



Feb. 4, 2025

VIA ELECTRONIC MAIL: ct.housing.plans@ct.gov

The Honorable Sella Mosquera-Bruno, Commissioner
Michael Santoro
Laura Watson
Connecticut Department of Housing
505 Hudson Street
Hartford, CT 06106-7106

Re: Town of Fairfield's Application for Certificate of Affordable Housing Completion

Dear Commissioner Mosquera-Bruno, Mr. Santoro, and Ms. Watson,

On behalf of Open Communities Alliance (OCA), I hereby respectfully submit the following comments on Fairfield's application for certificate of affordable housing completion, which was submitted on December 19, 2024. Based on a review of the application, Fairfield has failed to provide necessary compliance information, and OCA therefore requests that DOH declare the application incomplete until Fairfield provides that missing compliance information.

I. RELEVANT BACKGROUND

Fairfield's socioeconomic and racial homogeneity, and its historically exclusionary zoning policies and practices, have made it almost entirely inaccessible to anyone in need of affordable housing. Relative to the state and surrounding region, the town's population is made up disproportionately of wealthy, white households who own single-family homes; its residential zoning is reserved largely for single-family housing; and it has an exceedingly small supply of affordable housing for its size and in view of the staggering need in the region.

Only 3.05% of Fairfield’s occupied housing units are counted as affordable housing by the State Department of Housing Affordable Housing Appeals Act for 2023. Of those affordable units, nearly one-third are age-restricted for seniors, bringing the percentage of affordable housing available to low and moderate income families down to less than 2%. Fairfield’s affordable housing numbers are among the lowest for suburban, higher opportunity communities in the state.

The current number of affordable housing units in Fairfield *has* increased in recent years (by just over half a percentage point from 2019 to 2023), but it still falls far short of the need. Before 2019, the town’s total number of assisted units increased only 0.47% in the *three decades* since the enactment of the Affordable Housing Appeals Act.

Recent census data indicated that 85.8% of Fairfield households live in single-family homes, compared to 64% in Fairfield County, and the poverty rate is 4.6%, compared to a county rate of 8.8%. The socioeconomic homogeneity, and the corresponding homogeneity of the town’s housing stock, are not happenstance. Rather, they are attributable, to a meaningful extent, to the Town’s policies and decisions regarding multi-family and affordable housing in Fairfield.

This backdrop underscores the urgent need for municipalities like Fairfield to take seriously their fair housing obligations. Given the state of our housing crisis and the way that Fairfield’s miniscule housing production has contributed to it, it is vital that Fairfield prove it has in fact earned the 8-30g moratorium that it has applied for, by providing mandatory compliance evidence.

II. ARGUMENT

A. Conn. Gen. Stat. Sec. 8-30g is a remedial statute which must be construed in light of its purpose to facilitate much-needed affordable housing development

“[T]he key purpose of § 8–30g is to encourage and facilitate the much needed development of affordable housing throughout the state.” *W. Hartford Interfaith Coal., Inc. v. Town Council of Town of W. Hartford*, 228 Conn. 498, 511 (1994). In *Kaufman v. Zoning Commission of City of Danbury*, the Supreme Court held that “[a]s a remedial statute, § 8–30g “must be liberally construed in favor of those

whom the legislature intended to benefit.” 232 Conn. 122, 140 (1995) (internal citation and quotation marks omitted). In interpreting § 8-30g, the decision maker’s “fundamental objective [is] ascertaining and giving effect to the apparent intent of the legislature,” and in discerning that intent, the decision maker must start with “the words of the statute itself” as well as “the legislative policy it was designed to implement.” *Kaufman*, 232 Conn. at 133. When it comes to exemptions from § 8-30g, such as for a moratorium, “exceptions to statutes are to be strictly construed with doubts resolved in favor of the general rule rather than the exception.” *Ensign-Bickford Realty Corp. v. Zoning Comm'n Town of Simsbury*, 245 Conn. 257, 268 (1998).

Connecticut courts have therefore rejected attempts to interpret the § 8-30g statute in a way that “would undermine this very important objective” of facilitating affordable housing development in Connecticut. *W. Hartford Interfaith Coal., Inc.*, 228 Conn. at 511 (holding that, contrary to town’s contention, § 8-30g applied to legislative zone changes). *See also, e.g., Brenmor Props. v. Plan. & Zoning Comm'n of Town of Lisbon*, 162 Conn. App. 678, 697 (2016), *aff'd*, 326 Conn. 55 (2017) (rejecting planning commission’s claim that “any deviation’ from the requirements set forth in the road ordinance entitles it to deny an affordable housing application”); *Wisniowski v. Plan. Comm'n of Town of Berlin*, 37 Conn. App. 303, 317 (1995) (rejecting planning commission’s claim that underlying zoning nonconformity was a valid basis to block an affordable housing subdivision application).

B. Moratorium applications must include evidence of compliance, including annual certifications.

Under Conn. Gen. Stat. Sec. 8-30h, the owner of an affordable housing development that contains rental units must “provide annual certification to the commission that the development continues to be in compliance with the covenants and deed restrictions required under” § 8-30g. Section 8-30h further provides that a municipality has the right to “inspect the income statements of the tenants of the restricted units,” *id.*, making explicit that each municipality has oversight authority to verify a development’s compliance. If a development is not in compliance, “the developer, owner or

manager shall rent the next available units to persons and families whose incomes satisfy the requirements” until the development is back in compliance. *Id.* These requirements help ensure, *inter alia*, that the development is following mandatory income and rent limits and that formerly affordable units are not counted towards HUE points if they are no longer affordable.

Moreover, as a policy matter, it is important that DOH collects and municipalities provide accurate information and reliable data. OCA and other research, policy and advocacy groups depend on the accuracy of compliance evidence, amongst other sources, to understand the nature of Connecticut’s housing crisis and to analyze and advocate for policy changes that might address it.

C. Fairfield failed to provide necessary compliance information, and its application is therefore incomplete.

Fairfield’s claimed compliance was incomplete and unsupported by necessary evidence. The town’s application does not include any information about ongoing affordability plan compliance, including current compliance information for its claimed developments. For multiple developments, Fairfield failed to provide *any* § 8-30h reports, much less the annual reports required by the statute.

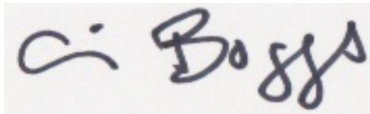
The burden is on the municipality to demonstrate that it has earned a moratorium. This must include proving annual, ongoing compliance with affordability requirements. If, as New Canaan claims, both developments are in fact in compliance, then it should not be unduly burdensome to provide evidence of that compliance.

On the other hand, if a town can obtain a moratorium based on unsupported claims of compliance, then there is no incentive for municipalities and developments to maintain accurate, up-to-date records, which would mean it could claim points for units that are no longer (or have never been) affordable. That interpretation would contravene the remedial purpose of § 8-30g by allowing a municipality to disregard its compliance requirements and nevertheless be rewarded with a moratorium. Instead, the Department should clarify that a town’s application for moratorium is not complete without evidence of annual, ongoing compliance with affordability requirements. In the

absence of that evidence, the Department should request additional information from Fairfield and find the application incomplete until such information is provided and reviewed.

Thank you for the opportunity to provide comments.

Sincerely,

A handwritten signature in black ink on a light gray background. The signature reads "Erin Boggs" in a cursive, flowing script. The first name "Erin" is written in a smaller, more compact cursive, while "Boggs" is written in a larger, more prominent cursive.

Erin Boggs, Esq.
Executive Director, Open Communities Alliance