Jersey's Zoning Laws Are Upset: Jersey Zoning Laws Are Struck Down
By RONALD SULLIVAN Special to The New York Times
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TRENTON, March 24—The New Jersey Supreme Court today struck down local zoning ordinances that exclude poor persons or families with low or moderate incomes, ruling that every community in the state must share the housing needs of its surrounding region.

In a unanimous ruling hailed by open housing advocates, the court handed down a sweeping directive that effectively outlawed restrictive zoning ordinances such as those that prohibit apartments or mandate large lots. Paul Davidoff, executive director of Suburban Action Institute, Inc., a public interest group seeking to open the New York metropolitan suburbs to housing for the poor and persons with moderate incomes, said the New Jersey ruling was the most significant court decision on the subject thus far in the country.

"This is the decision we have been waiting for," the Suburban Action executive said.

Mr. Davidoff said that his organization would use the decision in a renewed attack on exclusionary local zoning practices in Long Island, Westchester and Connecticut suburban communities.

In a concurring opinion, Justice Morris Pashman said that the decision begins to cope with "municipal land-use regulation—the use of the zoning power to advance the parochial interests of the municipality at the expense of the surrounding region and to establish and perpetuate social and economic segregation."

Since the court's decision was primarily based on state consti-

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tutional guarantees of equal protection and due process of law, officials here doubt whether the verdict can be successfully appealed to the United States Supreme Court. Such was the case in the court's celebrated school financing decision two years ago.

Specifically, the state's highest court upheld a Superior Court decision in 1972 that had struck down a ruling of the local zoning board in the Burlington County community of Mount Laurel Township on the ground that it effectively excluded housing for the poor or people with moderate means.

However, the court said today that the issue "was not confined to Mount Laurel" and that it had far broader implications.

"We conclude," the court said, "that every such municipality must, by its land-use regulations, presumptively make realistically possible an appropriate variety in choice of housing."

"More specifically," the court said, "presumptively it cannot foreclose the opportunity of the classes of people mentioned for low- and moderate-income housing, and its regulations must affirmatively afford that opportunity, at least to the extent of the municipality's fair share of the present and prospective regional need."

In other words, the court not only struck down exclusionary zoning laws, but it required, as well, that communities enact what amounted to affirmative action land regulation and housing plans that would attract families from every economic and social strata.

The decision was described by state officials here as the culmination of a protracted legal battle over restrictive zoning ordinances in New Jersey that has seen open housing advocates attack exclusionary zoning ordinances in schools of suburban communities throughout the state, beginning in the mid-nineteen-sixties.

Throughout the state, communities have enacted laws that either prohibit apartments, require expensive home construction, or which mandate anywhere from one to 10 acres to build on—all of which preclude anyone from moving into own unless they have substantial financial means.

And since many poor persons are black, local zoning ordinances also have the effect of keeping communities racially segregated.

But restrictive zoning ordinances are not just aimed at the poor. In many communities, the court said, zoning was used to keep out all but the wealthiest of families because large families of modest means living in modest housing with correspondingly modest taxes simply cannot provide the ratables required to educate their children or to support central local services.

As a result, the court said, many communities use restrictive zoning only as a means of protecting themselves.

"The conclusion is irresistible," the court said, "that Mount Laurel permits only such middle and upper income housing as it believes will have sufficient taxable value to come close to paying its own governmental way."

While Governor Byrne was out of the state today and could not be reached for comment, state officials and a number of legislators agreed that the court's decision created a local zoning vacuum that the Legislature ultimately would be compelled to fill. As a consequence, officials here expect the Governor to act quickly and push a state land-use and local housing plan through the Legislature this year.

Today's decision got its start in 1971 when Camden Legal Services, Inc., a Federal anti-poverty agency, joined with regional chapters of the National Association for the Advancement of Colored People in seeking to strike down housing regulations in Mount Laurel, which, the court concluded, effectively barred blacks and other poor minority groups.

While the local zoning ordinance allowed only single family homes on substantial plots, it did seek to allow multi family housing, too. But it was planned in such a way that only well-to-do families without children could afford or fit into the community.

A sprawling community of nearly 20,000, Mount Laurel comprises 22 miles of flat farmland that is quickly being transformed into a bedroom community, in part for commuters to Philadelphia, which is only 10 miles away. In one section of the township, known as Springville, a number of black families have resided in decaying farm homes that had been judged to be substandard.

"It is plain beyond dispute," the court said, "that proper provision for adequate housing of all categories of people is certainly an absolute essential in promotion of the general welfare required in all land-use regulation."

"It has to follow," the court said, "that, broadly speaking, the presumptive obligation arises for each such municipality affirmatively to plan and provide, by its land-use regulations, the reasonable opportunity for an appropriate variety in choice of housing, including, of course, low income and moderate cost housing . . ."

"Negatively," the court said "it may not adopt regulations or policies which thwart or preclude that opportunity."

Most important, for housing advocates, the court said it was now up to communities to prove that they were complying with the ruling, rather than have it proven by adversaries that they were not.

However, the court said that it did not intend communities like Mount Laurel to be "over whelmed by voracious land speculators" and it gave the community three months to adopt a land-use plan than conformed with its decision today.