ZONING & RACIAL BIAS

how zoning discriminates
SEGREGATING RESOURCES IS FUNDAMENTAL TO STRUCTURAL INEQUALITY

Those dirt roads were the reason he never learned to skate, and he could never forget that.

“We could buy skates,” Pershing would remember even as an old man. “But we couldn’t buy sidewalks.”

Downtown was called Five Points, the intersection of Eighteenth and Desiard, and when Pershing got there, he walked further down Desiard Street past Piccadilly’s restaurant, where the white people ate, and on to the Paramount straight ahead. He could see the double glass doors in front and a crowd forming outside. He knew to ignore the front en-
SEGREGATING RESOURCES IS FUNDAMENTAL TO STRUCTURAL INEQUALITY

SEgregation BY DESIGN  
LOCAL POLICIES AND INEQUALITY IN AMERICAN CITIES

- The earliest zoning codes explicitly separate people by race.
- Government-sponsored segregation becomes more prevalent as government spends more money on infrastructure.
- Single-family zoning is a function of this history.
- Large lot zoning becomes prevalent in the post-Great Migration era.
- From sewers and sidewalks to schools ZONING ENABLES SEGREGATING RESOURCES
“Municipalities with a higher share of land zoned for single-family detached homes and larger minimum lot size requirements had more expensive and larger homes than municipalities with less stringent zoning standards in the same metropolitan area.

After controlling for key factors, areas dominated by land zoned for single-family detached homes are more likely to contain higher shares of White residents and lower shares of Black and Hispanic residents.

Larger minimum lot size requirements also predict a lower proportion of Hispanic residents, but were not significantly related to Black population shares.

Citizen opposition to development also predicts the exclusion of Black and Hispanic residents.”
HOW DOES ZONING DISCRIMINATE

- Large lot zoning
- Single family zoning
- Citizen opposition and discretionary approvals
- Definitions of family
DENSITY AND STARTER HOMES
WHAT SINGLE FAMILY ZONING PROHIBITS
(PARCEL) SIZE MATTERS

And minimum lot sizes in Connecticut are enormous.

Robert Ellickson, Frozen Neighborhoods (forthcoming)
1925
- 99.99% of town included in two zones
  - A: Min 9325 square feet
  - B: Min 6000 square feet
  - C: Min 5000 square feet (mixed use)

1948
- Rezoned 10% of town to one acre
  - B: Increased min 6000 square foot zone to min 20,000 square foot

1951
- Rezoned 40% of town (90% of undeveloped land) to min two acre lots

1964
- Floating zones permit multifamily development per conditional approvals process

1965
- Townwide downzoning: decrease max height, increase min square footage
DOWNZONING AVON

1948
- Minimum parcel: 15,000 square feet

1951
- Rezoned area west of the Farmington River to minimum 2 acre parcels

1953
- Rezoned area east of the Farmington River to minimum 30,000 square feet

1957
- Rezones portions of eastern area to minimum 40,000 square feet
- Anticipates possibility of apartments by conditional permit

By 1967
- Vast majority of Avon is zoned for 1 acre and 2 acre lots
- Discrete areas zoned for commercial and industrial
Great Migration 1916-1970
Civil Rights Movement 1940's-1960's
Urban Renewal 1940's-1960's
Environmental 1962 -
Homevoters 1970's
Of all Connecticut towns:

- 23 prohibit multifamily housing
- 122 require special permit
- 29 have a bedroom cap
- 13 require minimum lot area of ≥2 acres for single-family homes
- 18 require minimum lot area of ≥5 acres for multi-family homes
- 11 have affordable housing preferences

Connecticut Zoning Initiative, collaborative effort between the Connecticut Fair Housing Center and the Cities Suburbs & Schools Project at Trinity College
DISCRETIONARY APPROVALS
• 4.1% African-American or Hispanic v. 20.3% for Nassau County
• 2.6% if you exclude college students
• Adjacent towns are racially diverse
• History of NIMBYism
• 25 acre site, owned by the County, becomes available for development
• Traffic; neighborhood character; “full families” living in apartments, increased number of schoolchildren, decreased property values.

• “Are we being urbanized?”

• Officials promise “upscale housing” and that “they are not necessarily looking at a different way of life. In terms of economics.”

• Responding to public opposition, officials created new zone for “townhomes,” defined as single-family homes.
"The tenor of discussion at public hearings and in the flyer circulated throughout the community shows that citizen opposition, though not overtly race-based, was directed at a potential influx of poor, minority residents."

- Think of the people who live here
- Character
- Flavor
- Keep Garden City what it is
- Crowding
- Upscale
- This is why I left ______.
Welcome to Garden City?
“None of the alleged statements expressly refers to race or national origin; rather they raise various concerns about issues including large families, unattended children, parking, and crime . . . The use of ‘code words’ may demonstrate discriminatory intent.”
“[H]ousing segregation both perpetuates and reflects this country’s basic problems regarding race relations: educational disparities, police-community relations, crime levels, wealth inequality, and even access to basic needs such as clean water and clean air. In this country, the neighborhood in which a person is born or lives will still far too often determine his or her opportunity for success.”
GREENWICH, CT

too urban

sea change in character of the town

character of the community

traffic

small courtyards and balconies

Since you’re doing 8-30g you need to expect more children.

influx of children

car alarms, sirens, ambulances and people partying on hundreds of balconies

This is not why people move to Connecticut.

gambling with our neighborhood
The Chair of the Housing Authority Board said residents in affordable housing would volunteer for town boards and activities. Much of the crowd laughed at this idea and [she] had to wait to resume speaking.”

One speaker said that Middlefield residents want to live near “nice people” and not apartments.

Selectman Jon Brayshaw suggested that the new development was a method of “creating a voting block.” Brayshaw said, “They could easily sway almost anything the townspeople tried to accomplish.”
33. During the public hearing sessions, members of the public who identified themselves as Branford residents repeatedly made comments, many of which drew applause, based on stereotypes, prejudice, race, or ethnicity, that suggested animus toward the intended residents of the Parkside Village redevelopment, including:

   a. "[The] problem is that you shouldn't be mixed in with low income or Section 8 people. That brings a different element to the town";
   b. "[Who's] going to police what kind of caliber of residents are moving in there?";
   c. "[You] can have six or seven people [per unit] living in there";
   d. "Retirees, disabled, old people, I have no objection to renovating the whole place and make it nice for them. But don't get too much of that riffraff ...";
   e. "If I wanted to live in a big city, I'd move to Chapel Street, New Haven";
   f. "[They're] getting out of the city where the crime and drugs and everything else are";
   g. "We are here as the Branford Housing Authority, not the New Haven ... Housing Authority";
   h. "It's a public housing low income project, and no matter what you call it, it is what it is";
   i. "[Keep Parkside] away from the federal dollars that have ruined many a fine city with their regulations and their low-income housing";
   j. "[Branford residents] have OK'd themselves to paying more taxes so we could live away from where we don't want to live";
   k. "[This] massive Section 8 development on our quaint neighborhood may just push us over the edge"; and
   l. "The minute [Parkside] take[s] state and federal money, it's open to anybody, anybody."
Massachusetts open meeting law requires detailed accounting of who participates

- Whiter
- Older
- Wealthier
- More opposed to the construction of affordable housing

Opposition predictably resulted in

- Fewer units
- Fewer affordable units
- More parking
UNDERMINING OTHER POLICY GOALS
• Zoning law’s insistence on perpetuating the status quo is at odds with evolution in other areas of law.

• Compare zoning’s insistence on formal definitions of family to family law’s functional definition.
REMINDER

- Zoning is often a duplicative layman’s ineffective overcorrective fix for problems actually solved in other regulations

- Public health codes
- Building codes
- Environmental codes
House of Representatives, March 28, 2019

The Committee on Housing reported through REP. MCGEE of the 5th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING PROTECTIONS FOR CERTAIN GROUP CHILD CARE AND FAMILY CHILD CARE HOMES.

Be it enacted by the Senate and House of Representatives in General
EXCLUSION MEANS EXCLUSION NOT JUST FROM PLACES BUT ALSO FROM STUFF
OPPORTUNITY MAPPING

Map of Distribution of Opportunity in Connecticut

Data Sources: U.S. Census Bureau, MAGIC, Date: December 13, 2014.
OPPORTUNITY MAPPING

Map of Distribution of People of Color and Opportunity in Connecticut

Data Sources: U.S. Census Bureau, MAGIC. Date: December 13, 2014.
EXCLUSIONARY ZONING AND SCHOOLS

Figure 2. The School Test Score Gap in the 100 Largest Metropolitan Areas
CAN WE FIX ZONING?

This is an earnest question. There is good reason to believe that race-conscious policies are necessary to redress harms perpetuated by a century of explicit, unabashed racism in zoning. These are all second-best strategies. But in this era of conservative courts and federal inaction, it remains crucial that we undo exclusionary zoning while we simultaneously fight for reparations.

- Designing the rules so that it is possible to build starter homes
- Ensuring that each town accommodates its fair share of housing development and housing types
- Making it possible for people other than developers to build rental housing
- Making sure that developers serve a range of housing need
DESIGNING THE RULES SO THAT IT IS POSSIBLE TO BUILD STARTER HOMES
MINNEAPOLIS

Remembering history in an effort to address it
WHAT SINGLE FAMILY ZONING PROHIBITS
REDLINING

RESTRICTIVE ZONING

MINNEAPOLIS
MINNEAPOLIS

Remembering history in an effort to address it
(OREGON, TOO)

Remembering history in an effort to address it
DECREASING NEED FOR CONDITIONAL APPROVALS
FEWER CONDITIONAL APPROVALS → LESS BIAS IN THE PROCESS

• Make a more diverse range of housing types “as of right”
• Subject multi-family housing to the same process applicable to single family housing
• Remove code words and subjective terminology from the state zoning enabling act and local zoning ordinances
EACH TOWN ACCOMMODATES ITS FAIR SHARE OF HOUSING DEVELOPMENT AND HOUSING TYPES
Some states have sought to replicate federal civil rights protections in state law in case the federal government rolls back those protections.
Many states require towns to consider housing need and affordability in their planning efforts.

Some require those planning considerations to be incorporated into local zoning ordinances.

If the zoning ordinance fails to allow the actual creation of housing units, the state might step in or developers constructing affordable housing have enhanced rights to build.

Anti-Snob Zoning Acts, like those in Connecticut and Massachusetts law, are one example, but there are others.
NEW JERSEY

- Each town must adopt zoning that accommodates regional housing need
- Measured as function of current affordability crisis plus anticipated growth
- Calculation is limited to low-income housing
- Builder’s remedy permits construction of mixed-income housing

CALIFORNIA

- Collaboratively, towns and state allocate housing needs number to each town
- Zoning must accommodate that number of units, both market & low-income
- Self-effectuating
- Can no longer use self-fulfilling prophecy to stymie growth

FROM SEA TO EXCLUSIONARY SEA
MAKING IT POSSIBLE FOR PEOPLE OTHER THAN DEVELOPERS TO BUILD RENTAL HOUSING
ACCESSORY DWELLING UNITS

ATTIC

ADDITION

OVER GARAGE

SECOND FLOOR

DETACHED

BASEMENT
ACCESSORY DWELLING UNITS

OREGON

- Minimum 480 square feet
- Maximum 900 square feet
- Consistent with design of main house
- Must meet other zoning criteria
  - Setback, height, etc.
  - But see California
- Must meet building code
- Can be attached or separate structure

NEW HAMPSHIRE

- Must be attached to main house
- Town cannot impose additional dimensional requirements
- Can require a special permit
  - But see California
- Town can impose occupancy limits only if it also does so for single-family homes
- Town cannot limit bedroom count to less than two
MAKING SURE THAT DEVELOPERS SERVE A RANGE OF HOUSING NEED

Can we use zoning for good?
### Marin County

- Impact fee applies to large single-family housing ($13/sq ft over 3000 sq ft)
- For developments or subdivisions over two (2) units, 20% must be affordable
  - Where 20% results in a fraction < .5, the developer can pay a fee in lieu of an affordable additional unit
  - \(20\% \times 2 \text{ units} \times $311,179 = $124,472\)
- Jobs/Housing Linkage Fees
- Deed restricted to 50% AMI forever

### Montgomery County

- Between 12.5 and 15% of new units must be affordable
- Applies to developments over twenty (20) units
- Developments over ten (10) units pay a modest fee (0.5%)
- Must be affordable to moderate-income households

**ENCOURAGE DEVELOPERS TO BUILD AFFORDABLE UNITS, NOT DISCOURAGE DEVELOPERS FROM BUILDING**