

Chart of Zoning Data for Berenson Test Prong 1<sup>1</sup>

Municipality	Comprehensive Plan <sup>2</sup>				Housing Types <sup>3</sup>				Land Use: Quantity of Presently Available/Developed Housing <sup>4</sup>						Ability to Meet Future Need <sup>5</sup>		Prong 1 Rank <sup>6</sup>	
	Has a Comp. Plan	Whether Adopted & Year	Recognizes Affordable Housing Need <sup>7</sup>	Addresses Affordable Housing <sup>8</sup>	Multi-Family	Two Family	Accessory Apartment	Mixed Use	Residential Use		Multifamily Use		Two or Three Family Use		Undeveloped Land Zoned Multifamily			Potential Units
									Acres	% of Total Acreage	Acres	% of Residential Use	Acres	% of Residential Use	Acres	% of Multi-family		
Ardsley	Yes	Yes 1964	No	No	As-of-Right 1 district; 1 overlay district SP 1 district Clusters 1 district	As-of-Right None, but if qualifies as affordable then permitted in single-family districts	None	As-of-Right 1 commercial district <sup>9</sup>	413.35	49.55%	4.23	1%	6.01	1.5%	2.7	0.3%	19	2

<sup>1</sup> Under this prong, the municipality must “provide[] a properly balanced and well-ordered plan for the community.” *Berenson v. Town of New Castle*, 38 N.Y.2d 102, 110 (1975).

<sup>2</sup> The plan need not be written, but if it is, it may be considered by the court. *See Asian Ams. for Equality v. Koch*, 72 N.Y.2d 121, 131 (1988).

<sup>3</sup> The adequacy of municipal plans is examined by: (1) identifying the types of housing in each municipality; (2) specifying both quantity and quality of the available housing; (3) determining whether the housing meets the current local need for affordable housing; and (4) determining whether and what type of new construction is necessary to fulfill future needs in each municipality. *See Berenson*, 38 N.Y.2d at 110. SP = Special permit.

<sup>4</sup> *Id.* *See also Cont'l Bldg. Co. v. Town of N. Salem*, 211 A.D.2d 88, 92-93 (N.Y. App. Div. 3d Dep’t 1995). The source of this data does not account for residential uses within mixed-use developments. Ex. J, Table 2 Residential Land Use Acreage by Municipality, *Land Use in Westchester*, at 17, 2010. The analysis of this prong also requires that the court analyze the quality of the available housing, however, the data collected thus far does not provide a means of doing so.

<sup>5</sup> *Berenson*, 38 N.Y.2d at 110. These columns refer to points (e) and (h) in the data sheets found in each municipal-specific report. *See* Ex. E, Methodology II-D(1) Table August 2012 (submitted Sep. 6, 2012); *id.* at Methodology II-C and II-D Map August 2012 (submitted Sep. 6, 2012). There is a lack of data to confirm that each municipality individually has a need for affordable housing development.

<sup>6</sup> Category 1 = Not exclusionary because the municipality provides a well-ordered plan for its community. Category 2 = Not exclusionary, but warrants improvement. Category 3 = Exclusionary because the municipality does not provide a well-ordered plan for its community.

<sup>7</sup> This column gives credit to those municipal plans that explicitly state that there is a need for affordable housing within the municipality or regionally.

<sup>8</sup> This column acknowledges municipal plans that address affordable housing, whether by way of mention that such housing should be considered or by more specific means amounting to detailed recommendations of how to develop affordable housing within the municipality.

<sup>9</sup> The County Planning Department’s February 29, 2012, analysis of zoning in the County’s municipalities is silent on the issue of mixed-use development in Ardsley, but a review of the Village’s zoning ordinance reveals that upper floor residential use is permitted in the B-1 district. *Compare* Ex. F, Village of Ardsley Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012), with VILLAGE OF ARDSLEY CODE § 200-65.B(8).

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	Has a Comp. Plan	Whether Adopted & Year	Recognizes Affordable Housing Need <sup>7</sup>	Addresses Affordable Housing <sup>8</sup>	Multi-Family	Two Family	Accessory Apartment	Mixed Use	Residential Use		Multifamily Use		Two or Three Family Use		Undeveloped Land Zoned Multifamily			Potential Units
									Acres	% of Total Acreage	Acres	% of Residential Use	Acres	% of Residential Use	Acres	% of Multi-family		
Bedford	Yes	Yes 2002	Yes	Yes	As-of-Right 12 districts SP 1 district and elsewhere by conversion in residences existing prior to Sep. 1, 1985, on lots < 20,000 sq. ft.	As-of-Right 12 districts SP 1 district and elsewhere by conversion in residences existing prior to Sep. 1, 1985, on lots < 20,000 sq. ft.	SP 9 districts	As-of-Right 3 districts	13966.46	54.92%	68.43	0.5%	108.41	0.8%	2.7	0.01%	45	2
Briarcliff Manor	Yes	Yes 2007	Yes	Yes	As-of-Right 2 districts; 1 commercial district SP all residential districts	SP all residential districts	None	As-of-Right 1 commercial district	1937.16	50.62%	88.05	4.6%	4.98	0.3%	0.2	0.01%	0	2

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Bronxville	Yes	Yes 2009	No	No but 2002 plan did	As-of-Right 3 districts; 1 commercial district	None	None although existing accessory apartments are grandfathered, permitted non-conforming uses.	As-of-Right all retail districts	387.37	62%	33.67	8.7%	2.14	0.5%	0	0%	0	2
Buchanan	Yes	Yes 2005	No	Yes	As-of-Right 2 commercial districts SP 2 commercial districts	SP 2 commercial districts	SP in residential and commercial districts	As-of-Right 2 commercial districts SP 2 commercial districts	225.29	24.17%	3.18	1.4%	24.32	10.8%	3.6	0.4%	7	2
Cortlandt	Yes	Yes 2004	No	Yes	As-of-Right 1 district, 2 special districts SP 1 district Cluster 1 district	None	SP 9 districts	As-of-Right 1 district	8064.3 1	36.41%	412.3 5	5.1%	243.9	3%	15.7	0.1%	60	1

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Croton-on-Hudson	Yes	Yes 2003	No	Yes	As-of-Right 2 districts; 1 overlay district SP 1 overlay district	As-of-Right 4 districts	SP all but 1 residential district	As-of-Right 1 overlay district SP 2 commercial districts	1097.53	36.13%	51.88	4.7%	37.95	3.5%	0	0%	0	2
Dobbs Ferry	Yes	Yes 2010	No	Yes	As-of-Right 13 districts	As-of-Right 11 districts SP 2 districts	None	As-of-Right 6 districts	596.44	38.57%	83.27	14%	38.62	6.5%	7.2	0.46%	273	1
Eastchester	Yes	Yes 1997	Yes	Yes	As-of-Right 9 districts SP 1 district	As-of-Right 10 districts	None	As-of-Right 3 districts	927.31	42.51%	79.13	8.5%	38.15	4.1%	1.6	0.1%	84	1
Harrison	Yes	No 2012	Yes	Yes	As-of-Right 3 districts SP 1 district	As-of-Right 3 districts	None	As-of-Right 1 district SP 4 districts	4283.72	38.43%	32.32	0.8%	203.91	4.8%	0.9	0.01%	45	2
Hastings-on-Hudson	Yes	Yes 2011	Yes	Yes	As-of-Right 6 districts SP 2 districts	As-of-Right 6 districts	As-of-Right 11 districts SP 1 district	As-of-Right in all retail districts	504.39	39.91%	34.71	6.9%	35.13	7%	6.4	0.5%	71	1

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	Has a Comp. Plan	Whether Adopted & Year	Recognizes Affordable Housing Need <sup>7</sup>	Addresses Affordable Housing <sup>8</sup>	Multi-Family	Two Family	Accessory Apartment	Mixed Use	Residential Use		Multifamily Use		Two or Three Family Use		Undeveloped Land Zoned Multifamily			Potential Units
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Irvington	Yes	Yes 2003	No	Yes	As-of-Right 1 district SP 1 district	As-of-Right 2 districts SP 1 district	As-of-Right all single-family districts	As-of-Right 2 districts	831.67	45.93%	121.8 2	14.6%	22.51	2.77%	0.3	0.01%	0	2
Larchmont	Yes	Yes 1966 and update 1987	N/A	N/A	As-of-Right 1 district; 2 commercial districts SP 1 district	As-of-Right 1 district; 2 commercial districts SP 1 district	None	As-of-Right 2 commercial districts	393.09	57.22%	4.05	1.03%	3.18	0.81%	1.9	0.3%	53	2
Lewisboro	Yes	Yes 1985	No	Yes but states multifamily housing for regional need is "not imperative"	As-of-Right 1 district	As-of-Right 2 districts	SP apartment on single family lots min. ½ acre; accessory residence dwellings on lots of at least 20 acres	As-of-Right 2 commercial districts	9590.1 1	51.39%	24.42	0.25%	37.44	0.4%	4.5	0.02%	18	3
Mamaroneck	Yes	N/A	N/A	N/A	As-of-Right 4 districts SP 1 district	As-of-Right 1 district	Only buildings or trailers for domestic employee in single-family districts	As-of-Right 2 districts SP 1 district	1074.1 5	47.32%	28.69	2.7%	16.43	1.5%	0	0%	0	3

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Mount Pleasant	Yes	Yes 1970	No	Yes	As-of-Right 10 districts SP 3 districts	As-of-Right 11 districts	SP 28 districts	As-of-Right 14 districts <sup>10</sup>	4647.45	30.19%	55.29	1.2%	70.46	1.5%	5.2	0.03%	5	2
New Castle	Yes	Yes 1989	No	Yes	As-of-Right 5 districts; 1 floating district <sup>11</sup> SP 9 districts	As-of-Right all single-family districts but only if affordable	SP 8 districts	As-of-Right 9 districts	8306.12	55.38%	302.13	3.6%	139.89	1.7%	5	0.03%	32	1
North Castle	Yes	Yes 1996	No	Yes	As-of-Right 8 districts	As-of-Right 1 district	As-of-Right 4 districts SP 8 districts	As-of-Right 6 districts	7125.56	42.47%	3.06	0.04%	79.43	1.1%	6.3	0.04%	82	2

<sup>10</sup> Based on the data submitted by the County, it is unclear exactly how many districts permit mixed-use development as-of-right. We have given Mount Pleasant credit for the largest number of districts. Ex. F, Town of Mount Pleasant Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012).

<sup>11</sup> There is some confusion about which zoning districts were identified by the County Planning Department as allowing multifamily housing as-of-right. In its Feb. 29, 2012, analysis of the zoning ordinances of Westchester municipalities, it identifies only the MFR-C, MFR-M and MFPD districts as allowing the use “as of right,” but it identifies the B-D, B-R, B-RP and I-G districts as allowing multifamily housing upon site plan review rather than as a special use., and the Planning Department has identified potential multifamily housing development sites in the B-D and B-R districts. Ex. F, Town of New Castle Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012; Ex. E, Methodology II-D(2) Table August 2012 (submitted Sep. 6, 2012). The acreage figure that the Planning Department has provided for districts allowing multifamily housing as-of-right does not appear, however, to include the I-G district, and a review of the zoning ordinance clearly indicates that residential use is allowed in the I-G district only by special permit. Schedule of regulations for business and industrial districts, TOWN OF NEW CASTLE CODE § 60 Attachment 4 (July 1, 2012).

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	Has a Comp. Plan	Whether Adopted & Year	Recognizes Affordable Housing Need <sup>7</sup>	Addresses Affordable Housing <sup>8</sup>	Multi-Family	Two Family	Accessory Apartment	Mixed Use	Residential Use		Multifamily Use		Two or Three Family Use		Undeveloped Land Zoned Multifamily			Potential Units
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North Salem	Yes	Yes 2011	Yes	Yes	As-of-Right 5 districts <sup>12</sup> SP 5 districts	As-of-Right 3 districts <sup>13</sup> SP 4 districts	As-of-Right 1 district SP 10 districts	None <sup>14</sup>	5642.07	37.96%	7.88	0.14%	46.53	0.82%	77.3	0.5%	307	1
Ossining	Yes	Yes 2002	Yes	Yes	SP 3 districts	SP 5 districts	SP 8 districts	SP 1 district	989.14	50.87%	158.03	16%	28.96	2.9%	0	0%	0	2
Pelham	Yes	Yes 2008	Yes	Yes	As-of-Right 4 districts	As-of-Right 8 districts	None	As-of-Right 3 districts	285.72	53.85%	4.73	1.7%	34.93	12.2%	1.1	0.2%	54	2
Pelham Manor	N/A	N/A	N/A	N/A	As-of-Right 1 district	As-of-Right 1 district	None	None	455.11	52.66%	10.31	2.3%	1.89	0.4%	0	0%	0	3
Pleasantville	Yes	Yes 1996	No	Yes in 2007 addendum	As-of-Right 3 districts SP 3 districts	As-of-Right 7 districts SP 3 districts	SP 6 districts	As-of-Right 2 districts SP 3 districts	551.68	48.07%	42.78	7.8%	39.12	7%	0.8	0.1%	10	1

<sup>12</sup> In Figure 7 of the County's Eighth Zoning Submission regarding North Salem, the County lists additional districts as permitting multifamily housing as-of-right: the NB, PO and RO districts, all of which are listed as not permitting multifamily housing in the County's February submission. Compare Ex. I, Town of North Salem, at 19-22, Eighth Zoning Submission, dated July 23, 2013, with Ex. F, Town of North Salem Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012). A review of the Town's zoning code reveals that residential uses are not permitted in the NB and RO districts and that only single-family detached dwellings are permitted in the PO district. Table of General Use Requirements, TOWN OF NORTH SALEM CODE § 250 Attachment 9, Nov. 1, 2011; Table of General Use Requirements, TOWN OF NORTH SALEM CODE § 250 Attachment 11, Nov. 1, 2011; Table of General Use Requirements, TOWN OF NORTH SALEM CODE § 250 Attachment 12, Nov. 1, 2011.

<sup>13</sup> In a letter dated April 18, 2013, Supervisor Warren J. Lucas stated that, contrary to the County Planning Department's February 29, 2012 analysis of zoning districts in the County's municipalities, two-family dwellings are also allowed as-of-right in R-MF/4 and R-MF/6. Ex. H.

<sup>14</sup> In a letter dated April 18, 2013, Supervisor Warren J. Lucas stated that, contrary to the County Planning Department's February 29, 2012, analysis of zoning districts in the County's municipalities, mixed-use development is allowed in the GB, PO, RO, NB, PD and PD-CCRC districts, but this is not supported by a reading of the zoning ordinance. Ex. H.

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Pound Ridge	Yes	Yes 2010	No	Yes	As-of-Right 3 commercial districts SP 4 districts	None	As-of-Right 2 districts	As-of-Right 3 commercial districts	6930.97	46.92%	0	0%	0	0%	3.6	0.02%	23	2
Rye	Yes	Yes 1985	No	Yes	As-of-Right 9 districts SP 2 districts	As-of-Right 10 districts	As-of-Right 15 districts	As-of-Right 4 districts	1809.44	48.43%	137.5	7.6%	38.22	2.1%	1.6	0.04%	38	1
Rye Brook	No	Has Vision Plan 2000	No	Yes	As-of-Right 4 districts; 2 floating districts SP 1 district; 1 floating district	As-of-Right 5 districts SP 1 district	None	SP 1 floating district	841.27	19.66%	10.88	1.3%	39.68	4.7%	1.2	0.1%	38	2



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	Has a Comp. Plan	Whether Adopted & Year	Recognizes Affordable Housing Need <sup>7</sup>	Addresses Affordable Housing <sup>8</sup>	Multi-Family	Two Family	Accessory Apartment	Mixed Use	Residential Use		Multifamily Use		Two or Three Family Use		Undeveloped Land Zoned Multifamily			Potential Units
									Acres	% of Total Acreage	Acres	% of Residential Use	Acres	% of Residential Use	Acres	% of Multi-family		
Scarsdale	Yes	Yes 1994	No	Yes and in 2010 update	As-of-Right <sup>7</sup> up to 5 districts <sup>15</sup>	As-of-Right up to 5 districts <sup>16</sup>	None <sup>17</sup>	As-of-Right up to 8 districts <sup>18</sup>	2377.82	55.58% <sup>19</sup>	6.08	0.26%	0	0%	0 <sup>20</sup>	0%	0	2
Somers	Yes	No 2005	No	Yes	As-of-Right 1 district, 3 floating districts; 3 commercial districts	None	As-of-Right 10 districts	As-of-Right 4 districts	8274.39	40.2%	75.91	0.9%	91.81	1.1%	73.9	0.4%	260	2

<sup>15</sup> In its February 2012 analysis, the County Planning Department stated that multifamily housing is allowed as-of-right in only three zoning districts: Res C, PUD-1 and PUD-8. Ex. F, Town/Village of Scarsdale Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012). This appeared to be an uncharacteristically narrow reading of the zoning ordinance. For other municipalities, if a business district allows “residences” (without further elaboration) as a principal use, even if confined to the upper floors of a mixed-use development, the County Planning Department indicates that they permit multifamily housing as-of-right. The Scarsdale zoning ordinance states that “residences” are among the permitted uses in the VCO-2.0 district. See VILLAGE OF SCARSDALE CODE § 310-12.B(4)(b)(1). It also states that residences are permitted upper floor uses in the Business A, VCR-2.0 and VCR-1.0 districts. The County’s most recent zoning submission corrects the prior omission of the Business A, VCR-2.0 and VCR-1.0 districts but not the omission of the VCO-2.0 district. Ex. I, Town/Village of Scarsdale Zoning Analysis, at Figure 7, Eighth Zoning Submission, dated July 23, 2013. The July 2013 submission also states incorrectly that the VCR-8 district also allows multifamily housing as-of-right. *Id.* A review of the zoning code reveals that the VCR-8 district does not permit residential uses. VILLAGE OF SCARSDALE CODE § 310-12.B(3)(b). All analyses of the acreage zoned for multifamily residential development, the number of available sites in those districts and the potential number of housing units that could be developed on those sites were based on the County’s earlier conclusion that only three districts permit multifamily housing as-of-right.

<sup>16</sup> In its February 2012 submission, the County Planning Department identified three zoning districts that allow for two-family housing development as-of-right (Res C, PUD 1 and PUD8-1.4). Ex. F, Town/Village of Scarsdale Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012). The July 2013 submission also identifies the VCR-2.0 and VCR-1.0 districts as allowing two-family housing as-of-right; however, two of those districts allow residences only above the ground floor in a mixed-use development, and thus exclude what is generally thought of as two-family homes. Ex. I, Town/Village of Scarsdale Zoning Analysis, at Figure 7, Eighth Zoning Submission, dated July 23, 2013; VILLAGE OF SCARSDALE CODE §§ 310-12.B(1)(b)(2), 12.B(2)(b)(2).

<sup>17</sup> In its February 2012 analysis, the County Planning Department erroneously stated that accessory apartments are allowed as-of-right in five nonresidential zoning districts, but it has corrected this error in its July 2013 analysis. Compare Ex. F, Town/Village of Scarsdale Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012), with Ex. I, Town/Village of Scarsdale Zoning Analysis, at Figure 7, Eighth Zoning Submission, dated July 23, 2013.

<sup>18</sup> In its analysis, the County Planning Department identifies 8 districts as permitting mixed-use development as-of-right, which includes the VCO-0.8 district. Ex. F, Town/Village of Scarsdale Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012). However, the zoning ordinance does not mention residential use of any kind as a permitted use in the VCO-0.8 district. VILLAGE OF SCARSDALE CODE § 310-12.B(5)(b).

<sup>19</sup> The data provided by the County indicates that 106.92% of the land in Scarsdale is residential. Ex. J, Table 2 Residential Land Use Acreage by Municipality, *Land Use in Westchester*, at 17, 2010. Due to this unclear figure, and for the purposes of this analysis, this percentage figure was changed to 55.58% after dividing the total acreage of Scarsdale (point a on the data sheet) by the number of acres currently subject to residential use. *Id.*; Ex. E, Methodology III-C-2 Table August 2012 (submitted Sep. 6, 2012).

<sup>20</sup> The analysis has been performed only on the areas zoned Res C, PUD-1 and PUD8-1.4, the districts identified by the County as allowing multifamily housing as-of-right in Ex. F, Town/Village of Scarsdale Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012).

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Tarrytown	Yes	Yes 2007	No	Yes	As-of-Right 8 districts	As-of-Right 10 districts	None	As-of-Right 3 districts	679.30	34.45%	216.86	32%	39.99	6%	2.3	0.1%	50	1
Tuckahoe	Yes	Yes 2008	No	Yes	As-of-Right 2 districts <sup>21</sup>	As-of-Right 2 districts	None	As-of-Right 5 districts	169.27	44.25%	29.51	17.4%	32.93	19.5%	0.7	0.2%	17	1
Yorktown	Yes	Yes 2010	No	Yes	As-of-Right 3 districts <sup>22</sup> SP 9 districts	As-of-Right 3 districts SP 8 districts	SP in all residential districts <sup>23</sup>	As-of-Right 1 district	9317.99	37%	617.01	6.6%	57.91	0.6%	40	0.2%	479	1

<sup>21</sup> The data provided by the County only credits the AP-3 district as permitting multifamily housing as-of-right. Ex. F, Village of Tuckahoe Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012). However, under the Village code and consistent with the Village’s response letter, the B/R district should also be included. VILLAGE OF TUCKAHOE CODE § 4-5.1; Ex. H, Village of Tuckahoe Response Letter from John D. Cavallaro, Village of Tuckahoe Attorney, at 3, dated May 16, 2013.

<sup>22</sup> The table provided by the County identifies R-3, R-3A and RSP-3 as districts permitting multifamily housing as-of-right. Ex. F, Town of Yorktown Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012). Yet, the County’s Methodology II-C and II-D tables and maps provide information about sites and acreage in RSP-1 rather than RSP-3, indicating that the descriptions of the two districts may have been inadvertently reversed in the review and analysis table. Compare Ex. F, Town of Yorktown Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012), with Ex. E, Town of Yorktown Methodology II-C and II-D Map August 2012 (submitted Sep. 6, 2012). Based on the zoning code, it does indeed appear that RSP-1, rather than RSP-3, permits multifamily as-of-right. TOWN OF YORKTOWN CODE §§ 300-124.C, 300-160.

<sup>23</sup> Although the data submitted by the County credits 9 zoning districts as permitting accessory apartments as-of-right, the County also provides an explanatory note stating that these accessory dwelling units are limited to one dwelling unit for the owner, operator or janitor of the establishment, and the zoning ordinance does indeed contain this restriction.. Compare Ex. F, Town of Yorktown Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012), with TOWN OF YORKTOWN CODE §§ 300-21.C(7)(b)(1), 300-21.C(8)(c)(4), 300-21.C(9)(c)(6), 300-21.C(10)(c)(1), 300-21.C(11)(c)(6), 300-21.C(12)(c)(1), 300-21.A(13)(c)(1), 300-21(15)(c)(5).

Chart of Zoning Data for *Berenson Test Prong 2*<sup>1</sup>

Municipality	Share of Regional Need <sup>2</sup>				Ability to Meet Regional Need through Multifamily Development <sup>3</sup>			Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup>		Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup>				Market Condition <sup>6</sup>	Prong 2 Rank <sup>7</sup>
	Allocation of Units	Number Built or Approved <sup>8</sup>	% of Built or Approved	Rank <sup>9</sup>	Number of Potential Units	Total Built Approved and Potential	% of Benchmark Built, Approved and Potential	Provided	Limitations	Total Acres	Acres Zoned Multifamily As-of-Right <sup>10</sup>	Undeveloped Acres Zoned Multifamily As-of-Right	% of Multifamily Acreage Undeveloped		
Ardsley	100	19	19%	12	19	38	38%	Yes	1 MF district is an overlay district. MF SP only allowed in	834	5.7	2.7	0.3%	Insufficient	2

<sup>1</sup> Under this prong, municipalities must consider, weigh and balance both local and regional housing needs, due to the ripple effects zoning may have on areas outside a municipality's boundaries. *Berenson v. Town of New Castle*, 38 N.Y.2d 102, 110 (1975) ("There must be a balancing of the local desire to maintain the *status quo* within the community and the greater public interest that regional needs be met."); *Triglia v. Town of Cortlandt*, No. 17976/96, 1998 WL 35394393, at \*4 (N.Y. Sup. Ct. Westchester Cnty. Jan. 6, 1998).

<sup>2</sup> A party challenging a municipal zoning ordinance must first demonstrate that there is an identifiable regional need for affordable housing. See, e.g., *Land Master Montg I, LLC v. Town of Montgomery*, 821 N.Y.S.2d 432, 439 (N.Y. Sup. Orange Cnty. 2006); *Triglia*, No. 17976/96, 1998 WL 35394393, at \*4. Westchester County has not submitted evidence of regional need. The only available assessment is a study that was commissioned by the County in 2005. The study was conducted by the Center for Urban Policy Research of Rutgers University (CUPR), which estimated that Westchester municipalities must collectively build 10,768 new affordable housing units by 2015 to meet the County's growing regional need for affordable housing. See *Westchester County Affordable Housing Needs Assessment*, Rutgers University Center for Urban Policy Research, at 67 (2004) (available at [http://homes.westchestergov.com/images/stories/pdfs/HOUSING\\_RutgersReport033004.pdf](http://homes.westchestergov.com/images/stories/pdfs/HOUSING_RutgersReport033004.pdf)) (last accessed July 31, 2013). The Westchester Housing Opportunity Commission ("HOC"), a body commissioned by the County, has issued recommendations that allocate a share of the regional affordable housing needs to each municipality. See HOC, *Affordable Housing Allocation Plan 2000-2015* (2005) (available at [http://homes.westchestergov.com/images/stories/pdfs/HOUSING\\_HOCAllocation05.pdf](http://homes.westchestergov.com/images/stories/pdfs/HOUSING_HOCAllocation05.pdf)) (last accessed July 31, 2013). This allocation plan has been cited by the County in many of its AI submissions, the County relies on it in distributing funds from the County's Legacy Program, and it is the only needs assessment that has been prepared to date. See, e.g., Ex. D, Westchester County, Analysis of Impediments to Fair Housing Choice (updated April 2013), p. 59-60. See also Ex. 10, Letter from James E. Johnson to Robert P. Astorino, dated June 12, 2013. Accordingly, this analysis goes forward with the best, indeed, only available relevant evidence.

<sup>3</sup> Once the regional need is established, the next step in the analysis requires addressing the question whether, on its face, the zoning ordinance fails to allow for "the construction of sufficient housing to meet the [municipality's] share of the region's housing needs." *Blitz v. Town of New Castle*, 94 A.D.2d 92, 99 (N.Y. App. Div. 2d Dep't 1983).

<sup>4</sup> Municipal zoning ordinances that fail to provide a provision for multifamily housing as-of-right or significantly reduce or limit such housing are facially exclusionary. *Id.* at 94; *Land Master Montg I, LLC*, 821 N.Y.S.2d at 439; *Triglia*, No. 17976/96, 1998 WL 35394393, at \*6.

<sup>5</sup> Municipalities commonly facilitate this by identifying, through zoning, areas of a municipality where multifamily housing may be built as-of-right. See *Cont'l Bldg. Co. v. Town of N. Salem*, 211 A.D.2d 88, 93 (N.Y. App. Div. 3d Dep't 1995). ("[M]ultifamily housing, given the nature of its construction and function as a whole, is one of the most affordable types of housing.") These columns refer to points (a), (b) and (c) on the data sheets included in each municipality's report.

<sup>6</sup> Since a zoning ordinance merely determines "what may or may not be built" as opposed to deciding "what will actually be built, in the absence of government subsidies," the question is not simply whether the zoning ordinance provides for the legal possibility of multifamily housing. *Blitz*, 94 A.D.2d at 99 (emphasis in original). Rather, the analysis must address the question of whether it is both "physically and economically feasible" that affordable housing could be built under the present zoning regime. See *id.*; *Cont'l Bldg. Co.*, 211 A.D.2d at 94 (citation and quotation omitted). This column indicates whether the market conditions within the municipality are such that condo sale prices are sufficient, meaning above the county-wide average of \$375,000, or insufficient, meaning below that average. Municipalities that have insufficient market conditions will likely need a subsidy to aid in new development of affordable housing.

<sup>7</sup> Category 1 = Not exclusionary because the municipality has considered and has the potential to satisfy regional need. Category 2 = Not exclusionary, but warrants improvement. Category 3 = Exclusionary because the municipality has not considered and does not have the potential to satisfy its fair share of regional need.

<sup>8</sup> Despite being given multiple opportunities to respond to a survey conducted by the County Planning Department, some municipalities have not reported the construction or approval of any affordable housing units since 2000. Ex. C, Table, Status of Allocation per Affordable Housing Allocation Plan 2000-2012 – As of November 20, 2012 (submitted Nov. 20, 2012). For the purposes of this analysis, these municipalities are assumed to have built or approved zero units and can be identified by an entry of "0\*".

<sup>9</sup> This column provides a ranking of the municipalities based on the percentage of affordable units that have been reported as built or approved since 2000. The lowest rank is 24, as more than one municipality has built or approved zero units since 2000. Ex. C, Table, Status of Allocation per Affordable Housing Allocation Plan 2000-2012 – As of November 20, 2012 (submitted Nov. 20, 2012).

<sup>10</sup> This column provides data from point b on the data sheets of the Housing Consultant Reports: Total acreage in zoning districts where multifamily housing is permitted as-of-right.

Chart of Zoning Data for Berenson Test Prong 2

Municipality	Share of Regional Need <sup>2</sup>				Ability to Meet Regional Need through Multifamily Development <sup>3</sup>			Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup>		Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup>				Market Condition <sup>6</sup>	Prong 2 Rank <sup>7</sup>
	Allocation of Units	Number Built or Approved <sup>8</sup>	% of Built or Approved	Rank <sup>9</sup>	Number of Potential Units	Total Built Approved and Potential	% of Benchmark Built, Approved and Potential	Provided	Limitations	Total Acres	Acres Zoned Multifamily As-of-Right <sup>10</sup>	Undeveloped Acres Zoned Multifamily As-of-Right	% of Multifamily Acreage Undeveloped		
									connection with conversion of former school (not available anymore); Cluster district only allows apartment development of only 6 units attached, semidetached or clustered with assisted living facilities. No more than 25% of the units may contain more than 3 bedrooms in the cluster district.						
Bedford	396	95	24%	10	45	140	35.4%	Yes	1 district requires min. lot size of 2 acres. For MF by SP, can develop in 1 district or elsewhere by conversion in residences existing prior to Sep.1, 1985, on lots of less than 20,000 sq. ft.	25,444	221	2.7	0.01%	Insufficient	2
Briarcliff Manor	141	49 <sup>11</sup>	34.8%	9	0	49	34.8%	Yes	1 MF district is commercial and only allows mixed-use development, where residential use must not exceed 80% of the gross floor area, and no ground floor dwelling units shall front any public right-of-way. 1 MF district is intended	3808	48.7	0.2	0.01%	Sufficient	2

<sup>11</sup> A developer is seeking approvals for a proposed affordable housing development that would contain 14 affordable units. See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013).

Chart of Zoning Data for Berenson Test Prong 2

Municipality	Share of Regional Need <sup>2</sup>				Ability to Meet Regional Need through Multifamily Development <sup>3</sup>			Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup>		Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup>				Market Condition <sup>6</sup>	Prong 2 Rank <sup>7</sup>
	Allocation of Units	Number Built or Approved <sup>8</sup>	% of Built or Approved	Rank <sup>9</sup>	Number of Potential Units	Total Built Approved and Potential	% of Benchmark Built, Approved and Potential	Provided	Limitations	Total Acres	Acres Zoned Multifamily As-of-Right <sup>10</sup>	Undeveloped Acres Zoned Multifamily As-of-Right	% of Multifamily Acreage Undeveloped		
									for elderly communities. SP only allowed for conversion of an existing house on a parcel of 10 or more acres.						
Bronxville	101	0*	0%	24	0	0	0%	Yes	None	622	79.5	0	0	Sufficient	2
Buchanan	56	0* <sup>12</sup>	0%	24	7	7	12.5%	Yes	MF as-of-right is only in 2 commercial districts and is limited to mixed-use development; the residential use must be in the back of or above a commercial establishment w a max. of 4 dwellings per acre. SP may be granted in 2 commercial districts for multifamily dwellings without commercial use but the districts require parcels of land not less than 40,000 sq.ft., each dwelling unit contains a min. of 750 sq.ft., the max. density is 5 dwelling units per 40,000 sq.ft., and the parcel must adjoin a residentially zoned district.	932	42.3	3.6	0.4%	Insufficient	2

<sup>12</sup> The County has reported that there is currently a proposal to rehabilitate one three-bedroom affordable housing unit, pursuant to the County’s obligations under the Settlement. See Ex. G, *Westchester County 2013 1Q Report*, at App’x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013).

Chart of Zoning Data for Berenson Test Prong 2

Municipality	Share of Regional Need <sup>2</sup>				Ability to Meet Regional Need through Multifamily Development <sup>3</sup>			Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup>		Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup>				Market Condition <sup>6</sup>	Prong 2 Rank <sup>7</sup>
	Allocation of Units	Number Built or Approved <sup>8</sup>	% of Built or Approved	Rank <sup>9</sup>	Number of Potential Units	Total Built Approved and Potential	% of Benchmark Built, Approved and Potential	Provided	Limitations	Total Acres	Acres Zoned Multifamily As-of-Right <sup>10</sup>	Undeveloped Acres Zoned Multifamily As-of-Right	% of Multifamily Acreage Undeveloped		
Cortlandt	403	201	49.9%	3	60	261	64.8%	Yes	MF district restricted to 3- and 4- family dwelling w max. of 2 bedrooms per unit; 1 special district is not mapped; 1 special district is limited to senior housing. Some of the multifamily housing is only allowed at very low densities, less than 3 units per acre in 1 case, and up to 10 bedrooms per acre in another case.	22147	171.9	15.7	0.1%	Insufficient	2
Croton-on-Hudson	115	17	14.8%	14	0	17	14.8%	Yes	1 MF district is an overlay district intended to simplify the development of large tracts of 10 or more contiguous acres and permits as-of-right multifamily housing consistent with the underlying districts. SP district is also an overlay district dependent on underlying districts permitted uses, unless in 1 of 3 residential districts.	3034	58.5	0	0%	Sufficient	3
Dobbs Ferry	105	0* <sup>13</sup>	0%	24	273	273	260%	Yes	All but 1 MF district requires min. lot size per unit ranging from low of 800 sq.ft. to a high of	1580	263.8	7.2	0.46%	Sufficient	2

<sup>13</sup> A developer is seeking approvals for a 202-unit mixed-income development at Rivertowns Square that would contain 10 affordable housing units. See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013).

Chart of Zoning Data for Berenson Test Prong 2

Municipality	Share of Regional Need <sup>2</sup>				Ability to Meet Regional Need through Multifamily Development <sup>3</sup>			Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup>		Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup>				Market Condition <sup>6</sup>	Prong 2 Rank <sup>7</sup>
	Allocation of Units	Number Built or Approved <sup>8</sup>	% of Built or Approved	Rank <sup>9</sup>	Number of Potential Units	Total Built Approved and Potential	% of Benchmark Built, Approved and Potential	Provided	Limitations	Total Acres	Acres Zoned Multifamily As-of-Right <sup>10</sup>	Undeveloped Acres Zoned Multifamily As-of-Right	% of Multifamily Acreage Undeveloped		
									6,000 sq.ft., and min. lot area of 5,000 sq.ft.						
Eastchester	104	2 <sup>14</sup>	1.9%	22	84	86	82.7%	Yes	SP district is limited to senior housing with max. 2 occupants in efficiency and 1 bedroom units and 3 occupants in 2 bedroom units and has preferences for Eastchester residents and relatives. The max. density for senior housing is 1 unit per 700 sq.ft., which yields approximately 60 units per acre.	2184	224.6	1.6	0.1%	Insufficient	2
Harrison	756	0*	0%	24	45	45	6%	Yes	None	11147	32.9	0.9	0.01%	Sufficient	3
Hastings-on-Hudson	97	21 <sup>15</sup>	21.6%	11	71	92	94.8%	Yes	1 of the 6 MF districts allows only 3-family homes as-of-right but more with SP	1264	84.9	6.4	0.5%	Sufficient	1
Irvington	156	4	2.6%	21	0	4	2.6%	Yes	None	1809	56.4	0.3	0.01%	Sufficient	2

<sup>14</sup> Despite being given multiple opportunities to respond to a survey conducted by the County Planning Department, Eastchester has not reported the construction or approval of any affordable housing units since 2000. Ex. C, Table, Status of Allocation per Affordable Housing Allocation Plan 2000-2012 – As of November 20, 2012 (submitted Nov. 20, 2012). However, based on a recent submission by the County, Eastchester has approved 2 affordable units. Ex. N, Funding Advisory to Monitor, No. 19, (submitted June 27, 2013).

<sup>15</sup> Developers are seeking approvals for two proposed affordable housing projects that would contain a combined total of 14 affordable units. See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013). Additionally, the County has reported that there is currently a proposal to rehabilitate one three-family home and convert it to three condominium affordable housing units, pursuant to the County's obligations under the Settlement. *Id.*

Chart of Zoning Data for Berenson Test Prong 2

Municipality	Share of Regional Need <sup>2</sup>				Ability to Meet Regional Need through Multifamily Development <sup>3</sup>			Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup>		Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup>				Market Condition <sup>6</sup>	Prong 2 Rank <sup>7</sup>
	Allocation of Units	Number Built or Approved <sup>8</sup>	% of Built or Approved	Rank <sup>9</sup>	Number of Potential Units	Total Built Approved and Potential	% of Benchmark Built, Approved and Potential	Provided	Limitations	Total Acres	Acres Zoned Multifamily As-of-Right <sup>10</sup>	Undeveloped Acres Zoned Multifamily As-of-Right	% of Multifamily Acreage Undeveloped		
Larchmont	105	51 <sup>16</sup>	48.6%	5	53	104	99%	Yes	2 MF districts are commercial allowing mixed-use development only. MF buildings cannot be larger than 20 unit or taller than 2.5 stories. SP district is for townhouse developments restricted to cites of 6 or more acres, w no more than 2 bedrooms per townhouse dwelling.	687	66.3	1.9	0.3%	Sufficient	2
Lewisboro	239	0*	0%	24	18	18	7.5%	Yes	Only MF district requires min. lot size for developments served by public water and sewer infrastructure of 15,000 sq.ft. If a development will not be served by public water and sewer, the min. lot size is 15 acres. The max. permitted density is 2 density units per acre.	18648	142.7	4.5	0.02%	Insufficient	3
Mamaroneck	125	10	8%	16	0	10	8%	Yes	1 MF district limits MF development to 1 3 bedroom unit for every 25 dwelling units, and has a min. lot size of 80,000 sq.ft. 1 MF district may have no more than an average of	2315	39.7	0	0%	Sufficient	3

<sup>16</sup> A 149-unit development on Byron Place that would contain 10 affordable housing units also appears to be under construction. See Ex. O, *Westchester County 2013 2Q Report*, at App'x I-1, 2Q 2013 AFFH Sites Progress List (submitted July 19, 2013).



Chart of Zoning Data for Berenson Test Prong 2

Municipality	Share of Regional Need <sup>2</sup>				Ability to Meet Regional Need through Multifamily Development <sup>3</sup>			Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup>		Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup>				Market Condition <sup>6</sup>	Prong 2 Rank <sup>7</sup>
	Allocation of Units	Number Built or Approved <sup>8</sup>	% of Built or Approved	Rank <sup>9</sup>	Number of Potential Units	Total Built Approved and Potential	% of Benchmark Built, Approved and Potential	Provided	Limitations	Total Acres	Acres Zoned Multifamily As-of-Right <sup>10</sup>	Undeveloped Acres Zoned Multifamily As-of-Right	% of Multifamily Acreage Undeveloped		
									2 bedrooms per unit, and no unit may have more than 3 bedrooms. SP district is for new, large mixed-use developments.						
Mount Pleasant	975	0*	0%	24	5	5	0.5%	Yes	1 MF district is commercial, is not mapped and requires min. site size of 100 acres; 1 MF district converted a school to dwelling units for seniors over 62 or families under 29 provided the development averages 750 sq.ft. The units were set aside for residents or parents or children of residents on the basis of economic and social need – criteria set by Town Board. 6 transitional districts restrict to average of 2 bedrooms with no more than 3 and no less than 1 bedroom. The 3 MF SP districts only allows multifamily housing if it is part of a conversion of an existing building.	15392	1014.8	5.2	0.03%	Sufficient	2

Chart of Zoning Data for Berenson Test Prong 2

Municipality	Share of Regional Need <sup>2</sup>				Ability to Meet Regional Need through Multifamily Development <sup>3</sup>			Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup>		Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup>				Market Condition <sup>6</sup>	Prong 2 Rank <sup>7</sup>
	Allocation of Units	Number Built or Approved <sup>8</sup>	% of Built or Approved	Rank <sup>9</sup>	Number of Potential Units	Total Built Approved and Potential	% of Benchmark Built, Approved and Potential	Provided	Limitations	Total Acres	Acres Zoned Multifamily As-of-Right <sup>10</sup>	Undeveloped Acres Zoned Multifamily As-of-Right	% of Multifamily Acreage Undeveloped		
New Castle	255	3 <sup>17</sup>	1.2%	23	32	35	13.7%	Yes	1 MF district is an unmapped floating district. Min. lot area for MF developments ranges from 1 to 5 acres, though they may be reduced for affordable units.	14999	303.6	5	0.03%	Sufficient	2
North Castle	712	46	6.5%	18	82	128	18%	Yes	5 MF districts allow stand-alone multiple housing developments. In 3 MF districts, the multifamily developments must be apartments on the second floor as part of a mixed-use development. 1 district the max. density is restricted to 1 density unit per 25,000 sq.ft. of net lot area; 1 district requires a max. density of 1 density unit per 14,000 sq.ft.	16763	312.4	6.3	0.04%	Insufficient	2
North Salem	152	74 <sup>18</sup>	48.7%	4	307	381	250.7%	Yes	MF developments must be on lots of at least 5 acres. In 2 MF districts, the max. density is 4 units per acre or 6	14864	142.7	77.3	0.5%	Insufficient	1

<sup>17</sup> A developer is seeking approvals as part of the pending Chappaqua Crossing development, which will include 20 affordable units. See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013). Another developer is seeking approvals for a proposed 28-unit affordable housing development on Hunts Place. *Id.*

<sup>18</sup> A developer is currently seeking approvals to build 102 units of affordable housing on a site on Route 22. See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013). Another developer is seeking approvals to build 2 affordable units on a different site on Route 22. See Ex. O, *Westchester County 2013 2Q Report*, at App'x I-1, 2Q 2013 AFFH Sites Progress List (submitted July, 19, 2013).

Chart of Zoning Data for Berenson Test Prong 2

Municipality	Share of Regional Need <sup>2</sup>				Ability to Meet Regional Need through Multifamily Development <sup>3</sup>			Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup>		Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup>				Market Condition <sup>6</sup>	Prong 2 Rank <sup>7</sup>
	Allocation of Units	Number Built or Approved <sup>8</sup>	% of Built or Approved	Rank <sup>9</sup>	Number of Potential Units	Total Built Approved and Potential	% of Benchmark Built, Approved and Potential	Provided	Limitations	Total Acres	Acres Zoned Multifamily As-of-Right <sup>10</sup>	Undeveloped Acres Zoned Multifamily As-of-Right	% of Multifamily Acreage Undeveloped		
									multifamily units per acre. 1 of the MF districts is for senior housing with assisted living only; 1 of the MF districts is limited to lots of 160,000 sq. ft., but is reduced to 5,000 sq.ft. for affordable units.						
Ossining	113	5	4.4%	19	0	5	4.4%	No	Only allow for MF housing by SP and must be in lots of at least 40,000 sq.ft.	1945	0	0	0%	Insufficient	3
Pelham	74	3	4.1%	20	54	57	77%	Yes	3 MF districts are commercial districts.	531	32.8	1.1	0.2%	Sufficient	2
Pelham Manor	101	0*	0%	24	0	0	0%	Yes	Only 1 district of 10. No MF by SP.	871	24.4	0	0%	Insufficient	3
Pleasantville	129	56 <sup>19</sup>	43.4%	7	10	66	51.2%	Yes	SP districts are limited to 2 bedrooms per dwelling unit.	1148	114.2	1	0.1%	Insufficient	2
Pound Ridge	184	12	6.5%	17	23	35	19%	Yes	MF development as-of-right only allowed in commercial districts as mixed-use developments limited to 2,500 sq.ft. max. coverage per building and max. height of 2 or 3 stories. SP districts are restricted to senior housing or residential care facilities w min. lot sizes ranging from 1 to 3 acres, precluding	14771	43.8	3.6	0.02%	Insufficient	3

<sup>19</sup> Developers are seeking approvals to construct another nine affordable housing units (seven within a 70-unit mixed-income multifamily housing development on Washington Avenue, plus a proposed two-family home). See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013).

Chart of Zoning Data for Berenson Test Prong 2

Municipality	Share of Regional Need <sup>2</sup>				Ability to Meet Regional Need through Multifamily Development <sup>3</sup>			Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup>		Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup>				Market Condition <sup>6</sup>	Prong 2 Rank <sup>7</sup>
	Allocation of Units	Number Built or Approved <sup>8</sup>	% of Built or Approved	Rank <sup>9</sup>	Number of Potential Units	Total Built Approved and Potential	% of Benchmark Built, Approved and Potential	Provided	Limitations	Total Acres	Acres Zoned Multifamily As-of-Right <sup>10</sup>	Undeveloped Acres Zoned Multifamily As-of-Right	% of Multifamily Acreage Undeveloped		
									development of small multifamily developments. Senior housing may not contain more than 50 dwelling units.						
Rye	167	27	16.2%	13	38	65	38.9%	Yes	1 district is for senior and handicapped housing only. 1 district is restricted to 2 historic properties and cannot contain more than 9 multifamily dwelling units. MF buildings may contain no more than 6 dwelling units per floor and cannot exceed 120 feet in maximum horizontal dimension.	3738	201.2	1.6	0.04%	Sufficient	2
Rye Brook	171	64 <sup>20</sup>	37.4%	8	38	102	59.6%	Yes	1 MF district limits MF to existing parcels of 15 to 20 acres. 2 MF districts are floating districts. 1 SP district is for MF senior housing.	2224	344.2	1.2	0.1%	Insufficient	2
Scarsdale	160	0* <sup>21</sup>	0%	24	0	0	0%	Yes	None	4278	15.6 <sup>22</sup>	0 <sup>23</sup>	0%	Sufficient	2

<sup>20</sup> A developer is seeking approvals for 13 units of affordable housing at a site on North Ridge Street. See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013).

<sup>21</sup> Developers are currently seeking approvals to construct five affordable housing units in Scarsdale: four affordable SROs as part of a 138-unit development on Saxon Woods Road and one affordable unit as part of an 11-unit development on Weaver Street. See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013).

<sup>22</sup> The Methodology III-C-2 Table included only three districts as permitting multifamily housing as-of-right, which are mapped over 15.6 acres, or 0.4% of Scarsdale's land area. See Ex. E. The County's July 2013 zoning analysis adds four additional districts. Ex. I, Town/Village of Scarsdale Zoning Analysis, at Figure 7, Eighth Zoning Submission, dated July 23, 2013. The estimates of acreage by zoning district in the Racial Composition Table indicate that the Business A, VCR-2.0, VCR-1.0 and VCO-2.0 districts contain another 6.7 acres, bringing the total to 22.5 acres, or 0.5% of the Village's land area. Ex. K, Racial Composition Table, Village of Scarsdale – 2000 & 2010 Census Data (submitted Aug. 15, 2012).

<sup>23</sup> The analysis has been performed only on the areas zoned Res C, PUD-1 and PUD8-1.4, the districts identified by the County as allowing multifamily housing as-of-right in Ex. F, Town/Village of Scarsdale Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012).

Chart of Zoning Data for Berenson Test Prong 2

Municipality	Share of Regional Need <sup>2</sup>				Ability to Meet Regional Need through Multifamily Development <sup>3</sup>			Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup>		Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup>				Market Condition <sup>6</sup>	Prong 2 Rank <sup>7</sup>
	Allocation of Units	Number Built or Approved <sup>8</sup>	% of Built or Approved	Rank <sup>9</sup>	Number of Potential Units	Total Built Approved and Potential	% of Benchmark Built, Approved and Potential	Provided	Limitations	Total Acres	Acres Zoned Multifamily As-of-Right <sup>10</sup>	Undeveloped Acres Zoned Multifamily As-of-Right	% of Multifamily Acreage Undeveloped		
Somers	224	149 <sup>24</sup>	66.5%	1	260	409	182.6%	Yes	1 MF district requires 500 acre min. site size; 2 MF districts min. lot of 10 acres; 1 MF has max. 3 density units per acre; 1 MF has max. 2 density units per acres; 2 districts limit to 2 bedrooms	20583	1,499	73.9	0.4%	Insufficient	1
Tarrytown	111	66	59.5%	2	50	116	104.5%	Yes	1 MF district is for mixed-use only with max. 55% of floor area for residential use.	1972	363.8	2.3	0.1%	Sufficient	1
Tuckahoe	56	6	10.7%	15	17	23	41.1%	Yes	MF development as-of-right only in 2 districts. In 1 district, MF must be apartments w min of 7 units or townhouses w max of 7 units and must be on lots of at least 12,000 sq.ft.	383	42	0.7	0.2%	Sufficient	2
Yorktown	378	169	44.7%	6	479	648	171.4%	Yes	1 MF district is for senior housing; 1 SP district is for either senior housing or conversion of existing homes constructed prior to 1930 and restricts the min. lot size to 15 acres.	25186	386.5	40	0.2%	Insufficient	1

<sup>24</sup> A developer is seeking approvals for 72 units of affordable housing on Route 6, which would be known as the Green at Somers. See Ex. G, *Westchester County 2013 IQ Report*, at App'x I-1, IQ 2013 AFFH Sites Progress List (submitted May 10, 2013). After the Monitor sent the Town of Somers a supplemental information request on September 6, 2013 regarding the status of this proposed development, see Ex. T, Letter from James E. Johnson to the Town of Somers Supervisor Mary Beth Murphy, dated Sep. 6, 2013, the Town responded that it has not adopted an amendment to its zoning code that would be required for this development to move forward. Ex. U, Letter from Town of Somers Supervisor to James E. Johnson, at 2, dated Sep. 10, 2013. In its letter, the Town did note, however, that a developer has applied to build a 60 unit development in the Somers Hamlet on Route 100 and 202, in which "the Town Board will require a percentage of the units [to] be affordable." *Id.* Another developer has applied to build 45 town homes near Mahopac Avenue and Route 6, which would include "eight affordable town homes with an additional affordable apartment attached for a total of 16 affordable units." *Id.*

Chart of Municipal Rebuttal Factors under *Berenson* Test<sup>1</sup>

Municipality	Model Ordinance <sup>2</sup>		Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>					Prong 1 Rank <sup>4</sup>	Prong 2 Rank <sup>5</sup>	Rebuttal Rank <sup>6</sup>	Berenson Test Result <sup>7</sup>
	Incentives	Mandates	Example/Other Restrictive Provisions <sup>8</sup>	Discretion Overly Vested in Municipal Officials <sup>9</sup>	Age Restrictions <sup>10</sup>	Resident Preferences <sup>11</sup>	Reach Limited to One or Few Districts <sup>12</sup>				
<b>Ardsley</b>	<b>[Score: 1]</b> The otherwise applicable min. lot area requirement for a single-family home is reduced by 25% for an affordable housing unit. Although 2-family homes are not otherwise permitted in single-family zoning districts, an affordable 2-family home may be located on a lot that meets the otherwise applicable min. lot area requirement for a single-family home. In the MF	<b>[Score: 1]</b> In all districts, all residential developments of 10 or more units must have at least 10% of the units be affordable. In residential developments of 5 to 9 units, at least 1 unit must be affordable. The MF overlay district mandates that 20% of units must be workforce housing for emergency service, public service, and quality of life occupations workers, and another 20% of units must be affordable housing.	<b>[Score: 3]</b> Accessory apartments are not allowed in any district. Preferences for Ardsley residents etc. in workforce housing developments. 1 MF district is an overlay district. MF SP only allowed in connection with conversion of former school (not available anymore); Cluster district only allows apartment development of only 6	<b>No</b>	<b>Yes</b> but only 1 district	<b>Yes</b> workforce housing	<b>No</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>

<sup>1</sup> If a municipality's zoning ordinance is exclusionary under either or both prongs of the *Berenson* test, there must be a showing that the zoning practices are, in actuality, not exclusionary. *Robert E. Kurzius, Inc. v. Incorporated Vil. of Upper Brookville*, 51 N.Y.2d 338, 345 (N.Y. 1980); *Allen v. Town of N. Hempstead*, 103 A.D.2d 144, 147 (N.Y. App. Div. 2d Dep't 1984).

<sup>2</sup> Score of 1 = The zoning ordinance has provisions that are equal to or better than the model ordinance. See Ex. B, Westchester County Implementation Plan, Appendix D-1(i): Model Ordinance Provisions. Score of 2 = The zoning ordinance has provisions that are similar to the model ordinance, but the provisions are not as inclusive. Score of 3 = The zoning ordinance does not provide the relevant provisions.

<sup>3</sup> Although incentives such as density bonuses or provisions allowing accessory apartments or multifamily housing development may suggest that a zoning ordinance is not exclusionary, these provisions must not be "intrinsically narrow in scope [such that they] do very little to genuinely address the established need for multifamily housing." *Cont'l Bldg. Co. v. Town of N. Salem*, 211 A.D.2d 88, 94 (N.Y. App. Div. 3d Dep't 1995); *Land Master Montg I, LLC v. Town of Montgomery*, 821 N.Y.S.2d 432, 440 (N.Y. Sup. Ct. Orange Cnty. 2006) (citation omitted).

<sup>4</sup> Category 1 = Not exclusionary because the municipality provides a well-ordered plan for its community. Category 2 = Not exclusionary, but warrants improvement. Category 3 = Exclusionary because the municipality does not provide a well-ordered plan for its community.

<sup>5</sup> Category 1 = Not exclusionary because the municipality has considered and has the potential to satisfy regional need. Category 2 = Not exclusionary, but warrants improvement. Category 3 = Exclusionary because the municipality has not considered and does not have the potential to satisfy its fair share of regional need.

<sup>6</sup> Category 1 = Rebuttal successful because the zoning ordinance provides a wide array of affordable housing opportunities sufficient to meet local and regional need. Category 2 = Rebuttal may be sufficient, but the zoning ordinance warrants improvement. Category 3 = Rebuttal unsuccessful because the zoning ordinance, though it may have provisions addressing affordable housing opportunities, is too narrow in scope to provide genuine opportunities sufficient to meet local and regional need.

<sup>7</sup> Category 1 = Municipalities whose zoning ordinances meet prong one and prong two of the *Berenson* analysis and are therefore not exclusionary. Category 2 = Municipalities whose zoning ordinances do not necessarily meet either prong of the *Berenson* analysis, but certain other factors provide a rebuttal to the presumption that their ordinances are exclusionary. Category 3 = Municipalities whose zoning ordinances fail either prong one or two of the *Berenson* analysis and where there are insufficient factors to provide for a viable rebuttal against a finding of exclusionary zoning.

<sup>8</sup> This column examines other ordinance provisions such as prohibitions on accessory uses and special permit restrictions. If the municipality receives a score of 1, the provisions are some of the least restrictive practices. A score of 3 means the municipality has some of the most restrictive practices.

<sup>9</sup> Zoning ordinances that provide a wide array of affordable housing opportunities via special permits "create[] the illusion of affordable housing availability," but vest a large amount of discretion in municipal officials and are therefore insufficient. *Land Master Montg I, LLC*, 821 N.Y.S.2d at 440.

<sup>10</sup> *Cont'l Bldg. Co.*, 211 A.D.2d at 94.

<sup>11</sup> *Allen*, 103 A.D.2d at 148; *Triglia v. Town of Cortlandt*, No. 17976/96, 1998 WL 35394393, at \*6 (N.Y. Sup. Ct. Westchester Cnty. Jan. 6, 1998).

<sup>12</sup> *Cont'l Bldg. Co.*, 211 A.D.2d at 94.

Chart of Municipal Rebuttal Factors under *Berenson* Test

Municipality	Model Ordinance <sup>2</sup>		Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>				Prong 1 Rank <sup>4</sup>	Prong 2 Rank <sup>5</sup>	Rebuttal Rank <sup>6</sup>	Berenson Test Result <sup>7</sup>	
	Incentives	Mandates	Example/Other Restrictive Provisions <sup>8</sup>	Discretion Overly Vested in Municipal Officials <sup>9</sup>	Age Restrictions <sup>10</sup>	Resident Preferences <sup>11</sup>					Reach Limited to One or Few Districts <sup>12</sup>
	overlay district, the Village may waive fees or provide assistance in obtaining additional local, state or federal funds for a multifamily development that includes 20% or more of workforce and/or affordable housing units.		units attached, semidetached or clustered with assisted living facilities. No more than 25% of the units may contain more than 3 bedrooms in the cluster district.								
<b>Bedford</b>	<p><b>[Score: 1]</b> In a development where at least 20% of residential units are affordable, the Planning Board may waive or reduce fees, provide local assistance or actively assist in procuring federal, state or other agency support for affordable housing. In these affordable or mixed-income developments, the Town allows a reduction of dimensional requirements of not more than 25%, and shared parking to reduce infrastructure costs.</p>	<p><b>[Score: 1]</b> At least 20% of any multifamily development in any multifamily residential zoning district must be affordable units. In all residential developments of 5 or more units in single-family districts, at least 10% of all units must be affordable.</p>	<p><b>[Score: 2]</b> Accessory units are not allowed as-of-right. By special permit they may only be in existing homes, not in accessory buildings. The accessory apartment shall contain at least 400 sq.ft. but not more than 800 sq.ft. of gross floor area and shall not exceed 25% of the total floor area of the principal residence structure. There can be no more than 1 accessory apartment per lot and no more than 5 residents per lot. 1 MF district requires min. lot size of 2 acres. For MF by SP, can develop in 1 district or elsewhere only by conversion in residences existing prior to Sep.1, 1985, on lots of less than 20,000 sq. ft.</p>	No	No	No	No	2	2	1	2

Chart of Municipal Rebuttal Factors under *Berenson* Test

Municipality	Model Ordinance <sup>2</sup>		Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>				Prong 1 Rank <sup>4</sup>	Prong 2 Rank <sup>5</sup>	Rebuttal Rank <sup>6</sup>	Berenson Test Result <sup>7</sup>	
	Incentives	Mandates	Example/Other Restrictive Provisions <sup>8</sup>	Discretion Overly Vested in Municipal Officials <sup>9</sup>	Age Restrictions <sup>10</sup>	Resident Preferences <sup>11</sup>					Reach Limited to One or Few Districts <sup>12</sup>
Briarcliff Manor	[Score: 2] 1 district provides a 50% increase in the usually applicable max. dwelling-units-per-acre density if at least 50% of the units are moderate income dwelling units, but has preference given to employees of the Village or the school district, residents of the Village, members of the fire department, former residents who still own residential property in the Village, other persons employed in the Village, relatives of Village residents and other Westchester residents	[Score: 3] None	[Score: 2] 1 MF district is commercial and only allows mixed-use development, where residential use must not exceed 80% of the gross floor area, and no ground floor dwelling units shall front any public right-of-way. 1 MF district is intended for elderly communities. SP for MF and 2-family homes are only allowed for conversion of an existing house on a parcel of 10 or more acres.	Yes	Yes	Yes	Yes	2	2	3	2
Bronxville	[Score: 3] None	[Score: 3] None	[Score: 3] No specific reference to affordable housing in the zoning code. New accessory apartments are not listed as a permitted use as-of-right or by SP in any district, contrary to what is indicated in the County's Municipal Zoning Analysis Appendix Table, although existing accessory apartments are grandfathered, permitted non-conforming uses.	No	No	No	No	2	2	3	2



**Chart of Municipal Rebuttal Factors under *Berenson* Test**

Municipality	Model Ordinance <sup>2</sup>		Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>				Prong 1 Rank <sup>4</sup>	Prong 2 Rank <sup>5</sup>	Rebuttal Rank <sup>6</sup>	Berenson Test Result <sup>7</sup>	
	Incentives	Mandates	Example/Other Restrictive Provisions <sup>8</sup>	Discretion Overly Vested in Municipal Officials <sup>9</sup>	Age Restrictions <sup>10</sup>	Resident Preferences <sup>11</sup>					Reach Limited to One or Few Districts <sup>12</sup>
Buchanan	[Score: 3] None	[Score: 3] None	<p><b>[Score: 2]</b>                      Accessory apartments limited to only 1 bedroom units, between 300 and 600 sq.ft. in size and not to exceed 33% of the gross area of the building. MF as-of-right is only in 2 commercial districts and is limited to mixed-use development; the residential use must be in the back of or above a commercial establishment w a max. of 4 dwellings per acre. SP may be granted in 2 commercial districts for multifamily or 2-family dwellings without commercial use but the districts require parcels of land not less than 40,000 sq.ft., each dwelling unit contains a min. of 750 sq.ft., the max. density is 5 dwelling units per 40,000 sq.ft., and the parcel must adjoin a residentially zoned district.</p>	No	No	No	Yes	2	2	3	2

Chart of Municipal Rebuttal Factors under *Berenson Test*

Municipality	Model Ordinance <sup>2</sup>		Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>				Prong 1 Rank <sup>4</sup>	Prong 2 Rank <sup>5</sup>	Rebuttal Rank <sup>6</sup>	Berenson Test Result <sup>7</sup>	
	Incentives	Mandates	Example/Other Restrictive Provisions <sup>8</sup>	Discretion Overly Vested in Municipal Officials <sup>9</sup>	Age Restrictions <sup>10</sup>	Resident Preferences <sup>11</sup>					Reach Limited to One or Few Districts <sup>12</sup>
Cortlandt	<p><b>[Score: 2]</b> In 1 special district, if higher than 10% of affordable housing is provided, density may be increased by 66% (from 3 units / 6 bedrooms per acre to 5 units / 10 bedrooms per acre). In RRSP district, the new housing may be developed at a density of up to 20% greater than the existing development.</p>	<p><b>[Score: 2]</b> In 1 special district, at least 10% of the final unit count must be affordable. All senior housing units in 1 special district must meet the Westchester County definition of affordability. In a RRSP development, all new units above the existing number of units must be affordable.</p>	<p><b>[Score: 2]</b> Accessory units require SP approval. Although accessory units are permitted by special permit in 9 zoning districts (representing all but one multifamily district), in some districts a 1-bedroom / 2-occupant restriction forestalls the ability of families of three or more persons to be potential residents. The only MF district is restricted to 3- and 4-family dwelling w max. of 2 bedrooms per unit; 1 special MF district is not mapped; 1 special MF district is limited to senior housing. Some of the multifamily housing is only allowed at very low densities, less than 3 units per acre in one case, and up to 10 bedrooms per acre in another case.</p>	Yes	Yes But only 1 district	No	Yes	1	2	3	2
Croton-on-Hudson	<p><b>[Score: 2]</b> 1 district permits an increase in density of 5% of the number of market-rate units if the additional units are affordable; 1 overlay district permits a 10% increase in density over the underlying residential districts requirements.</p>	<p><b>[Score: 3]</b> None</p>	<p><b>[Score: 2]</b> Accessory apartments may only be in existing buildings and the owner or lessee must be at least 55 years old. Only 1 accessory apartment is allowed per unit and it must be at least 400 sq.ft. but not greater than the lesser of 750 sq.ft. or 1/3 of the habitable floor area</p>	No	Yes accessory units	No	Yes incentives	2	3	3	3

Chart of Municipal Rebuttal Factors under *Berenson* Test

Municipality	Model Ordinance <sup>2</sup>		Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>				Prong 1 Rank <sup>4</sup>	Prong 2 Rank <sup>5</sup>	Rebuttal Rank <sup>6</sup>	Berenson Test Result <sup>7</sup>	
	Incentives	Mandates	Example/Other Restrictive Provisions <sup>8</sup>	Discretion Overly Vested in Municipal Officials <sup>9</sup>	Age Restrictions <sup>10</sup>	Resident Preferences <sup>11</sup>					Reach Limited to One or Few Districts <sup>12</sup>
			of the dwelling. 1 MF district is an overlay district intended to simplify the development of large tracts of 10 or more contiguous acres and permits as-of-right multifamily housing consistent with the underlying districts. SP district is also an overlay district dependent on underlying districts permitted uses, unless in 1 of 3 residential districts.								
Dobbs Ferry	[Score: 3] None	[Score: 1] At least 10% of all residential developments of more than 10 units must be affordable. Offers alternative to meet requirement either off-site or through payment.	[Score: 3] Village Code explicitly states that accessory dwelling units are illegal in the Village. All but 1 MF district requires min. lot size per unit ranging from low of 800 sq.ft. to a high of 6,000 sq.ft., and min. lot area of 5,000 sq.ft.	No	No	No	No	1	2	2	2
Eastchester	[Score: 3] None	[Score: 2] 15% of units must be affordable in the SP district limited to senior housing	[Score: 3] Accessory dwelling units are not permitted. In 1 mixed-use district, the commercial use may not take up more than 50% of the total floor area, and may only be located on the ground floor. SP district is limited to senior housing with max. 2 occupants in efficiency and 1 bedroom units and 3 occupants in 2 bedroom units and has preferences for	No	Yes but only 1 district	Yes but only 1 district	Yes mandate only for 1 district	1	2	3	2

Chart of Municipal Rebuttal Factors under *Berenson* Test

Municipality	Model Ordinance <sup>2</sup>		Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>					Prong 1 Rank <sup>4</sup>	Prong 2 Rank <sup>5</sup>	Rebuttal Rank <sup>6</sup>	Berenson Test Result <sup>7</sup>
	Incentives	Mandates	Example/Other Restrictive Provisions <sup>8</sup>	Discretion Overly Vested in Municipal Officials <sup>9</sup>	Age Restrictions <sup>10</sup>	Resident Preferences <sup>11</sup>	Reach Limited to One or Few Districts <sup>12</sup>				
			Eastchester residents and relatives. The max. density for senior housing is 1 unit per 700 sq.ft., which yields approximately 60 units per acre.								
Harrison	[Score: 3] None	[Score: 3] None	[Score: 3] Accessory apartments are prohibited.	N/A	N/A	N/A	N/A	2	3	3	3
Hastings-on-Hudson	[Score: 1] If a single-family home is to be an affordable housing unit, the minimum lot size is reduced by 25%. Planning Board may increase density requirements by 10% if, for every market rate unit in excess of the usually applicable max., one affordable housing unit is also provided.	[Score: 1] At least 10% of any development of eight or more units must be affordable and at least 5% more must be either affordable or workforce. Alternative of meeting mandate either off-site or by contributing to housing trust fund.	[Score: 1] Accessory units are permitted in existing buildings. Only affordable accessory housing units are permitted in newly constructed single-family homes and are limited to one bedroom, while other accessory units can include up to two bedrooms.	No	No	No	No	1	1	1	1
Irvington	[Score: 2] Each single-family affordable housing unit may be located on a lot meeting 75% of the otherwise applicable min. lot area. Each affordable 2-family home may be located on a lot meeting the min. lot area applicable to a single-family home. For SP below-market-rate units developed in 1 district, Village increases the allowable number of housing units and issues a waiver of site capacity requirements.	[Score: 1] Any development of more than 10 units must include 10% affordable units, and any development of 5 to 9 units must include at least 1 affordable unit.	[Score: 2] Accessory units are permitted as-of-right in single-family zoning districts, but only on lots of at least 60,000 sq.ft., and occupancy is restricted to the son or daughter of the primary building residents. The zoning code has a special permit for below-market-rate units developed in 1 district, but these units are limited to Village employees, fire/EMS volunteers and resident senior citizens.	No	No	Yes but only 1 district	No	2	2	2	2

Chart of Municipal Rebuttal Factors under *Berenson* Test

Municipality	Model Ordinance <sup>2</sup>		Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>				Prong 1 Rank <sup>4</sup>	Prong 2 Rank <sup>5</sup>	Rebuttal Rank <sup>6</sup>	Berenson Test Result <sup>7</sup>	
	Incentives	Mandates	Example/Other Restrictive Provisions <sup>8</sup>	Discretion Overly Vested in Municipal Officials <sup>9</sup>	Age Restrictions <sup>10</sup>	Resident Preferences <sup>11</sup>					Reach Limited to One or Few Districts <sup>12</sup>
Larchmont	[Score: 3] None	[Score: 3] None	<p><b>[Score: 3]</b></p> <p>Accessory housing is not listed as a permitted use. No single-family house can be smaller than 1,000 sq.ft. outside of the multifamily districts, and 1,400 sq.ft. in most of the Village, which forestalls cottage-style housing. 2 MF and two-family districts are commercial allowing mixed-use development only. MF buildings cannot be larger than 20 unit or taller than 2.5 stories. SP district is for townhouse developments restricted to cites of 6 or more acres, w no more than 2 bedrooms per townhouse dwelling.</p>	N/A	N/A	N/A	N/A	2	2	3	2
Lewisboro	<p><b>[Score: 2]</b></p> <p>In only MF district, density may be increased by up to 40% if the applicant builds at least 1/3 of the additional density as middle-income units.</p>	[Score: 3] None	<p><b>[Score: 2]</b></p> <p>Accessory apartments cannot contain more than two bedrooms or four occupants and must be on lots of at least ½ acre. Accessory dwelling residences are allowed by SP on lots of at least 20 acres. The only MF district requires min. lot size for developments served by public water and sewer infrastructure of 15,000 sq.ft. If a development will not be served by public water and sewer, the min. lot size is 15 acres. The max. permitted density is 2</p>	No	No	No	Yes	3	3	3	3

Chart of Municipal Rebuttal Factors under *Berenson* Test

Municipality	Model Ordinance <sup>2</sup>		Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>				Prong 1 Rank <sup>4</sup>	Prong 2 Rank <sup>5</sup>	Rebuttal Rank <sup>6</sup>	Berenson Test Result <sup>7</sup>	
	Incentives	Mandates	Example/Other Restrictive Provisions <sup>8</sup>	Discretion Overly Vested in Municipal Officials <sup>9</sup>	Age Restrictions <sup>10</sup>	Resident Preferences <sup>11</sup>					Reach Limited to One or Few Districts <sup>12</sup>
			density units per acre.								
Mamaroneck	[Score: 3] None	[Score: 2] 1 district requires that one of every 17 dwelling units must be workforce housing occupied permanently by individuals or families whose household incomes do not exceed 80 percent of the Westchester County area median income.	[Score: 3] Accessory apartments are prohibited, with the exception of accessory buildings or trailers for domestic employees in single-family zoning districts. 1 MF district limits MF development to 1 3 bedroom unit for every 25 dwelling units, and has a min. lot size of 80,000 sq.ft. 1 MF district may have no more than an average of 2 bedrooms per unit, and no unit may have more than 3 bedrooms. SP district is for new, large mixed-use developments.	No	No	No	Yes	3	3	3	3
Mount Pleasant	[Score: 2] 5 MF districts permit a density bonus of up to 1/3 beyond the basic permitted density if the applicant provides affordable housing. There is no guidance regarding whether all or some percentage of the units must be affordable for the development to qualify for the bonus, nor are there any provisions regarding the location or quality of the affordable units.	[Score: 2] Except for the maximum costs established for certain units in a single specified project, the residential conversion of a former school (units in the building may be set aside for seniors or those under 29 years of age who are either Town residents or their parents or children and that any such units must be sold at specified below-market prices), the Town has established no mandate for affordable housing.	[Score: 3] Accessory apartments are permitted only by special permit, in existing buildings at least 10 yrs. old, and with a maximum of 600 sq. ft. Transitional districts restrict the number of bedrooms per unit in a development to an average of 2, with no more than 3 and no less than 1 bedroom. 1 MF district is commercial, is not mapped and requires min. site size of 100 acres; 1 MF district converted a	No	Yes but only 1 development	Yes but only 1 development	Yes but only mandate	2	2	2	2

Chart of Municipal Rebuttal Factors under *Berenson Test*

Municipality	Model Ordinance <sup>2</sup>		Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>				Prong 1 Rank <sup>4</sup>	Prong 2 Rank <sup>5</sup>	Rebuttal Rank <sup>6</sup>	Berenson Test Result <sup>7</sup>	
	Incentives	Mandates	Example/Other Restrictive Provisions <sup>8</sup>	Discretion Overly Vested in Municipal Officials <sup>9</sup>	Age Restrictions <sup>10</sup>	Resident Preferences <sup>11</sup>					Reach Limited to One or Few Districts <sup>12</sup>
			school to dwelling units for seniors over 62 or families under 29 provided the development averages 750 sq.ft. The units were set aside for residents or parents or children of residents on the basis of economic and social need – criteria set by Town Board. 6 transitional districts restrict to average of 2 bedrooms with no more than 3 and no less than 1 bedroom. The 3 MF SP districts only allows multifamily housing if it is part of a conversion of an existing building.								
New Castle	<p><b>[Score: 1]</b> For affordable single-family homes, the usually applicable min. lot size is reduced by 25%. In a single-family home district, a 2-family home including an affordable unit may occupy a lot meeting the specified min. lot size for a single-family home. At the discretion of the Planning Board, density bonuses of up to 100% beyond the basic permitted density may be awarded in 1 district in exchange for the development of special features or facilities, including affordable units. Density bonuses may be considered in 1 district, but the ordinance is silent about the</p>	<p><b>[Score: 1]</b> In 3 MF districts, within any multifamily development of 10 or more units, at least 10% must be affordable, and within any multifamily development of 5 to 9 units, at least 1 unit must be affordable. Within subdivisions of 10 or more building lots, affordable units must occupy at least 10% of the lots. Within subdivisions of 8 or 9 building lots, an affordable unit must occupy at least 1 lot.</p>	<p><b>[Score: 1]</b> The zonig code has a provision for workforce housing, which does not allow for multifamily developments, but is restricted to mixed-use developments. The regulations regarding workforce housing units specify that no workforce units may be built within a tenth of a mile of 5 other workforce units and that such units have a max. unit size of 2 bedrooms. 1 MF district is an unmapped floating district. Min. lot area for MF developments ranges from 1 to 5 acres, though they</p>	No	No	No	No	1	2	1	2

Chart of Municipal Rebuttal Factors under *Berenson* Test

Municipality	Model Ordinance <sup>2</sup>		Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>				Prong 1 Rank <sup>4</sup>	Prong 2 Rank <sup>5</sup>	Rebuttal Rank <sup>6</sup>	Berenson Test Result <sup>7</sup>	
	Incentives	Mandates	Example/Other Restrictive Provisions <sup>8</sup>	Discretion Overly Vested in Municipal Officials <sup>9</sup>	Age Restrictions <sup>10</sup>	Resident Preferences <sup>11</sup>					Reach Limited to One or Few Districts <sup>12</sup>
	purposes for which they may be awarded. Also has a workforce housing provision in 3 districts by SP.		may be reduced for affordable units.								
North Castle	<b>[Score: 2]</b> The maximum density in 1 district may be increased by up to 45% if more than 40% of the increase is built as middle-income units. In 1 district, the permitted density may be increased by not more than 40% if the applicant constructs at least 20% of the increase as middle-income dwelling units.	<b>[Score: 2]</b> At least 15% of permitted floor area ratio in 1 district must be set aside for middle-income units for seniors. At least 35% of units in a single structure in 1 district must be set aside for middle-income units. At least 20% of units in a single structure in 1 commercial district must be set aside for middle-income units.	<b>[Score: 1]</b> Accessory units are permitted in 4 districts up to 1 unit as-of-right, but need SP for more units. 5 MF districts allow stand-alone multiple housing developments. In 3 MF districts, the multifamily developments must be apartments on the second floor as part of a mixed-use development. 1 district the max. density is restricted to 1 density unit per 25,000 sq.ft. of net lot area; 1 district requires a max. density of 1 density unit per 14,000 sq.ft.	No	Yes but only 1 district	No	Yes	2	2	2	2
North Salem	<b>[Score: 1]</b> 6 districts provide density bonuses of 25% for developments that provide more than the min. required number of affordable units, or, in subdivisions of less than 10 lots, a reasonable number. Bonuses of 20% may be awarded in 2 other districts. In 1 district, the min. required lot area for multifamily housing is reduced from 160,000 sq.ft. to 5,000 sq.ft for affordable units.	<b>[Score: 1]</b> At least 10% of all units in subdivisions of 10 or more units must be affordable. The requirement is increased to 20% in 4 of the MF districts.	<b>[Score: 2]</b> MF developments must be on lots of at least 5 acres. In 2 MF districts, the max. density is 4 units per acre or 6 multifamily units per acre. 1 of the MF districts is for senior housing with assisted living only; 1 of the MF districts is limited to lots of 160,000 sq. ft., but is reduced to 5,000 sq.ft. for affordable units. Mixed-use development is not permitted as-of-right in any zoning district.	No	Yes but only 1 of 5 MF districts	No	No	1	1	1	1



Chart of Municipal Rebuttal Factors under *Berenson Test*

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	Incentives	Mandates	Example/Other Restrictive Provisions <sup>8</sup>	Discretion Overly Vested in Municipal Officials <sup>9</sup>	Age Restrictions <sup>10</sup>	Resident Preferences <sup>11</sup>					Reach Limited to One or Few Districts <sup>12</sup>
Ossining	[Score: 2] Density bonuses are awarded in residential districts and 1 commercial district, so long as 1/2 of the density awarded is made up of below-market rate units.	[Score: 1] Within all residential developments of 10 or more units, 10% must be below-market-rate units, and residential developments of 5 to 9 units must contain at least 1 below-market-rate unit.	[Score: 3] MF housing development, two-family homes and mixed-use development are not permitted as-of-right. Accessory apartments are permitted by SP but with restrictions. Mixed-use development allowed by SP must be on a lot of at least 20,000 sq.ft. w min. housing unit size of 850 sq.ft. for a studio, efficiency or 1 bedroom unit, 1,150 sq.ft. for a 2 bedroom unit, and 1,450 sq.ft. for a 3 bedroom unit. MF housing by SP must be in lots of at least 40,000 sq.ft.	Yes	No	No	Yes	2	3	3	3
Pelham	[Score: 3] None	[Score: 3] None	[Score: 3] Accessory apartments are prohibited. 3 MF districts are commercial districts.	N/A	N/A	N/A	N/A	2	2	3	2
Pelham Manor	[Score: 3] None	[Score: 3] None	[Score: 3] Accessory apartments and mixed-use development is prohibited. No single multifamily unit may be used to accommodate more than one family or household for each 3,000 square feet of lot area within the district, which translates into a max. density of 14 units per acre. On the min. lot size of 7,000 sq. ft., only a 2-family home could be built.	No	No	No	Yes	3	3	3	3

Chart of Municipal Rebuttal Factors under *Berenson* Test

Municipality	Model Ordinance <sup>2</sup>		Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>				Prong 1 Rank <sup>4</sup>	Prong 2 Rank <sup>5</sup>	Rebuttal Rank <sup>6</sup>	Berenson Test Result <sup>7</sup>	
	Incentives	Mandates	Example/Other Restrictive Provisions <sup>8</sup>	Discretion Overly Vested in Municipal Officials <sup>9</sup>	Age Restrictions <sup>10</sup>	Resident Preferences <sup>11</sup>					Reach Limited to One or Few Districts <sup>12</sup>
Pleasantville	<p><b>[Score: 2]</b> For affordable occupied by a household that does not earn more than 50% of the Westchester County median income, have at least 1 occupant over the age of 62, and have a rent that does not exceed 30% of the annual gross household income, off-street parking requirements are waived for dwelling units that contain no more than 2 bedrooms, are rental units, and are designated affordable units.</p>	<p><b>[Score: 1]</b> 10% of any development of 10 or more units must be affordable units. 5% of assisted living facility units in 1 district must be set aside as affordable.</p>	<p><b>[Score: 2]</b> A max. of 50 accessory apartments may be issued as of date the provision of the code was adopted, not including pre-existing ones. MF SP districts are limited to 2 bedrooms per dwelling unit.</p>	No	Yes	No	Yes incentives	1	2	2	2
Pound Ridge	<p><b>[Score: 1]</b> For affordable housing units, the minimum lot size for a single-family home is reduced by 25%. The Planning Board, at its discretion, may waive up to 50% of the otherwise applicable recreation fee for an affordable housing unit.</p>	<p><b>[Score: 1]</b> Within all residential developments of 10 or more dwellings, at least 10% of the units must be affordable.</p>	<p><b>[Score: 3]</b> Accessory units may not contain more than 2 bedrooms. 2 Family homes are not permitted in the town. MF development as-of-right only allowed in commercial districts as mixed-use developments limited to 2,500 sq.ft. max. coverage per building and max. height of 2 or 3 stories. SP districts are restricted to senior housing or residential care facilities w min. lot sizes ranging from 1 to 3 acres, precluding development of small multifamily developments. Senior housing may not contain more than 50 dwelling units.</p>	Yes	Yes	No	Yes	2	3	3	3

Chart of Municipal Rebuttal Factors under *Berenson* Test

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	Incentives	Mandates	Example/Other Restrictive Provisions <sup>8</sup>	Discretion Overly Vested in Municipal Officials <sup>9</sup>	Age Restrictions <sup>10</sup>	Resident Preferences <sup>11</sup>	Reach Limited to One or Few Districts <sup>12</sup>				
Rye	[Score: 3] None	[Score: 3] None	[Score: 2] Accessory units may only be granted by special permit. 1 district is for senior and handicapped housing only. 1 district is restricted to 2 historic properties and cannot contain more than 9 multifamily dwelling units. MF buildings may contain no more than 6 dwelling units per floor and cannot exceed 120 feet in maximum horizontal dimension.	Yes for accessory apartments	Yes but only for 1 district	No	No	1	2	3	2
Rye Brook	[Score: 2] Only in 2 floating zones that allow for the Board to waive or modify dimensional or bulk requirements at its discretion.	[Score: 1] In all residential districts, at least 1 of each 10 units built in addition to the first 10 must be affordable. At least 25% of units of senior housing developments must be affordable, though senior housing needs a special permit and only either immediately adjacent to or south of Westchester Avenue. At least 50% of developments of 2 or more units in the FAH floating district must be affordable.	[Score: 3] Accessory apartments and mixed-use development are prohibited throughout the Village, except that mixed-use developments are permitted in the FAH floating district. 1 MF district limits MF to existing parcels of 15 to 20 acres. 2 MF districts are floating districts. 1 SP district is for MF senior housing	No	Yes but only 1 district	No	No	2	2	2	2
Scarsdale	[Score:3] None	[Score: 1] All residential developments of 10 or more units must contain at least 10% affordable units. In a development of from 5 to 9 units,	[Score: 3] Accessory housing units are not permitted.	No	No	No	No	2	2	2	2

Chart of Municipal Rebuttal Factors under *Berenson* Test

Municipality	Model Ordinance <sup>2</sup>		Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>					Prong 1 Rank <sup>4</sup>	Prong 2 Rank <sup>5</sup>	Rebuttal Rank <sup>6</sup>	Berenson Test Result <sup>7</sup>
	Incentives	Mandates	Example/Other Restrictive Provisions <sup>8</sup>	Discretion Overly Vested in Municipal Officials <sup>9</sup>	Age Restrictions <sup>10</sup>	Resident Preferences <sup>11</sup>	Reach Limited to One or Few Districts <sup>12</sup>				
		at least 1 unit must be affordable.									
Somers	<p><b>[Score: 2]</b> 1 district allows a base number of density units to be increased by up to 50% if the development includes more than the required affordable component. One additional market-rate unit may be developed for each affordable unit in excess of the required 15%, but not to exceed 20%. In 1 district, if at least 50% of units in a development are affordable, the Town Board may permit a floor area ratio increase up to 50%, a reduction in the number of required parking spaces, and/or an increase in building height to 3 stories or 50 ft. Density bonuses of up to 10% may be awarded in 1 district if in the Town Board's judgment particular social, cultural, environmental, physical or economic needs of the community are to be served or substantial benefits are to be derived.</p>	<p><b>[Score: 2]</b> The only Town-wide affordability mandate applies to senior housing. At least 15% of housing units must be affordable in 1 MF district.</p>	<p><b>[Score: 3]</b> Preference to Somers residents, municipal employees, volunteer firemen, policemen, school district employees, and former Town residents are provided for affordable units. 2-family dwellings are prohibited in the Town. The minimum site size is 500 acres in 1 district. The MF districts require a minimum lot area of 10 acres, 1 of these districts allows a max. of 3 density units per acre, the other allows 2 density units per acre. In 2 districts, residential units are limited to a max. of 2 bedrooms.</p>	Yes for incentives	Yes	Yes	No	2	1	3	2
Tarrytown	<p><b>[Score: 1]</b> Density bonuses of up to 50% and waivers of land and building requirements may be awarded to developments that create more than the required number of affordable housing units. In 2 special waterfront</p>	<p><b>[Score: 1]</b> In any residential development of 10 units or more, at least 10% of all units must be affordable. In residential developments of 8 or 9 units, at least 1 affordable unit must be created. In residential developments of 5 to 7 units,</p>	<p><b>[Score: 3]</b> Accessory apartments are prohibited. 1 MF district is for mixed-use only with max. 55% of floor area for residential use.</p>	No	No	No	No	1	1	1	1

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	Incentives	Mandates	Example/Other Restrictive Provisions <sup>8</sup>	Discretion Overly Vested in Municipal Officials <sup>9</sup>	Age Restrictions <sup>10</sup>	Resident Preferences <sup>11</sup>	Reach Limited to One or Few Districts <sup>12</sup>				
	districts, dimensional bonuses, including larger permitted frontage, coverage, width, setback and height measurements, as well as relaxed landscaping requirements, may be awarded to a developer that provides affordable housing.	payments in lieu of affordable units must be made.									
Tuckahoe	<b>[Score: 2]</b> For workforce housing, for which current residents and employees are given preferences, density bonuses are provided and the Planning Board may waive restrictions at its discretion. The workforce housing ordinance allows between 5 and 15% of the total number of units to be affordable, subject to the Planning Boards approval. The Village Board of Trustees may increase the number of workforce units to 20% of the units where such flexibility is needed.	<b>[Score: 3]</b> None	<b>[Score: 3]</b> Accessory apartments are prohibited. MF development as-of-right only in 2 districts. In 1 district, MF must be apartments w min of 7 units or townhouses w max of 7 units and must be on lots of at least 12,000 sq.ft.	No	No	Yes	Yes	1	2	3	2
Yorktown	<b>[Score: 3]</b> None	<b>[Score: 1]</b> At least 10% of the units in any new residential subdivision of land in any single-family zoning district shall be established as fair and affordable housing units. At least 10% of the units of any new multifamily residential development of 30 units or less in any multifamily residential zoning district shall be established as affordable units, and at least 15% of the units of any new multifamily	<b>[Score: 2]</b> Accessory housing units are not permitted as-of-right. 2-family housing is restricted to conversion of existing properties. 1 MF district is for senior housing. 1 MF SP district is for either senior housing or conversion of existing homes constructed prior to 1930 and restricts the min. lot size to 15 acres.	Yes accessory units	Yes but only 1 district	No	No	1	1	2	1

**Chart of Municipal Rebuttal Factors under *Berenson* Test**

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	Incentives	Mandates	Example/Other Restrictive Provisions <sup>8</sup>	Discretion Overly Vested in Municipal Officials <sup>9</sup>	Age Restrictions <sup>10</sup>	Resident Preferences <sup>11</sup>				
		residential development of 31 units or more in any multifamily residential zoning district shall be established as affordable.								