10-Year Regional Need Estimate (Units) |
|---|---|
| 1,294 | 36,498 |

*For data sources, see the report's Town Data Compendium.*

## *Land Area: Planning and zoning overwhelmingly for single-family housing*

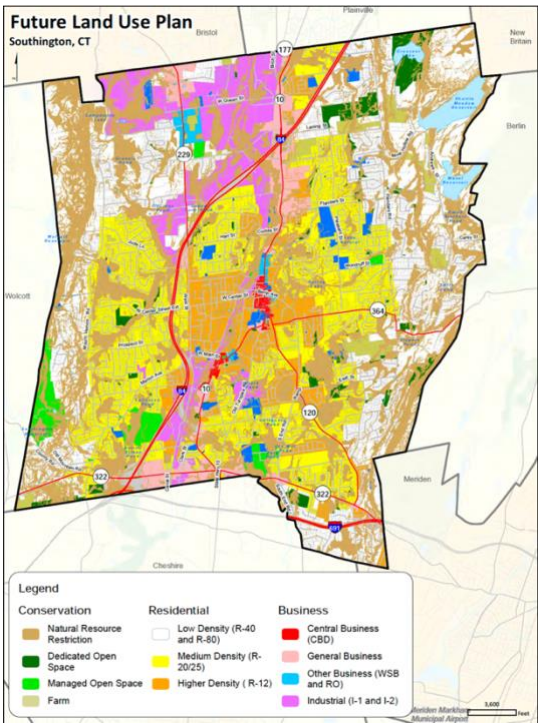
One of the most striking aspects of Southington's land usage is how heavily it skews in favor of single-family zoning. The most recent Plan of Conservation and Development, from 2016 ("2016 POCD"), reported that "about 75 percent [of zoned land] is zoned for single-family development, about 8 percent is zoned for two-family / multi-family development," and the remainder is business (7%) or industrial (10%).[23] The 2016 "Zoning Pattern" POCD map at right presents this data visually, with all of the green, white, and yellow areas reflecting single-family.




*Source: 2016 POCD, at 15.*

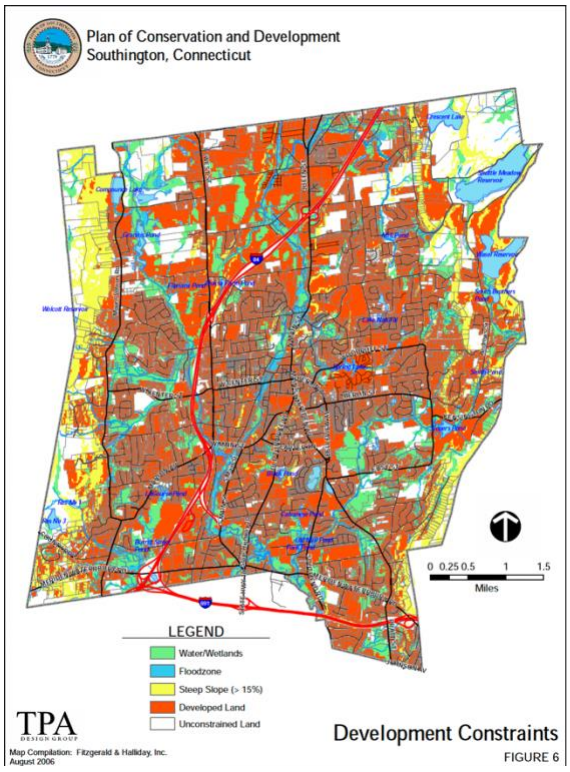
This reality aligns with the guiding principles in the 2016 POCD and is, in fact, central to Southington's planning. That document underlined that "the single-family residential character of the community has clearly been established" and made the following commitment: "Southington's zoning approach should continue to recognize the prevailing development pattern of: Predominantly single-family development[,] Higher densities in and near downtown Southington and Plantsville, and A reduction in density as distance from these centers increase."[24] The POCD also commits to "protect[ing] the integrity of existing residential neighborhoods" and "[m]aintaining appropriate buffers between residential neighborhoods and multi-family" uses.[25]

The town's forward-looking planning has followed through on these directives. Although the 2016 POCD's "Future Land Use" map, reproduced at right, suggests that much of town should be zoned for what it calls "Medium Density" (the yellow on the map) that is equated with the R-20/25 zone.[26] That is a single-family zone with the only permitted multifamily being elderly housing sponsored by the local housing authority (and even that needs a special permit).[27] As can be seen, the vast majority of the map remains proposed for "Low Density" (white-shaded), the "Medium Density" that is actually single-family (yellow), or non-residential (the purple and brown) uses.[28]




*Source: 2016 POCD, at 113.*

Southington's meager planning for multifamily is even more troubling because the town has admitted that there is little land available for development in the first place. The 2016 POCD acknowledged that "Southington appears mostly developed," while cautioning of the need to "guid[e] and manag[e]" the additional residential development that is possible.[29] The 2006 POCD provided a powerful illustration of the shortage of land in the form of its "Development Constraints" map, reproduced to the right. As the map shows, even back in 2006 (so prior to the past 15 years of further development), only a tiny portion of land was "Unconstrained" (white-shaded areas) rather than "Developed" (the red-shaded areas that blanket the map), water / wetlands, flood zones, or steep slopes (the remaining areas).[30] Even if one were to assume development is possible in the undeveloped but otherwise constrained areas (*e.g.*, the wetlands and steep slopes), that would still represent a modicum of all land in the town for new development.




*Source: 2006 POCD, Figure 6.*

## *Bureaucratic Hurdles: Only single-family units allowed by right in most of town*

Leaving aside floating/overlay zone possibilities (discussed below), a fundamental barrier to affordability in Southington is the outright ban on all non-age restricted multifamily housing[31] in the three residential zones (R-80, R-40, and R-20/25)[32] that collectively comprise roughly three-quarters of the town's zoned land.[33] Even the age-restricted multifamily housing that is permitted is limited to just one of these zones (R-20/25), only allowed by special permit, and comes with requirements like housing authority sponsorship, a cap at 8 units per building, and a 5-acre minimum on lots served by water and sewer.[34] By contrast, these and all the non-floating/overlay residential zones allow single-family homes as-of-right, meaning subject only to the issuance of a zoning permit by the zoning enforcement officer (and, importantly, without any public hearing).[35]

## *No zones allow new construction of more than two-family homes as-of-right*

The remaining non-floating/overlay residential zones (which, again, occupy a slim proportion of town) do allow for some form of multifamily as-of-right, but erect barriers to developing at greater densities.

- **R-12L Zone**: In the R-12L zone, only two-family dwellings are permitted by right – and there is not even a special permit procedure to allow for housing of more than two.[36]

- **R-12 Zone**: The R-12 zone also allows for two-family homes as-of-right, but only allows for higher-occupancy multifamily housing by special permit.[37]

- **RO Zone**: The Residential-Office ("RO") zone allows as-of-right for both two-family homes and mixed-uses in buildings that existed as of 1971, but building new multifamily above two units needs a special permit.[38]

- **R-HD Zone**: Finally, and perhaps ironically, the so-called "Residential, High-Density" ("R-HD") zone adds three-family dwelling units to the as-of-right uses in R-12 zones, but still requires a special permit for denser multifamily.[39] Critically, the R-HD's minimal enhancements over R-12 are unavailable for new development, as the commission was barred from granting R-HD zone changes after 1994.[40] There appears to be only one R-HD zone.[41]

## *Application of floating and overlay zones inherently involve procedural obstacles to developing multifamily housing*

While the relevant floating/overlay zones[42] could theoretically provide for higher residential densities, by definition, application of these zones to underlying districts or parcels entails bureaucratic burdens.

- **The Housing Opportunity District**: A "Housing Opportunity District" ("HOD") may only be established upon petition for a change in zone boundary, which requires a public hearing process, and then subsequent site plan approval.[43] Perhaps as a result of these and other restrictions included in the ordinance, an HOD zone has apparently been applied only once to the Southington Zoning Map[44] (by Calcagni Real Estate, which is in the process of producing 98 single family homes, only 10% of which will be affordable[45]).

- **Age Restricted Cluster Housing Zone**: The floating age-restricted cluster housing zone ("ARCHZ") – beyond being both age-restricted *and* only providing for (at most) the addition of private duplexes in the R-40 and R-20/25 zones (it also may be applied to R-12 zones, but these already allow for two-family housing as-of-right)[46] – requires not only special permit and site plan approval, but also a "pre-application meeting" with town staff.[47]

- **Planned Unit Developments**: Applying "Planned Unit Development" ("PUD") regulations, available in R-12 and B zones, requires a special permit and notice to nearby properties.[48]

## *Business, industrial, and mixed-use zones never allow multifamily by right*

Steeper procedural hindrances exist in the business and industrial zones, insofar as *none* allow for housing of any kind as-of-right.[49] In that sense, these areas continue the pattern of ensuring that multifamily cannot be constructed without discretionary review throughout the vast majority of town.

But Southington has singled out multifamily as requiring application for a special permit within at least one non-residential zone. Oddly, this is the West Street Business zone ("WSB"), a mixed-use district whose regulations stress the importance of "promot[ing] and sustain[ing] the economic viability of the area by introducing a multi-family residential component."[50] Despite this focus on encouraging multifamily, and even though *all* applicants "are encouraged to participate in a pre-application meeting with town staff to discuss the conceptual design and attributes of a proposed development," the WSB's "Specific Requirements for Multifamily Residential Uses" make clear that it is *only* a development "involving multifamily residential use" that "shall require Site Plan and Special Permit Approval."[51]

## *Stringent special exception requirements for multifamily conversions*

A final form of bureaucratic burden that merits discussion are certain residential "special exception" regulations. As a preliminary matter, it is important to be aware that special exceptions are distinct from special permits for reasons including the fact that they are reviewed by the zoning board of appeals rather than the commission.[52] The relevant special exceptions are those in two residential (R-12 and RO) and two commercial (Central Business ("CB") and Business ("B")) zones regarding converting an "existing dwelling" to either a two-family home (all four zones) or a multifamily use (only allowed in the commercial zones under a separate special exception provision from the two-family conversion).[53]

These special exceptions for residential conversions may only be granted after a public hearing and subject to "appropriate safeguards in harmony with the general purpose" of the zoning code.[54] Such a procedure represents a substantial bureaucratic burden, all the more so because all special exceptions are to be treated as "individual case[s]" by the board of appeals and must "conform to the detailed application" of a series of discretionary standards.[55] In the residential zones, this represents yet another way that even the least dense type of multifamily possible (two-family) is subject to regulations that single-family housing (allowed as-of-right) is not. In the business zones, it is noteworthy that the two-family conversions have no minimum floor area whereas the multifamily uses do.[56]

## *Density: Multiple limits on multifamily housing, often more so if the proposal is for non-age-restricted units*

Southington limits multifamily density in a number of ways that are likely to drive up housing prices, and often imposes stricter density regulations on general multifamily than on age-restricted units. The non-PUD multifamily allowed as a special use in R-12 (and zones that incorporate R-12 special uses[57]) is a good example. Under this provision, multifamily buildings may not have more than 12 units, and need at least 10,000 square feet per unit (meaning that even a four-family structure would require about an acre).[58] Both standards are significantly relaxed if the proposal is for elderly housing, which may contain *more than three-times* as many units per building (up to 40) and requires four-fifths of the square feet per unit (8,000).[59] Similarly, in the CB zone, "high-rise structures" such as apartments or mixed use buildings require 3,000 square feet per unit – but just half that if units are exclusively for the elderly.[60]

Another cost-increasing form of multifamily density regulation can be seen in Southington's mixed-used zones, which at times impose housing-to-non-housing ratios or call for a set amount of non-housing per unit. Two examples: first, in the WSB, applicants must not only provide 750 square feet of open space onsite for each residential unit, but they also must ensure that aggregate floor area for housing does not exceed a 2:1 ratio as compared with commercial floor area.[61] Second, and again disfavoring non-age-restricted multifamily, the Mixed Use Transition ("MUT") zone allows "Residential-only buildings in support of non-residential buildings" so long as the building footprint for the residential-only use does not exceed a 2:1 ratio to the non-residential use; but it allows for "Age-restricted or age-targeted residential" uses without imposing *any* ratio or minimum for non-residential uses.[62]

## *Lot size: Large-lot single-family zoning throughout most of town*

Almost all of the eastern and western edges of Southington require about two-acres for single-family homes (R-80), with another sizeable chunk requiring about an acre per single-family home (R-40), and the bulk of the remainder comprised of roughly half-acre lots for single-family housing (R-20/25).[63] As has already been discussed, Southington estimates these three zones cover about 75% of the town.[64]

## *Huge minimum parcel sizes may inhibit certain affordable housing development*

Beyond the unaffordability inherent to the prevalence of large-lot single-family zoning, some affordable housing provisions require enormous parcels that limit the number of eligible areas and drive up costs. A prominent example is HOD. Though the stated purpose of this zone includes "assist[ing] the Town of Southington in complying with the State Zoning Enabling Act, [C.G.S.] § 8-2 . . . by adopting zoning regulations that promote housing choice and economic diversity," it requires an area of "not less than 30 acres in a single tract [or] by a number of contiguous tracts under one ownership."[65] Southington is aware that this hinders the effectiveness of this expressly remedial ordinance: one of the "Action Steps" delineated to "Address Future Housing Needs" in the 2016 POCD was to "Consider modifying the Housing Opportunity District (HOD) provisions to allow such housing on sites less than 30 acres."[66]

## *Site Location Limitations: Some multifamily provisions are restricted to specific areas, or even specific types of buildings*

Several multifamily uses are only available in narrow stretches of town. For example, even before it expired in 1995,[67] R-HD rezoning was only available to R-12 lots 2,000 feet from two intersections, adjoining or facing CB or RO lots.[68] WSB requires 400 feet of frontage on West St., which runs through mostly business and R-12 zones in the center-west of town.[69] And the business and industrial zones that allow (by special permit only) mixed-use conversion of previously industrial land all require that the converted buildings date to prior to 1957 – significantly narrowing eligibility for such provisions.[70]

## *Inadequate Provisions: Several multifamily provisions favor seniors and small households over families, in keeping with Southington's planning*

In multiple instances, the zoning code limits the likelihood that even the multifamily development Southington allows will promote integration by restricting or directing that housing to certain groups – often the elderly or to smaller households. Southington has several age- or familial status-restricted provisions that allow for a form of density not available to the non-elderly, including the following:

- Special permit for housing authority senior housing (only multifamily permitted in R-20/25).[71]
- Age-restricted ARCHZ that allows for duplexes and was just adopted in 2019.[72]
- Special permit provision for adding a "Parent/Grandparent Apartment" within single-family homes that prohibits rental of such units and requires that they go to parents or grandparents (with the right to such units terminating upon sale or upon death of the parent/grandparent).[73]

As has already been highlighted, Southington also often imposes greater burdens on non-age-restricted multifamily housing than it does on age-restricted multifamily.[74] There are, thus, numerous ways that the zoning code gives preferential treatment to age-restricted multifamily over general multifamily.

Similarly impactful on families as age-restrictions are prohibitions or limitations on apartments above certain sizes, which exist in some of Southington's mixed-use zones. Both the WSB and MUT prohibit any apartments larger than two bedrooms, with the WSB further providing that no more than 65% of units in a site plan or the first phase of development may even be two bedrooms.[75]

The favoritism for housing bestowed on elderly and smaller households reflects the direction laid out in the 2016 POCD. That document emphasized that housing "diversity should continue to be encouraged in order to help" achieve, *inter alia*, the following goals:[76]

- "Address the housing needs of an aging population."[77]
- "Provide housing choices for existing residents so that they do not have to move elsewhere if their circumstances change."[78]
- "Offer more housing choices for younger people."[79]
- "Offer more housing choices for single people."[80]

This prioritization of seniors or younger / smaller households (*i.e.*, non-families - and particularly to the extent they focus on benefitting existing residents) runs counter to more broadly integrative efforts.

## *Conclusion*

Southington's planning and zoning appear to present a number of challenges to developing the multifamily and affordable housing that would help the town begin to reflect more of the diversity seen in the cities that surround it. The town will need to reorient its housing strategies significantly if it is to be able to add the nearly 1,300 affordable housing units that are required for Southington to meet its "fair share" of the regional need.[81]

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[1] *See* Town Data Compendium, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[2] Town of Southington, Plan of Conservation and Development, adopted Aug. 1, 2006 ("2006 POCD"), at 3, available at https://portal.ct.gov/-/media/CSC/1_Dockets-medialibrary/Docket_455/application/bulkfiling/04PlanofConservationandDevelopmentpdf.pdf.
[3] All references to racial groups in this analysis are shorthand for "non-Hispanic" members of that group. Conversely, all references to "Hispanic" are meant to capture Hispanics of any race.
[4] *See* Town Data Compendium.
[5] *See id.*
[6] *See id.*
[7] *See id.*
[8] *See id.*
[9] *See id.*

[10] *See id.*
[11] *See id.*
[12] 2006 POCD, at 47 (including "mobile home parks" among "Higher density" uses). *See also id.* at Figure 8 (containing the "Land Use" map that designates about a half-dozen "Mobile Homes" areas in orange).
[13] *See* Town Data Compendium.
[14] *See* Town of Southington Zoning Regulations ("Zoning Code"), as amended through Dec. 15, 2020, at § 11-08, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[15] *See id.*
[16] 2006 POCD, at 52, 72.
[17] *Id.* at 52.
[18] *See* Town Data Compendium.
[19] *See id.*
[20] *See* Buchanan, Jesse, "Planned apartments in Southington trigger debate on affordable housing," *Record-Jorunal*, Mar. 7, 2020, available at https://www.myrecordjournal.com/News/Southington/Southington-News/Planned-apartments-trigger-debate-on-affordable-housing.html (reporting that town planner had "said the affordable housing in the town hasn't grown substantially since he started seven years ago" and that he "doesn't see much progress toward the 10 percent" C.G.S. § 8-30g threshold).
[21] *See* Town Data Compendium.
[22] "COG" is shorthand for "Council of Governments." There are 9 COGs in Connecticut, which are meant to serve as "planning regions" to "provide a geographic framework within which municipalities can jointly address common interests." *See* State of Connecticut, *Regional Councils of Government (COGs) in Connecticut*, available at https://portal.ct.gov/OPM/IGPP-MAIN/Responsible-Growth/Regional-Planning-Organizations-RPO.
[23] *See* Town of Southington 2016 Plan of Conservation and. Development ("2016 POCD"), at 15 (including accompanying map), a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[24] *Id.* at 74.
[25] *Id.*
[26] *Id.* at 113 (featuring "Future Land Use" map).
[27] *See* Zoning Code, at §§ 3-02 and 3-02.2(B), in particular.
[28] *See* 2016 POCD, at 113 (featuring "Future Land Use" map).
[29] *See id.* at 12 and 73, respectively.
[30] *See* 2006 POCD, Figure 6 ("Development Constraints").
[31] Small boarding houses are permitted as special uses in a few zones, and this may perhaps include the R-80 and R-40 districts. However, this is unclear, as the special use provision within the R-80 and R-40 portion of the zoning code states that boarding houses "shall be restricted to the Residential R-12, Residential Office (RO) or Residential High Density (R-HD) zoning districts." Zoning Code, at § 3-01.2(E)(10). But beyond the textual ambiguity, boarding houses are clearly distinct from multifamily housing. The boarding house special use prohibits individual cooking facilities or use of accessory buildings from the residence, meaning it is instead a provision to owners to rent out rooms in their home to up to 6 people (not households). *See id.* at §§ 2-02 (containing definition of "Boarding Houses" that define them as owner-occupied) and 3-01.2(F)(10) (providing the special use provisions and limitations). In any event, there is little reason to believe many owners will take advantage of this special use.
[32] *See id.* at §§ 3-01.1(A) (establishing single-family dwellings and farms as only permitted uses in R-80 and R-40 residential zones), 3-01.2 (containing no provision for multifamily among special permit uses), 3-02.1 (adopting R-80 / R-40 uses as only permitted uses in R-20/25 zone), 3-02.2(A) (incorporating same special uses as R-80 / R-40 for R-20/25), and 3-02.2(B) (allowing "Municipal housing for the Elderly" as a special use, subject to site restrictions, in R-20/25).
[33] *Compare* 2016 POCD, at 15 (citing Town geographic information system data showing 75 percent of town is zoned single-family residential and containing map showing single family districts versus "Higher Density Districts") and Town of Southington Official Zoning Map ("Zoning Map") (showing "Higher Density" districts in the 2016 POCD map correspond to R-12 districts, whereas the single-family areas correspond with R-80, R-40, and R-20/25), a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.

[34] *See* Zoning Code, at § 3-02(B).
[35] *See id.* at §§ 3-01.1(A) (establishing single-family as permitted use in R-80 and R-40); 3-02.1(A) (adopting same permitted uses for R-20/25); 3-03.1(A) (adopting R-20/25 permitted uses for R-12L); 3-04.1(A) (adopting R-20/25 permitted uses for R-12); and 3-05.1(A) (adopting R-12 permitted uses for RO). *See also id.* at §§ 9-01 (exempting single-family dwellings from site plan review), 14.02.1 (requiring zoning permits for all development, but containing no public hearing requirement).
[36] *See id.* at § 3-03.1
[37] *See id.* at § 3-04.2(B).
[38] *See id.* at §§ 3-05.1(A)-(B) (listing RO permitted uses) and 3-05.2(A) (adopting R-12 special uses for RO).
[39] *See id.* at §§ 3-06.2 (adding three-family to R12 uses) and 3-06.3(B) (requiring special permit for anything more).
[40] *See id.* at § 3-06.4 ("On and after January 1, 1995, no requests for change of zone for [R-HD] shall be granted.").
[41] *See* Zoning Map.
[42] Southington has an "Open Space Preservation Subdivision" special permit provision applicable to R-80, R-40, and R-20/25 that does nothing to alter permitted housing types therein. *See* Zoning Code, at § 3.07-1. The town also has created a Business Overlay Zone ("BOZ") that, not surprisingly, is targeted to business zones. *See id.* at § 4-04.12(D) (providing that any BOZ proposal "shall conform to the provisions outlined in Section 4-00," which are the general requirements for business zones). As such, and because this adopts the uses and special uses from the middle-tier business zone, this overlay could only have the effect of adding another form of special permit multifamily use in the most restrictive business district, the Business ("B") Zone. *See id.* at §§ 4-04.2 and 4-04.3 (adopting Business Limited ("BL") zone permitted and special uses to BOZ); *compare id.* at §§ 4-01.2 (adopting RO special uses to Central Business ("CB") zone), with 4-02.2 (adopting RO special uses to BL), 3-05.2(A) (adopting R-12 special uses to RO) and 4-03.2 (carving out from R-12 special uses § 3-04.2(B), which provided for multifamily, but retaining special use permitted by § 3-04.2(C), which provided for multifamily via planned unit development).
[43] *See id.* at §§ 3-08.3 (requiring petition for boundary change and site plan approval for HOD) and 14-03.4 (requiring public hearing for boundary changes pursuant to State statutory procedures).
[44] *See* Zoning Map.
[45] *See* https://www.calcagni.com/property/hod-home/. Note that the advertised 10% of homes for families at 80% area median income ("AMI") that was apparently the result of a court order is *less* than what the code requires for HOD (which is 30% deed-restricted units, half at 80% AMI and half at 60% AMI). *See* Zoning Code, at § 3-08.7.
[46] *See* Zoning Code, at §§ 3-09.1 (limiting ARCHZ to R-40, R-20/25, and R-12 zones), 3-09.3 (listing single-family and "attached duplex" among permitted uses, as well as delineating age-restrictions), 3-04.1(B) (permitting two-families in R-12), and 3.01-1 to 3.02.32 (showing municipal senior housing is only multifamily allowed in other ARCHZ eligible areas).
[47] *See id.* at §§ 3-09.5 (requiring preliminary meeting) and 3-09.23 (requiring special permit and site plan approval).
[48] *See id.* at §§ 10-01.3 (limiting PUD to R-12 and B) and 10-02 (subjecting PUD to special permit and notice rules).
[49] *See id.* at §§ 4-01.1 (excluding housing from permitted uses in CB), 4-02.1 (same in BL), 4-03.1 (same in B), 4-04.2 (same in BOZ), 5-01.1 (same in Industrial Zone I-1), 5-02.1 (same in Industrial Zone I-2), 4-05.13(B) (requiring special permit for multifamily in West Street Business ("WSB") zone), 4-06.2 (subjecting all uses in "Mixed Use Transition" ("MUT") zone to special permit), and 5-03.4 (same in Industrial Zone I-3).
[50] *Id.* at §§ 4-05.
[51] *Id.* at §§ 4-05.2, and 4-05.13(B), respectively.
[52] *See, e.g., id.* at § 3-04.31 (authorizing the "Zoning Board of Appeals" after public hearing, to grant a special exception).
[53] *See id.* at §§ 3-04.31(B) (allowing for special exception two-family conversion in R-12), 3-05.31(A) (incorporating R-12 special exception into RO), 4-01.31(C) (allowing for special exception two-family conversion in CB), 4-01.32(D) (separately allowing for special exception multifamily conversion in CB), 4-03.31(A) (incorporating CB special exception for two-family conversion into B), and 4-03.32(A) (incorporating CB special exception for multifamily conversion into B).
[54] *Id.*
[55] *Id.* at § 15-05.
[56] *Compare id.* at §§ 4-01.31(C)(1) (stating there is no minimum floor area for two-family) and 4-01.31(D)(1) (requiring 600 feet of "minimum living area" for any 2-room unit, and an additional 150 square feet for each additional unit).

[57] Southington uses a form of cumulative zoning whereby subsequent zones often incorporate a prior (usually more restrictive) zone's permitted and special uses. Thus, for example, RO adopts R-12 special uses and adds others, CB in turn adopts and adds to RO special uses, and so on. *See id.* at §§ 3.05.2 and 4-01.2.
[58] *See id.* at §§ 3-04.2(B)(2) and 3-04.2(B)(6).
[59] *See id.*
[60] *See id.* at § 4-01.2(C).
[61] *See id.* at § 4-05.13(A)(2)(f) and (c), respectively.
[62] *Compare id.* at § 4-06.2(F) and (G).
[63] *See* Zoning Map. *See also* Zoning Code, at § 7A-00 (providing minimum lot sizes for all zones).
[64] *See, supra*, at 155 n. 23.
[65] Zoning Code, at §§ 3-08.2(B) and 3-08.4, respectively.
[66] 2016 POCD, at 80. Note that this action step also called for "allow[ing] single-family detached units" in HOD. *Id.*
[67] *See* Zoning Code, at § 3-06.4 ("On and after January 1, 1995, no requests for change of zone for [R-HD] shall be granted.").
[68] *See id.* at § 3-06.1. For the provision that prevents future remapping to R-HD, see *id.* at § 3-06.4.
[69] *See id.* at § 4-05.5(B). *See also id.* at 4-05 n.1 (showing zone effective as of 2013).
[70] *See id.* at §§ 4-01.2(D)(1), 4-03.2(C)(1), 5-01.2(F)(1), and 5-02.2(D)(1) (requiring this in CB, B, I-1, and I-2 zones).
[71] *See id.* at § 3-02.2(B).
[72] *See id.* at § 3-09.3.
[73] *See id.* at § 11-22.
[74] *See* discussion of differential standards in "Density" section, *supra*, at 5. S*ee also* Zoning Code, at § 3-04.2(B)(9) (requiring 400 square feet of recreational space on same plot per family for R-12 multifamily special permit, but allowing commission to waive this requirement, under certain circumstances, only if project is elderly housing).
[75] *See* Zoning Code, at §§
[76] *See* 2016 POCD, at 78.
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] *See* Town Data Compendium.

# Westport

## Overview

Westport is a highly affluent town of just over 28,000[1] living overwhelmingly in single-family homes in a densely populated area of Fairfield County along the Long Island Sound. The town is roughly 52 miles northeast of New York City and 13 miles from both Stamford (to the southwest) and Bridgeport (to the northeast). Westport is served by the Metro North commuter railroad, I-95 and the Merritt Parkway. Westport's planning and zoning present significant challenges to the development of multifamily and affordable housing, which in turn impede the ability of a greater cross section of the state to benefit from the town's many opportunities and excellent regional connectivity.

## Summary of Findings

- ***Westport's residential planning appears to be guided by an inward focus on the goals and needs of existing residents rather than an approach that also considers regional needs.***
- ***Westport restricts where multifamily and non-single family affordable housing types can go to small, non-residential areas of town, suppressing the amount of this housing.***
- ***Westport keeps single-family neighborhoods effectively walled off from the limited areas where multifamily and affordable housing can be built.***
- ***Westport seems to subject multifamily and affordable housing of any density / unit size to an onerous special permit process with public hearing and planning and zoning commission vote.***
- ***Where multifamily/affordable housing is permitted in theory, it faces major impediments (e.g., caps on number of bedrooms, density limits, lot criteria, caps on number of projects).***
- ***Recent reliance on accessory dwelling units seems to reflect both the town's inward focus and its steadfast devotion to the supremacy of single-family housing.***

## Demographics Overview: A lack of racial diversity coupled with extreme wealth

| Key Demographic Data | Westport | Fairfield County | Connecticut |
|---|---|---|---|
| Total Population | 28,016 | 943,926 | 3,575,074 |
| % White, Non-Hispanic | 86.0% | 61.7% | 66.9% |
| % Black, Non-Hispanic | 1.0% | 10.6% | 9.9% |
| % Hispanic, Any Race | 4.5% | 19.7% | 16.1% |
| % Asian, Non-Hispanic | 6.1% | 5.3% | 4.5% |
| % Population Below Poverty | 4.1% | 8.9% | 9.9% |
| Median Household Income | $206,466 | $95,645 | $78,444 |
| Grand List Per Capita | $568,346 | $256,323 | $160,428 |
| *For data sources, see the report's Town Data Compendium.* | | | |

One need only briefly review the data to observe segregation in Westport. As the table above reflects, relative both to the surrounding county and the state as a whole, Westport is disproportionately non-Black[2] and non-Hispanic, by substantial margins.[3] Similarly, the proportion of people living below the federal poverty line in Westport, 4.1%, is significantly lower than the comparable county and state proportions, at about 9% and 10%, respectively.[4] Moreover, the median household income and grand list per capita figures *vastly* surpass the corresponding county and state figures – *more than doubling even Fairfield County* in both respects.[5] In sum, Westport is racially and socioeconomically homogeneous, with relatively few people of color and exceptionally high household incomes.

## *Housing Stock Overview: Westport's housing stock is dominated by single-family homes, and extraordinarily expensive ones, at that*

| Key Housing Data | Westport | Fairfield County | Connecticut |
|---|---|---|---|
| Total Housing Units | 10,931 | 372,565 | 1,516,629 |
| % Affordable (C.G.S. § 8-30g) | 3.6% | 9.6% | 11.7% |
| Median Home Value (Owned) | $1,150,400 | $428,500 | $275,400 |
| % Single-Family | 91.3% | 64.1% | 64.3% |
| % Two-Family | 3.4% | 8.3% | 8.2% |
| % 3-9 Units | 2.6% | 12.5% | 14.1% |
| % 10-19 Units | 0.9% | 3.5% | 3.8% |
| % 20+ Units | 1.4% | 11.1% | 8.8% |
| % Mobile Homes | 0.4% | 0.4% | 0.8% |
| 2001-2017 Permits | 1,588 | 33,530 | 117,821 |
| % Permits Single-Family | 88.7% | 55.4% | 68.7% |
| % Permits 5+ Units | 6.9% | 40.7% | 27.5% |
| *For data sources, see the report's Town Data Compendium.* | | | |

The housing data presented above are comparably striking to Westport's demographic profile. Over 91% of housing in Westport is single-family, and the median home value – *a whopping $1,150,400* – is stratospheric even relative to Fairfield County's median, which is less than half that of Westport's.[6] There is also little housing that qualifies as affordable under the Affordable Housing Land Use Appeals Procedure (C.G.S. § 8-30g) in Westport –just 3.6% of units, as compared with almost 10% in the county.[7]

The Westport Planning and Zoning Commission ("PZC") is well aware that single-family zoning reigns supreme in Westport. The town's current Plan of Conservation and Development ("POCD"), adopted in 2017, noted that housing in Westport is 92% single-family homes on lots of "two acres or so in the northern areas of the community to smaller lots in older neighborhoods and shoreline areas."[8] Multifamily and affordable housing types appear to be confined to narrow slivers of the town zoned non-residential (commercial and business areas along the Post Road, in downtown or Saugatuck center) or in border areas split zoned residential/commercial.[9]

As can be seen throughout Westport's POCD, the town seems to cherish, and appears to be planning to preserve, this status quo. The POCD reflects a town policy decision, backed by popular support, to prioritize maintaining the "character" of its existing single-family residential neighborhoods over other goals and considerations – notably including expanding residential development.

*The POCD seeks to maintain the essence of what has made Westport a unique and desirable place to live while accommodating desirable changes after careful reflection.*

*Conservation of existing character and important resources is valued more in Westport than the promotion of new or expanded commercial or residential development*.[10]

This philosophy predictably results in impediments to increasing housing (and racial) diversity in town. Nor does the extreme dominance of high-cost single-family owner-occupied housing appear likely to change in light of this preservationist mindset towards residential neighborhoods, which essentially calls for these areas to remain frozen in time and walled off as uniformly single-family oases, apparently in perpetuity.[11] Notably, in adhering to this philosophy, the town is aware that its imbalance in favor of single-family housing is more extreme than many other towns in Fairfield County and the state. The POCD includes the following ranking of towns in the county, based on 2010 Census data:

| | **Percent Single-Family** |
|---|---|
| Weston | 97% |
| Darien | 93% |
| **Westport** | **92%** |
| Wilton | 91% |
| New Canaan | 84% |
| Fairfield | 84% |
| **State** | **65%** |
| Norwalk | 53% |

2010 Census
*Source: POCD, at 12.*

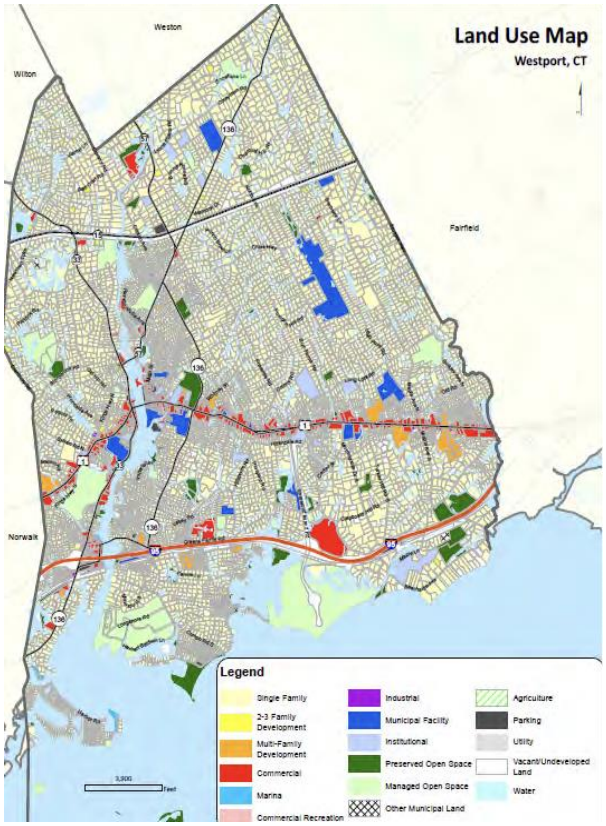
Notwithstanding outlier status, Westport seems to be resolute in its dedication to single-family zoning.

## *Land Area: Single-family zones are dominant and walled-off from multifamily and other uses as a result of town planning*

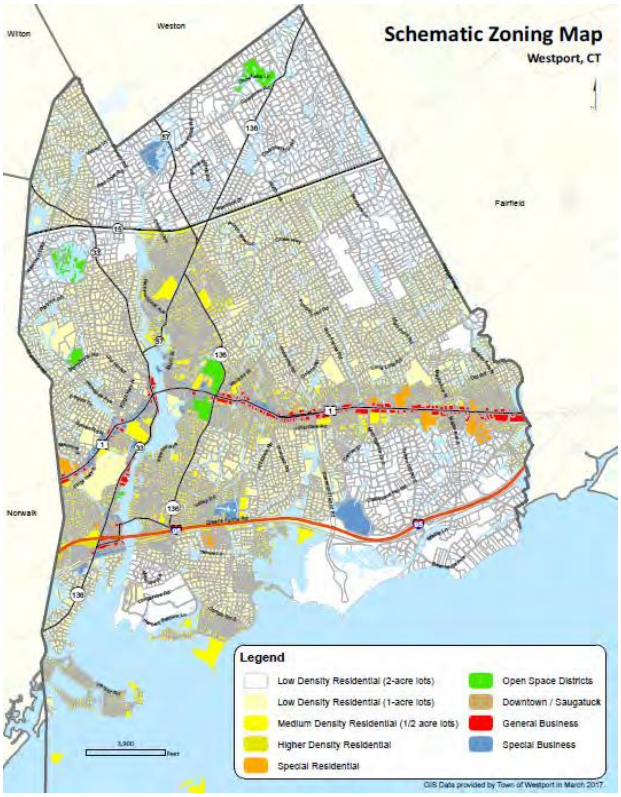
The vast majority of Westport's land is open for single-family homes, but off limits for multifamily (including even duplexes). According to Westport's POCD, approximately 95% of the town's area is zoned for residential uses, four per cent for business uses and one per cent for other uses.[12] The POCD notes that the residentially zoned area of town is "mostly single family residential use."[13] Though the town does not make precise land area zoning data available, this description in the POCD would appear to be an understatement in view of the high percentage of single-family homes in town, the zoning code's restrictions on non-single-family housing types and higher density uses (discussed below) and what information can be gleaned from the maps provided by the town in its POCD and on its web site. A more apt description might be that the 95% of town that is zoned residential is zoned *nearly exclusively for single-family uses*. It appears from a close review of the zoning code that the only portion of residentially zoned land that is available for multifamily uses under the current zoning scheme is those lots which are split-zoned residential and non-residential.

The most relevant maps – the official town zoning map ("Zoning Map")[14] and the current and future land use maps in the POCD – all illustrate the extent to which what the town classifies as low density single-family residential uses (one and two-acre lots) dominates (and appears poised to continue to dominate) the town. In the POCD maps, such as the current land use map provided to the right, small slivers here and there are allocated for so-called medium density (brightest yellow, for still quite large 1/2 acre lots) and occasional "special residential" parcels (orange) can be found, primarily along the Post Road.[15] The color code for "higher density residential" (dark yellow) closely resembles that for medium density, and thus closer examination may be necessary to identify parcels in the former category.

In any case, the POCD also contains a "Land Use Map," reproduced below, showing which portions of the town's land are available for multifamily development (orange) and duplexes/triplexes (yellow).




*Source: POCD at 14.*




*Source: POCD, at 15.*

As can be seen, the very few parts of Westport where multifamily development is permitted are separated from single-family areas (the pale yellow that overwhelms the land use map).[16] Instead of allowing multifamily development in areas where single-family is permitted, the town appears to have concentrated the sparse multifamily areas (orange) along the predominantly non-residential Route 1/Post Road – where commercial and municipal uses are the norm and land costs are likely highest – along with in a smattering of parcels close to I-95 in the southwestern corner of town near Norwalk.

The dominance of single-family housing – and the walling-off of single-family neighborhoods from areas where other uses, including multifamily housing, are permitted – appears to be by design. Indeed, Chapter 10 of the POCD, tellingly entitled "Guide Residential Development," opens with the following statement of the town's housing goals:

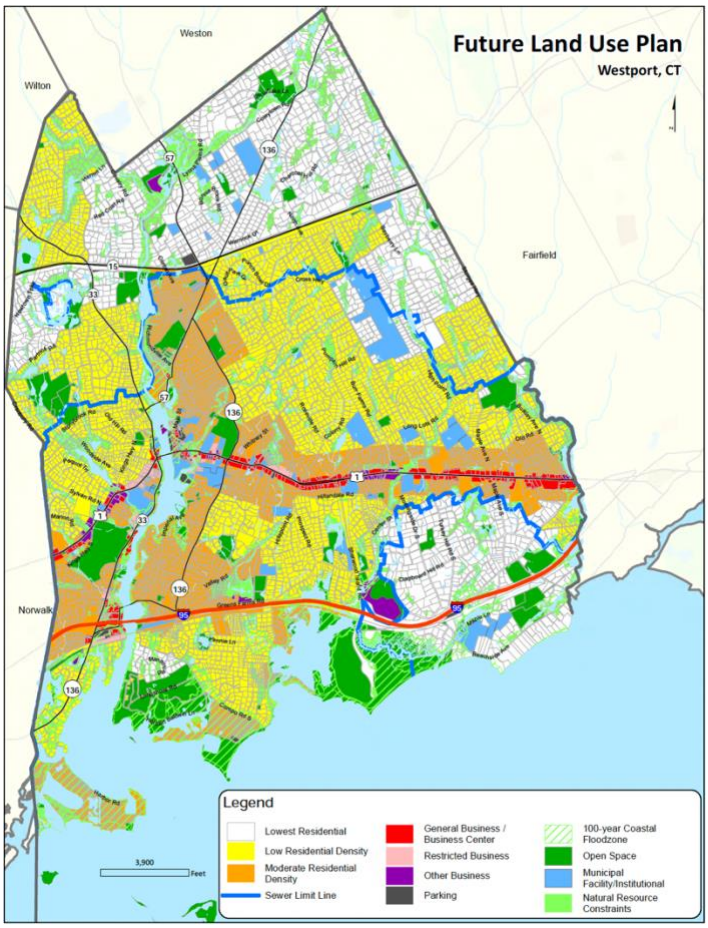
> *As with prior Plans, it is a central goal of this Plan to maintain the single-family residential character and density of Westport's existing neighborhoods. The overall character and ambience of existing neighborhoods is responsible for the recognized quality of life in Westport.*[17]

While the POCD occasionally nods to the need to provide housing diversity and affordability, the supreme planning objective as far as housing is concerned seems to be *preserving* existing single-family neighborhoods (*e.g.*, "Maintaining residential character is a fundamental philosophy of the Plan…").[18]

Section 10.2 of the POCD, "Maintain Residential Character," along with its accompanying "Residential Densities Plan" map, confirms the town's intentions to preserve the single-family character and density restrictions in residential zones as currently laid out.[19] The POCD's Residential Densities Plan map closely tracks the current "Land Use Map" (reprinted above) and confirms that parcels eligible for higher density (comprising the orange "Higher Density Residential Zone" and the brown "Special Residential Zone") are exceedingly rare and concentrated along Route 1/Post Road, I-95, or, in perhaps a few cases, other main roads.[20] The POCD recommends maintaining the existing residential densities.[21]

In contrast to the existing zoning and land use maps, the Future Land Use map (reproduced to the right) does not include a category for any density higher than "Moderate Residential Density" (the orange).[22] (This may simply reflect the fact that even what is referred to as "higher" density in the current zoning is generally not so "high.") Regardless, the critical point is that *all* of the available maps confirm the predominance of 1- and 2-acre lots, which occupy the vast majority of the town's land area.[23] As will be discussed below,[24] even the smaller, but nontrivial, areas of town with half-acre lots are generally off limits for multifamily or affordable housing.

The town's residential planning approach, with its emphasis on safeguarding single-family zones from encroachment, seems to be *inwardly focused*, guided primarily (if not exclusively) by the preferences and goals of *existing* town residents despite the statutory commands directing towns to look *outward* to the needs and conditions of their surrounding regions.[25]




*Source: POCD, at 129.*

Westport's POCD is responsive to residents' stated goals,[26] and at points appears to regard higher density residential development – including affordable housing – as an existential threat, given residents' goal of preserving the town's single-family community character. For example, the POCD notes the historical concerns of town residents in the 1970s and 80s regarding growth and the impacts on neighborhood character of multifamily development[27] and notes that these concerns have continued: "In recent years, there have been land use applications for affordable housing and other developments which have been provocative and strengthened resident's [sic] concerns about the changing character of the community."[28] Relatedly, and further suggesting that town planning views more inclusive forms of housing development as potential threats to the continued dominance of single-family-only neighborhoods, the POCD "recommends that Westport continue to seek ways to address changing housing needs ***while maintaining the character and integrity of Westport***."[29]

As summarized in the remainder of this discussion, this planning philosophy results in, and is further reflected by, key zoning policies and principles that privilege single-family housing, sharply limit the growth potential of multifamily/affordable housing types – and generally keep the two separate.

## *Westport maintained a multifamily cap until early 2021, and it was only removed due to a court ruling, though caps on developments remain*

Westport's devotion to the dominance of single-family housing is so absolute that, until very recently (and only no longer due to legal intervention), it was enshrined expressly in a peculiar provision of the zoning code. Specifically, from 2007 to 2021, the code contained an outright cap on the number of multifamily units in town, limiting such units to 10% of single-family units.[30] The POCD, issued in 2017, prominently noted the cap as key to maintaining the single-family residential character of the town.[31] In 2020, a court ruling required the town to remove its multifamily cap in a developer's successful appeal under C.G.S. § 8-30g from a PZC decision that had rejected an affordable housing proposal along with a proposed text amendment to remove the cap and replace it with a provision more accommodating of affordable housing (yet likely of little use given C.G.S. § 8-30g).[32]

However, several zones creating a pathway for building multifamily and affordable housing include caps on how many *developments* could ever be built under the applicable zoning code provision, as noted in the table further below.[33]

## *Bureaucratic Hurdles: Multifamily and affordable housing requires rigorous special permit review (with public hearing), while single-family does not*

The Westport zoning code privileges single-family housing by allowing it to be built with a zoning permit,[34] generally on minimum lot sizes from 5,000 square feet to 2 acres, throughout not just the main residential districts of town[35] but also in other districts ostensibly intended to promote development of affordable housing (where, unlike single-family, multifamily and affordable housing cannot be built except by special permit granted by the full PZC (planning and zoning commission) following a public hearing)[36] and even in generally non-residential districts.[37] Yet, there appears to be *no* district in Westport in which *any* multifamily housing (three or more units) can be built without the approval of the PZC following a public hearing and rigorous Special Permit process. To build multifamily housing in Westport, the owner or developer must file an application for at least a special permit (often also site plan approval), which may be granted only by the full PZC based on a majority vote after what is likely to be a lengthy and costly process (the public hearing generally includes testimony from experts and comments from neighbors, other residents, and the public).[38]

Thus, a fundamental dividing line between single-family and multifamily housing in Westport is the special permit review process. The seemingly lone exception is a district that seems to allow two-family homes (not higher levels of multifamily) to be built without PZC approval; but this district, beyond being for the least intensive form of multifamily development, is also quite small, as it is limited to a group of narrowly defined lots concentrated along Saugatuck and Riverside avenues.[39]

Based on a review of the relevant zoning regulations (including those governing zoning districts where at least some form of multifamily development is listed as a *possible* use) it appears that *any* multifamily proposal of three or more units *anywhere* in town – regardless of scale or density, whether three units or 30 or 300 – must go through the special permit review process (again, sometimes coupled with Site Plan approval and/or additional special conditions). The code, in broad strokes, proceeds thusly:

- The Residential AAA District, which is perhaps the largest district in town and serves as somewhat of a regulatory template for other districts, as it is the first discussed in the zoning code, allows, as a permitted principal use, single-family homes on lots of at least two acres, and, by special permit, certain forms of multifamily housing with affordable units, most prominently Inclusionary Two-Family and Multifamily Dwellings (discussed below).[40]

- The regulations governing several other districts follow the approach of the AAA zone in whole or in part, occasionally with additional uses and/or conditions noted – but in each, 3+ unit multifamily requires at least a special permit (often coupled with site plan approval).[41]

- Even zoning districts that the code describes as focused specifically on encouraging affordable housing development require a special permit (and, once again and often, site plan approval) for any affordable or multifamily housing.[42]

- Finally, some zoning districts (including certain overlay districts) where multifamily/affordable housing theoretically could be built require a special permit for any use or any residential uses.[43]

Requiring multifamily and affordable housing proposals to go through a special permit process while generally allowing single-family by zoning permit poses a major barrier to housing diversity and affordability. The special permit review process gives the town much more latitude in the grounds on which it can rely for rejecting multifamily and affordable housing proposals that do not apply to single-family applications, *requires* a public hearing, and places expectations and burdens on the applicant that make such proposals considerably more difficult than the staff level zoning permit process that governs single-family homes.[44] Several of the special permit standards – including that the proposed use should "[b]e in conformance with the [POCD]" and "in scale with and compatible with surrounding uses, buildings, streets and open spaces" – tend to reinforce the existing status quo, placing the PZC in the role of guardian rather than agent of expanding housing opportunities.[45] The process, given its intricacies, seems likely to be considerably lengthier (and costlier) than staff level review.

It is important to underscore that Westport *knows* and *embraces* the fact that the special permit process can limit the amount of development of any uses that are required to undergo it. In the section called "Maintain Residential Character," the POCD states that one of the steps the PZC will take "to protect residential neighborhoods from inappropriate uses" will be that "Special Permit requests in residential zones will be carefully reviewed to ensure that they [are] appropriate and suitable for that location."[46]

## *Site Location Limitations: Key inclusionary housing provision (beyond being confusingly drafted) contains highly specific site requirements, reducing its use*

As has been discussed, another sharp contrast between the Westport zoning code's treatment of single-family and multifamily/affordable housing is that single-family units can be built throughout much of the town, while multifamily and affordable housing appears to be considered essentially a non-residential use in Westport. It is appropriate to begin with a close analysis of one of the main pathways available in the Westport zoning code for building affordable and multifamily housing: § 32-12, "Inclusionary Two-Family and Multi-Family Dwellings."

At the outset, it bears noting that Section 32-12 and the other regulations with which it interacts are not user friendly; to the contrary, they are *confusing* and lead to questions and ambiguities, which is a recipe for discouraging, rather than encouraging, a potential affordable housing developer. For example, the regulations governing the Residence AAA, AA, A, B, and C districts include, on their lists of uses permissible in those zones subject to a special permit and site plan approval from the PZC, inclusionary two-family and multifamily housing in accordance with Section 32-12 of the regulations.[47] Yet, Section 32-12 itself clearly restricts this form of housing only to certain *non-residential* districts.[48] The Zoning Map could help to clarify this issue, but currently does not.

This analysis does not attempt to resolve this internal contradiction in the zoning code, and simply assumes that the inclusionary regulation reaches as many zoning districts as it theoretically could under the most generous interpretation of the code, including Residential Districts AAA, AA, A, B, and C, and the various non-residential business/commercial districts listed in § 32-12.

But as it turns out, it does not matter if inclusionary housing under § 32-12 is theoretically allowed in residential zones because the limits on where these inclusionary developments could be built *even assuming they can go in residential zones* disqualify the vast majority of residentially zoned lots in town. Indeed, an applicant seeking to build an inclusionary home under this regulation would first need to find an eligible lot, since § 32-12 limits the lots where this type of development may be built to lots (a) that have at least 15% frontage *on an "arterial street"* (undefined in the zoning code but generally means a heavily-trafficked main road) and (b) *where the primary access to the development would be from a non-residential portion of the lot*.[49]

Thus, the apparent effect of § 32-12's lot restrictions is to confine these developments to lots with enough frontage along main roads that either are in the tiny amount of land area in non-residential districts listed in § 32-12[50] or fall in likely rare split-zoned areas on the borders between residential and eligible non-residential districts. These areas generally track the Post Road and a smattering of commercial / business districts in or near downtown and along Saugatuck and Riverside avenues.[51]

It is highly unlikely that many lots in the vast exclusively residential districts in Westport could satisfy these requirements. Westport does not report how much housing has actually been built under this regulation, and, as noted, the Zoning Map does not include this type of housing. The POCD notes that a town zoning regulation promoting an "inclusionary housing approach" (it's unclear if this is referring to § 32-12 or to the Inclusionary Housing Overlay District that, in any event, is similarly constrained[52]) resulted in "at least one approval of additional affordable units."[53]

## *Other multifamily and affordable zones are comparably restricted to tiny fractions of town*

Section 32-12 is not alone in being hampered by highly-particular site requirements. By way of illustration, below are other inclusionary and multifamily provisions with limited availability.

- **The Inclusionary Housing Overlay District ("IHZ")** is, as noted, similar to § 32-12. The IHZ can be used to apply for re-zoning to build inclusionary multifamily housing with 20% affordable units for households earning no more than 80% of area median income or state median income[54] in the following specific parts of town: "on lots that are split zoned Res. AA, A or B and GBD, RPOD, RORD, BPD, RBD, BCD, BCD/H or DDD #2 Non-Residential zoning districts."[55] Furthermore, the regulation also requires that "[a]ny lot using this regulation must provide frontage on an arterial street that is equal to at least fifteen [sic] (15%) of the perimeter of the lot or, on sites over two (2) acres, at least seventy-five (75) lineal feat."[56] The Zoning Map appears to show two sets of parcels re-zoned as IHZ on the Post Road, and a full scan of the map confirms the limited potential of this approach given the strict locational limitations.[57]

- **The Affordable Housing Zone ("R-AHZ") district** is a floating zone that has very limited development potential given its lot restrictions. It can only be used on "parcels of land, not necessarily contiguous to each other, which have public sewer and water available [and] [a]t least 100 feet of one side of the property must abut one of the Commercial districts . . . with the exception of the DDD. Such property must also have frontage on an arterial road."[58] Further, the frontage on an arterial road must be "at least 100 feet."[59] The R-AHZ regulation notes that "[t]he intent is to assist the town in meeting the statutory goals of affordable housing, *and to provide such housing near the commercial and retail shopping areas of the town*."[60] These geographic restrictions sharply reduce the land available for R-AHZ developments and concentrate them in eligible lots next to commercial districts along arterial roads. Indeed, according to the zoning map, the R-AHZ has been used for what appears to be a few parcels just west of downtown, south of Edge Hill Lane and along Riverside Avenue.[61]

- **Like the R-AHZ, the R-AHZ/W** (the W is for "Workforce") is a floating zone with very limited geographic reach, but, tucked in at the end of the regulation is perhaps the biggest limitation of this zone: *it can only be used for two developments (which must be a mile apart)*.[62] This restriction is in addition to still further the location restrictions reminiscent of the R-AZ, requiring that lots "shall be contiguous to, or directly (on a perpendicular) across the street from, a non-residential zone, with the exception of the DDD and shall have a minimum of thirty (30) feet of frontage on an arterial street."[63] These alone would seem to diminish the potential use of this zone to negligible levels, even before accounting for requirements that the lot *also* be between one and four acres[64] *and* that density not exceed the rather low level of seven units per acre.[65] Indeed, the Westport Zoning Map appears to contain only one R-AHZ/W district, located just north of I-95, near Riverside Avenue and Bradley Lane.[66]

- **The Residence C District** is not mapped, but its narrow scope is clear from the following: "The Residence C provisions are intended to allow moderate/high density development . . . for smaller sized dwelling units on small parcels along Saugatuck and Riverside Avenues and served by public sanitary sewerage facilities. The Residence C Zone shall also allow for the redevelopment and/or adaptive reuse of existing non-residential buildings on Riverside Avenue into larger sized dwelling units on lots over two (2) acres in non-residentially zoned lots and

residentially zoned lots that currently have a permitted nonresidential use with a minimum 200 feet of frontage on Riverside Avenue and served by public sanitary sewerage facilities."[67]

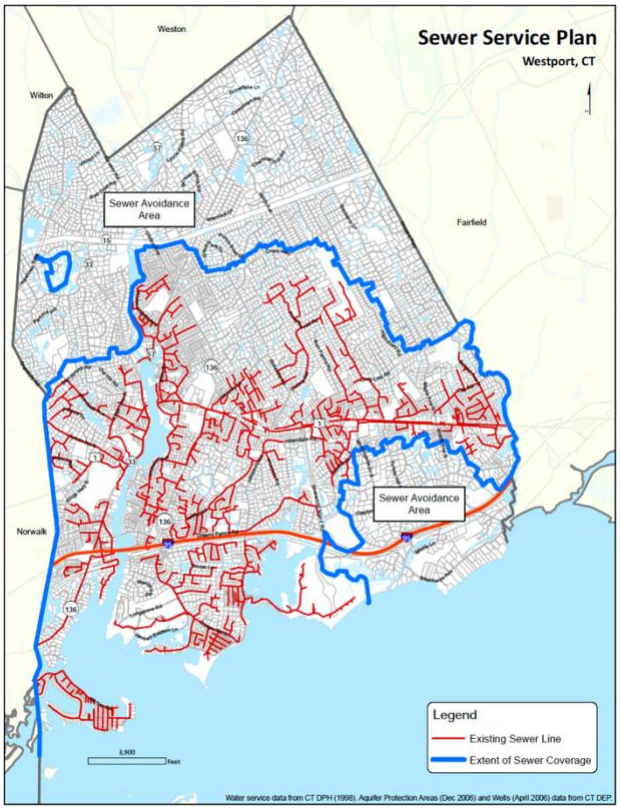
- **The General Business District/Residential (GBD/R) and General Business District/Saugatuck (GBD/S)** are sharply limited geographically and in regard to the number of lots they could ever apply to,[68] and, like the RHZ-W, *each has a cap of no more than two developments*.[69]

- **The Business Center Retail Residential District (BCRR)** appears to be available for mixed-use development including potential affordable units in just a sliver of the commercially-zoned portion of downtown Westport.[70]

There are at least two key takeaways from the extensive geographic and location restrictions that the Westport Zoning Code imposes on so many of the main mechanisms for building multifamily and affordable housing: the volume of multifamily/affordable housing necessarily is suppressed by severely limiting the lots that could be used for this housing, *and* this housing is kept apart from single-family neighborhoods.

Finally, it bears noting that these restrictions cannot plausibly be justified by sewer or water service considerations for at least two reasons: (1) much of Westport's land – far more than just the commercial and downtown areas – is served by sewer lines and public water (water service being more extensive, but even sewer service is extensive, as shown in the map reproduced to the right);[71] and (2) in any event, these restrictions are categorical, meaning that they disallow *any* multifamily housing, even small-scale or low-density multifamily.

Perhaps recognizing these realities, the POCD, while generally emphasizing the need to preserve the residential status quo in Westport, suggested exploring "small scale developments in multiple areas" as one way of expanding housing opportunities – but this, of course, was subject to the primary command of "maintaining the character and integrity of Westport."[72]




*Source: POCD, at 121.*

## *Density: Even where theoretically permitted, development of multifamily and affordable housing is hobbled by complicated density and other restrictions*

Even where multifamily is theoretically permitted (by special permit and often site plan, except for the solitary and tiny two-family provision discussed above[73]), the zoning code imposes a range of conditions and restrictions that likely have had (and, if retained, likely will continue to have) the effect of keeping such housing to a minimum. The table beginning on the next page highlights examples.

## Substantial Rules Apply to Key Westport Zones Permitting Multifamily or Affordable Housing[74]

| Zone | Bedrooms ("BRs") | Units/acre | Approvals Required | Lot Criteria | Other Reqmts / issues |
|---|---|---|---|---|---|
| Inclusionary, § 32-12<br>20% affordable | 20/acre or 26 with affordable unit ("w/AU") | 18 | Special Permit ("SP") and Site Plan Approval/ review ("SPA") | Must be in GBD, RPOD, RORD, BPD, RBD, BCD, BCD/H or DDD #2 *or* split zoned commercial/residential, with access from non-residential portion of lot.<br><br>15% frontage on arterial road. No min size. | Mixed-use except in RPOD, RORD and BPD (minimum % of floor area for non-residential use) |
| Inclusionary Overlay Zone (IHZ) , § 39A<br>20% affordable | 20/acre or 26 (w/AU) | 18 in non-res portion of lot<br><br>12 in res portion of lot | SP and SPA | Must be split zoned as Res. AA, A or B *and* GBD, RPOD, RORD, BPD, RBD, BCD, BCD/H or DDD#2.<br><br>15% frontage on arterial road.<br><br>If over 2 acres, 75 lineal feet frontage on arterial road. No min. | Mixed use except in RPOD, RORD and BPD (minimum % of floor area for non-residential use) |
| Affordable Housing Zone, R-AHZ, § 19<br>30% affordable based on CGS § 8-30g | No 3BRs | 8 | SP and SPA | 100 feet of one side of lot must abut a commercial district (not DDD).<br><br>100 ft Frontage on arterial street.<br><br>No min./Max 3 acres. | Minimum of 5 units.<br><br>Appears mooted by CGS § 8-30g |
| Affordable Housing Zone-Workforce, R-AHZ/W, § 19A<br>30% affordable w/different allocation than CGS § 8-30g | No 4BRs | 7 | SP and SPA | Contiguous to, or directly (on a perpendicular) across the street from, a non-residential zone, with the exception of the DDD and shall have a minimum of thirty (30) feet of frontage on an arterial street. Between 1 and 4 acres. | No more than 2 projects in town, at least 1 mile apart |
| Res. C., § 18 | No 3BRs except on 2+ acre lots | 10<br>(1 per 4350 sq ft) | SP and SPA | Min 5000 sq ft. Available on lots along Saugatuck and Riverside Avenues, with min 50 ft. frontage on public street. Also for re-developing or adaptive re-use of lots over 2 acres that are zoned non-residential or currently have a permitted nonresidential use with a minimum of 200 ft. of frontage on Riverside Ave. | No more than 120 total units in town |

## Substantial Rules Apply to Key Westport Zones Permitting Multifamily or Affordable Housing (Continued)

| Zone | Bedrooms | Units/acre | Approvals Required | Lot Criteria | Other Reqmts |
|---|---|---|---|---|---|
| Municipal Housing Zone, § 20<br>100% affordable | 12/acre<br><br>Max 4BR, no more than 5% can be 4BR<br><br>33% of units must be 1BR | 6 | SP and SPA | Land owned by Town or WHA<br><br>Min 4acres, 100 ft on arterial street or railroad right of way | 25% must be senior housing |
| General Business District-Residential GBD-R, § 24B<br>20% affordable | 20/acre<br><br>Max 3BR | 10 | SP and SPA | Lots served by a public water supply, suitable power supply and public sanitary sewers; where areas have frontage on a State Highway and on the Saugatuck River, are zoned General Business District as of the effective date of this regulation, and are within 'Westport Center" as set forth in the Current [POCD].<br><br>Min 2 Acres | No more than 2 projects in town<br><br>Mixed use<br><br>Offsite AUs allowed as alternative |
| General Business District-Saugatuck GBD-S, § 24A<br>20% affordable | 20/acre or 26 (w/AU) | 18 | SP and SPA | Lots located in Saugatuck Center as defined in POCD and formerly zoned GBD<br><br>Min 40,000 sq ft | No more than 2 projects in town<br><br>Offsite AUs allowed as alternative in specific area of Saugatuck Ctr |
| Bus. Center Retail Residential BCRR, § 29B<br>20% affordable | | | | Sub-zone of the Bus. Center District.<br><br>Lots located in Westport Center, as defined in POCD, north of Post Road, east of Main Street, with 75ft of frontage on non-state highway local road and 40% of perimeter consisting of or abutting on municipal parking lot in existence at time of adopting of regulation | Mixed use<br><br>Appears to be two lots bordering Elm Street (see Westport Zoning Map, Downtown Area) |

| Substantial Rules Apply to Key Westport Zones Permitting Multifamily or Affordable Housing (Continued) | | | | | |
|---|---|---|---|---|---|
| Zone | Bedrooms | Units/acre | Approvals Required | Lot Criteria | Other Reqmts |
| Highway Service District, § 25 20% affordable | | Market rate units cannot exceed 2,250 SF of gross lot area per unit. Affordable units exempt from calculation. | SP and SPA | Purpose of district is to provide suitable locations for general commercial, automobile and drive-in type establishments which serve the needs of motorists. These service areas will be limited in number, size and location.<br><br>Residential uses are allowed where automobile uses are not displaced. | 1 development allowed<br><br>2 stories max. |

Density limits like those discussed above – which vary among zones and involve both bedrooms per acre and unit per acre restrictions – can make development economically difficult or infeasible depending on lot characteristics. In and near the commercial areas of town, the only areas where multifamily / affordable developments are allowed to be built, not only are the number of lots likely to be limited – particularly so for lots that could satisfy the criteria of the multifamily / affordable housing regulations – but existing lot sizes are typically smaller than in the residential areas.[75] Smaller lot sizes plus stringent density regulations is a recipe for limited affordable housing growth.

## *Dimensional Restrictions: Critical inclusionary housing provisions inherently involve sharing limited space within developments with commercial uses*

In keeping with the town's policy of restricting multifamily/affordable housing to areas within or abutting commercial districts, several of Westport's primary inclusionary zoning provisions require that any projects built under those provisions to also contain a non-residential component, *i.e.*, be a mixed-use project, in most of the zones eligible for these projects. Thus, both the IHZ regulation and the inclusionary two-family/multifamily regulation (§ 32-12) require that at least 30% of the floor area in the project "shall be non-residential use in the GBD, RBD, BCD, BCD/H and DDD#2 zones."[76] While only the non-affordable floor areas is used in calculating the 30%, the central point is that a non-residential use is required to be included in any project built under these inclusionary zoning provisions. This limits the pool of potential developers to only those willing to do a mixed-use project. And, given overall floor area and building coverage requirements for projects containing housing units (which even on their own would restrict the potential housing that could be built),[77] having to split finite floor area with business uses necessarily will operate to limit the amount of housing that can be built. This would not be true if such housing were permitted to be free-standing, without accompanying commercial uses.

## *Inadequate Provisions: Caps on bedrooms reduces access for families*

The Westport Zoning Code notably caps the number of bedrooms allowed in several of the main affordable and multifamily housing types authorized by the Code. As can be seen in the table above, some provisions use an aggregate cap of 20 or 26 (with affordable units) bedrooms per acres, while others do not allow units of more than two-bedrooms either outright or unless the lot exceeds a certain acreage.[78] The bedroom caps obviously affect whether families can move into units.

## *Development in certain affordable zones limited by rarity of public housing or subsidized municipal-driven projects*

Westport's zoning code and POCD evince a preference for heavy town control over multifamily / affordable development. This is generally seen in geographic and project restrictions, but is also visible in efforts to ensure that projects are town-sponsored or directly involve the town. As to the latter form of control, the code includes a Municipal Housing Zone ("MHZ") that is apparently restricted to 100% affordable projects developed by the town or the Westport Housing Authority on land owned by either.[79] Another provision for "Affordable and Middle-Income Housing on Town-Owned" property generally requires that half the units be affordable as government-assisted housing (including tenant-based assistance) or otherwise for households earning no more than 80% of state median income, with the remainder of units being for middle-income households earning no more than 80% of area median income.[80] Both approaches generally will require the use of town- or housing authority-owned property *plus* some form of government housing subsidies or public financing – with such resources being of obviously limited supply. As such, such proposals are unlikely to produce a sizeable quantity of affordable housing.

## *Recent accessory dwelling unit amendment appears to reflect town's inward focus on its own residents and desire to reinforce single-family zoning*

The POCD's discussion of changing housing needs emphasizes the projected housing needs of current residents who are or will become "empty nesters" and retirees, but who wish to continue living in Westport.[81] Similarly, the POCD notes that children of Westport residents and workers employed by Westport businesses may want to live in town.[82] To meet these anticipated housing needs, the POCD identifies possible strategies, all subject to a now-familiar caveat: "The POCD recommends that Westport continue to seek ways to address changing housing needs ***while maintaining the character and integrity of Westport***."[83] One of the ways identified in the POCD is accessory apartments.[84]

In May 2021, the PZC adopted an amendment to the zoning code establishing the requirements for accessory dwelling units ("ADUs") in single-family homes and authorizing affordable accessory units for occupancy by households with incomes not exceeding 80% of state median income.[85] Westport's embrace of ADUs is not surprising given the POCD's inward focus on the housing needs of current residents (or their relatives) and the town's overall single-family preservationist residential planning philosophy. As to the former, given that even the affordable ADU provisions require owner occupancy *and* that the ADU be attached to the house,[86] it is highly unlikely that even homeowners inclined to construct ADUs (and there is no reason to believe many would be) will choose to become private landlords within their own homes rather than provide housing for family members (such as residents seeking to age in place). And the attachment requirement, which further mandates that the house post-ADU addition "must have the exterior appearance of a single-family home"[87] (as well as the fact

that ADUs are, by definition, *accessory* uses that do not alter the principal use) ensures that single-family character is preserved.

In any event, reliance on accessory units on their own is unlikely to have a significant impact in growing the supply of affordable housing in town or be a productive pathway to greater racial integration,[88] and risks entrenching the mindset that single-family districts are off limits for higher density development.

## *Conclusion*

Westport, despite its regional interconnectivity, seems to have adhered to an inwardly-focused residential planning philosophy centered on maintaining single-family zoning and severely curtailing multifamily and affordable housing development in ways that are likely to preserve the racial, socioeconomic, and single-family ownership homogeneity of the town. Westport's status-quo preservationist approach is particularly glaring in view of the need for affordable housing opportunities in its region. Open Communities Alliance estimates Westport's "fair share" of the region's affordable housing need to require the construction of an additional 1,808 affordable units over the next 10 years.[89] To begin to make progress toward this goal, the town would need to dramatically reevaluate its approach to residential planning and zoning in order to foster a far greater diversity of housing types.

| **Westport 10-Year "Fair Share" Allocation (Units)** | **Combined Metropolitan & Western "COGs"[90] 10-Year Regional Need Estimate (Units)** |
|---|---|
| 1,808 | 35,365 |

*For sources, see the report's Town Data Compendium.*

[1] *See* Town Data Compendium, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[2] All references to racial groups in this analysis are shorthand for "non-Hispanic" members of that group. Conversely, all references to "Hispanic" are meant to capture Hispanics of any race.
[3] *See* Town Data Compendium.
[4] *See id.*
[5] *See id.*
[6] *See id.*
[7] *See id.*
[8] Town of Westport, 2017 Plan of Conservation and Development ("POCD"), at 12, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[9] *See* discussion in "Land Area," *infra*, at 166–169.
[10] *See* POCD, at 4; *see also id*. at 79, 80-85, 87.
[11] *See also* discussion of planning to retain single-family areas as they currently exist in "Land Area," *infra*, at 167–168.
[12] *See* POCD, at 15.
[13] *Id*.
[14] *See* Town of Westport Zoning Map ("Zoning Map"), as revised through May 7, 2018, a link to which is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[15] *See* POCD, at 15 (containing featured "Schematic Zoning" map under "Existing Zoning" section).
[16] *See id.*, at 14 (containing featured "Land Use Map").
[17] *Id.* at 79.

[18] *Id*. at 80. For further examples, *see also, e.g., id.* (identifying as first of three components of "fundamental philosophy" of the POCD "[m]aintaining the overall residential density of an area (units / acre) within a range that is reflective of the built form of the neighborhood or otherwise appropriate for the location"), *id*. at 83 (identifying same point from page 80 and calling for town to "[p]rotect residential neighborhoods from encroachment from inappropriate uses" under banner of "Managing Development"), and *id.* at 87 ("Westport would prefer to address local housing needs in ways that maintain its town character and past experiences with CGS 8-30g development shows that might not always be the case when the development is exempt from local zoning rules.").
[19] *See id*. at 80-81.
[20] *See id*. at 81 (featuring "Residential Densities Plan," not reproduced here due to similarity with "Land Use Map" featured above).
[21] *See id*. at 80.
[22] *See id*. at 129 (containing "Future Land Use Plan" map reproduced here).
[23] *See* Zoning Map; POCD at 129 (featuring "Future Land Use Plan" map), 81 (featuring "Residential Densities Plan" map); and *id.* at 14-15 (featuring current zoning and land use maps).
[24] *See*, *infra*, at 172–173.
[25] *See* C.G.S. § 8-23(e)(1)(G)-(H) (mandating that POCDs shall "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," as well as to "promote housing choice and economic diversity in housing, including housing for both low and moderate income households" and to "encourage the development of housing which will meet housing needs identified in the state's consolidated plan" and the State's POCD). *See also* C.G.S. § 8-2(a) (requiring 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").
[26] *See, e.g.*, POCD, at 83 (recommending that "Westport's zoning regulations should be revisited to ensure that housing units being built are in scale and proportion with the lot size and the neighborhood," and then listing a series of related "concerns expressed by Westport residents" that seemed to motivate this recommendation).
[27] *See id.* at 2.
[28] *Id.* at 3.
[29] *Id*. at 85 (emphasis in original).
[30] Section 4.5 of Town of Westport Zoning Regulations and Subdivision Regulations ("Zoning Code"), 2007-2021 (repealed 1/20/21, Zoning Amendment 751, available at http://online.encodeplus.com/regs/westport-ct/doclibrary.aspx?id=71710886-fa22-4209-8923-551dd64c82a5). This provision exempted affordable units, but not the market rate units that are necessary to enable production of affordable units in inclusionary developments. *See id*.; *see also* POCD, at 80. A link to the zoning code itself is provided in the "Core Planning and Zoning Documents for 12 Towns" section of this report, at 31.
[31] *See* POCD, at 80.
[32] Zoning Amendment 751 (adopted 1/20/21); *see also Garden Homes Management Corp. v. Westport Planning & Zoning Commission*, No. LND-CV-19-6107573-2, dkt entry # 134 (Conn. Super. Ct. July 27, 2020) (memorandum of decision); *id*. dkt entry # 135 (entry of judgment). The new language, in relevant part, provides that affordable housing developments covered by C.G.S. § 8-30g shall be permitted in all residential districts in accordance with the requirements for site plan approval. *See* Zoning Code, at § 4.5(1). Although the site plan standards are more favorable than the special permit process (discussed below in the main text), they are still considerably less favorable than the developer-friendly standards of C.G.S. § 8-30g. Thus, it is unlikely that a developer would use the zoning provision in lieu of simply filing an application under C.G.S. § 8-30g.
[33] *See* "Substantial Rules Apply to Westport Zones Permitting Multifamily or Affordable Housing" table, *infra*, at 174–176.
[34] *See* Zoning Code, at § 45-3. This analysis assumes that where the zoning regulations state that a residential use is "permitted" without qualification or reference to the Special Permit and/or Site Plan approval processes, land use approval is by zoning permit issued by the town Zoning Enforcement Officer or staff.
[35] *See id*. §§ 11-1, 11-2, 11-2.1.1, 11-3 (Residence AAA District, single-family dwellings on minimum two acre lots); *id*. at §§ 12-1, 12-2, 12-3 (Residence AA District, single-family residences on minimum one acre lots); *id.* §§ 13-1, 13-2, 13-3 (Residence A District, single-family residences on minimum 1/2 acre lots); *id*. at §§ 14-1, 14-2, 14-3 (Residence B District, single-family residences on minimum 6,000 square foot lots); *id.* at §§ 18-1, 18-2, 18-2.1, 18-3

(Residence C District, single-family residences, as permitted in Residence AAA District by § 11-2.1, and two-family residences on minimum 5,000 square foot lots).

[36] *See id*. at §§ 19-1, 19-3, 19-3.1, 19-3.2 (allowing in Affordable Housing Zone, despite the name, single-family and other uses permitted in the Residence AAA District, while limiting other uses to by Special Permit only); *id*. at §§ 19A-1, 19A-2, 19A-2.1, 19A-2.2 (same for the Residential Affordable Housing Zone/Workforce).

[37] *See*, *e.g*., *id.* at §§ 21-1 and 21-2 (allowing in Restricted Professional Office District same uses as permitted in the Residence AAA District, and limiting other uses such as multifamily and inclusionary two family to by Special Permit and Site Plan Approval); *id*. at §§ 22-1 and 22-2 (allowing in Restricted Office-Retail Districts #1, 2 & 3 same uses as permitted in the Residential AAA District, and limiting a range of other uses, including multifamily and inclusionary two family, to by Special Permit and Site Plan Approval); *id*. at §§ 23-1 and 23-2 (showing Restricted Business District ("RBD") similarly allowing the same uses as permitted in the Residential AAA District along with various non-residential uses, and limiting other uses such as multifamily to by Special Permit and Site Plan Approval); *id.* at §§ 24-1 and 24-2 (allowing uses in General Business District similar to the RBD); *id*. at §§ 25-1 and 25-2 (allowing in Highway Service District the same uses as permitted in Residential AAA Districts and limiting other uses, including multifamily with affordable units, to by Special Permit and Site Plan Approval); *id.* at §§ 27-1 and 27-2 (containing similar provision for Corporate Park District as to uses permitted in the Residence AAA District); and *id*. at §§ 29-1 and 29-2 (showing Business Center District allowing same uses as permitted in a Residence AAA District while limiting multifamily/two-family inclusionary to by Special Permit and Site Plan approval per §32-12).

[38] *See* C.G.S. § 8-3c(b) (discussing public hearings before zoning commissions on applications for special permits); *id*. at § 8-7d (discussing public hearings before zoning commissions generally, including timelines); and Zoning Code, at §§ 43-2, 43-3, 43-5, 43-6, 43-7 (discussing requirements for Special Permits and public hearings thereon, including PZC review process and action on applications).

[39] Residence C District, which apparently is not shown on the Westport Building Zone Map. "The Residence C provisions are intended to allow moderate/high density development (greater than the Residence B Zone density) for smaller sized dwelling units on small parcels along Saugatuck and Riverside Avenues and served by public sanitary sewerage facilities. The Residence C Zone shall also allow for the redevelopment and/or adaptive reuse of existing non-residential buildings on Riverside Avenue into larger sized dwelling units on lots over two (2) acres in non-residentially zoned lots and residentially zoned lots that currently have a permitted nonresidential use with a minimum 200 feet of frontage on Riverside Avenue and served by public sanitary sewerage facilities." *Id*. § 18-1.

[40] *See id*. at §§ 11-1 and 11-2.

[41] *See* notes 35 and 37 *supra*; *id*. at §§ 12-1 and 12-2 (Residence AA); *id*. at §§ 13-1 and 13-2 (Residence A); *id*. at §§ 14-1 and 14-2 (Residence B); *id*. at §§ 18-1 and 18-2 (Residence C); *id*. at §§ 21-1 and 21-2 (Restricted Professional Office District ("RPOD")); *id*. at §§ 22-1 and 22-2 (Restricted Office-Retail Districts #1, 2 & 3 ("RORD")); *id*. at §§ 23-1 and 23-2 (Restricted Business District ("RBD")); *id*. at §§ 24-1 and 24-2 (General Business District ("GBD")); *id*. at §§ 28-1 and 28-2 (Business Preservation District ("BPD")); *id*. at §§ 29-1 and 29-2 (Business Center District ("BCD")); *id*. at §§ 29A-1 and 29A-2 (Business Center District/Historic ("BCD/H")); *id*. at §§ 30-1 and 30-2 (Historic Design District ("HDD")).

[42] *Id*. at §§ 19-1 and 19-3 (Affordable Housing Zone ("R-AHZ")); *id*. at §§ 19A-1 and 19A-2 (Residential Affordable Housing Zone/Workforce ("R-AHZ/W")); *id*. at §§ 20-1 and 20-2 (Municipal Housing Zone ("MHZ")); *id*. at §§ 24A-1 and 24A-2 (General Business District/Saugatuck ("GBD/S")); *id*. at § 32-12 (Inclusionary Two-Family and Multi-Family Dwellings); and *id*. at §§ 39A-1 and 39A-3 (Inclusionary Housing Overlay District ("IHZ")).

[43] *See id*. at §§ 15-1 and 15-2 (Planned Residential Development ("PRD")); *id*. at §§ 17-1 and 17-2 (Open Space Residential District ("OSRD")); *id*. at §§ 24B-1 and 24B-2 (General Business District/Residential ("GBD/R")); *id.* at §§ 29B-1 and 29B-2 (Business Center Retail Residential District ("BCRR")).

[44] *See generally id*. at §§ 43 (process for special permit / site plan approval), 44-6 (standards for special permits). In reviewing a special permit and/or site plan application, the PZC is empowered with wide latitude in using its judgment to grant or deny the application. The PZC is required to "take into consideration the public health, safety and general welfare, and may prescribe such conditions and safeguards as are necessary to assure compliance with § 44, herein [concerning special permit / site plan standards]." *Id*. at § 43-6. The regulations specifically authorize the PZC to require an applicant for a special permit / site plan approval to pay for the town to hire one or more consultants to assist the PZC and its staff in their review. *See id*. at § 43-6.4.

[45] *Id*. § 44-6 (containing special permit standards).

[46] POCD, at 80.
[47] *See* Zoning Code, at §§ 11-2.3 and 11-2.3.16 (providing "Inclusionary Two-Family and Multifamily Dwellings" as a special permit and site plan use in the AAA zone), 12-2 (adopting same uses and standards as AAA zone for AA zone), 13-2 (same for A zone), 14-2 (same for B zone), and 18-2.2.1 (adopting AAA special permit uses permitted under § 11-2.3, with certain exceptions not relevant here, for C zone).
[48] *See id*. § 32-12 ("Two-family and multi-family dwelling units are permitted in any GBD, RPOD, RORD, BPD, RBD, BCD, BCD/H and DDD#2 Non-Residential Zoning District subject to a Special Permit and Site Plan Approval in accordance with §43, herein, all applicable provisions of the underlying zoning district, and the following additional standards and safeguards.").
[49] *See id*. §§ 32-12.1.1 and 32-12.1.2. The regulation also requires that the unit must be connected to a public water supply and public sanitary sewer line. *See id*. § 32-12.13.2.
[50] That is, the GBD, RPOD, RORD, BPD, RBD, BCD, BCD/H and DD#2 zones. *See id.* at § 32-12. That these zones encompass only a fraction of Westport can be seen from the Zoning Map.
[51] *See* Zoning Map.
[52] *See* Zoning Code, at §§ 39A-1-39A-3 (providing for Inclusionary Housing Overlay District ("IHZ") with express split zone requirement, and requiring same access from non-residential portion of lot requirement as § 32-12).
[53] POCD, at 87.
[54] *See* Zoning Code, at § 39A-18.1.
[55] *Id*. at § 39A-1. *See also id.* at § 39A-2 (reiterating this requirement).
[56] *Id*. § 39A-4.1.
[57] *See* Zoning Map.
[58] Zoning Code, at § 19-2.
[59] *Id.* at § 19-6.
[60] *Id*. at § 19-1 (emphasis added).
[61] *See* Zoning Map (showing R-AHZ zone bordering Edge Hill Lane).
[62] *See* Zoning Code, at § 19A-17.
[63] *See id.* at § 19A-3.
[64] *See id.*
[65] *See id*. at § 19A-4.
[66] *See* Zoning Map.
[67] Zoning Code, at § 18-1.
[68] "The General Business District/Residential (GBD/R) shall be limited to areas that are served by a public water supply, suitable power supply and public sanitary sewers; *where areas have frontage on a State Highway and on the Saugatuck River, are zoned General Business District as of the effective date of this regulation, and are within 'Westport Center' as set forth in the Current [POCD]*." *Id*. at § 24B-1 (emphasis added). For the GBD/S district, "[p]arcels shall be eligible for district designation if they are located in the area considered the Saugatuck Center (as defined by the Town [POCD]) and formerly zoned GBD." *Id*. at § 24A-1.
[69] *See id*. at §§ 24A-19 and 24B-16.
[70] *See id*. at § 29B-1 (describing the BCRR as "offer[ing] the owners of commercial property, within that area in Westport Center north of the Post Road and east of Main Street, with at least 75 feet of frontage on a non-state highway local road and consisting of or abutting on at least 40% of its perimeter a municipal parking lot existing at the time of adoption of this regulation"). *See also* Zoning Map (including "Downtown Area" inset).
[71] *See* POCD, at 121 (featuring sewer coverage area map) and 123 (featuring water service area map).
[72] *Id.* at 85.
[73] *See*, *supra*, at 170.
[74] Compiled from the relevant provisions of the Zoning Code contained within the Code sections noted in the "Zone" column of the Table.
[75] This is, as a general matter, expected to be true, follows from the generally smaller minimum lot size requirements in these areas (except, occasionally, for certain inclusionary/affordable housing types, as noted herein) but is also discernible from close scrutiny of the Zoning Map.
[76] Zoning Code, at § 39A-10.3.2 (IHZ). Mixed use is not required in the RPOD, RORD and BPD zones, owing to their smaller building standards. *Id*. *See also id.* at § 32-12.7.2.2 (providing same mixed-use requirements for § 32-12).

[77] *See id*. §§ 39A-10 (providing floor area requirements for IHZ), 39A-8 (providing coverage regulations for IHZ), 32-12.7 (listing floor area requirements for inclusionary two-family and multifamily dwellings), and 32-12.5.2 (stating that total coverage shall not exceed 70% of lot for inclusionary two-family and multiple dwellings special permit).
[78] *See* examples in the "Substantial Rules Apply to Key Westport Zones Permitting Multifamily or Affordable Housing" above.
[79] *See id*. at § 20-1.
[80] *See id*. at § 32-17.
[81] POCD, at 85.
[82] *Id*.
[83] *Id*. (emphasis in original).
[84] *See id*. Also listed are: "retaining/repurposing older housing, small scale developments in multiple areas [noted above], transitional locations between business areas and residential areas, . . .house sharing, and other approaches that maintain the character and integrity of Westport." *Id*.
[85] *See* Amendment 791, codified in §§ 11-2.4.12A, 11-2.4.12B of the Zoning Code.
[86] *See* Zoning Code, at §§ 11-2.4B(b) (requiring owner occupancy) and (c)(i) (requiring ADUs be attached).
[87] *See id.* at § 11-2.4B(c)(i).
[88] Due to the unlikelihood of such units being created in the first instance, rented out *at all* if they are created, and affirmatively marketed even if rented out. *See also* discussion of ADUs in the introduction to this report, *supra*, at 10.
[89] *See* Town Data Compendium.
[90] "COG" is shorthand for "Council of Governments." There are 9 COGs in Connecticut, which are meant to serve as "planning regions" to "provide a geographic framework within which municipalities can jointly address common interests." *See* State of Connecticut, *Regional Councils of Government (COGs) in Connecticut*, available at https://portal.ct.gov/OPM/IGPP-MAIN/Responsible-Growth/Regional-Planning-Organizations-RPO.

## Conclusion

There are a number of clear takeaways from this assessment, but the overarching theme is that rather than actively planning and zoning to generate a meaningful number of affordable homes (in accordance with existing laws), many towns appear to be significantly restricting such development.

This review revealed both recurring planning and zoning practices as well as several unique impediments to affordable housing creation. The trends include but are not limited to the following:

- Zoning for large-lot single-family homes on the overwhelming majority of town land, with planning often driven by the goal of keeping multifamily isolated to limited areas of town (and separate from single-family neighborhoods).
- Requirements that multifamily housing be served by public water and sewer facilities, when both were often in short supply (and, in some cases, towns actively opposed expanding such systems).
- Bans or severe limitations on even small-scale multifamily homes that could be built in non-sewered areas, with such restrictions generally increasing with the scale of multifamily uses.
- Imposition of burdensome submission and public hearing processes for virtually all multifamily housing proposals.
- The imposition of density, lot size, and other requirements for multifamily development, in addition to requiring Special Permits/Special Exceptions (meaning a public hearing), that seem likely to make such development either more difficult or hinder its capacity to generate units on the limited parcels that permit it.
- Application of extremely different standards for approval of non-age-restricted multifamily proposals as compared to single-family developments and senior-only proposals.
- Planning that seemed to favor keeping undeveloped land in that state rather than balancing that need with the deep need for affordable housing development, including strategies to expend public monies on the acquisition of underutilized parcels.
- Over-reliance on accessory dwelling units ("ADUs") that appear unlikely to generate robust quantities of multifamily rental housing (it seems unrealistic to assume an appreciable number of homeowners will choose to build such units in the first place, much less choose to become private landlords).
- Restrictions on the number of bedrooms that limit access for families with children in even the multifamily and affordable housing that is developed.
- Apart from the Affordable Housing Land Use Appeals Procedure's (C.G.S. 8-30g) exemption (10% of a town's housing stock is affordable) or moratorium (a 1.5% or 2% of town housing stock improvement in the number of affordable units in certain statutorily-defined timeframes), towns seem to have no yardstick to measure success. Note that C.G.S. 8-30g is not tied to the actual regional need for affordable housing, a critical consideration that appears to be lacking in many towns' planning (even when supposedly addressing the need for greater housing diversity).
- A need for proactive municipal decisions and state or federal investment to expand infrastructure, especially sewer and water service supporting multifamily housing development.

Some of the more "unique" impediments to affordable housing development or to unlocking the integrative potential of such housing that we encountered were as follows:

- Fixed numerical caps on the amount of affordable or multifamily housing that could be developed in certain zones, or within certain periods of time, or even throughout the entire town pursuant to particular regulations.
- Sunset provisions in particular affordable or multifamily housing provisions that rendered such avenues for development unavailable after specific dates or triggering criteria (such as a town reaching its C.G.S. § 8-30g 10% threshold).
- Residency preferences written into certain affordable housing regulations that make it unlikely that low-income households from other municipalities can move into any affordable housing generated pursuant thereto.

With such barriers to affordable and multifamily development, it is no wonder that the state of Connecticut has a deficit of 135,000 affordable units and is one of the most racially, ethnically, and economically segregated states in the nation.[1]

## *Statewide Reforms*

Unfortunately, we are in a world where the major players involved in generating housing -- for-profit developers and towns --- appear to have few incentives to make it affordable. Developers generally can make more money on market rate units and in towns a range of concerns, many of which are likely to be unfounded, make approval of affordable housing politically challenging.

This is where the notion of Fair Share Planning and Zoning becomes critical. As discussed in the introduction, inspired by a process in New Jersey that has generated hundreds of thousands of affordable and market rate homes, Fair Share Planning and Zoning takes the total number of affordable housing needed in the state, allocates it fairly to each town and then asks (or, rather, *entrusts*) each town to plan and zone for their share.

Fair share supplies the missing pieces to Connecticut's zoning puzzle. It creates affordability goals and an enforcement structure that ensure that each town is playing its part in meeting at least two important state housing goals: ensuring housing affordability and promoting inter-municipal accessibility. Critically, it does this by assigning to towns the job of figuring out the best way to reach that goal considering local factors -- in other words, by providing a guiding framework for local control, rather than supplanting it. Fair Share creates a central role for the developers and the private market, but part of that role necessarily involves creating a percentage of affordable units and working in genuine partnership with towns. Lastly, Fair Share is carefully designed to create desegregated housing options both through the affordability levels it requires and the obligation to market new units across municipal and (given the segregated landscape) racial and ethnic lines.

## *Local Advocacy*

While Fair Share Planning and Zoning is a proposal for statewide reform, it can be used immediately by local advocates interested in prompting change at the municipal level. With a town's Fair Share number as a goal, local groups can work to re-envision local planning and zoning to increase affordable housing options and help foster much needed racial, ethnic, and economic diversity in their towns.

The challenge is clear; the impact of inaction is clear; and the solution, while perhaps daunting in light of decades of stagnation, is both *workable* and clear. Together, we can come to a new, more equitable version of planning and zoning in Connecticut, one which relies on local decision making within a process designed to meet housing needs and generate desegregating housing choices. Now is indeed the time to plan and zone for equity.

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[1] The Consolidated Plan estimates that Connecticut needs an additional 128,520 affordable units to house households at 30% of Area Median income paying more than 50% of that income towards housing costs. *State of Connecticut 2020-2024 Consolidated Plan (Con Plan)*, p. 46, available at https://portal.ct.gov/-/media/DOH/20-24-ConPlan-and-Action-Plan.pdf. This is in line with Open Communities Alliance (OCA)'s own estimate of 135,740 units. Kinsey, David N. Fair Share Housing Model for Connecticut 2020. November 2020, p. 16, https://www.ctoca.org/fairshare. Accessed 7 June 2021.