

ZONING & RACIAL BIAS

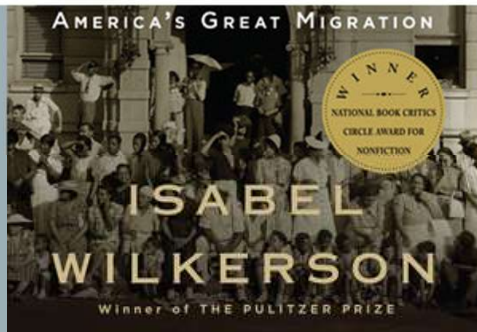
how zoning discriminates

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.”

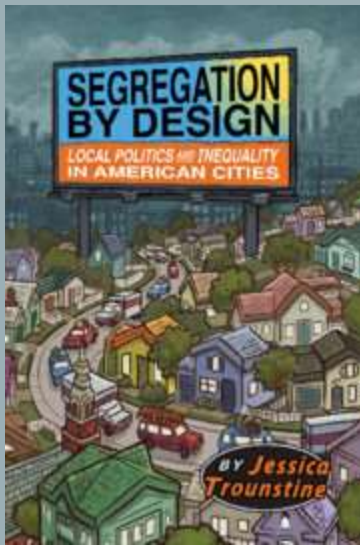


as if the ditches were a swimming pool. They didn’t know what a real pool was like because the only one in town didn’t allow children who looked like them.

Trucks rumbled down the road and flung dust on the porches and through the screens and into the front rooms of the houses on Pershing’s

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



ZONING ENABLES
SEGREGATING RESOURCES

- 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 the post-Great Migration era.
- From sewers and sidewalks to schools

THE REGULATIONS MATTER

Land Use Politics, Housing Costs, and Segregation in California Cities

Jonathan Rothwell
Principal Economist, Gallup
Visiting Scholar, George Washington University
Non-Resident Senior Fellow, Brookings Institution

September 2019

TERNER
CENTER
OF HOUSING
INNOVATION
UC BERKELEY

“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.

Table 1

Metric One: Percentage of Residentially Zoned Land Requiring a Lot-Size above a Specified Minimum

	≥ 1/2 acre	≥ 1 acre	≥ 1-1/2 acres	≥ 2 acres
Silicon Valley	52.8%	51.0%	36.1%	36.1%
Greater New Haven	76.1%	74.0%	47.7%	32.0%
Northwest Austin	32.3%	32.1%	13.7%	13.7%

Table 3

Metric 2: Percentage of Residentially Zoned Acreage Permitting Single-Family Detached Houses on Lots Below a Specified Minimum

	≤ 6,000 sq.ft.	≤ 8,000 sq.ft.	≤ 10,000 sq.ft.
Silicon Valley	20.5%	24.9%	32.3%
Greater New Haven	0.2%	1.0%	3.6%
Northwest Austin	24.8%	39.5%	49.0%

Robert Ellickson, *Frozen Neighborhoods* (forthcoming)

DOWNZONING FAIRFIELD

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

CONTEXT

Great Migration

1916-1970

Environmental

1962 -

Civil Rights Movement

1940's-1960's

Urban Renewal

1940's-1960's

Homevoters

1970's

CONNECTICUT TODAY

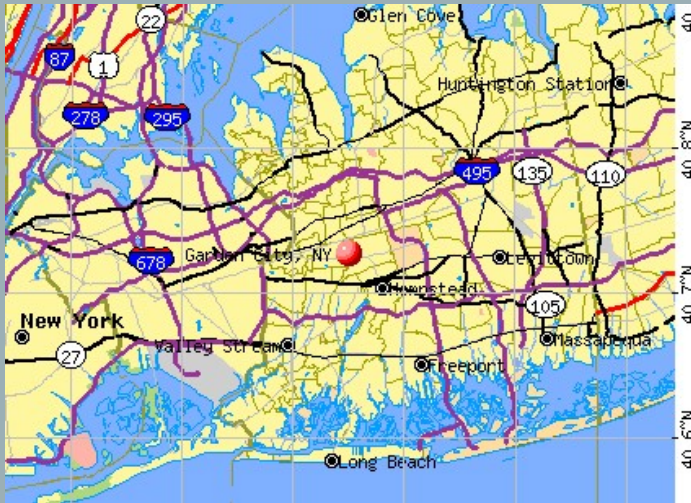
Of all Connecticut towns:

- 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

M'HANY MANAGEMENT V.
COUNTY OF NASSAU



- 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



M'HANY MANAGEMENT V.
COUNTY OF NASSAU

- 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?

TATE

The New York Times

PLAY THE C

LIVING IN

Garden City, N.Y.: Affluent, With a Welcome Mat Out



Living in Garden City, N.Y.

Photos View Slide Show

Johnny Milano for The New York Times

AVENUE 6E INVESTMENTS
V.
CITY OF YUMA



“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.”

AVENUE 6E INVESTMENTS
V.
CITY OF YUMA

“[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



MIDDLEFIELD, CT

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.”

Middlefield Housing Development Faces Vocal Opposition



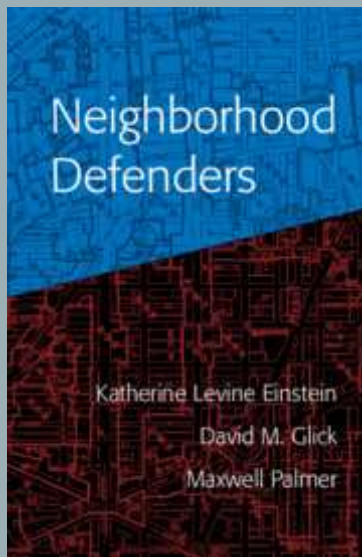
BRANFORD HOUSING AUTHORITY



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."

WHO PARTICIPATES?



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

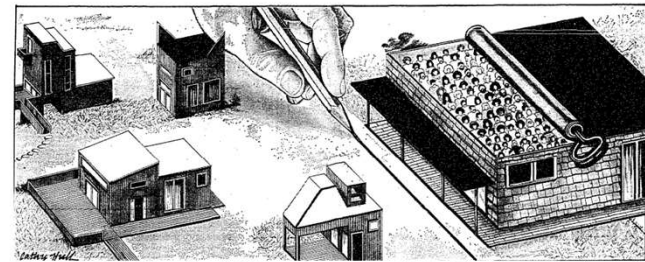
FAMILY

- 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

THE YALE LAW JOURNAL

KATE REDBURN

Zoned Out: How Zoning Law Undermines Family Law's Functional Turn



Note. Cathy Hull, Illustration, N.Y. TIMES, Aug. 31, 1975, § 8 (Real Estate), at 1. Reprinted with permission of the artist.

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

ALL OUR KIN



House of Representatives

General Assembly

File No. 181

January Session, 2019

Substitute House Bill No. 6291

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

When Day Care Clashes With Zoning Laws

BY ANTHONY DePALMA
Special to The New York Times

VERONA, N.J. — When Tracy DeLaura decided to stay home with her boy, she figured she might as well watch a few other children. She thought she could have fun and make some money. She never suspected she would be breaking the law.

Set for away in another busy street in her Newark suburb, Janet E. Michalovsk, a pediatric nurse, also decided to take care of other children while she stayed home with her son, so she put an ad in the local newspaper.

Then the town building inspector saw it, he promptly notified her that she could not operate a business in a residential area.

It is the kind of dispute increasingly seen in suburbs where zoning rules prohibit day-care services in a person's home. Mrs. DeLaura and Mrs. Michalovsk issued forces and hired a lawyer

to seek a zoning variance. In the meantime they have tried to persuade the township to change the zoning ordinance to permit family day care throughout Verona.

"It's 1963," said Mrs. DeLaura, speaking in the finished basement of her home where she now cares for her son and four other children. "I can count on my hands the number of friends who are not two-income families. People have to work and they need day care."

Officials in Verona, who allowed the women to continue caring for children while they sought variances, said they were aware of the need for day care but were still responsible for enforcing the law.

Clash of Tempers

"We were faced with a dilemma," said Mayor Robert M. Pignatelli. "We certainly could not ignore the fact that there are thousands of homes in our township where the situation we didn't want to see them or force them to shut down."

As the women have pursued their cause, tempers have flared. Letters were printed in the local paper demanding that family day-care homes be shut down. Property values and help spread rumors. Day-care supporters distributed a flyer showing the picture of a baby with a line through it and the question: "Is this the future of Verona?"

In September the township planning board recommended that family day care be included in Verona's new municipal zoning plan, which governs the township's future. Mrs. DeLaura and Mrs. Michalovsk are still awaiting a ruling on their variances. The Board of Zoning Appeals is scheduled to consider the request at its meeting on Thursday.

In showdowns all over the country, entrepreneurial mothers are facing

with puzzled local officials over zoning and day care. The outcome can be community resentment and, at worst, the shutdown of scarce day-care centers.

"Zoning and family day care was the first issue we worked on," said Abby J. Cohen, managing lawyer for the Child Care Law Center, a legal services organization that began in 1978 in San Francisco. "And it continues to be a major source of difficulty for family day-care providers as they get started and maintain operations, throughout virtually the whole country."

According to the Center, most states do not extend special protection to family day care. It has adopted laws that in some way exempt family home day care from local zoning restrictions that typically ban businesses in residential areas.

Different States, Different Laws

The laws range from "zoning" provisions in Massachusetts, New York and California, to the minimal security offered by New Jersey's current law, under which family day-care homes are treated like other home businesses, though they can still be excluded from certain neighborhoods.

Most regulations draw a distinction between family day care, generally no more than six children, and bigger day-care centers, which can admit 75 or more children depending on their size. A few states license or register home-day operators, but most do not. It is thought that the overwhelming majority of people who take in children for a fee do not undergo any training or inspection.

Mrs. Cohen said local disputes are arising now because the home-based centers are proliferating and becoming more visible. They usually are discovered after an angry neighbor files a complaint and then they are treated as



Tracy DeLaura with the children she watches, for pay, in the basement of her home in Verona, N.J. She is seeking a variance of the local zoning law that prohibits operating a business in a residential zone.

Ellis Flyte Wed To Brian Henson

Miss Ashley Flyte, a daughter of Mr. and Mrs. Tom Douglas of Edinburgh, was married yesterday to Brian David Henson, a son of Jane Anne Henson of New York and the late Jan Henson, creator of the Marquis, Miss Annette McKean, a registrar, performed the civil ceremony at a luncheon of the island of Tortola in the British Virgin Islands.

The bride, who changed her name to Flyte and is keeping it, is a fashion designer in London. Her father is an architect in Edinburgh.

The bridegroom is a propagator and a director in London for Jim Henson

It is possible to get around zoning by applying for a variance. But that can be a complicated processing months and costing thousands of dollars in legal fees.

While Mrs. DeLaura and Mrs. Michalovsk were allowed to continue operating until the variance is decided, others have not been so fortunate.

Patricia M. Land had just started caring for a few children in her home in the Hillcrest section of Philadelphia, N.J., in July when she received a notice from local officials that she was illegally operating a business in a residen-

ing that the children she watched would wear at the playground equipment and grass in the common areas and raise maintenance fees.

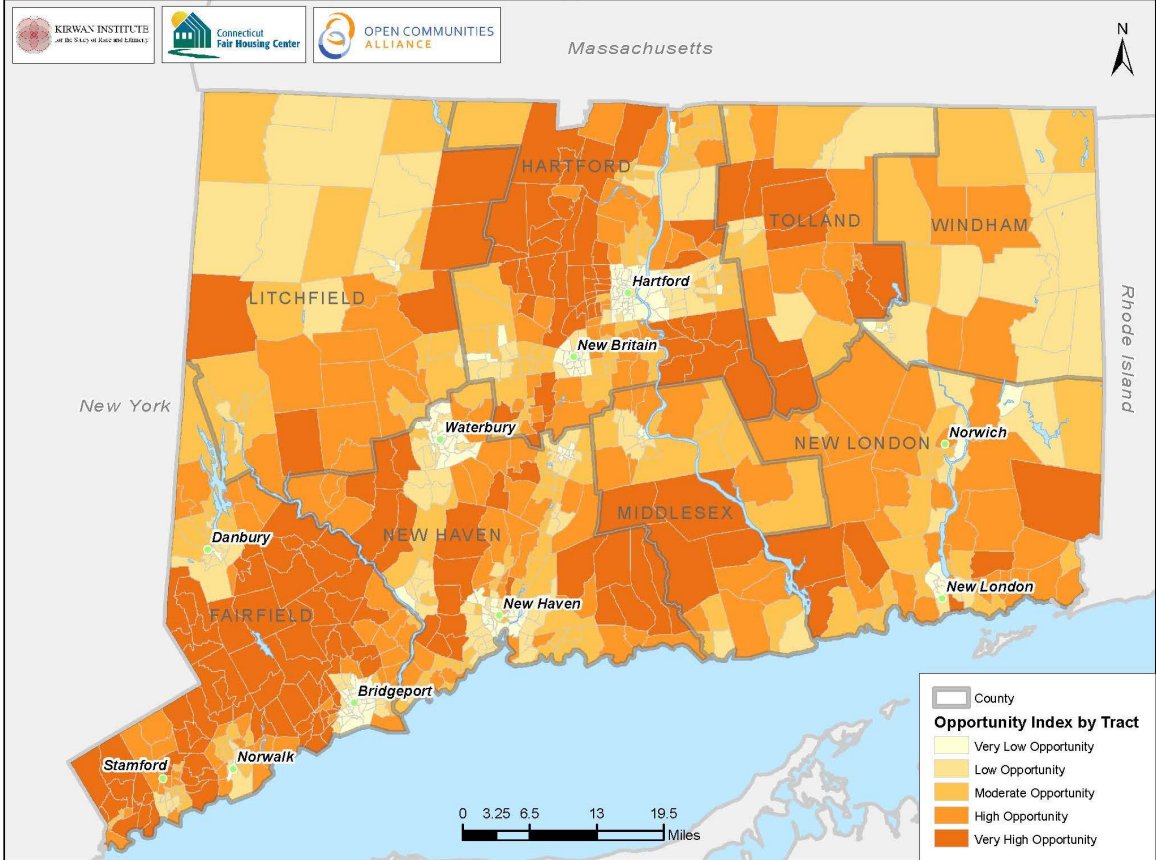
The end result of such hassles, day-care advocates said, will be to scare providers so that instead of registering with authorities and undergoing inspections, they will operate illegally and, in some instances, unsafely.

Chronicle

EXCLUSION MEANS EXCLUSION NOT
JUST FROM PLACES BUT ALSO FROM
STUFF

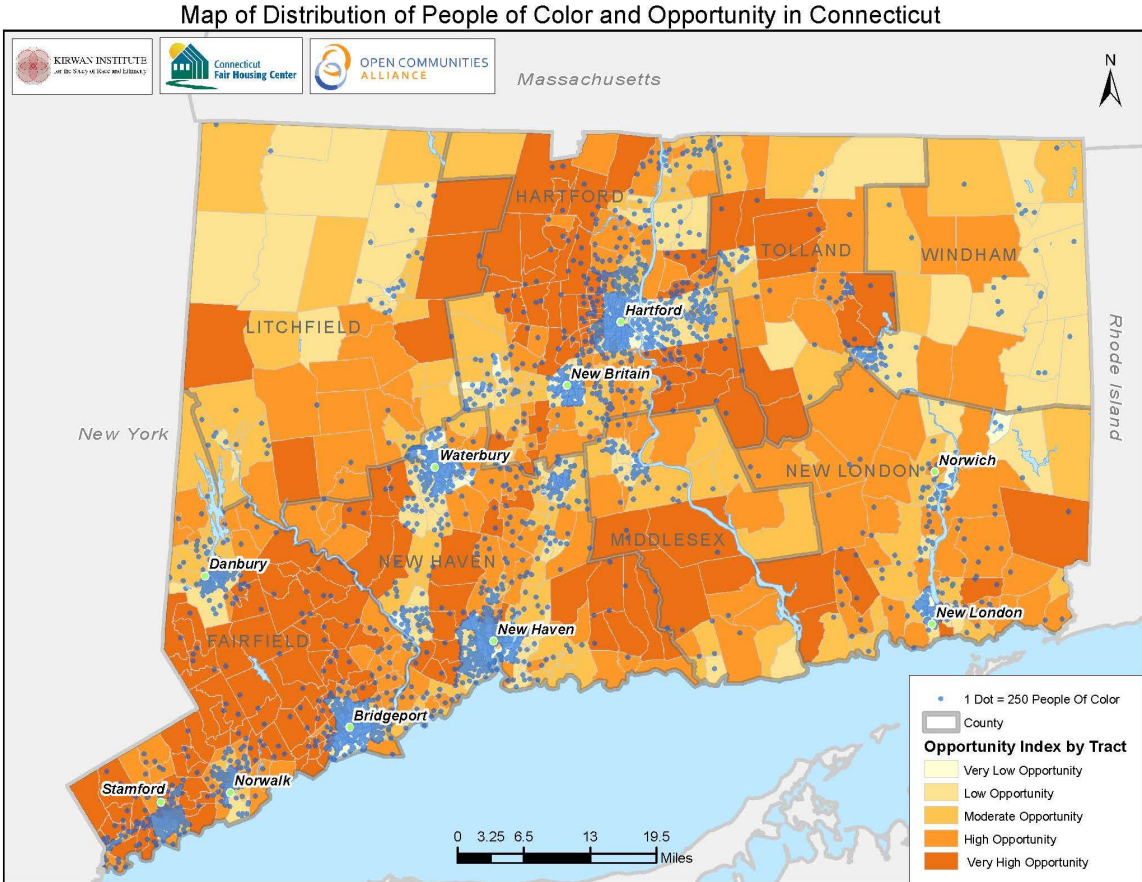
OPPORTUNITY MAPPING

Map of Distribution of Opportunity in Connecticut



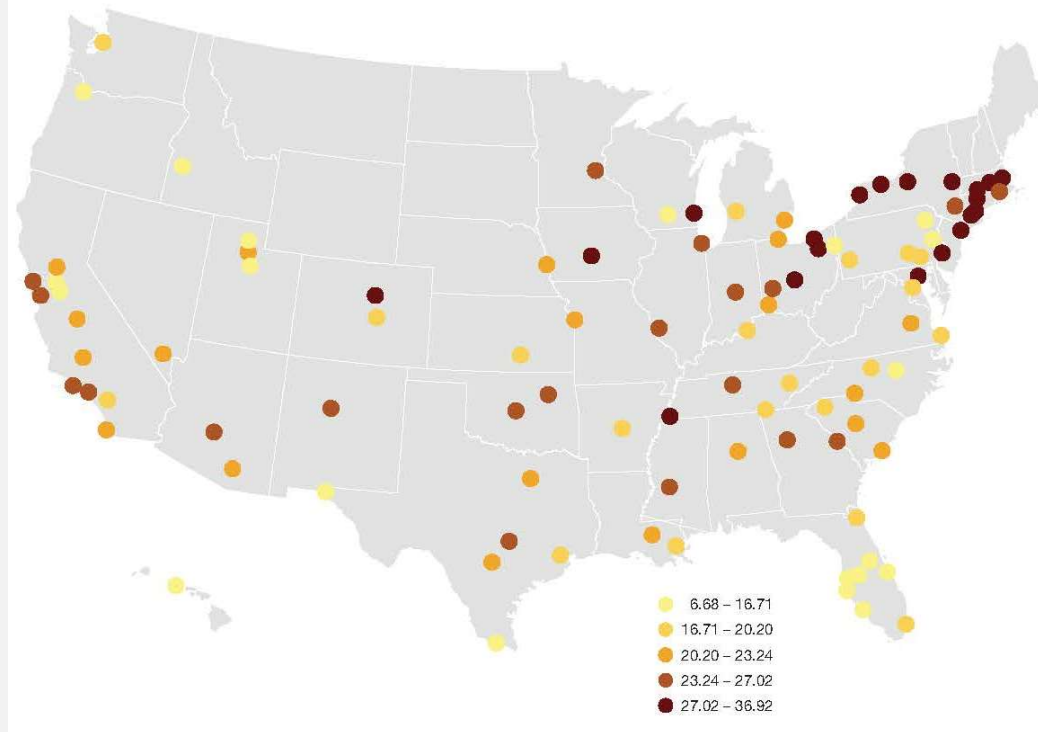
Data Sources: U.S. Census Bureau, MAGIC. Date: December 13, 2014.

OPPORTUNITY MAPPING



EXCLUSIONARY ZONING AND SCHOOLS

Figure 2. The School Test Score Gap in the 100 Largest Metropolitan Areas



CAN WE FIX ZONING?

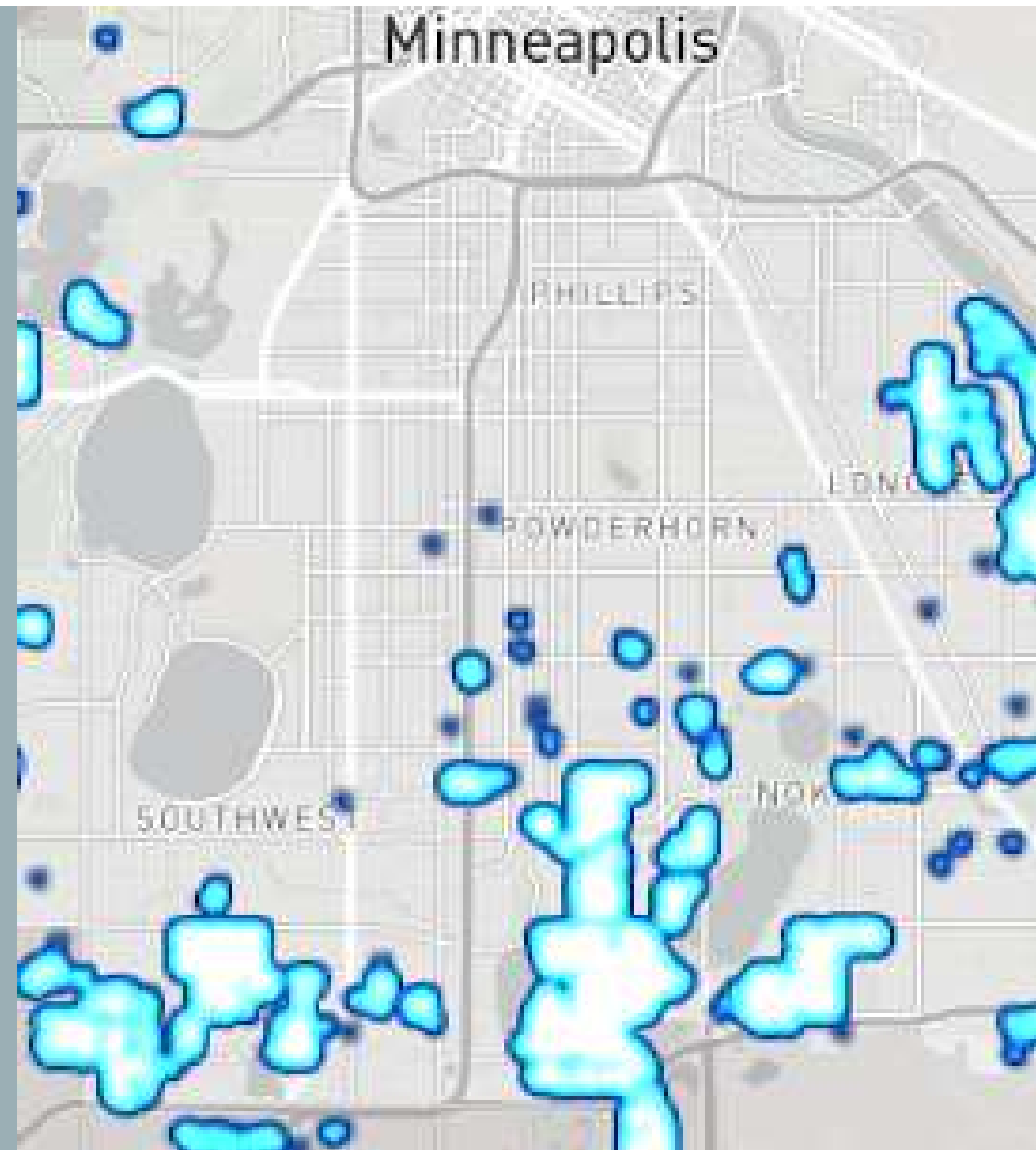
This is an earnest question. There is good reason to believe that race-conscious policies are necessary to redress harms perpetuated by a century of explicit, unabashed racism in zoning. These are all second-best strategies. But in this era of conservative courts and federal inaction, it remains crucial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

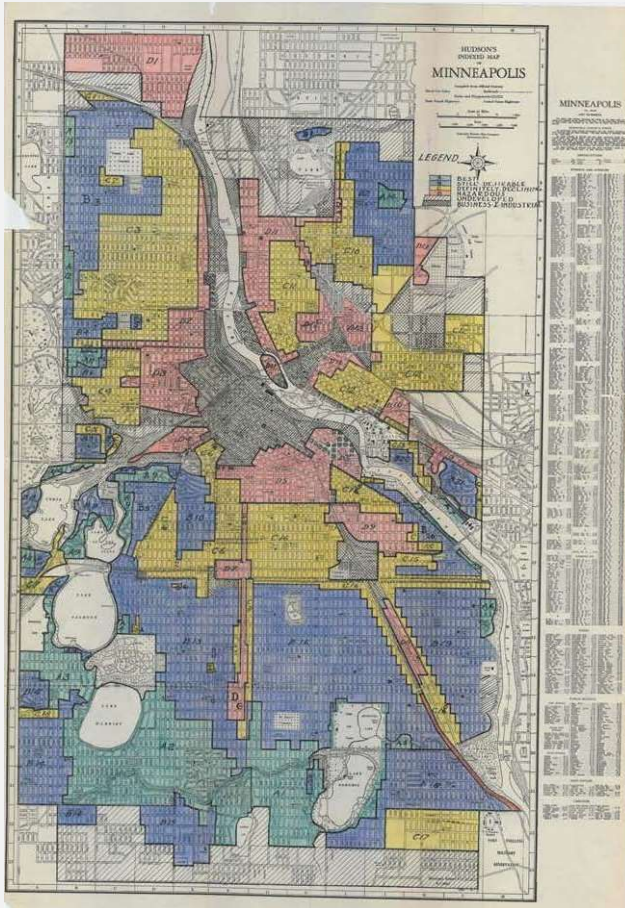


WHAT SINGLE FAMILY ZONING PROHIBITS

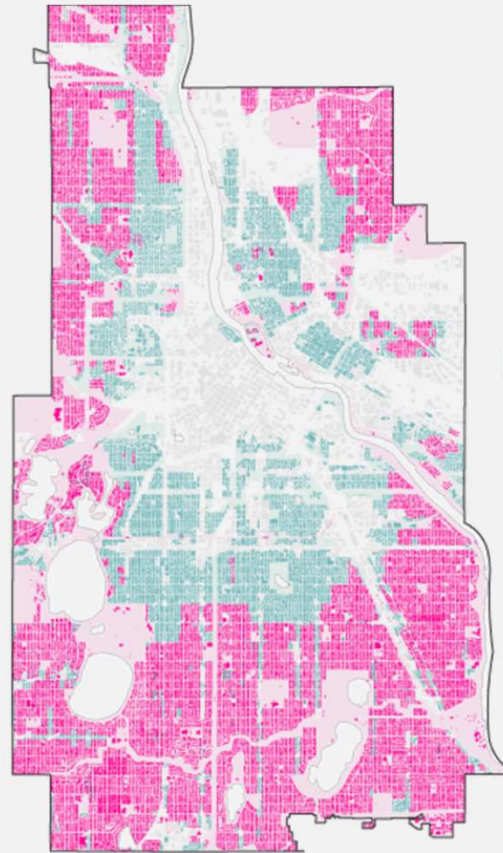


MINNEAPOLIS

REDLINING



RESTRICTIVE ZONING



MINNEAPOLIS

Remembering history in an effort to address it

The New York Times

Minneapolis, Tackling Housing Crisis and Inequity, Votes to End Single-Family Zoning



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WHAT WORKS

How Minneapolis Freed Itself From the Stranglehold of Single-Family Homes

Desperate to build more housing, the city just rewrote its decades-old zoning rules.

By ERICK TRICKEY | July 11, 2019

(OREGON, TOO)

Remembering history in an effort to address it



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NATIONAL

Oregon Legislature Votes To Essentially Ban Single-Family Zoning

July 1, 2019 · 7:03 PM ET

LAUREL WAMSLEY

NOTABLE: Impeachment Bill Barr Jeffrey Epstein Ford v. Ferrari Kaepernick Nonfiction Canon SLATE PODCA

SLATE News & Politics Culture Technology Business Human Inter
TRYING TO GET THE VERY LAST DROPS FOLLOW

METROPOLIS

Legalize It

The apartment has been banned in far too many places, deepening racial divides and driving up rents. Oregon is set to be the first state to fix that—and it won't be the last.

By HENRY GRABAR

JULY 02, 2019 · 3:40 PM

TWEET
SHARE
COMMENT



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

AFFIRMATIVELY FURTHERING FAIR HOUSING

Some states have sought to replicate federal civil rights protections in state law in case the federal government rolls back those protections.

teenVOGUE



GETTY IMAGES

Politics

The Trump Administration Is Dismantling Our Tools To Promote School Integration

CURBED

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AFFORDABLE HOUSING NEWS

HUD proposes rule that would make housing discrimination lawsuits 'impossible'

It's the latest in a string of attempts by Ben Carson and HUD to undermine Obama-era fair housing regulations

By **Jeff Andrews** | Aug 19, 2019, 3:04pm EDT

FAIR SHARE ANALYSES

- 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.

FROM SEA TO EXCLUSIONARY SEA

NEW JERSEY

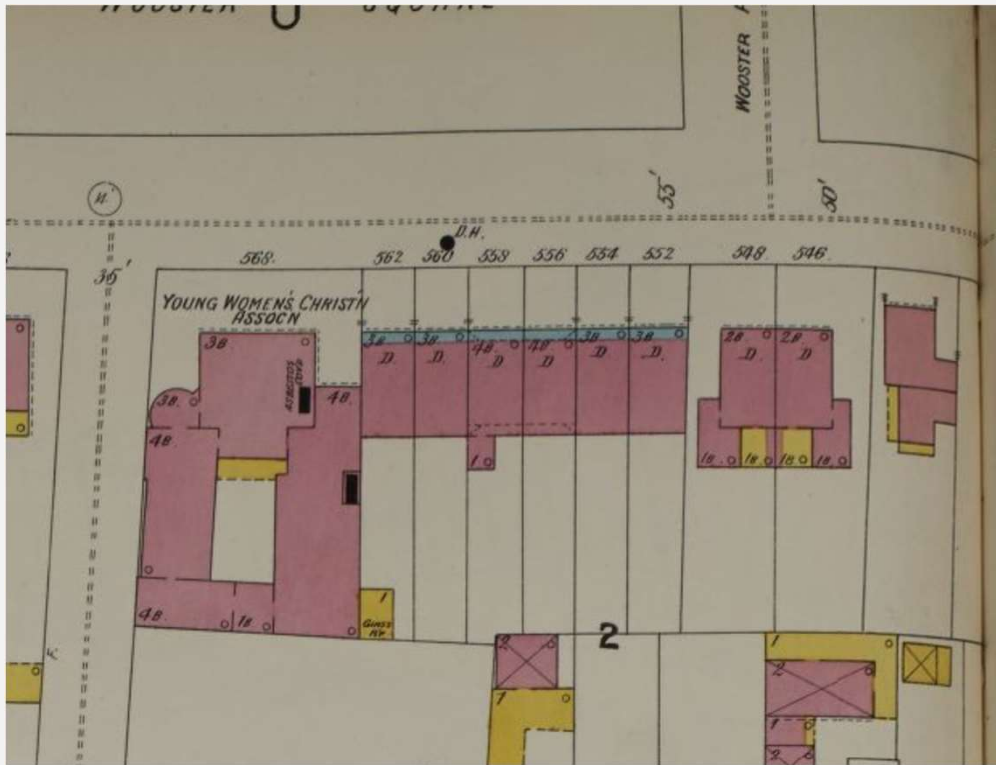
- Each town must adopt zoning that accommodates regional housing need
- Measured as function of current affordability crisis plus anticipated growth
- Calculation is limited to low-income housing
- Builder's remedy permits construction of mixed-income housing

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

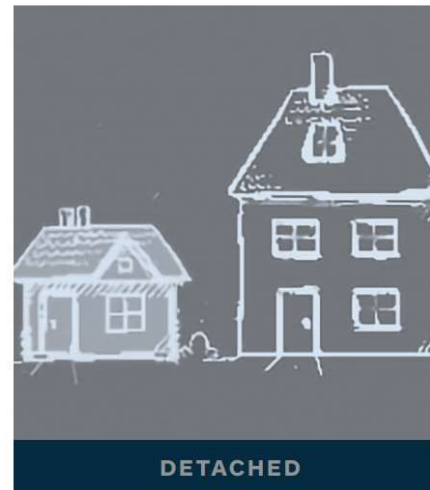
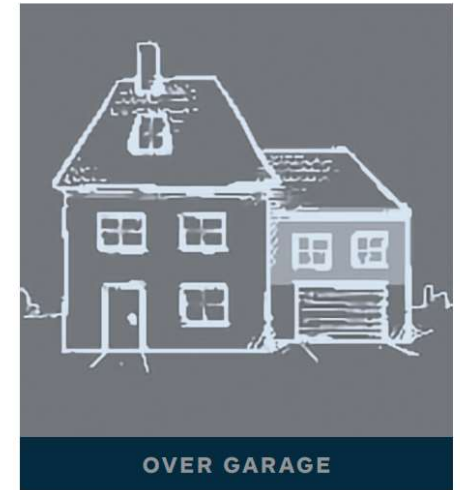
MAKING IT POSSIBLE FOR PEOPLE
OTHER THAN DEVELOPERS TO BUILD
RENTAL HOUSING







ACCESSORY DWELLING UNITS



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?

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

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
 - $20\% * 2 \text{ units} * \$311,179 = \$124,472$
- 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



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