

action against these five municipalities, while commending Croton-on-Hudson on its progress. July 7, 2016 Letter at 2.

Since July 2016, Croton-on-Hudson, Larchmont, and Lewisboro have amended their zoning ordinances; Pelham Manor and Harrison have not. I address the zoning changes in the first three municipalities in more detail below. Because Pelham Manor and Harrison have made no effort to amend zoning ordinances that the Monitor and an expert deemed potentially exclusionary, I am unable to conclude that anything has meaningfully changed in those municipalities.³⁶

Croton-on-Hudson: The *Berenson* report found that Croton-on-Hudson's zoning code did not appear to provide meaningful opportunities for the development of affordable housing to meet local need, partly due to its restrictive practices on multi-family housing. *See* 2013 Zoning Report at 61. Although the zoning code permits multi-family housing and other typically affordable housing types, only 1.9% of the acreage was zoned for as-of-right multi-family development and those districts were completely built out. *Id.* Further, accessory apartments were allowed by special permit only but were age- and size-restricted. *Id.* at 63. The *Berenson* report concluded that the Village needed to take additional actions to meet its share of regional affordable housing need, including: "adopting the model zoning ordinance and providing mandates and broader incentives for affordable housing, mapping additional areas where multi-family housing is permitted as-of-right, permitting accessory housing units as-of-right and for tenants other than seniors, and providing opportunities for additional types of development (such as quadraplexes or cottage-style housing)." *Id.* at 65.

³⁶ That does not mean that the County should be faulted for their inaction. As discussed above, the County has undertaken significant efforts to encourage both municipalities to adopt the Model Ordinance, including written correspondence and meeting with local officials. I encourage the County to continue those efforts.

In 2015, after the *Berenson* report was issued, the Village “liberalized the conditions under which accessory apartments are permitted,” including removing age restrictions and streamlining the approval procedures, and “expanded the opportunity for mixed-use housing development.” June 9, 2020 Letter, Ex. 18, at 3-4; July 7, 2016 Letter, at 1-2. Additionally, on November 5, 2018, Croton-on-Hudson adopted amendments to its zoning code that included provisions of the Model Ordinance. Dec. 13, 2018 Letter from John M. Nonna to Stephen C. Robinson, attached hereto as Ex. 35, at 1. The amendments included provisions for mandatory affordable housing in new developments of ten or more units and an expedited and priority review process for developments that include AFFH units. *Id.*; *see also* Village of Croton-on-Hudson Local Law #9 2018, Sections 1(B)(1), 1(C)(1).

In sum, Croton-on-Hudson’s zoning amendments adequately addressed the *Berenson* report’s recommendation of providing mandates and incentives for affordable housing, removing age restrictions on accessory apartments, and expanding opportunities for additional types of development (specifically, mixed-use). However, the amendments do not address the two primary concerns with the Village’s zoning: mapping additional areas where multi-family housing is permitted as-of-right and permitting accessory units as-of-right. The County acknowledges this and “continues to . . . advocate for the expansion of multi-family zoning . . . in Croton-on-Hudson.” *See* Aug. 7, 2020 Letter, Ex. 11, at 7.

Larchmont: The *Huntington* report concluded that there was prima facie evidence that the Village’s zoning code perpetuated minority clustering because 50.4% of Larchmont’s minority household population resided in the only three zoning districts allowing as-of-right multi-family housing development. *See* Monitor’s *Huntington* Analysis of Westchester County Municipal Zoning, Sept. 8, 2014, ECF 578-43 (Ex. 84) at 6. Those same districts were home to only 16.7%

VIII. Areas of Continuing Concern

While I am satisfied with the County's performance and believe that it has met its obligations under the Settlement, I have concerns about certain municipalities: Briarcliff Manor, Buchanan, Eastchester, Mount Pleasant, Pelham, Tuckahoe, Cortlandt, Somers, Harrison, Pelham Manor, Rye, Yorktown, Croton-on-Hudson, and Larchmont. These municipalities should take further action to change their zoning ordinances and further affordable housing. I have discussed my concerns about these municipalities with the County and am satisfied that the County is aware and will take continuing action to address them. Although I have identified the issues affecting each municipality above, I will reiterate and consolidate them here.

While the County does not have the power to mandate municipal adoption of the Model Ordinance, it has done what it can to promote adoption through discretionary funding, written correspondence, conversations with municipal officials, collaboration with housing non-profit agencies, and public speaking engagements. Despite the County's efforts, twelve municipalities have not yet adopted the Model Ordinance: Briarcliff Manor, Buchanan, Eastchester, Mount Pleasant, Pelham, Tuckahoe, Cortlandt, Somers, Harrison, Pelham Manor, Rye, and Yorktown. I urge these municipalities to do so to meet the goals of the Settlement.

I also have lingering concerns with respect to *Berenson* or *Huntington* issues for several municipalities. The Monitor's Third Biennial Assessment found that Harrison, Pelham Manor, Croton-on-Hudson, and Larchmont had zoning laws that could result in liability under *Berenson* or *Huntington*. Neither Harrison nor Pelham Manor modified its zoning ordinances following that report, meaning that potentially exclusionary zoning remains in place. While Croton-on-Hudson has expanded the conditions under which accessory apartments are permitted, expanded the opportunity for mixed-use housing development, and adopted provisions of the Model

Ordinance, it still has not addressed two primary concerns: expanding the areas where multi-family housing is permitted as-of-right and permitting accessory units as-of-right. As for Larchmont, the *Huntington* report concluded that its zoning code perpetuated minority clustering because more than half of Larchmont's minority population resided in the three zoning districts that permit as-of-right multi-family housing development. While Larchmont has adopted provisions consistent with the Model Ordinance, it has not zoned additional land for multi-family housing as-of-right. Both Croton-on-Hudson and Larchmont should implement these measures to maximize the potential for affordable housing development.

IX. Conclusion

This Report concludes that the County has complied with its Paragraph 25(a) and 33 requirements and has substantially complied with its Paragraph 7 and 32 requirements. For the reasons discussed, I believe that the County has substantially satisfied its obligations under the Settlement.

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New York, New York

Respectfully submitted,

/s/ Stephen C. Robinson

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