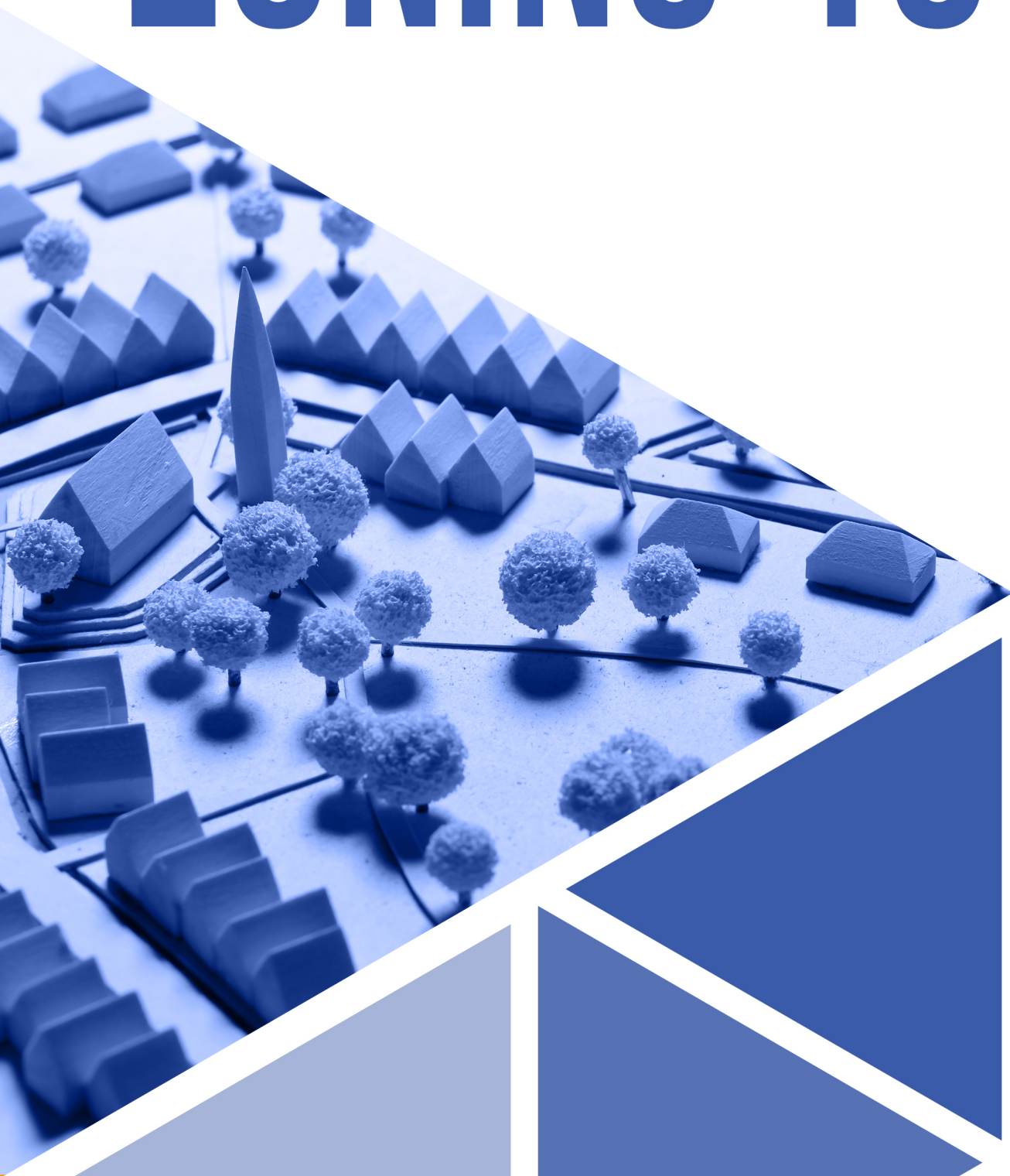


ZONING 101



MARCH
2022



OPEN COMMUNITIES
ALLIANCE

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.

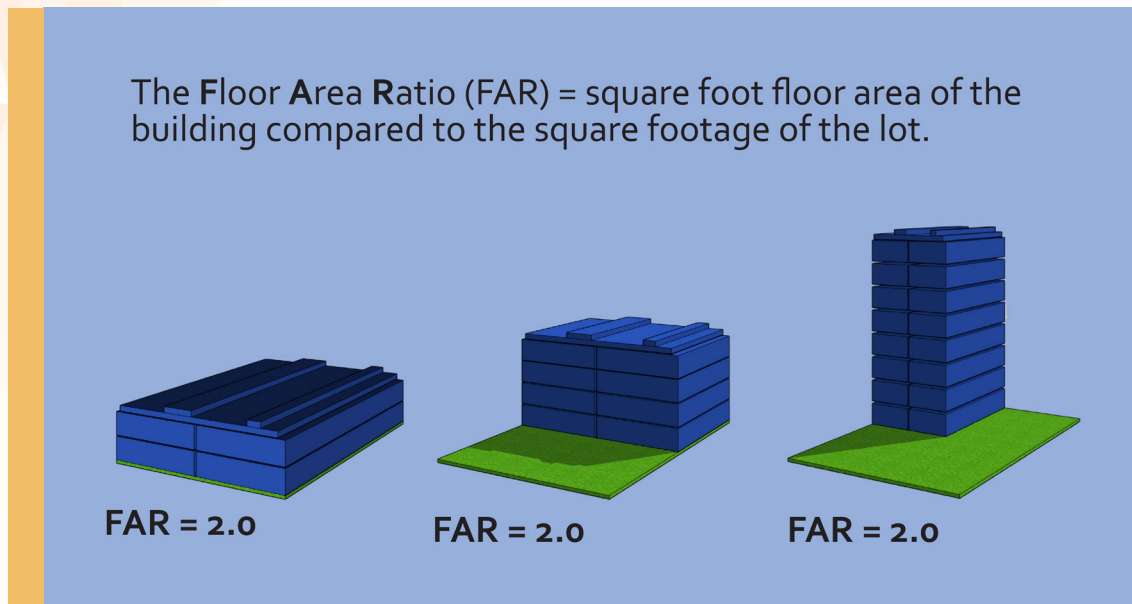
- **Density:** Density is the maximum number of units per a given benchmark (such as per acre) that may be built on lots within a particular zone of the municipality. It is commonly measured in dwelling units per acre (“du/ac”), but density limits may also take the form of units per building or per amount 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 & Quadplexes	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/spio321_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, *Implementation 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-cnhdapon4jfqxgri3jn53rroz4-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.

