

The Jerome N. Frank
Legal Services Organization

YALE LAW SCHOOL



April 1, 2021

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

Re: Application of 2 Orchard Road LLC and Open Communities Trust LLC –
Written Response Submission for Public Hearing

Dear Chairman Klee and Commission Members:

Attached to this letter are our written responses to various questions and issues that have arisen in the course of the public hearing before the Woodbridge Town Planning & Zoning Commission on our pending applications to amend the Town's Zoning Regulations and Plan of Conservation and Development (collectively, "Application"). We are submitting these responses in a good-faith effort to engage in a dialogue with the Commission and the public about the amendments proposed in our Application. As we hope you will agree after reviewing our substantive responses, nothing raised in the hearing gives the Commission reason to deny our Application. The fundamental reasons why we brought *this* proposal before *this* Commission remain.

Woodbridge's zoning violates the law by failing to promote a diverse array of housing options, including multi-family and affordable housing, reflective of local and regional needs. This exclusion has continued for decades. We have proposed a simple, immediately achievable strategy to begin to address this violation and also begin to remedy its effects. Woodbridge can apply its existing bulk regulations to multi-family development throughout the Town's residential districts. This plan thus represents a conservative step for the Town to start making headway towards meeting its multi-family and affordable housing obligations. This Commission has subjected our Application to dissection and review over the last six months and the public hearing process has revealed no legitimate basis to deny or materially alter what we have proposed.

In this submission, we respond to specific inquiries and concerns raised by members of the Commission and the public based on our review of the full record thus far. In addition, we enclose a full version of our response to the South Central Connecticut Regional Water Authority's March 1 letter, showing why it provides no basis for rejecting our Application, as we previously presented orally at the March 18 hearing. We next respond to critiques and alternatives presented by the

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Town's planning consultant, Glenn Chalder, during the public hearing session on March 18. We also explain why the Commission should approve our proposal rather than deny our Application in favor of an alternative longer-term planning process or adopt any material amendments thereto. Lastly, we direct the Commission's attention to a series of procedural irregularities that have occurred during this proceeding.

Our Application is a necessary first step for Woodbridge to remedy its illegal zoning practices, provide for a variety of housing opportunities, and address its socioeconomic and racial segregation. To be clear, adopting our proposal will not erase Woodbridge's legacy of exclusion or fully satisfy its legal obligations, with which it has not complied for decades. But that does not change your duty to rule on the Application that is currently pending before you. Indeed, that Application is a necessary first step. We urge you to approve it.

Sincerely,



Erin Boggs, Esq.
Open Communities Alliance



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

Enclosures

cc: Timothy Herbst (by electronic mail)

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I. Response to public comments

We have reviewed all of the written and oral comments submitted into the public record over the course of this proceeding. In order to engage in a constructive dialogue with members of the public on the merits of our Application, we have responded here to the most common recurring themes and concerns expressed by Woodbridge community residents in these comments.

A. Support for our Application

We are encouraged by the numerous public comments that have been submitted in favor of our Application. Supporters have noted how addressing Woodbridge’s socioeconomic and racial segregation would improve the Town for all residents, and that increasing opportunities for affordable housing would benefit existing community members, their elderly and young relatives, and newcomers alike.¹ Supporters have also recognized the importance of addressing Woodbridge’s long history of exclusion.² These comments indicate that a significant portion of Woodbridge’s community recognizes the clear benefits of bringing multi-family and affordable housing to the Town.

In particular, we draw the Commission’s attention to a letter submitted into the public record prior to the February 9 hearing session by a Woodbridge land-use attorney, who commented that “the legal basis for the Commission to reject this application is close to nonexistent” and that a “‘Preserve Our Neighborhood’ [mentality] is not a legitimate planning tool but instead is a coverup for exclusion.”³ The letter noted how higher-density residential development would bolster Woodbridge’s tax base and provide necessary alternatives to expensive single-family homes for older and younger community residents, and further commented that concerns regarding decreased property values and water and septic issues are unsupported by evidence. Such submissions exemplify how this public hearing process has allowed Woodbridge community residents to meaningfully assess, critique, and ultimately come out in support of what we have proposed.

¹ See, e.g., Evan Stark, Comment Email (Jan. 4, 2021) Email (Jan. 4, 2021), <https://www.woodbridgect.org/DocumentCenter/View/3871/January-4-2021-emails-for-hearing-record-scan-1> (“Affordable housing is like a pension. It entails a small sacrifice now, a collective deferral on the part of a town, for payoff later on...the quality of all of our lives is enriched by increments in equity, diversity and justice”).

² See, e.g., Nancy Kline, Comment Email (Jan. 4, 2021) (“Low and middle-income families are locked out of living in Woodbridge because of the zoning restrictions and the home cost. This is a form of segregation. It prevents low and middle-income families from benefiting from the schools and the recreational activities offered by the town”), <https://www.woodbridgect.org/DocumentCenter/View/3876/January-4-2021-email-comments-for-hearing-record-scan-6>.

³ Dominick Thomas, Comment Letter (Feb. 9, 2021), <https://www.woodbridgect.org/DocumentCenter/View/3970/Public-Comment-for-hearing-continuation-on-February-1-2021-adjourned-to-February-9-2021>.

B. Sewer

Several residents have expressed their concerns regarding wastewater disposal and water supply,⁴ arguing that multi-family development should be limited to the small portion of Woodbridge where there is public water and public sewer, which happens to be adjacent to New Haven. As we presented on March 18, there is an extensive public health and environmental protection regulatory program in place to address those aspects of development. Because our proposal requires compliance with the Public Health Code (PHC), only multi-family housing that has adequate on-site subsurface disposal systems and protected well systems would be permissible under our proposed zoning amendment. New on-site septic systems are regulated by the Quinnipiack Valley Health District, the state's Department of Public Health (DPH), or the Department of Energy and Environmental Protection, depending on the volume of the design flow of the system. Any of these regulators will deny septic permits if the proposed systems do not comply with the DPH's Technical Standards, which take into account lot-specific factors including but not limited to soil type, depth to groundwater slope, whether the lot is within a public water supply watershed area, and whether there are wetlands and watercourses.

The PHC also accounts for any differences in intensity between single-family and multi-family that may exist by imposing more stringent requirements on certain multi-family homes. For example, for multi-family homes, the Code's Technical Standards requires adding 150 gallons per bedroom per day to the septic capacity after the third additional bedroom, while the Code reduces this requirement to half for single-family homes. Moreover, just as Mr. Miller acknowledged in his January 3 report,⁵ technological development will likely allow more intensive use of on-site subsurface disposal system in future years, which will further address any increased need from a shift to multi-family housing.

C. Water

Regarding public concerns over increased demand on water supply,⁶ Woodbridge's Zoning Regulations defer to state regulations for "written evidence . . . confirming safe and satisfactory means of supply potable water" as provided in Section 5.16A. DPH enforces detailed regulations on on-site water systems for multi-family housing. For small multi-family developments using private wells, developers must receive approval from the Quinnipiack Valley Health District.

⁴ See, e.g., Maria Kayne, Comment Email (Jan. 4, 2021) ("The town is located within the convergence of 2 important watersheds making it impossible for sewer lines and public water lines to run properly and efficiently throughout the majority of town land"), <https://www.woodbridgect.org/DocumentCenter/View/3871/January-4-2021-emails-for-hearing-record-scan-1>; Cathy Wick, Comment Email (Jan. 4, 2021) ("The application barely acknowledges the fact that while 85% of the state is served by public water and sewer, in Woodbridge the vast majority of the town's homes are served by private well and septic systems"), <https://www.woodbridgect.org/DocumentCenter/View/3871/January-4-2021-emails-for-hearing-record-scan-1>.

⁵ "Engineering of subsurface on-site wastewater disposal systems has been getting better, and it is possible that the State Health code may be amended in the near future to permit more intensive use of the systems." Brian Miller, Planning Analysis (January 3, 2021), <https://www.woodbridgect.org/DocumentCenter/View/3868/Report-Miller-Planning-Group-1421>.

⁶ See, e.g., Angela Incassati, Comment Letter, (Jan. 4, 2021) ("Our properties depend on well water and we should have a clear understanding of how much ground water there is, how many people can be supported over 20, 50, or 100 years, and how this might fluctuate in times of drought like our previous summer."), <https://www.woodbridgect.org/DocumentCenter/View/3871/January-4-2021-emails-for-hearing-record-scan-1>.

Large-scale community water systems—i.e., systems that have more than 25 users or 15 service connections—can only be built with a Certificate of Public Convenience & Necessity from the DPH. However, as we showed in our March 18 presentation, the DPH has effectively stopped approving such community water systems. Therefore, it is very likely that only small-scale multi-family developments will be built under our proposal. In any event, developers will have to comply with PHC standards to build them.⁷ If some residents are still concerned that the PHC is inadequate, they may further pursue the issue before the DPH or the legislature.

D. Property Values

Several residents have expressed concern about property values dropping with the introduction of multi-family dwelling units in Woodbridge.⁸ The argument appears to be that the presumed unattractive nature of mixed-use housing would lead to residents selling off their land, leading to a drop in property values. Neither the residents nor any party's expert have pointed to any evidence to support this claim. It is important to first note that the current zoning in Woodbridge has artificially affected the housing price by imposing a large minimum lot size and restricting the number of units being built upon it with *no* provision for multi-family housing. Moreover, studies⁹ have shown that the introduction of affordable multi-family housing into neighborhoods does not give rise to a drop in property values.

E. Parking

Arguing that the increased number of parking units can become a visual eyesore for the neighborhood, some residents have raised parking as a problem.¹⁰ Current single-family residences do not have restrictions limiting maximum parking or other impervious surface. As a result, Woodbridge is peppered with large asphalt driveways of 7,000 square feet or more. What is being proposed on 2 Orchard Road would not be any greater than what exists directly across the street at 3 Orchard Road. Furthermore, single-family residences in Woodbridge can build large outdoor leisure facilities such as tennis courts or swimming pools that similarly introduce impervious surfaces to the lot and impede on the visual aesthetics of the neighborhood.

⁷ Even in the unlikely event that a larger development were to be approved for a community water system, the approval of the system would itself evidence the development's consistency with health and environmental regulations.

⁸ See, e.g., Angela Incassati, Comment Letter (Jan. 4, 2021) ("I do not believe that it makes sense to develop multi-family dwellings in the middle of residential neighborhoods. It would lower neighborhood property values..."), <https://www.woodbridgect.org/DocumentCenter/View/3871/January-4-2021-emails-for-hearing-record-scan-1>.

⁹ Ctr. for Housing Pol'y, "*Don't Put it Here!*": *Does Affordable Housing Cause Nearby Property Values to Decline?*, Insights from Housing Policy Research (2009), https://furmancenter.org/files/media/Dont_Put_It_Here.pdf (providing a review of the literature on the impact of affordable and multi-family housing on property values).

¹⁰ See, e.g., Michael D. Broderick, Comment Letter (Jan. 4, 2021) ("... increased pavement to accommodate all the cars parked at these multi-family units."), <https://www.woodbridgect.org/DocumentCenter/View/3871/January-4-2021-emails-for-hearing-record-scan-1>.

F. Tax

Some public comments have expressed concern that adjustments to handle the effects of multi-family zoning may require increasing Woodbridge residents' tax rates.¹¹ As an initial matter, any such effect would be mitigated by a concomitant expansion of the town's tax base. More importantly, though, this argument misses the legal point of the Application: Woodbridge is legally obliged to both zone *and* plan for multi-family housing. Desiring a low tax rate is not a legitimate criterion for maintaining restrictive zoning, especially given the town's legal duty to help meet the broader housing needs of the region.

G. Schooling

Certain members of the community have expressed concern that our proposal may result in increased enrollment at Woodbridge public schools.¹² They argue that a zoning change to allow multi-family housing would increase the density of the neighborhood, further straining the school district's resources. The Commission should first remember that impacts on school systems are legally irrelevant to zoning decisions. Connecticut caselaw holds that zoning regulation decisions cannot be based on the need to prevent additional financial burdens from falling on the town, such as increased school district demand.¹³

In any event, critiquing our Application for its potential impact on Woodbridge's schools misses the greater issue of educational equity. Just as Woodbridge has artificially kept its population density low and disproportionately white, so too has it artificially kept its enrolled student population low and disproportionately white. Instead of promoting regional educational equity, Woodbridge has enacted zoning restrictions which effectively prevent its schools from reflecting the broader racial diversity of Connecticut. For instance, Amity Regional School District No. 5 is 3% black,¹⁴ while the New Haven School District is 37% black.¹⁵ 12.5% of Woodbridge School District students are eligible for free and reduced lunch,¹⁶ while 70.2% of students in the

¹¹ See e.g., Joseph & Christine Jalowiec, Comment Letter (Dec. 23, 2020) (“[I]t’s so far out that it would immediately lower all values of residential property and definitely call for a serious property tax increase”), <https://www.woodbridgect.org/DocumentCenter/View/3870/January-4-2021-letters-from-the-public-for-hearing-record>.

¹² See, e.g., Elliot Wangaard, Comment Email (Dec. 30, 2020) (“The schools will become overcrowded over time and will suffer”), <https://www.woodbridgect.org/DocumentCenter/View/3875/January-4-2021-email-comments-for-hearing-record-scan-5>.

¹³ See *Beach v. Plan. & Zoning Comm'n of Town of Milford*, 103 A.2d 814 (Conn. 1954) (holding that commissions acting in its legislative capacity did not have authority to pass regulations prohibiting subdivision of land because it would place additional financial burdens upon the town).

¹⁴ Connecticut State Department of Education, *District Profile and Performance Report for School Year 2018-2019: Regional School District 05* (Nov. 25, 2020), http://edsight.ct.gov/Output/District/HighSchool/2050012_201819.pdf.

¹⁵ Connecticut State Department of Education, *District Profile and Performance Report for School Year 2018-2019: New Haven School District* (Nov. 25, 2020), http://edsight.ct.gov/Output/District/HighSchool/0930011_201819.pdf.

¹⁶ Connecticut State Department of Education, *District Profile and Performance Report for School Year 2018-19: Woodbridge School District*, (Nov. 25, 2020), http://edsight.ct.gov/Output/District/NonHighSchool/1670011_201819.pdf.

New Haven School District are eligible for free and reduced lunch.¹⁷ The effect of maintaining barriers to access for Woodbridge’s schools through zoning is that these same students who may have attended Woodbridge instead are forced to attend lower-resourced schools in areas with less restrictive zoning.

In other periods of growth in Woodbridge’s history driven by single-family residential development, the Town has found ways of maintaining high standards of education, and we are confident it will be able to sustainably accommodate any additional demand created by the long-mandated multi-family zoning in this instance.

H. “Neighborhood Character”

A number of public comments have referenced potential changes to the Town’s “character” that might result from the introduction of multi-family housing. As a general response to any concerns about architectural or aesthetic character, we note that our zoning amendment would only allow the exact types of physical structures that can already be built as single-family homes. Moreover, any concerns about “character”—often left undefined by commenters—do not exempt the Town from its legal obligations as described above.

More concerningly, some commenters have made arguments in keeping with what courts have recognized as coded language suggestive of racial animus toward prospective residents. Troubling examples from the public comments include letters characterizing our proposal as “an invitation for trouble”¹⁸ and warning about “social pathologies,”¹⁹ “urban blight” that would “invade,”²⁰ “degradation of character,”²¹ and “the type of people this zoning would bring in.”²² One commenter stated that “once you have multi-family dwellings the complexion of the town will change forever,”²³ another asserted that our proposal would “change the pleasant face of our existing peaceful community,”²⁴ and another argued that “the zoning rules should not be amended

¹⁷ Connecticut State Department of Education, *District Profile and Performance Report for School Year 2018-2019: New Haven School District* (Nov. 25, 2020), http://edsight.ct.gov/Output/District/HighSchool/0930011_201819.pdf.

¹⁸ Francine Schaefer Ponchick, Comment Email (Dec. 28, 2020), <https://www.woodbridgect.org/DocumentCenter/View/3875/January-4-2021-email-comments-for-hearing-record-scan-5/>.

¹⁹ Alan Weick & Hong Peng, Comment Email (Jan. 2, 2021), <https://www.woodbridgect.org/DocumentCenter/View/3874/January-4-2021-email-comments-for-hearing-record-scan-4/>.

²⁰ James Zorena, Comment Email (Jan. 4, 2021), <https://www.woodbridgect.org/DocumentCenter/View/3871/January-4-2021-emails-for-hearing-record-scan-1>.

²¹ Kari & Richard Webster, Comment Letter (Dec. 30, 2020), <https://www.woodbridgect.org/DocumentCenter/View/3875/January-4-2021-email-comments-for-hearing-record-scan-5>.

²² Bruce Torello, Comment Email (Jan. 4, 2021), <https://www.woodbridgect.org/DocumentCenter/View/3871/January-4-2021-emails-for-hearing-record-scan-1>.

²³ Marilyn Schatz, Comment Email (Dec. 23, 2020), <https://www.woodbridgect.org/DocumentCenter/View/3876/January-4-2021-email-comments-for-hearing-record-scan-6>.

²⁴ Frederick Carasone, Comment Letter (Dec. 24, 2020), <https://www.woodbridgect.org/DocumentCenter/View/3870/January-4-2021-letters-from-the-public-for-hearing-record>.

to change Woodbridge to a lower tier town.”²⁵ One letter stated that “to allow for multi family [sic] housing in areas not previously approved only opens the flood gates for people who rent and not own to come into our school systems” and that “I do not want a 2/3/4/5/6 family dwelling next to my house with cars coming in and out at all hours of the night.”²⁶ Several letters included dog whistles about crime – one warned of zoning changes “destroying the town people moved here for” and leading to increased “criminal acts,”²⁷ and another argued that more rental properties would lead to “crime (drug dealing and domestic disputes),” “exploitation of the school system by kids using the address but not living there,” and “a general uneasiness of the neighborhood,” raising concerns about “changing the look and feel to resemble West Haven or New Haven.”²⁸

These charged code words indicate that racial animus appears to underly some of the most strident opposition to our proposal. The use of dog whistles to oppose affordable housing is not new—as we have detailed, Woodbridge has a long history of such comments in public hearings on zoning proposals that would have expanded housing opportunities.

I. Alternatives

Some residents have raised questions about whether it is proper for the Commission to adopt this particular amendment rather than beginning a new process to consider alternatives.²⁹ As we note below,³⁰ our proposal is the only application pending before the Commission. This is the only proposal that has been through a six-month public hearing process. It is the only proposal that has been the subject of six months of public engagement. Any alternatives would require the initiation of new public hearing process, and thus would only further delay Woodbridge’s rectifying the illegal status quo. Moreover, our proposal is an actionable first step that can be implemented now for Woodbridge to move toward legal compliance and begin to remedy its long, ongoing history of exclusion. We welcome continued efforts to supplement, not replace, our proposal and bring Woodbridge to full compliance with the law.

J. Homeownership

Several public commenters, as well as members of the Commission, have questioned why this Application focuses on the lack of available rental units rather than increasing access to

²⁵ Scott Pearl, Comment Email (Dec. 23, 2020), <https://www.woodbridgect.org/DocumentCenter/View/3876/January-4-2021-email-comments-for-hearing-record-scan-6>.

²⁶ Jed Sosnowitz, Comment Email (Jan. 3, 2021), <https://www.woodbridgect.org/DocumentCenter/View/3871/January-4-2021-emails-for-hearing-record-scan-1>.

²⁷ Lynne Drazen, Comment Email (Dec. 28, 2020), <https://www.woodbridgect.org/DocumentCenter/View/3875/January-4-2021-email-comments-for-hearing-record-scan-5>.

²⁸ Bruce Torello, Comment Email (Jan. 4, 2021), <https://www.woodbridgect.org/DocumentCenter/View/3871/January-4-2021-emails-for-hearing-record-scan-1>.

²⁹ *See, e.g.*, Mary Gorham, Comment Email (Jan. 4, 2021) (“I recommend we proactively work to create 10% affordable housing. . . I recommend we consider partnering with the nonprofit organization, Local Initiatives Support Corporation.”), <https://www.woodbridgect.org/DocumentCenter/View/3871/January-4-2021-emails-for-hearing-record-scan-1>.

³⁰ *See infra* § IV(A).

homeownership for those families with modest incomes.³¹ First, our proposal defines affordability according to current state law, and that state law allows for—just as our proposal does—the construction of income-restricted affordable homeownership as well as rental. Second, even if only rental housing is built as a result of the Opportunity Housing zoning amendment, it will have beneficial effects on the ability of low and moderate-income families to build wealth. Many families with low to moderate incomes cannot afford to save for a significant down payment precisely because they are currently paying artificially high rental prices due to the dearth of affordable rentals.³² Building affordable units will give families the opportunity to save for homeownership if they so choose. We applaud efforts to make homeownership more accessible for all, but this does not need to occur at the expense of ignoring the crisis of affordable rental units in the greater New Haven area.

Indeed, an affordable housing proposal that focused exclusively on increasing access to homeownership would only perpetuate Woodbridge’s exclusionary practices, because homebuyers will be wealthier and have more income than will renters.³³ Limiting new residents to potential homeowners only would exacerbate rather than remedy the Town’s illegal barriers to entry.

Our proposal also encourages naturally occurring affordable housing, by allowing developers to earn a modest profit while simultaneously increasing supply of rental units and thereby decreasing price. Our proposal is grounded in § 8-2's view of economic diversity, which not only addresses the affordable housing needs of very low-income families, but also the needs of those with moderate incomes as well. For even those tenants that do not meet the income threshold for affordable housing, the multi-family units in Opportunity Housing will still be less expensive than what is available in the current Woodbridge housing market.³⁴ By offering a diversity of housing options, our proposal helps ensure that people requiring affordable housing and those who prefer multi-family housing or cannot afford single-family housing will not be siloed into pockets of poverty.

II. Response to March 1 Regional Water Authority letter

During the March 18 special meeting, we presented a thorough response to the March 1 letter of the South Central Connecticut Regional Water Authority (RWA). Following our presentation, the author of the letter—Ron Walters, RWA Senior Environmental Analyst—sent us

³¹ See, e.g., Lou Routolo, Oral Comment (Nov. 30, 2021) (“Maintenance on the properties by rentals is not particularly a priority as it is with the person who owns it, so I question how well the houses will be maintained.”), <https://www.youtube.com/watch?v=x4JLjcpK5w>; and Eric M. Polinsky, Comment Email (Jan. 4, 2021) (“Homeownership, on the other hand, is the gateway to positive impact on less fortunate families in a measurable and sustainable way.”), <https://www.woodbridgect.org/DocumentCenter/View/3875/January-4-2021-email-comments-for-hearing-record-scan-5>.

³² See John Mangin, *The New Exclusionary Zoning*, 25 Stan. L. & Pol’y Rev 91, 94 (2014).

³³ See Applicant’s September 29, 2020 Submission, Data Appendix at 133 (listing percent of regional households in structures with two or more units that are renters and low income by income and race).

³⁴ Across the 15 municipalities in the South Central Region, the per-household costs of single-family ownership are 31% more than the costs of owning a two-family/multi-family home and 67% more than renting a unit in a two-family/multi-family home. See Applicant’s September 29, 2020 Submission, Data Appendix XXIII.

an email (reproduced below) stating that our “interpretation of the RWA comment letter was spot on. I couldn’t have done it any better.” Given that the RWA has endorsed our interpretation, we are providing a written version for the convenience of the Commission and members of the public.

Overview

As we have repeatedly noted, and as the RWA letter further demonstrates, multi-family housing is not incompatible with protecting natural resources—quite the contrary. For example, increasing housing density can better protect public water supply watershed areas by generating less stormwater runoff and impervious cover and occupying less total land area per capita.

Accordingly, the RWA letter does *not* endorse Woodbridge’s current lack of multi-family housing, and it certainly does *not* recommend denying our Application. Instead, the RWA letter makes recommendations that pertain to all of the “lots contained within Woodbridge’s public water supply watershed areas.” These areas cover the majority of the Town, and already host a variety of developments. Woodbridge’s 2015-2025 Plan of Conservation and Development notes on Page 91 that 15% of the Town’s land area has already been protected from development by the RWA for watershed reasons. That is, the RWA specifically selected certain areas to protect water supply sources, and our Opportunity Housing amendment does not change any of these protections.

The RWA letter makes recommendations about possible steps to further protect public water supply watershed areas. These recommendations are applicable both to multi-family and to single-family developments within the watershed. Therefore, the Commission could holistically address these issues at any point, but nothing in the RWA letter gives the Commission a legitimate reason to deny our Application.

If the Commission shares the concerns that the RWA raises about the impacts of development within the watershed, then the Commission should develop zoning amendments that target the specific physical characteristics of concern—not regulations that arbitrarily distinguish between single-family and multi-family developments. Water sources are not affected by whether the people living in a home are all members of a single family or members of multiple families.

We intentionally and carefully crafted the Opportunity Housing amendment to require any multi-family developments to meet all of the physical requirements that apply to single-family homes in Woodbridge. If the Commission thinks its own requirements are not protective enough of the watershed, then the Commission can and should change them—through amendments, holistically applicable to both single-family and multi-family developments, pursued in a separate public hearing process. As we did in our March 18 presentation, we turn now to addressing each recommendation made in the RWA letter.

Recommendation #1

The first recommendation is for the RWA to have “the opportunity to be notified and provide comments” on developments in the watershed that go through a “Zoning Permit issuance process.” As the letter explains, this type of notification to the RWA and the Commissioner of Public Health is already mandatory under General Statutes § 8-3i(b) for developments in a watershed that require special approval from a zoning commission. But for single-family homes

and our proposed Opportunity Housing, which both require staff approval from the Zoning Enforcement Officer, that notification is not always mandatory. Instead, § 8-3i(c) provides that:

[W]hen an agent of the zoning commission, planning and zoning commission or zoning board of appeals is authorized to approve an application, petition, request or plan concerning any site that is within the aquifer protection area delineated pursuant to section 22a-354c or the watershed of a water company without the approval of the zoning commission, planning and zoning commission or zoning board of appeals, *and such agent determines that the proposed activity will not adversely affect the public water supply*, the applicant or person making the filing shall not be required to notify the water company or the Commissioner of Public Health (emphasis added).

In Woodbridge, the “agent” of the Commission that is authorized to approve Zoning Permit applications is the Zoning Enforcement Officer (ZEO). Mr. Chalder’s argument on March 18 that making the referral decision is an inappropriate role for the ZEO to play is thus directly contradicted by Connecticut law. Moreover, Mr. Chalder mischaracterized the law by failing to explain that the default remains notification—this requirement is waived only if the ZEO affirmatively “determines that the proposed activity will not adversely affect the public water supply.” If the ZEO lacks sufficient information or technical expertise, or has any potential concerns, then the ZEO can require notification of the RWA.

That said, if the RWA wanted to move toward a system of universal notification, then the Commission could go beyond § 8-3i(c) and impose additional notice requirements. § 8-2(a) provides that local zoning “regulations may also provide for notice requirements in addition to those required” by state law. The Commission could consult with the RWA to determine what amount of impervious cover or other physical characteristics should trigger any new reporting requirement for developments in the watershed. However, if notice is required for Opportunity Housing developments that are physically indistinguishable from single-family developments, then notice needs to be required for those single-family developments too, or additions to single-family developments like adding a tennis court or expanding a driveway.

Recommendation #2

The RWA’s second recommendation relates to stormwater management plans and Low Impact Development practices. Section 5.7 of the Woodbridge Zoning Regulations has detailed requirements for stormwater management plans and guidance on Low Impact Development practices. However, as the RWA notes, “it is unclear” whether developments that go through the Zoning Permit process, such as single-family developments and our proposed Opportunity Housing, are required to submit stormwater management plans and incorporate best management practices to minimize impacts to surface and ground water resources. We agree that Section 5.7, which is new as of July 2019 and includes some conflicting and ambiguous language, would benefit from additional clarity.

Section 5.7.H.4 says “the Stormwater Management Plan shall be submitted with each application to the TPZ,” and other provisions of the zoning regulations (such as Section 6.5.B) confirm that “applications” include Zoning Permit applications. Section 5.7.B includes similarly

broad language, stating that “No person shall develop land without having provided stormwater management measures that control or manage runoff from such development”—this would also seem to include applications for Zoning Permits. However, Section 5.7.B also says “a Stormwater Management Plan shall be prepared for all *site development proposals*” when the Commission makes certain determinations, and it later says “all *site development plans* shall include a Stormwater Management Plan” (emphasis added). Those two phrases, “site development proposals” and “site development plans” appear nowhere else in the Woodbridge Zoning Regulations. Given this varying language, we think the RWA is right to indicate a lack of clarity.

If the Commission is interested in clarifying when exactly stormwater management plans are required, then the Commission could amend Section 5.7—which would need to apply equally to Opportunity Housing and single-family developments based on their physical characteristics.

Recommendation #3

The third recommendation is about limits on impervious coverage, and the RWA specifically notes that it would “also support applying this recommendation to single family residential development.” Woodbridge does not currently have any restrictions on impervious coverage in the watershed, as indicated by Table 4.1 of the Woodbridge Zoning Regulations. This lack of restrictions makes possible developments like 3 Orchard Road, a single-family development that has more than 12,000 square feet of impervious coverage. As visualized in our March 18 presentation, that coverage is much greater than the 6,519 square feet that our illustrative Opportunity Housing development across the street at 2 Orchard Road would introduce. In addition to allowing huge amounts of pavement for single-family homes, Woodbridge also allows swimming pools, tennis courts, and golf courses in the watershed.

If the Commission is interested in changing that status quo and pursuing limits on impervious coverage (such as the RWA’s recommended “limit of 15 to 20% impervious coverage over the parcel’s buildable area”), then the Commission could amend Table 4.1, which applies to single-family homes and would apply equally to any Opportunity Housing developments. Notably, unlike existing single-family developments, new construction can use modern, low-impact development techniques like permeable pavers for parking areas, driveways, and sidewalks, so any future regulation that limited impervious coverage should take that into account when defining impermeable versus permeable surfaces.

Recommendation #4

The fourth recommendation is for a “minimum non-disturbance setback buffer width of 50 to 100 feet from watercourses and wetlands for new development”—once again, the RWA does not distinguish between single- and multi-family. Woodbridge’s Inland Wetlands Agency already has jurisdiction to review “any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging of storm water on the land within 100 feet measured horizontally from the boundary of any wetland or watercourse,” which are defined in Section 2.1 of the Town of Woodbridge Inland Wetlands and Watercourses Regulations as “regulated activities” requiring a permit from the Inland Wetlands Agency in order to move forward.

If the Commission wants to go beyond those existing regulations, and require a hard setback buffer, it could develop an amendment to do so. To avoid being arbitrary and potentially discriminatory, that hard buffer would need to apply to all development in the watershed, not conspicuously target only Opportunity Housing.

Recommendations #5 and #6

As we noted on March 18, only the RWA’s first four recommendations relate to zoning. The fifth recommendation is about on-site septic systems, which are not regulated by the Commission, but rather require permits from the Quinipiack Valley Health District, DPH, or the Department of Energy and Environmental Protection, depending on how large the system is.³⁵ The sixth recommendation was for the applicants to clarify when Opportunity Housing would be subject to the regulatory requirements of a Community Water System. As we discussed at length on March 18, under state law and regulations promulgated by DPH, any water system with more than 15 service connections or serving more than 25 people triggers the requirements for a Community Water System.

Conclusion

The RWA has confirmed that our March 18 “interpretation of the RWA comment letter was spot on.” We stated during our March 18 presentation and will reiterate here that the RWA recommendations relate to existing provisions of Woodbridge’s Zoning Regulations—the very provisions that Opportunity Housing has to comply with, in the exact same way as single-family. We have stressed repeatedly that our Application is a straightforward first step to allow Opportunity Housing developments that are physically identical to the single-family homes currently allowed. We have also called repeatedly for the Commission to then undertake a broader overhaul of its own Zoning Regulations. As part of that, if the Commission wants to change the requirements for development in the watershed, then the RWA letter suggests some options to do so. But if anyone is looking for a way to arbitrarily distinguish between single-family and multi-family, or looking for an excuse to oppose our Application, the RWA letter simply does not provide either.

³⁵ The Town could also adopt a sewer avoidance ordinance which mandates certain inspection and maintenance for septic systems. The DPH and DEEP funded the development of a model ordinance that was adopted by the Town of Westbrook. That ordinance applies to all septic systems.

From: Ron Walters <rwalters@rwater.com>
Sent: Tuesday, March 23, 2021 2:04 PM
To: eboggs@ctoca.org; Z_Hollister, Timothy <THollister@goodwin.com>
Subject: Woodbridge Zoning amendment - RWA Service Area in Woodbridge

EXTERNAL EMAIL

This map was submitted to Kris Sullivan today in relation to the multi-family zoning amendment. At the last public hearing the question regarding what areas of Town are supplied by public water was asked. This map shows the parcels that have access to public water. The RWA considers the location of water mains to be critical information and thinks this map addresses the question asked at the public hearing.

I would also like to say Karen Anderson's interpretation of the RWA comment letter was spot on. I couldn't have done it any better. Usually when someone tries to do that we end up writing a clarification letter.

Ron Walters
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III. Response to Mr. Chalder's March 18 presentation

During the March 18 hearing, Mr. Chalder presented a disjointed assortment of proposals for potential changes to our Application that are not based on any valid organizing principle or rationale. Mr. Chalder called for more process and fewer units but provided no citations to research, planning investigations, or any other basis in fact for those proposals. His comments fall into seven categories, each of which we discuss in greater detail below: (A) different affordability requirements; (B) more stringent bulk regulations; (C) standards for building forms and site development; (D) more stringent standards and review procedures for two-family development and multi-family development in the Town's watershed area; (E) zone-specific regulations; (F) Plan of Conservation and Development; and (G) delaying implementation.

A. Different affordability requirements

Our proposal is a concrete, meaningful step that can be taken now to begin to remedy Woodbridge's decades of failure to fulfill its obligation under General Statutes § 8-2 to "encourage the development of housing opportunities, including opportunities for multi-family dwellings" and to "promote housing choice and economic diversity in housing, including housing for both low and moderate income households." The Opportunity Housing we are proposing helps Woodbridge to make gains toward achieving this two-fold goal through a market approach that incentivizes local developers to build multi-family housing with affordable units, while obtaining reasonable profits. Market-rate multi-family units are an essential part of our strategy to provide affordable housing—although market-rate multi-family housing might not be deed-restricted affordable

housing, it is still more affordable than single-family housing,³⁶ more likely to be rental, and still contributes to Woodbridge's attempts to offer a range of housing opportunities and increase economic diversity. Such housing also is responsive to market forces, and so likely actually to be built. For all of these reasons, § 8-2 requires towns to encourage multi-family dwellings, without regard to whether those dwellings are deed-restricted affordable housing.

Mr. Chalder ignored the mandates for both multi-family housing and economic diversity in proposing his affordability requirements, with its 20% affordability set-aside, differential affordability requirement for two-, three-, and four-family development, and perpetual affordable housing deed restriction. On the pretext of providing more affordable housing, these burdensome requirements proposed will not only render developing affordable units infeasible, but also discourage developers from building any multi-family houses. If adopted, Mr. Chalder's suggestions would produce a bloated affordable housing regulation that would fail to serve its stated purpose. As we know from Woodbridge's own history with its never-used and functionally unusable Affordable Housing District (AHD) regulation, affordable housing programs laden with restrictions can serve as a tool of exclusion. When reading Mr. Chalder's recommendations, think about how a developer might possibly try to comply with its rules and still make a profit.

1. Affordability set-aside

Mr. Chalder suggests a number of watered-down versions of our proposal to allow multi-family units, depending on the zone. As a starting point, there is no legitimate reason supportable within the record to differentiate among the zones in this way.

In some places, Mr. Chalder seems to argue that specification with regard to number of units is needed because he believes our proposal opens the door to two-family development without affordable units. As an initial matter, he ignores the Section 3.4, D-1 clause of our amendment, which calls for affordable units to be the *greater* of 10% or one unit. Thus, building even a five-unit, multi-family structure - which would require including one affordable unit - would result in at least a 20% set-aside. Choosing to build two- or three-unit Opportunity Housing developments would not absolve builders from the responsibility of creating affordable units. In areas where two-family buildings are already permitted, outside of the Opportunity Housing regulation, we see no issue with market-rate two family housing continuing to be built. While it is true that larger lots can be subdivided to create a greater number of market rate two-family houses, that is true today and would be nothing new. Although we seek to promote greater density that includes affordable housing throughout the Town, we are also supportive of additional market-rate two-family continuing to be built because they would still be more affordable than single-family homes as we indicated above.

In other zones, Mr. Chalder recommends the commission require three-family developments contain 2 affordable units. Research shows that most jurisdictions with inclusionary

³⁶ See Applicant's September 29, 2020 Submission, Data Appendix XXIII (comparing ownership and rental costs of single-family, two-family, and multi-family).

zoning require 6 to 15 percent affordability set-aside.³⁷ The two-thirds inclusionary development proposed by Mr. Chalder far exceeds the percentage that housing market can bear and is almost certainly unbuildable without massive government subsidy. Mr. Chalder also suggested a general 20% affordability set-aside requirement in all residential zones of Woodbridge. However, instead of providing concrete explanation on how this set-aside requirement would realistically produce more affordable units in Woodbridge than our proposal, Mr. Chalder included this number with a question mark in multiple pages of his March 18 slides and did not provide any further justification in his oral presentation. The affordability set-aside of *at least* 10%—and more often 20-33%—we have proposed is well within the range of best practices and has been proved effective in providing affordable housing.³⁸ Mr. Chalder did not provide any evidence to show otherwise. Moreover, as the set-aside percentage increases, the average per-unit revenue of a development will decline and significantly affect development feasibility.³⁹ Doubling the set-aside percentage as proposed by Mr. Chalder will backfire and result in less housing built due to significant increase in developer’s cost and drop in the residual land value.⁴⁰ Lastly, the inclusionary requirement of “the greater of 1 unit or 10%” is only one of the three affordability options available for developers to build Opportunity Housing. The 2 Orchard Road development will utilize the second option, i.e., “the greater of 1 unit or 30% of units shall be leased to households receiving rental assistance.” Again, Mr. Chalder did not provide any reason to reject these two options.

Mr. Chalder also suggests that for multi-family housing of more than three units in the A and B zones, the Commission might consider permitting with TPZ site plan approval, TPZ special exception approval, or TPZ special density exemptions per § 8-2g. He offers no reasons for levying these additional requirements on multi-family but allowing staff approval for single-family and two-family, beyond the idea that other communities in Connecticut commonly limit the development of multi-family by requiring discretionary review. In a state with such well-documented patterns of exclusion,⁴¹ a rationale that looks to current trends is no reasonable rationale at all. As we pointed out on March 18, requiring such discretionary review could

³⁷ Aaron Shroyer, *Determining In-Lieu Fees in Inclusionary Zoning Policies*, Urban Institute (May 2020), <https://www.urban.org/sites/default/files/publication/102230/determining-in-lieu-fees-in-inclusionary-zoning-policies.pdf>.

³⁸ For example, Stamford and Norwalk are among the towns with the most deed restricted affordable units in Connecticut in 2020, and they both have a 10% set-aside requirement in all multi-family zones. *See* Conn. Dep’t of Hous., 2020 Affordable Housing Appeals List, <https://portal.ct.gov/-/media/DOH/2020-Affordable-Housing-Appeals-List.pdf> (showing numbers of deed restricted affordable units in towns across Connecticut); Zoning Regulations of Stamford, Section 7.4 Below Market Rate Housing Program, <https://www.stamfordct.gov/Home/ShowDocument?id=2415>; Building Zoning Regulations of Norwalk, Article 101 – Workforce Housing Regulations, <https://www.norwalkct.org/203/Building-Zone-Regulations>.

³⁹ Stockton Williams et al., *The Economics of Inclusionary Development*, Urban Institute 9 (2016), <https://uli.org/wp-content/uploads/ULI-Documents/Economics-of-Inclusionary-Zoning.pdf>.

⁴⁰ The “residual land value” is the maximum price a developer is willing to bid for land. A high affordability set-aside requirement can significantly increase the developer’s cost and reduce the price a developer will pay, which in turn would stymie sales and therefore impede the construction of new developments. *See* Dan Bertolet & Alan Durning, *Inclusionary Zoning: The Most Promising—Or Counter-Productive—Of All Housing Policies*, Sightline Institute (Nov. 29, 2016), <https://www.sightline.org/2016/11/29/inclusionary-zoning-the-most-promising-or-counter-productive-of-all-housing-policies/>.

⁴¹ Jacqueline Rabe Thomas, *Separated by Design: How Some of America’s Richest Towns Fight Affordable Housing*, Pro Publica (May 22, 2019), <https://www.propublica.org/article/how-some-of-americas-richest-towns-fight-affordable-housing>.

substantially increase a developer's expenditures of time and money, thereby reducing the ability to build the housing.

2. *Affordability preservation*

Our proposal's affordability preservation term of 40 years is a substantial commitment that will both incentivize developers to build multi-family housing with affordable units and guarantee long-term affordability. Mr. Chalder's suggestion that the Town ought to require deed restrictions in perpetuity would undermine this balance by making Opportunity Housing an infeasible investment for developers.

A 40-year deed restriction is already more than lengthy enough to provide lasting affordability. This term is longer than that required by many federal affordable housing programs;⁴² is squarely in line with the requirements of Connecticut's successful LIHTC program;⁴³ and meets the standards in Connecticut's model set aside development regulation.⁴⁴ Notably, 40 years is also longer than the 30-year deed restriction mandated in Woodbridge's own AHD regulation.

Mr. Chalder's perpetual deed restriction would make the construction of Opportunity Housing significantly more difficult for several reasons. First, developers and financiers are incentivized to build housing when there is an end date to deed restrictions. An end date creates residual value in a property; value that emerges when the restriction expires. Property owners, underwriters, and lenders can rely on this value when coming to terms in the financing process. Second, most financing arrangements are for 20, 30, and 40 years. Mr. Chalder must be aware that a perpetual restriction will make it difficult, if not impossible, to obtain mortgage financing. Regulations out of alignment with the reality of housing finance make it more difficult for developers to approach lenders for loans and refinancing. Third, buildings tend to need major maintenance after about 40 years, single and multi-family alike. Ending deed restrictions around this time helps owners earn what they will need to reinvest in what will then be older and well used buildings. Finally, a developer is more likely to agree to a long period of below market rents or sale prices if they know that there is an end date when value of the property will increase. By proposing perpetual deed restriction on multi-family homes, Mr. Chalder deprives developers of the incentive to develop affordable units. Furthermore, Mr. Chalder is incorrectly treating our proposal as an § 8-30(g) application, as evidenced by his inapposite reference to Sisyphus pushing a boulder toward the statute's moratorium. The reference seems to assume housing and its residents are evils to be stomached only in pursuit of that 10% goal. Although Mr. Chalder professes concern about Woodbridge's ability to meet its 10% goal under § 8-30(g), our Application is based not on

⁴² Elizabeth Elia, *Perpetual Affordability Covenants: Can These Land Use Tools Solve the Affordable Housing Crisis?*, 124 Penn. St. L. Rev. 57, 61 (2019). (explaining that the HOME and federal LIHTC programs generally only require 5-20 year deed restrictions and 30 year deed restrictions respectively).

⁴³ See Conn. Hous. Fin. Auth., Low-Income Housing Tax Credit Qualified Allocation Plan 8 (2020), <https://portal.ct.gov/-/media/DOH/FINAL-2020-QAP-PendingGLappvl.pdf> ("The Proposed Development shall include a commitment of at least forty (40) years of affordability by virtue of the LIHTC Program Extended Low-Income Housing Commitment (the 'ELIHC').")

⁴⁴ Conn. Agencies Regs. § 8-30g-9.

§ 8-30(g), but on Woodbridge's obligation to permit the construction of multi-family and affordable housing under § 8-2.

3. *Affordability plan*

Lastly, Mr. Chalder also criticized the affordability plan we outlined in subsection H of our proposed zoning regulation amendment as vague and impractical. He is wrong, and woefully uninformed. The affordability plan we proposed actually replicates the best practice that emerged from state-wide efforts to promote affordable housing. It is a standard template that has been widely adopted. Mr. Chalder's criticizing the plan as insufficient is another demonstration of Woodbridge's lack of experience in building affordable housing. Mr. Chalder also seems to ignore the fact that we do build in affirmative fair housing marketing plan requirement that are consistent with state law. Moreover, the property owner applicant is entitled to the presumption that they will comply with legal requirements such as preparing an affirmative fair housing marketing plan.

B. Establish more stringent bulk regulations for multi-family developments

In his presentation on March 18, Mr. Chalder suggested that Woodbridge ought to consider adopting density limits on multi-family housing. Mr. Chalder's argument is unusual because he does not provide any specific reason for regulating density other than the fact that other towns in Connecticut rely on density limits to restrict development. As we have regularly noted, other Connecticut towns are not a model for Woodbridge to follow, especially those that are failing to meet their obligations under § 8-2.

Mr. Chalder has previously stated that density from multi-family housing could harm Woodbridge's watershed. Our presentation on March 18 pointed out that Connecticut rejected the use of density requirements as a strategy to protect watersheds in its 2013-2018 Statewide POCD, and instead encouraged towns to adopt impervious surface restrictions. The state has recognized that residential density requirements are not an optimal method to protect watersheds because higher-density housing may actually *reduce* the impact of development on the environment by minimizing the amount of impervious surface per capita.⁴⁵

It is premature for the Commission to adopt a maximum density regulation. In the future, if a clear need for density restrictions develops as the town builds new infrastructure, it can then consider limitations. At this current moment, however, limitations on density would only add to the list of requirements the Town imposes on multi-family housing that it does not impose on single-family homes of a similar size. Unwarranted density requirements are in conflict with a core principle of our amendment, one that has not been rebutted: that Woodbridge should end its arbitrary discrimination between expensive single-family and affordable multi-family housing.

⁴⁵ Conn. Off. of Pol'y & Mgmt., *Conservation and Development Policies Plan 2013-2018: Response to Public Comments* (2012), <https://portal.ct.gov/-/media/OPM/IGP/ORG/cdplan/cdupdate/StateAgencyResponsespdf.pdf> (citing Peter Flinker, *The Need to Reduce Impervious Cover to Prevent Flooding and Protect Water Quality*, R.I. Dep't of Env'tl Mgmt. (2010), <http://www.dem.ri.gov/programs/bpoladm/suswshed/pdfs/imperv.pdf>); Env'tl Protection Agency, *231-R-06-001, Protecting Water Resources with Higher-Density Development 1* (2006), https://www.epa.gov/sites/production/files/2014-03/documents/protect_water_higher_density1.pdf.

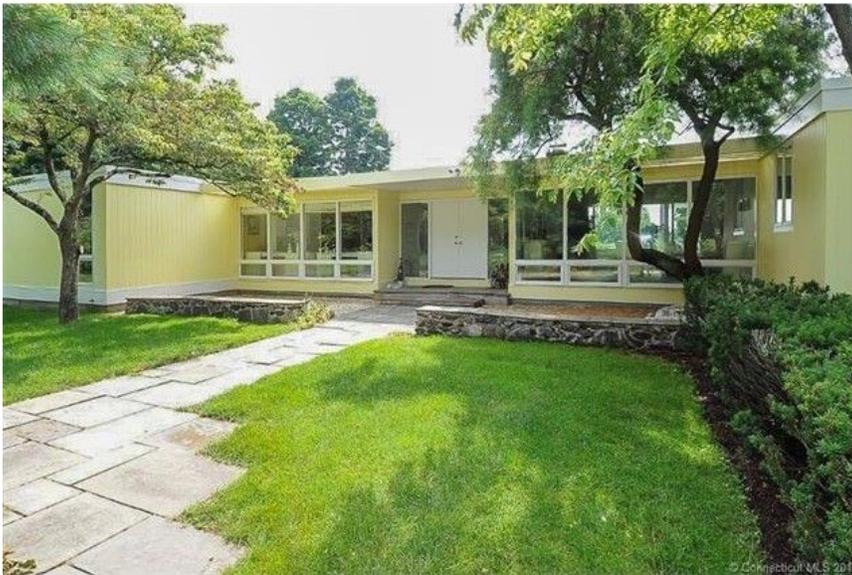
C. Establish standards for building form and site development

1. Building form based on formbook

Throughout his presentation, Mr. Chalder made a number of comments related to what he sees as preferable design choices for multi-family and affordable housing. As we have stated many times, our amendment ensures that Opportunity Housing developments would need to fit within envelopes—and design standards—currently allowable in the Town. On the topic of design standards and building form, we want to reiterate that there is nothing in the record to support a conclusion that the Commission has grounds for putting *greater* constraints on multi-family houses than it puts on single-family houses.

Woodbridge has, notably, not put in place form-based zoning standards or adopted a pattern book of any kind for residential dwellings, to date. Woodbridge is clearly aware of their own authority to designate village districts with stringent design standards, as the town has chosen to do so within the commercial downtown area. Yet, it has chosen not to do so—or even to figure out whether or not it could do so— more broadly. This is evidenced by the wide range of residential housing styles found throughout the town. A quick Google search for contemporary and modern homes in Woodbridge shows a wide range of construction falling far beyond what one might think of as typical New England-style construction.

239 Rimmon Road⁴⁶

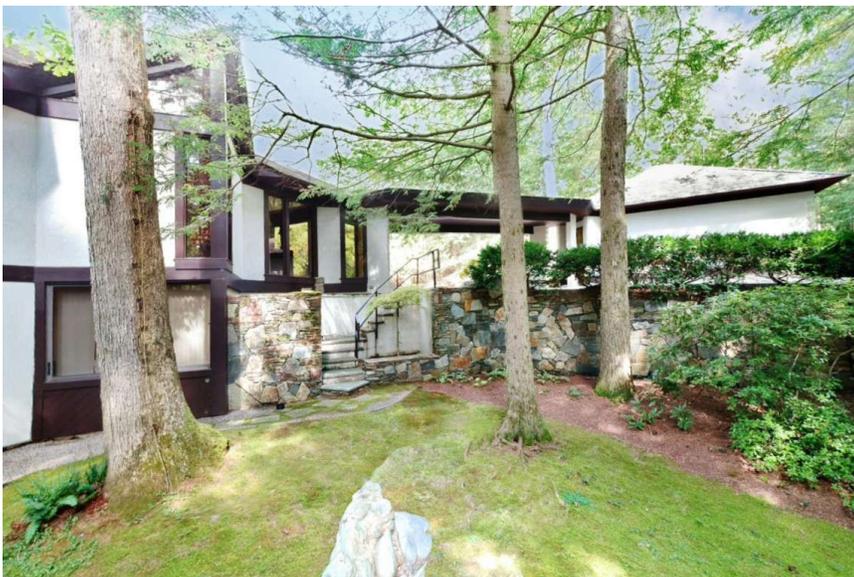


⁴⁶ Realtor.com, https://www.realtor.com/realestateandhomes-detail/239-Rimmon-Rd_Woodbridge_CT_06525_M34345-18022#photo1.

33 Old Mill Road⁴⁷



25 Old Still Road⁴⁸



⁴⁷ Zillow.com, https://www.zillow.com/homedetails/33-Old-Mill-Rd-Woodbridge-CT-06525/58042062_zpid/?mmlb=g,1.

⁴⁸ Realtor.com, https://www.realtor.com/realestateandhomes-detail/25-Old-Still-Rd-Woodbridge_CT_06525_M35336-45429#photo1.

45 Rock Hill Road⁴⁹



81 Deer Run Road⁵⁰



Additionally, Mr. Chalder's specific design suggestions do not meaningfully improve the proposal in any way. For instance, as Mr. Chalder is likely aware, the only realistic alternatives to

⁴⁹ Realtor.com, https://www.realtor.com/realestateandhomes-detail/45-Rock-Hill-Rd_Woodbridge_CT_06525_M47017-72290.

⁵⁰ Compass, <https://www.compass.com/listing/81-deer-run-road-woodbridge-ct-06525/25449415321960001/>.

a flat roof—which our proposed regulation would not allow—on this type of development are gable, hip, or gambrel. However, he characterizes the requirement to eschew flat roofs as insufficient. What, may we ask, does Mr. Chalder believe the amendment’s supporters have planned? Large domes atop missing middle housing? Medieval turrets? Pagodas? The additional criteria he proposes are wholly unnecessary. Similarly, Mr. Chalder seeks to add language regarding appliance type, HVAC system, and so on. Why do so here, when such language typically resides in building codes and cannot be found elsewhere in Woodbridge’s Zoning Regulations, if not in an attempt to thwart the current version of the Opportunity Housing proposal?

2. *Some standards for site development*

Finally, with regard to standards for the site development process, nothing should be put in place that does not also exist for single-family development.

D. More stringent standards and review procedures for two-family and multi-family development in watershed area

Mr. Chalder’s analysis seems to assume that our proposal would attempt to bypass review by DPH or the South Central Connecticut Regional Water Authority (RWA). We want to make it clear that our proposal does not attempt to sidestep any review process by any relevant governing authority.

Any development within 100 feet of wetland soils is subject to a separate review by the Inland Wetlands Agency. Small multi-family development still requires approval from the Quinnipiack Valley Health District for well and septic proposals.⁵¹ Any developments with 25 or more users would require a Certificate of Public Convenience and Necessity for a community water system from the Department of Public Health.⁵² Any development with flow rates from 2,000-7,500 gallons per day requires approval from Connecticut’s Department of Public Health.⁵³ Any flow rate over 7,500 gallons per day requires approval from the Department of Energy and Environmental Protection.⁵⁴ If densities of over six bedrooms per acre are reached, DPH recommends submission of a nitrogen analysis to account for potential offsite impact.⁵⁵ Our Opportunity Housing amendment does not change any of these protections.

As stated above in response to the RWA’s March 1 letter, the argument Mr. Chalder made on March 18 that making the referral decision is an inappropriate role for the ZEO to play is directly contradicted by Connecticut law.⁵⁶ In the instance that reporting requirements for the agencies noted above are not triggered, Mr. Chalder insists that the ZEO has a heavy burden as they are unable to evaluate multi-family applications. We cannot understand why. Mr. Chalder mischaracterized the law by failing to explain that the default remains notification—this

⁵¹ Conn. Pub. Health Code § 19-13-B103e.

⁵² Conn. Gen. Stat. § 16-262m.

⁵³ Conn. Pub. Health Code 19-13-B103d.

⁵⁴ *Id.* § 19-13-B104c.

⁵⁵ Conn. Dept. of Pub. Health, Circular Letter 2000-01, at 3 (Jan. 13, 2000), https://portal.ct.gov/-/media/Departments-and-Agencies/DPH/dph/environmental_health/environmental_engineering/pdf/CIR200001SewageUpdatespdf.pdf.

⁵⁶ *See supra* § II, Recommendation #1.

requirement is waived only if the ZEO affirmatively “determines that the proposed activity will not adversely affect the public water supply.”⁵⁷ If the ZEO lacks sufficient information or technical expertise, or has any potential concerns, then they can require notification of the RWA, DPH, or any relevant agency. This is true for both single- or multi-family buildings.

Furthermore, developers must submit site plans when seeking zoning permits, which are in turn required for issuance of building permits. ZEOs are typically trained in land use, equipped to evaluate an applicant’s compliance with all applicable bulk regulations, like the 15% building coverage limit and the two-and-a-half stories limit in Residence A. They can similarly assess whether a referral pursuant to § 8-3i is appropriate and, if in doubt, err on the side of caution and make the referral.

If the Commission wishes to move toward a system of universal notification and go beyond § 8-3i(c) and impose additional notice requirements, the Commission may go forth and consult with relevant agencies to determine requirements for physical characteristics that trigger requirements for reporting. However, if notice is required for Opportunity Housing developments that are physically indistinguishable from single-family developments, then notice needs to be required for those single-family developments too, as well as for any new additions to single-family development.

E. Non-A zone proposals

During Mr. Chalder’s March 18 presentation, he provided a zone-by-zone analysis of the proposed regulations as well as alternative options for the TPZ to consider in each zone. Included zones were: T3-D, T3-C, T3-BB, B, and A. This variety of zones gave an illusion that the Commission had many options to choose from, and that a combination of various options presented in various zones could bring Woodbridge closer to compliance. What Mr. Chalder failed to disclose is that the total area of T3-D, T3-C, T3-BB and B (every zone except for A) account for only about 1.5% of Woodbridge’s land mass. Limiting multi-family to any one or even all of these areas would effectively remove Woodbridge’s chance of developing real affordability options in the Town.

Mr. Chalder himself acknowledged in his presentation that each zone provides only a tiny portion of land for development. A zone-by-zone analysis confirms that many of these options will have a negligible effect on the Town’s total land mass.

T3-D Zone

This is a tiny portion of town with only 9.4 acres (from Mr. Chalder’s presentation), accounting for less than 0.1% of Woodbridge’s land mass. The only reasonably-sized parcel of note is a 4.8 acre site that is sited on an irregular triangle that is not ideal for development. Mr. Chalder’s suggestion of having multi-family housing on lots over four acres would only affect that *one* parcel.

⁵⁷ Conn. Gen. Stat. § 8-3i(c).

T3-C Zone

This small zone only has 9.5 acres of land, again only less than 0.1% of Woodbridge's area. Mr. Chalder proposes "bulk regulations," but provides no details on what those would be, and design standards, again without any details. These are proposals he makes generally and are not specifically tailored to this zone.

T3-BB Zone

T3-BB has 119 acres of land, or almost 1% of Woodbridge's land area. The only significant lot is an irregularly shaped 11.5-acre parcel. Seeing how little potential there is in this zone, Mr. Chalder proposes to allow for ADUs by zoning permit. This recommendation would address a current contradiction in the Zoning Regulations, as Section 3.3.CC. 2 states that "a single-family dwelling may be converted to allow the incorporation of one Accessory Dwelling Unit in any zone permitting a single-family residence subject to a Zoning Permit," but Table 3.1 does not list ADUs as an allowed use in T3-BB, despite the fact that T3-BB does allow for single-family dwellings by Zoning Permit.

While we are not opposed to Woodbridge addressing this contradiction, we note that ADUs are no replacement for multi-family affordable housing. ADUs in Woodbridge are limited to 600 square feet and allowed only in owner-occupied dwellings. Notably, Mr. Chalder's presentation did not address any potential loosening of those restrictions.

B Zone

Zone B has 38 parcels totaling 37 acres, less than 0.5% of Woodbridge's land mass. Mr. Chalder puts forth the option of bringing in water and sewer, which can absolutely be done in addition to accepting our proposed amendment. The options of having two, three-, and over three-family dwellings by various approval types are covered elsewhere in this brief.

The key takeaway is that, even if all of Mr. Chalder's proposals were to be accepted in all of the above zones, and developers were able to acquire every single parcel it would still only account for about 1.5% of Woodbridge's land area that has multi-family housing. Even if the Commission allowed for multi-family development in all of these zones, Woodbridge would be hard-pressed to come into compliance with state and federal law.

Mr. Chalder goes zone-by-zone and makes different recommendations for every zone but does not give a reason as to why our proposal should be differentiated in each zone. Our proposal can be uniformly applied across these zones, as written. Most of the lots Mr. Chalder brought forth are so small, and so limited in number, that there is a limit to what can be built and the Commission would waste significant time rezoning these areas to no effect.

F. Plan of Conservation and Development

During this hearing, Mr. Chalder has made two specific comments about our Plan of Conservation and Development (POCD) amendment, neither of which provides sufficient reason to reject it. One of Mr. Chalder's comments was a request for changes to the POCD amendment to improve its clarity, while the other comment was only tangentially related to our Application.

First, in his February 22 presentation, Mr. Chalder stated that the wording and structure of our POCD amendment is not compatible with the future land use map in the Town's current POCD. Mr. Chalder did not articulate a specific reason for why he believes this, but we think that he is likely concerned about the fact that if amended, the Town's POCD would list "Low Density Single Family Residential" as both a land use definition and a future land use classification. Presumably, he believes that this could confuse those reading the future land use map because one of the categories on its legend is "Low Density Single Family Residential." This is simply not an issue with the POCD. It is clear that the legend refers to the "Low Density Single Family Residential" future land use plan classification, but if the Commission feels that it must change our Application for ease of reading, it could easily make small wording changes without altering the substantive purpose of our amendment. The Commission, for instance, could change the name of the new future land use plan classification from "Low Density Single Family Residential" to "Low Density Residential" and change the map's legend from listing "Low Density Single Family" to listing "Low Density Residential."

Mr. Chalder's second concern with the POCD is unrelated to our Application. In his March 18 presentation, he stated that as of 2015, § 8-23 has been amended to require that "any plan of conservation and development scheduled for adoption on or after July 1, 2015, shall identify the general location and extent of any (1) areas served by existing sewerage systems, (2) areas where sewerage systems are planned, and (3) areas where sewers are to be avoided." Since the Town's current POCD does not contain this information, Mr. Chalder believes that if the POCD is amended it "might" trigger this requirement, which is contained in § 8-23(g), and the Commission will have to include sewerage system information in the amendment.

We agree that the Town ought to eventually update its POCD to include sewerage system information, but we interpret § 8-23(g) to say that this requirement is only triggered when a full POCD is adopted, not when it is amended. § 8-23 consistently specifies when its provisions apply to the full POCD, a part of the POCD, or an amendment. § 8-23(g) does not list any requirement that information about sewerage systems be added to a POCD when an amendment is adopted, indicating that it was not meant to be triggered by a simple amendment. The Town must eventually update its POCD to meet the requirements of § 8-23(g), but it can hold a separate hearing on this matter at a later date.

G. Other considerations/delayed implementation

Mr. Chalder suggested that the Commission should consider delaying implementation of any amendments it might choose to adopt. If the Commission chooses to adopt our amendments in full, delayed implementation will not be necessary. Our zoning amendment is specifically designed around the existing bulk requirements in Woodbridge's code. This is not a complex amendment; it is a straightforward change to the zoning code and it can stand on its own without new supporting regulations.

IV. General statements regarding alternatives to our Application

A. Alternative proposals

Having articulated our substantive objections to the alternative zoning proposals that Mr. Chalder raised on March 18, we also note the broader importance of keeping this proceeding focused on the Application before the Commission. After a public hearing on our specific text changes, it would not be appropriate for the Commission to instead deliberate and rule on alternative amendments that have no basis in the substance of our proposal and have not been specified in the public record.

For six months, our Application has gone through a robust public hearing process, with all interested parties on notice about the exact changes we have proposed. Connecticut law requires this public engagement on proposed zoning regulation amendments, providing that “no such regulation . . . shall become effective or be established or changed until after a public hearing *in relation thereto*.”⁵⁸ Following this public hearing process, the Commission is statutorily obligated to “act upon *the changes requested*” in our Application.⁵⁹ In doing so, the Commission’s deliberations can be informed by the thorough presentations and extensive public comment that has been provided regarding our specific proposal. As we note above,⁶⁰ the public hearing process has given Woodbridge residents the opportunity to meaningfully engage with our Application, and many have come out in support as a result.

In contrast, the alternatives presented by Mr. Chalder took the form of general, bullet-point suggestions—not specific zoning amendments—and, where these suggestions were mutually exclusive with one another, Mr. Chalder did not provide any reasons for the Commission to choose one option over another. Moreover, these eleventh-hour suggestions have not been the subject of a dedicated public hearing.

Using our Application as a bait-and-switch to push forward a completely different approach—particularly one that fails to meaningfully redress Woodbridge’s illegal and exclusionary zoning practices— would be inappropriate as a matter of public policy and a disservice to the public hearing process. Our Application has transparently proposed a specific, actionable zoning amendment, and we urge the Commission not to conclude a six-month public engagement process by attempting to enact a mystery alternative.

B. Alternative planning processes

Based on Woodbridge’s history of avoiding and delaying engagement with the requirements of various federal and state law requirements applicable to its zoning code, we are also concerned that the Commission may deny our Application—thus refusing to take a concrete, meaningful step available now, with no valid reason for delay—for the purported reason of allowing the Town to engage in an alternative longer-term planning process addressing

⁵⁸ Conn. Gen. Stat. § 8-3(a) (emphasis added).

⁵⁹ § 8-3(c) (emphasis added).

⁶⁰ See *supra* § 1(A).

Woodbridge's affordable housing crisis. As we have repeated throughout this process: longer-term planning must happen, but is not a valid alternative to taking action now.

As further discussed below, the Board of Selectmen recently commissioned a "Woodbridge Housing Opportunity Study Committee" to assess the Town's housing issues and submit a report on potential long-term solutions during a secret executive session concerning our Application. It is clear that our Application served as a major impetus for this group's formation.

We welcome the Town's efforts to engage in forward-looking planning to increase Woodbridge's affordable and multi-family housing stock and we hope that the Study Committee's work ultimately produces constructive changes.

That said, contrary to the suggestion made by Attorney Herbst, the Town's obligation to plan for affordable housing under § 8-30j provides no basis to deny our Application. § 8-30j requires towns to "adopt an affordable housing plan" at least once every five years. These plans must "specify how the municipality intends to increase the number of affordable housing developments in the municipality." § 8-30j went into effect in 2017, beginning a five-year countdown towards a July 2022 deadline for all towns in Connecticut to prepare and adopt their affordable housing plan.

§ 8-30j's mandate to develop and adopt an affordable housing plan does not give Woodbridge the choice to wait to until the 2022 deadline to change its zoning code. The Town must immediately act to remedy its failure to promote affordable and multi-family housing by accepting our zoning and POCD amendments. The amendments before the Commission are actionable steps the Town can take to bring itself into compliance with the law. It is unacceptable for the Commission to admit that it has failed to meet its burdens and willfully pass the problem off to an advisory planning commission when it has the power right now to remedy the Town's ongoing violations of housing and civil rights laws.

§ 8-30j does not allow towns to avoid speedily complying with state and federal law. Its purpose was to make towns take their obligations to provide affordable housing seriously. Refusing to take a first step to address segregation in the name of an affordable housing statute that was meant to solve this very problem undermines the clear spirit of the law.

Attorney Herbst, Mr. Miller, and public commenters have suggested that the current zoning and POCD amendment process has not involved enough input from community members, and that a Woodbridge-driven process would be more appropriate. We agree that public input is required, by various statutory rubrics, and is a key component of planning best practices. The POCD and zoning amendments before the Commission will serve as a foundation for the Town's affordable housing policies, and upcoming planning processes will give Woodbridge residents the chance to tailor additional future policies to both the Town's needs and its regional obligations.

But we disagree that there has not been enough public input for the Commission to make a decision about how to allow affordable housing in Woodbridge. Since submitting our Application in September 2020, we have participated in months of extended public hearings, received and listened to over 200 public comments, participated in a cross-examination by an attorney opposed to our Application, and answered the concerns of members of this Commission

and its consultant. The Woodbridge community has had ample opportunity to have its voice heard on our Application.

It is also important to recognize that the affordable housing conversation within walled-off Woodbridge has been and could continue to be constrained by an exclusionary mindset. For example, Woodbridge’s Ad Hoc 2030 Task Force recently conducted an analysis of the Town’s strengths, weaknesses, opportunities, and threats, identifying as a strength that “residents are affluent and educated,” and as a weakness the “location – between Waterbury and New Haven.”⁶¹

Remarks from Commission members during this proceeding similarly indicate an exclusionary, status quo bias. Commission members have repeatedly characterized our proposal as being “extreme” or “drastic.” We have explained several times why this characterization is inaccurate, for reasons including the limitations on density imposed by Woodbridge’s existing bulk regulations and other bodies of regulation such as the PHC. This repeated mischaracterization also reveals a deep-rooted resistance to change.

As detailed in our Application, the planning and zoning history of Woodbridge shows that the Town has debated whether or not to expand housing opportunity for decades. Delaying a decision to begin to remedy the long history of inaction for yet more discussion about whether to finally comply with state and federal law is not necessary or appropriate. Now is the time for the Commission to act on the proposal before it.

V. Procedural irregularities

Over the course of this proceeding, we have become increasingly concerned by various procedural irregularities that could unduly prejudice our Application. Following upon our objections at the March 18 public hearing session, we respectfully raise here a non-exhaustive list of key issues for the Commission’s attention.

A. Board of Selectmen Executive Sessions

While our Application has been pending only before the Commission, the Woodbridge Board of Selectmen has held several executive sessions with Attorney Dubuque to discuss our Application in private. The first such executive session (listed on the agenda as “Discussion of application to amend zoning regulations and Plan of Conservation of [sic] Development regarding 2 Orchard Road”)⁶² took place during a Board of Selectmen Special Meeting on November 23, 2020, which resulted in the Board voting to retain Attorney Dubuque to assist the Commission.⁶³ Additional executive sessions of the Board regarding our application took place on December 9, 2020 (“Discussion of application to amend zoning regulations and Plan of Conservation and

⁶¹ Woodbridge Ad Hoc 2030 Task Force, Minutes of Special Meeting (Jan. 19, 2021), https://www.woodbridgect.org/AgendaCenter/ViewFile/Minutes/_01192021-1870.

⁶² Woodbridge Board of Selectmen, Agenda for Special Meeting (Nov. 23, 2020), https://www.woodbridgect.org/AgendaCenter/ViewFile/Agenda/_11232020-1821.

⁶³ Woodbridge Board of Selectmen, Minutes of Special Meeting (Nov. 23, 2020), https://www.woodbridgect.org/AgendaCenter/ViewFile/Minutes/_11232020-1821.

Development”);⁶⁴ December 17, 2020 (“Discussion of application to amend zoning regulations and Plan of Conservation and Development”);⁶⁵ January 13, 2021 (“Discussion of application to amend zoning regulations and Plan of Conservation and Development”);⁶⁶ February 10, 2021 (“Discussion regarding application to amend zoning regulations and Plan of Conservation and Development”);⁶⁷ and February 17, 2021 (“Discussion regarding application to amend zoning regulations and Plan of Conservation and Development – Atty. DuBuque”).⁶⁸

The stated justification for each of these executive sessions was “C.G.S. 1-200(6)(B),” which provides a specific exemption to the Connecticut Freedom of Information Act. It allows executive sessions (where “the public is excluded”) to discuss “strategy and negotiations with respect to *pending claims or pending litigation* to which the public agency or a member thereof, because of the member’s conduct as a member of such agency, *is a party* until such litigation or claim has been finally adjudicated or otherwise settled.”⁶⁹ However, this exemption was not applicable to our Application, which is a petition for amendments to the Zoning Regulations and POCD pursuant to General Statutes § 8-3 and § 8-23—not a pending claim or pending litigation. Even if the Board of Selectmen interpreted our Application as somehow falling within § 1-200(6)(B), an executive session of the Board was still inappropriate because it would be the Commission, not the Board, that would be “a party” to any claims or litigation arising from our Application.⁷⁰

Following the unauthorized executive session regarding our Application on December 17, 2020, the Board voted “to authorize the law firm of Carmody/Torrence to retain a planning consultant to assist The Town Plan & Zoning Commission in reviewing the applications from the Open Communities Trust and the 2 Orchard Road LLC.”⁷¹ Accordingly, Mr. Chalder’s role in this proceeding was determined during a discussion of the Board held in secret. The Board also voted to “develop a charge for establishing a committee to review and make recommendations with a full report regarding the housing application recently filed in Woodbridge with the Town Plan and Zoning Commission.” Only later, following the executive session on February 17, 2021, did the

⁶⁴ Woodbridge Board of Selectmen, Agenda for Regular Meeting (Dec. 9, 2020), https://www.woodbridgect.org/AgendaCenter/ViewFile/Agenda/_12092020-1835.

⁶⁵ Woodbridge Board of Selectmen, Agenda for Special Meeting (Dec. 17, 2020), https://www.woodbridgect.org/AgendaCenter/ViewFile/Agenda/_12172020-1847.

⁶⁶ Woodbridge Board of Selectmen, Agenda for Regular Meeting (Jan. 13, 2021), https://www.woodbridgect.org/AgendaCenter/ViewFile/Agenda/_01132021-1864.

⁶⁷ Woodbridge Board of Selectmen, Agenda for Regular Meeting (Feb. 10, 2021), https://www.woodbridgect.org/AgendaCenter/ViewFile/Agenda/_02102021-1898.

⁶⁸ Woodbridge Board of Selectmen, Agenda for Special Meeting (Feb. 17, 2020), https://www.woodbridgect.org/AgendaCenter/ViewFile/Agenda/_02172021-1903.

⁶⁹ Conn. Gen. Stat. § 1-200(6)(B) (emphasis added).

⁷⁰ *Plan. & Zoning Comm’n of Town of Monroe v. Freedom of Info. Comm’n*, 110 A.3d 419, 427 (2015) (“[I]n order for § 1–200(6)(B) to apply, the public agency either must be bringing or defending a prospective or pending lawsuit in court or some other legal action in an adjudicatory forum”).

⁷¹ Woodbridge Board of Selectmen, Minutes of Special Meeting (Dec. 17, 2020), https://www.woodbridgect.org/AgendaCenter/ViewFile/Minutes/_12172020-1847.

Board broaden this charge beyond our Application to include “the development of an Affordable Housing Plan, as required by State law.”⁷²

We sent Attorney Dubuque an email immediately prior to the February 17 meeting that, as described in the minutes, asked “for the legal justification for the executive session.”⁷³ Town Counsel Gerald Weiner and Attorney Dubuque argued “that the proper section of the Connecticut General Statutes was cited, strategy and negotiations, and the wording on the agenda arose from their [the applicants’] documents, but the Board was not discussing the specific applications.”⁷⁴ Notably, this assertion that the Board had not been discussing our Application was made after five prior executive sessions that listed our Application as the topic of discussion— including the December 17 session, which authorized the use of a planning consultant to help review our Application, and only our Application.

The fact that the Board of Selectmen has held six unauthorized executive sessions with the stated purpose of discussing our Application—and then attempted to deny having done so—is irregular and concerning. In addition to voicing our concern, we note that Commission members must refrain from considering any materials, including materials produced for or by the Woodbridge Housing Opportunity Study Committee, that are not submitted into the public record prior to the close of this public hearing.

C. Late submission of materials

Pursuant to Governor Lamont’s Executive Order No. 7B, “*any materials* relevant to matters on the agenda [of a public hearing], including but not limited to *materials related to specific applications* . . . shall be submitted to the agency a minimum of *twenty four (24) hours* prior and posted to the agency’s website for public inspection prior to, during, and after the meeting.”⁷⁵ To this end, we have repeatedly requested—including via letter on February 17 and via email on March 15—that the Commission provide any new materials to be presented at public hearing sessions at least twenty-four hours in advance.

Despite our requests, as we stated during the March 18 hearing session, the Commission has repeatedly violated this directive by failing to share relevant documents and information twenty-four hours in advance of meetings. For example, the Commission failed to disclose the identity of its retained consultant Mr. Chalder in advance of the February 22 hearing session, and neither Mr. Chalder’s first presentation on February 22 nor his second presentation on March 18 were provided *at all* prior to the hearings. As a result, the applicant’s legal team first saw both of Mr. Chalder’s presentations during the hearings.

This conduct reflects a pattern of withholding information from the applicant and members of the public without any clear justification. We also disagree with Attorney Dubuque’s argument

⁷² Woodbridge Board of Selectmen, Minutes of Special Meeting (Feb. 17, 2020), https://www.woodbridgect.org/AgendaCenter/ViewFile/Minutes/_02172021-1903.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Conn. Exec. Order No. 7B, § 1 (Mar. 14, 2020) (emphasis added), <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7B.pdf>.

during the March 18 hearing session that the Governor's order does not pertain to PowerPoint slides, since these are "presentation aids," which she defined as "a computer program that helps you create and give presentations." The order makes no such distinction, but broadly applies to "any [relevant] materials"—which clearly includes Mr. Chalder's presentations. Unlike the PowerPoint we used on November 30, which was a visual accompaniment that highlighted points previously publicized in our submitted written Application, Mr. Chalder's presentations were in themselves the only underlying materials for the new arguments that he made on February 22 and March 18.

Accordingly, neither Mr. Chalder nor any other participant at the April 5 hearing should be allowed to present any materials that are not published a minimum of twenty-four hours in advance (and, as discussed at the March 18 hearing, no later than close of business on April 1 to the extent that the Easter holiday weekend will prevent subsequent submissions from being timely circulated to all parties).

D. Ex parte communications

As Chairman Klee first stated during the January 4th meeting, some communications regarding our proposed amendments have been emailed directly to individual Commission members, but remain undisclosed to the public because Mrs. Sullivan was not properly copied. On January 4th, Commissioner Wallace (who subsequently resigned from the Commission in February) expressed concern that "people overstepped" and that her work email had been included on a widely-circulated flyer opposing our Application. During the February 9th meeting, Commissioner Zamir noted that such emails had continued to reach individual Commission members.

As we previously informed the Commission in our February 17 letter and again during the March 1 hearing session, the Commission has a duty out of fairness to all parties to disclose such ex parte communications and enter them into the public record. It is a principle of Connecticut law that all voices ought to be heard during open public hearings and that publication of emails to the Commission would help further the public's participation in this process. Failing to disclose these emails creates a presumption of prejudice,⁷⁶ and we are concerned about the lack of transparency that the Commission's decision shows.

E. Conduct of virtual hearings

On multiple occasions over the course of the hearing, members of the applicant's legal team have been prevented from timely raising objections due to not being granted "panelist" status in WebEx. For example, during the March 18 hearing session, we attempted to object to the Commission's failure to release Mr. Chalder's presentation in advance, but were unable to do so before until after Mr. Chalder completed his presentation.

While we are sensitive to the technical challenges posed by the hearing's virtual format, we do not believe that the Commission has adequately provided for all voices to be heard during these proceedings, and we have been prejudiced by the inability to promptly object to procedural

⁷⁶ *Daniel v. Zoning Comm'n of City of Norwalk*, 645 A.2d 1022, 1024 (Conn. 1994).

issues on the record. We reiterate the request we made on March 18 that any further WebEx hearings include representatives for all parties—including the applicant and Attorney Herbst— as active “panelists” at all times.