YIMBY LAW

September 2025

Pennsylvania Fair Share Doctrine

Excluding multi-family housing developments is already illegal in many Pennsylvania cities

By: Jack Farrell, Research Attorney, YIMBY Law; Cooper Andrews, Legal Intern, YIMBY Law

Copyright 2025 YIMBY Action
For more information, see our website at www.yimbyaction.org

Table of Contents

Table of Contents 2
About YA & YL 2
Introduction 3
Origins of the Fair Share Test 4
Surrick's Test for Unlawful Exclusion 8
Applicable Jurisdictions 12
Standing to Bring a Fair Share Claim 14
Conclusions and Recommendations 16

About YA & YL

YIMBY Action is a grassroots movement of pro-housing advocates fighting for more equitable, sustainable, and abundant housing in every community. Volunteer members across America work in their own communities to improve access to safe, affordable homes near jobs and opportunity. YIMBY Action pushes for policies that end exclusionary zoning, reduce displacement, and promote smart growth.

YIMBY Law is the legal enforcement arm of YIMBY Action. YIMBY Action directs local volunteers to support housing projects and state legislative changes; YIMBY Law leads grassroots oversight and takes legal action so that housing laws are followed, more homes are built, and housing becomes affordable and equitable. We work through direct legal action, compliance review, and coordination with state and local agencies, advocates, and developers to improve housing laws and their implementation.

Introduction

The drafters of Pennsylvania's Fair Share Doctrine recognized the same fundamental truth that drives YIMBY and YIMBY Law: neighborhoods are for homes and homes are for people. Full stop. Fair Share protects this right to housing by ensuring new zoning ordinances can't outlaw multifamily development in local communities. More specifically, the law fosters regional growth by requiring communities on the fringes of metropolitan areas to absorb the increased responsibility for public housing needs, as well as the economic burdens brought by natural growth.[1] To ensure that all Pennsylvanians understand the positive impact of the Fair Share Doctrine, this report explains the doctrine's application, its effects on local zoning, and the types of litigation that are likely to succeed by relying on it.

Zoning rules are most commonly made and enforced at the local level, which has historically led local authorities to wield zoning as a weapon in the fight for more segregation. And single family zoning–the most expensive, least environmentally sound type of zoning–has been an effective means to keep "undesirables" out of communities with stable access to good jobs, schools, and resources. Multi-family zoning allows more affordable housing, increasing access to historically segregated communities, which is why so many communities outright refuse to allow greater density, despite the economic needs of a state, region, or country.

Similar to New Jersey's Mount Laurel Doctrine and New York's Berenson Doctrine, Pennsylvania's Fair Share Doctrine states that municipalities cannot justify a total exclusion of basic forms of housing, such as multi-family. Partial exclusion is only allowable where the community has met its fair share obligation, providing for housing in a variety and amount that is appropriate for its location, proximity to population growth, and the amount of undeveloped land in the community. For these reasons, activists, advocates, and housing

[1] *Macioce*, 850 A.2d 882.

developers should not hesitate to utilize Fair Share's projections to implement a more equitable and sustainable housing future for the people of Pennsylvania.

Origins of the Fair Share Test

The Fair Share Doctrine was developed by the Supreme Court of Pennsylvania in the 1977 case, *Surrick v. Zoning Hearing Bd.*, requiring municipalities to allow a fair share of housing types.[2] The Court created a three-pronged test for determining whether a municipality's zoning ordinances are in violation of the Fair Share Doctrine. In the 1993 case of *BAC, Inc. v. Bd. of Supervisors*, the Supreme Court of Pennsylvania clarified the scope of the Fair Share Doctrine, establishing that municipalities must provide zoning laws allowing for a class of uses, rather than classes of people.[3] This is in explicit contrast to New Jersey's *Mt. Laurel* Doctrine, which mandates municipal zoning codes requiring housing options for low-income people.[4]

In 1970, seven years prior to the principal *Surrick* case, the Court held in *Appeal of Girsh* that land use laws must be reasonable, and that total exclusion of apartments is unreasonable.[5] In *Girsh*, Nether Providence Township's zoning code failed to include provisions allowing the construction of apartment buildings. Rather, the city claimed it was enough to provide occasional variances to allow for the construction of apartments. The Court disagreed, holding that allowing occasional variances alone did not meet the standard of reasonableness, as such variances require proof of a special hardship.[6] The Court explained that "protecting the character -- really the aesthetic nature -- of the municipality

---

[2] *Surrick v. Zoning Hearing Bd.*, 382 A.2d 105, 108-09 (Pa. 1977).
[3] *BAC, Inc. v. Bd. of Sup'rs of Millcreek Twp.*, 534 Pa. 381, 633 A.2d 144 (1993).
[4] *S. Burlington Cnty. NAACP v. Twp. of Mt. Laurel*, 336 A.2d 713 (N.J. 1975)).
[5] *Appeal of Girsh*, 263 A.2d 395, 399 (Pa. 1970).
[6] *Id.*

is not sufficient justification for an exclusionary zoning technique."[7] Nebulous concerns about a community's aesthetic "character" are commonly used to attack new housing or justify its denial. Under Pennsylvania law, these concerns are not legitimate use of the police power when compared against the need for more housing.

Furthermore, the Court stated that a municipality "can protect its attractive character by requiring apartments to be built in accordance with (reasonable) set-back, open space, height, and other light-and-air requirements, but it cannot refuse to make any provision for apartment living."[8] This holding establishes that city zoning codes must provide reasonable development standards for the development of apartment buildings.

In 1975, two years prior to the principal *Surrick* case, the Pennsylvania Supreme Court expanded on its reasoning from *Girsh* in the case of *Willistown v. Chesterdale Farms*, holding that every municipality must make available an appropriate amount of land for apartments specifically.[9] Where an ordinance allowed apartments on 80 out of 11,589 acres, the Court ruled it unconstitutionally exclusionary "in that it does not provide for a fair share of the township acreage for apartment construction."[10]

Appeal of Girsh and *Willistown* informally created the fair share principle, but *Surrick v. Zoning Hearing Board of Providence Township* followed these cases, affirmatively establishing the fair share test; the test requires local governments to meet the legitimate needs that are served by multiple categories of land use.[11] In this case, Surrick sought to build apartments and townhouses on land zoned for single-family housing. The municipality, Providence Township, is a suburb of Philadelphia, which, at the time, only allowed multi-family developments on 1.14% of their land, including developed and undeveloped

---

[7] *Id.* at 398.
[8] *Id.* at 399.
[9] *Willistown v. Chesterdale Farms*, 462 Pa. 445(1975).
[10] *Id.* at 450.
[11] *Surrick*, 382 A.2d 105, 108.

land. After the township denied the applicant's request for a zoning variance, the builder appealed to allow construction on his land.

The housing proposal prevailed and the court ruled that restricting multi-family housing developments to such a miniscule proportion of land, the majority of which was already substantially developed, illegally interfered with property rights afforded by Article I, Section I of the Pennsylvania Constitution, as well as the Due Process Clauses of the 5th and 14th Amendments of the United States Constitution.[12]

Given the United States Supreme Court's decisions in *Village of Euclid*, which upheld the constitutionality of residential zoning generally, and *Village of Belle Terre*, which upheld a zoning ordinance prohibiting unrelated roommates in a college town, courts are often hesitant to overturn the zoning ordinances of localities, the creation of which are viewed as legislative functions.[13] Explaining that the Court was not usurping administrative or legislative functions, the opinion explained that "in establishing the 'fair share' standard, this Court has merely stated the general precept which zoning hearing boards and governing bodies must satisfy by the full utilization of their respective administrative and legislative expertise."[14] Exclusionary zoning is, by implication, an artificial refusal to use a zoning body's full authority. The Court reasoned that multiple categories of land use are necessary to meet a community's needs. It is therefore unreasonable for a zoning body to ignore its own power to meet those needs. In effect, this decision requires zoning boards to satisfy the Court's "fair share" standard, while imposing a duty upon zoning boards to fully utilize their expertise in creating zoning ordinances.

Following *Surrick*, the Court has clarified and re-emphasized its commitment to enforcing the Fair Share Doctrine. The 1985 Pennsylvania Supreme Court case of *Fernley v. Board of*

---

[12] *Id.* 107-108.
[13] *Vill. of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926); *Vill. of Belle Terre v. Boraas*, 416 U.S. 1, 94 S. Ct. 1536, 39 L. Ed. 2d 797 (1974).
[14] *Surrick*, 382 A.2d 105, 109.

Supervisors of Adams Township established that a court does not need to engage in the full fair share analysis "where the local government has made no provision for multi-family housing."[15] This rule was also applied in the 1986 case of *West v. Township Supervisors of Adams Township*, in which the township excluded all multi-family uses of property and permitted only single and two-family dwellings.[16] Hence, the court found that under *Fernley*, because the township had a categorical exclusion, a fair share analysis was not required to assess the exclusionary impact of the ordinance.[17]

The Pennsylvania Municipalities Planning Code (MPC), created in 1968, enables municipalities within the state to create individual zoning plans, so long as they follow the provisions of this code. In 1988, more than a decade after the *Surrick* decision, Pennsylvania amended the MPC by adding Section 10604, requiring zoning ordinances "be designed ... [t]o provide for the use of land within the municipality for residential housing of various dwelling types encompassing all basic forms of housing, including ... a reasonable range of multifamily dwellings in various arrangements..."[18] The section goes on to require that municipalities' zoning plans "accommodate reasonable overall community growth, including population and employment growth."[19]

In the 2003 case of *Heritage Bldg. Group, Inc. v. Plumstead Tp. Bd. of Sup'rs*, a developer argued that Section 10604 of the MPC required a municipality to amend their zoning plan to allow for more multi-family housing development. The Commonwealth Court of Pennsylvania did not agree with this argument, and refused to interpret Section 604 of the MPC to require municipalities to go beyond the standards established under the *Surrick* Fair Share Doctrine.[20] This decision didn't address the MPC in much length, basing its rejection of the developer's statutory argument on references to the *BAC, Inc.* and *Precision*

[15] *Fernley v. Bd. of Sup'rs of Schuylkill Twp.*, 509 Pa. 413, 424, 502 A.2d 585, 591 (1985).
[16] *West v. Township Supervisors of Adams Township*, 99 Pa. Commw. 599 (1984).
[17] *Fernley v Bd. of Supervisors*, 509 Pa. 413 (1985).
[18] 53 Pa. Stat. Ann. § 10604(4) (West).
[19] *Id.* § 10604(5) (West).
[20] *Heritage Bldg. Grp., Inc. v. Plumstead Twp. Bd. of Sup'rs*, 833 A.2d 1205, 1213 (Pa. Commw. Ct. 2003).

Equities, Inc. decisions, both of which related to the Fair Share Doctrine, but did not address Section 10604. The developer chose to build single family homes in areas zoned for multi-family, and did not convince the Court to extend Fair Share to all areas of the community. The Court did not find that fair share requires approving affordable developments; it interpreted the categories of uses under *Surrick* as requiring variable types of housing, but not variable costs. While unfeasible development may be found economically unconstitutional, that does not require a community to actively facilitate new development which its zoning code does allow for.

The limits of *Surrick* applicability remain in question, and there has been little attempt to use it proactively. Without specificity about what it requires and where, communities and courts have many ways to circumvent the doctrine. We spoke with a prominent Pennsylvania Land Use attorney who has attempted to persuade courts that Section 10604(4) was added to the MPC for the purpose of requiring localities to allow for a reasonable range of housing densities. Unfortunately, he says that no court has sided with him on this argument. At the legislative level, it could be worthwhile for YIMBY members of the Pennsylvania General Assembly to amend this section of the MPC to more clearly require a reasonable range of densities. Courts found that density is unconnected from Fair Share's allowance for a variable range of housing types, when practically they are one and the same. Disallowing certain categories of density necessarily reduces the types of housing that may be built.

Surrick's Test for Unlawful Exclusion

To guide future analysis, the *Surrick* court created the "Fair Share Test," a three-pronged approach used in determining whether or not a zoning ordinance is unconstitutionally exclusionary. Total exclusion of multi-family housing is always unconstitutional; zoning bodies may not unilaterally forestall legitimate uses of their ability to meet community needs. Partial exclusions should be analyzed by the following three prong test:

(1) whether or not the community in question is a logical area for development and growth (in the path of development);

(2) the present level of development in the community; and

(3) whether or not the challenged zoning scheme "effects an exclusionary result or manifests an exclusionary intent to zone out natural growth."[21]

If all three elements of this test are satisfied, then a community is appropriate for development, and their failure to allow developments in accordance with the growing demand for housing within the locality represents a violation of fair share. *Surrick* and subsequent courts added non-exclusive details that help evaluate the three factors above.

In contemplating whether a community lies along a path of growth, courts can review:

(1) projected population growth & population density

(2) anticipated economic development

(3) access by major roads or public transportation

(4) the growth and development of neighboring municipalities

(5) proximity to a large metropolitan area

(6) attempts by developers to obtain permission to build

For example, if a locality is in close proximity to an urban area, and there have been many attempts by developers to build denser housing in the locality, then there is evidence that the locality is in the path of growth. As stated in *Girsh*, "[t]he simple fact that someone is anxious to build apartments is strong indication that the location of this township is such that people are desirous of moving in, and we do not believe Nether Providence can close its doors to those people."[22] In other words, if demand for higher density housing within a

[21] *Villa, Inc. v. Zoning Hearing Bd., Old Forge Borough*, 426 A.2d 1209, 1211 (1981); *Surrick v. Zoning Hearing Board of Upper Providence Township*, A.2d 105 (1977); *Abcon, Inc. Appeal*, 387 A.2d 1303 (1978).

[22] *Appeal of Girsh*, 263 A.2d 395, 399 (Pa. 1970).

locality is clearly evident, then a court should reason that the locality is within the path of growth and move on to the second element of the Fair Share test.

The next element of the Fair Share test is whether or not a community is highly developed such that greater density is inappropriate. When considering this question, courts examine the current levels of development within a community.[23] In doing so, they assess:

(1) The percentage of undeveloped land in the community
(2) the percentage of land available for the use in question
(3) and the extent of such use that can be accommodated under the existing zoning ordinance

If a determination is made that a municipality is along a path of growth and that it is not in an overdeveloped area, courts then move to the third area of inquiry: whether the zoning ordinance has the practical effect of unlawfully excluding a proposed use.[24] Here, if it is found that a zoning ordinance partially excludes a proposed use, then courts must make a deeper look and consider:

(1) The percentage of community land available under the ordinance for the proposed use
(2) The total amount of undeveloped land in the community

Ultimately, if a court finds that the amount of land zoned for the proposed use is disproportionately small in relation to the total amount of undeveloped land in a community, the ordinance is a de facto exclusion of the use.[25] In *McKown v. Board of Supervisors*, a locality invalidated a zoning ordinance that only allowed mobile home parks

---

[23] *Valley Greene Assocs. v. Bd. of Sup'rs of Tredyffrin Twp.*, 29 Pa. D. & C.3d 693, 697 (Pa. Com. Pl. 1983), aff'd, 84 Pa. Cmwlth. 314, 479 A.2d 45 (1984).
[24] *Smith v. Hanover Zoning Hearing Bd.*, 78 A.3d 1212 (Pa. Commw. Ct. 2013).
[25] *Ctr. Lime & Stone Co. v. Spring Twp. Bd. of Supervisors*, 787 A.2d 1105 (Pa. Commw. Ct. 2001).

to be developed within a planned residential development, while only allowing 55% of these planned residential development unit-mixes to utilize mobile homes, and creating no other avenue for developers to create communities of solely mobile homes. The court found that this was an example of exclusionary zoning, citing that the ordinance only allowed two-tenths of one percent of the total township area to be utilized for the creation of mobile home development.[26]

The test distinguishes between de facto and de jure exclusions.[27] De facto exclusionary zoning occurs when the provision for a particular use in the ordinance does not reasonably accommodate the immediate and projected demand for that use. A zoning plan that facially permits a particular use, but with circumstances that prevent any such use from occurring, is a *de facto* ban.[28] If a land use cannot be prohibited *de facto*, the land use consequently cannot be prohibited *de jure*.

Pennsylvania courts would find zoning plans unconstitutional that facially, *de jure* exclude multifamily housing, mobile home parks, billboards, public schools, or mushroom farm-houses.[29] However, municipalities have no obligation to permit all types of land use *de*

---

[26] *McKown v. Bd. of Supervisors of E. Fallowfield Twp., Chester Cnty.*, 104 Pa. Cmwlth. 428, 522 A.2d 159 (1987), aff'd sub nom. McKown v. Bd. of Sup'rs of E. Fallowfield Twp., Chester Cnty., 518 Pa. 467, 544 A.2d 446 (1988).

[27] *Macioce v. Zoning Hearing Bd. of Borough of Baldwin*, 850 A.2d 882, 883 (Pa. Commw. Ct. 2004); *Fernley v. Bd. of Sup'rs of Schuylkill Tp.*, 502 A.2d 585 (1985).

[28] *See Twp. of Exeter v. Zoning Hearing Bd. of Exeter Twp.*, 962 A.2d 653, 659 (Pa. 2009) ("In a de jure exclusion case, the challenger alleges that an ordinance on its face totally excludes a use. . . . In a de facto exclusion case, the challenger alleges that an ordinance appears to permit a use, but under such conditions that the use cannot in fact be accomplished.").

[29] *See Env't Cmtys. of Pa., Inc. v. North Coventry Twp.*, 412 A.2d 650, 651 (Pa. Commw. Ct. 1980) ("We are again confronted with a municipal zoning ordinance which totally excludes a specific land use in a township, i.e., the development of a mobile home park, and we reaffirm our stance that such an ordinance is unconstitutional."); *Twp. of Exeter*, 962 A.2d at 659 ("However, since billboards are not objectionable per se, a blanket prohibition on billboards without justification cannot pass constitutional muster."); *Jim Thorpe Area Sch. Dist. v. Kidder Twp. Zoning Hearing Bd.*, 42 Pa. D. & C.4th 432, 437 (Ct. of Common Pleas of Pa., Carbon Cnty. 1999) (finding a de facto zoning ban on public schools unconstitutional); *Eller v. Bd. of Adjustment of London Britain Twp.*, 198 A.2d 863, 866 (Pa. 1964) (finding a zoning setback requirement for mushroom houses was an unconstitutional taking).

jure.[30] Nor must a municipality plan for all types of land use in their zoning plan.[31] Instead, areas of growth are evaluated based on what types of land uses are prohibited instead of explicitly permitted.

Pennsylvania courts have clarified that the Fair Share doctrine does not protect specific housing types, only uses of property.[32] In *Precision Equities v. Franklin,* the appellant argued that the zoning laws in question did not allow a fair share of affordable single-family detached housing, but the court held that while the municipality was required to zone for a reasonable range of multi-family housing, it did not need to zone specifically for affordable housing for low to moderate-income individuals.[33] Hence, the doctrine applies to uses of property, not the classes of people able to afford the housing. Unlike New Jersey's Mount Laurel Doctrine, "the [Pennsylvania] fair-share doctrine is based on constitutional property rights rather than a large-scale social justice program."[34]

A municipality is in violation of the fair share doctrine if it totally excludes a particular use of a property or partially excludes a use "to such an extent that it engages in 'tokenism' or

---

[30] *See Appeal of Girsh*, 263 A.2d 395, 399 (Pa. 1970) ("It is not true that the logical result of our holding today is that a municipality must provide for all types of land use. This case deals with the right of people to live on land, a very different problem than whether appellee must allow certain industrial uses within its borders.").

[31] *See Appeal of M.A. Kravitz Co.*, 460 A.2d 1075, 1081 (Pa. 1983) ("The question which this case presents is whether a community must affirmatively provide for a particular architectural design in its plan for development. In no case has this Court held that a municipality's zoning ordinance must affirmatively provide for any specific use—residential, commercial, industrial, or otherwise. Our holdings have been limited to statements that an ordinance may not prohibit certain uses . . .").

[32] *Heritage Bldg. Group, Inc. v. Plumstead Twp. Bd. of Supervisors*, 833 A.2d 1205; *Precision Equities v. Franklin Park Borough Zoning Hearing Bd*., 646 A.2d 756 (Pa. Commw. Ct. 1994).

[33] *Precision Equities,* 646 A.2d 756, 760 (Pa. Commw. Ct. 1994). *See also Heritage Building Group, Inc. v. Plumstead Township Board of Supervisors* (2003) (concluding that an ordinance is not unconstitutional just because it mandates construction of multi-family rather than single-family units, since "*Surrick* applies only to the exclusion of uses, not classes of people."); *Concord Twp. Appeal*, 439 Pa. 466 (1970) (finding that an ordinance mandating minimum lot requirements for residential developments was found to be unconstitutional since the sizes required were larger than what should be considered necessary size for building a single-family homes).

[34] Katrin Rowan, *Anti-Exclusionary Zoning in Pennsylvania: A Weapon for Developers, a Loss for Low-Income Pennsylvanians*, 80 Temp. L. Rev. 1271, 1273 (2007).

'selective admission.'"[35] The Court has not outlined exactly what constitutes the minimum amount of a given property use. The types of housing covered under the doctrine may vary, ranging from single and multi-family dwellings to mobile home parks, particularly since the MPC does not detail any specific housing types that must be covered under the fair share doctrine.[36]

Applicable Jurisdictions

The *Surrick* court did not name specific geographic areas where Fair Share would apply, but did discuss relevant factors to identify whether a community is a logical area for development and population growth.[37] Factors include the community's proximity to a large metropolis, and the community's and region's projected population growth.[38] If a community is determined to be in the path of urban-suburban growth, the court must examine the present level of development within the community, including population density data, and the percentage of total undeveloped land and percentage available for the development of multi-family dwellings.[39]

The *Surrick* court determined that Upper Providence Township was a logical area under the factors.[40] The township is located 12 miles from Philadelphia at the intersection of two main traffic routes, including a direct route to the city.[41] It was not a high density area, and roughly one quarter of its land was undeveloped.[42] Based on these factors, the court

---

[35] *Precision Equities,* 646 A.2d at 759.
[36] *Heritage Bldg. Group v. Bedminster Twp. Bd. of Supervisors*, 742 A.2d 708 (1999) (denying an appellant's challenge to an allegedly exclusionary zoning ordinance that did not allow appellant to develop mobile home parks and multifamily dwellings because under the *Surrick* test, the area in question was not a logical area for development and population growth).
[37] *Surrick v. Zoning Hearing Bd. of Upper Providence Tp.*, 476 Pa. 182, 191 (1977).
[38] *Id.* at 192 (citation omitted).
[39] *Id.* (citation omitted).
[40] *Id.* at 194.
[41] *Id*.
[42] *Id.* at 195.

determined there was "little doubt" that it was a logical area for development and population growth.[43] Following this reasoning, low to medium density areas around major urban cities would meet the definition.

For example, townships in Chester County could likely meet this definition, as many are located within 40 miles of Philadelphia with accessible traffic routes to Philadelphia and Wilmington, DE, and as of 2017 the County has 29% undeveloped land (Chester County Planning Commission, 2017).[44] Townships in Delaware County may not meet this standard despite their proximity to Philadelphia, though only 1% of the land use activity in the county is multi-family zoned (out of the 44% for residential use), as only 4% of the land is undeveloped (Delaware County Planning Department).[45] Montgomery County, located around 30 miles from Philadelphia, likely meets this criteria with 12% undeveloped land, particularly in the New Hanover and North Coventry townships (Montgomery County Planning Commission).[46] Pottstown and Norristown specifically chose to exclude new development and housing shelters, preferring to arrest unhoused individuals, creating a strong case for unlawful exclusion under *Surrick*.

Only counties in Pennsylvania are required to adopt comprehensive plans, but those and other local plans will be useful guides to evaluate a region's capacity and likelihood of development.

Standing to Bring a Fair Share Claim

In challenging a zoning ordinance, the burden of proof lies with the party challenging the ordinance to show the lack of a fair share of a particular type of zoning.[47] Through its common law, Pennsylvania's courts have outlined two broad categories of people who have

[43] *Id.* at 194.
[44] https://chescoplanning.org/Landscapes3/PDF/4c1/00LandUseAnalysis.pdf
[45] https://delcopa.gov/planning/pubs/delco2035/LandUseFrameworkPlan.pdf
[46] https://www.montgomerycountypa.gov/DocumentCenter/View/2072/pottsregch4?bidId=
[47] *Farley*, 636 A.2d 1232.

standing to bring suit under the Fair Share Doctrine: 1) residents of the municipality in question[48] and 2) people directly impacted by the zoning regulation, often called those who are "specifically aggrieved."[49]

While residential status is binary, it is more complicated to determine when a party is "specifically aggrieved."[50] "In order to establish standing, a party need only allege that he or she has an immediate, direct and substantial interest in the subject matter of the litigation."[51] Pennsylvania courts have explained that "specially aggrieved" persons, for the purposes of standing under Fair Share, must be directly and materially harmed and cannot merely have a loosely related interest to the municipality in question.[52] For example, in *Farley*, the challengers to a local zoning ordinance "clearly confirmed that they had standing to challenge the Ordinance when they testified that they are landowners who rent to students and that they have been cited for renting to students in violation of the Ordinance."[53]

In *Spahn*, The Pennsylvania Supreme Court confronted a lawsuit brought by a resident seeking review of decisions of the city zoning board of adjustment (ZBOA) under the Home Rule Act granting the landowner's applications for variances for construction on two vacant lots.[54] Upon appeal due to challenges to the resident's standing, evidence from the trial

---

[48] *Raum v. Bd. of Sup'rs of Tredyffrin Twp.*, 370 A.2d 777, 780 (1976) ("It has traditionally been held that residents of a municipality have a legal interest in preserving the integrity of their zoning ordinance and the status of their property thereunder so as to be 'aggrieved persons,' thereby enabling them to challenge an amendatory ordinance as unconstitutional."); *Penny v. Warrington Township Board of Supervisors*, 21 Bucks C.L. Rep. 322 (1971); *Tredyffrin Construction Company Appeal*, 7 Ches. Co. Rep. 153 (1956).

[49] *Raum v. Bd. of Sup'rs of Tredyffrin Twp.*, 370 A.2d 777, 780 (1976); *Farley v. Zoning Hearing Bd. of Lower Merion Twp.*, 636 A.2d 1232, 1234 (1994).

[50] *See Farley*, 636 A.2d 1232 (1994); *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269 (1975)

[51] *In re Hoover*, 608 A.2d 607 (1992).

[52] *Armstead v. Zoning Bd. of Adjustment of City of Philadelphia*, 115 A.3d 390, 392 (Pa. Commw. Ct. 2015); *Spahn v. Zoning Bd. of Adjustment*, 977 A.2d 1132, 1143 (2009).

[53] *Farley*, 161 Pa. Commw. 229, 240.

[54] *Spahn*, 977 A.2d 1132, 1150 (2009).

record revealed that this person lived approximately one and a half blocks from the subject properties, but that he only walked by the properties every day.[55] The Court held that the city resident did not have standing to challenge the ordinance.[56] The Pennsylvania Supreme Court explained that a party is an "aggrieved person" under the standing provision of the Home Rule Act, which requires the party to show interest that is substantial, direct, and immediate.[57] The Court reasoned that "the plain language of [Section 17.1] leads to the inescapable conclusion that the General Assembly intended to limit standing to appeal a zoning decision to two classes—the governing body *and* aggrieved persons—*while specifically excluding the broader category of taxpayers.*"[58]

In short, to establish standing to bring Fair Share claims, one must demonstrate a stronger connection than simply having an interest in the localities' zoning decisions. Rather, a claimant must demonstrate that they were "specifically aggrieved," which requires more than simply living near and walking by the new development or lack thereof. To be considered an "aggrieved person," they must be directly and materially harmed. Ideally, these standing provisions would be widened to prospective residents, who are most harmed by the impacts of exclusionary zoning.

Conclusions and Recommendations

Zoning for exclusion is already illegal; aesthetic considerations and exclusionary motives are not legitimate uses of authority to keep people out of communities. Under Pennsylvania law, municipalities must provide zoning for a range of housing types—particularly multifamily—based on constitutional property rights, and it's time to enforce that legal protection. Courts currently assess exclusionary zoning through a

[55] *Id*.
[56] *Id*.
[57] *Id* at 1149.
[58] *Id* at 1143.

three-prong test: (1) if a community is in the path of existing growth, (2) if a community's present level of development meets its growth needs, and (3) if its zoning regulations practically exclude certain housing types. Partial exclusions—especially those that result in tokenism or de facto bans—can trigger judicial intervention.

Pennsylvania's developers, the Attorney General's office, residents of exclusionary communities and "specifically aggrieved" non-residents have a powerful tool available to fight exclusionary zoning. Communities that make multifamily housing legally or practically unbuildable do so in violation of the law, and they cannot ignore their responsibilities. Municipalities with substantial undeveloped land containing low levels of multifamily zoning are open to challenge. It is time to overturn unjust zoning laws,and Pennsylvania's Fair Share Doctrine can be an effective and useful means to that end.