

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MONROE RE, LLC	:	Civil Action
and CT YA SERVICES, LLC,	:	
d/b/a NEWPORT ACADEMY,	:	Case No. 3:21-cv-00078 (MPS)
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
TOWN OF FAIRFIELD, CONNECTICUT	:	
and BRENDA L. KUPCHICK, individually	:	
and in her official capacity as First	:	
Selectwoman of the Town of Fairfield,	:	
	:	
Defendants.	:	April 20, 2021

ANSWER AND AFFIRMATIVE DEFENSES TO AMENDED COMPLAINT

Defendants Town of Fairfield (the “Town”) and Brenda L. Kupchick (“Kupchick”), for their Answer and Affirmative Defenses to Plaintiffs’ Amended Complaint dated March 30, 2021, state as follows:

I. INTRODUCTION

1. Defendants make no answer to Paragraph 1 as it includes a statement as to the nature of the case, which requires no response.
2. Defendants make no answer to Paragraph 2 as it includes a statement as to the nature of the case, which requires no response.
3. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 3 and, therefore, leave Plaintiffs to their proof.
4. Defendants admit that Town staff have been directed not to issue certificates of occupancy to Plaintiffs, but deny the remaining allegations of Paragraph 4.

5. As to the first sentence of Paragraph 5, Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations and, therefore, leave Plaintiffs to their proof. Defendants admit Plaintiffs need to obtain Certificates of Occupancy to be compliant with the law, and deny the remainder of this Paragraph.

6. Defendants deny the allegations of Paragraph 6.

7. Defendants deny the allegations of Paragraph 7.

8. Defendants deny the allegations of Paragraph 8.

II. JURISDICTION

9. Defendants admit the allegations of Paragraph 9.

10. Defendants admit the allegations of Paragraph 10.

III. VENUE

11. Defendants admit the allegations of Paragraph 11.

IV. PARTIES

12. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 12 and, therefore, leave Plaintiffs to their proof.

13. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 13 and, therefore, leave Plaintiffs to their proof.

14. Defendants admit the allegations of Paragraph 14.

15. Defendants admit the allegations of the first sentence of Paragraph 15.

Defendants lack knowledge or information sufficient to form an opinion or belief as to the

truth of the remaining allegations of Paragraph 15 and, therefore, leave Plaintiffs to their proof.

V. APPLICABLE LEGAL AUTHORITY

16. Defendants deny the allegations of the first sentence of Paragraph 16.

Defendants make no answer to the remaining allegations of Paragraph 16 as they purport to state legal authority, not a short, plain statement of fact supporting Plaintiffs' claims for relief.

17. Defendants admit that the Town was involved in the lawsuit cited in Paragraph 17. Defendants further admit that they are aware of, and comply with, the requirements of the federal Fair Housing Act. Defendants deny the remaining allegations of Paragraph 17 to the extent inconsistent with their answer.

18. Defendants deny the allegations of Paragraph 18.

19. Defendants admit the first sentence of Paragraph 19, and deny the remaining allegations of Paragraph 19.

20. Defendants deny the allegations of Paragraph 20.

VI. FACTS

21. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 21 and, therefore, leave Plaintiffs to their proof.

22. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 22 and, therefore, leave Plaintiffs to their proof.

23. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 23 and, therefore, leave Plaintiffs to their proof.

24. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 24 and, therefore, leave Plaintiffs to their proof.

25. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 25 and, therefore, leave Plaintiffs to their proof.

26. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 26 and, therefore, leave Plaintiffs to their proof.

27. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations as to the first sentence of Paragraph 27 and, therefore, leave Plaintiffs to their proof. Defendants admit that, based on certain representations by Plaintiffs, Wendt issued an initial zoning permit. Defendants deny the remaining allegations of Paragraph 27.

28. Defendants admit that Plaintiffs obtained building permits for the properties located at 2495 Redding Road and 3236 Congress Street in or about April of 2019. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 28 and, therefore, leave Plaintiffs to their proof.

29. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 29 and, therefore, leave Plaintiffs to their proof.

30. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 30 and, therefore, leave Plaintiffs to their proof.

31. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 31 and, therefore, leave Plaintiffs to their proof.

32. Defendants admit that residents of Fairfield attended a meeting on June 10, 2019 and that the then-First Selectman and then-Town Attorney attended the meeting. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the remaining allegations of Paragraph 32 and, therefore, leave Plaintiffs to their proof.

33. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 33 and, therefore, leave Plaintiffs to their proof.

34. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 34 and, therefore, leave Plaintiffs to their proof.

35. Defendants admit that Berchem Moses issued a letter dated July 9, 2019, and refer the Court to that document for its content and meaning.

36. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 36 and, therefore, leave Plaintiffs to their proof.

37. Defendants admit that on September 18, 2019, Fairfield ZBA affirmed the issuance of permits and that James Wendt appeared at the ZBA hearing. Defendants deny the remaining allegations in Paragraph 37.

38. Defendants admit that certain Fairfield residents filed appeals of the ZBA's decision in the Connecticut Superior Court for the Judicial District of Fairfield at Bridgeport in October of 2019. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the remaining allegations of Paragraph 38 and, therefore, leave Plaintiffs to their proof.

39. Defendants admit the allegations of Paragraph 39.

40. Defendants deny the allegations of Paragraph 40.

41. Defendants deny the allegations of Paragraph 41.

42. Defendants admit that Kupchick issued a letter to OHS dated February 13, 2020, and direct the Court to that document for its content and meaning. Defendants deny the remaining allegations of Paragraph 42.

43. Defendants admit the allegations of the first sentence of Paragraph 43. Defendants deny the remaining allegations in Paragraph 43 in that the alleged summary of Kupchick's statements is out of context and incomplete.

44. Defendants deny the allegations of Paragraph 44.

45. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 45 and, therefore, leave Plaintiffs to their proof.

46. Defendants deny the allegations of Paragraph 46.

47. Defendants deny the allegations of Paragraph 47.

48. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 48 and, therefore, leave Plaintiffs to their proof.

49. Defendants admit that the first sentence of Paragraph 49 includes an accurate quotation of a portion of a Connecticut Regulation, and refer the Court to that Regulation for its full content and meaning. Defendants deny the remaining allegations of Paragraph 49.

50. Defendants deny the allegations of Paragraph 50.

51. Defendants admit that Paragraph 51 includes an accurate quotation from a statement issued by two federal agencies, and refer the Court to that statement for its full content and meaning. Defendants deny the remaining allegations of Paragraph 51.

52. Defendants admit that Paragraph 52 includes an accurate quotation of a portion of a Connecticut Regulation, and refer the Court to that Regulation for its full content and meaning. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the remaining allegations of Paragraph 52 and, therefore, leave Plaintiffs to their proof.

53. Defendants deny the allegations of Paragraph 53.

54. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 54 and, therefore, leave Plaintiffs to their proof.

55. Defendants admit that Mr. Baldwin issued the letter referenced in Paragraph 55, and refer the Court to that document for its content and meaning.

56. Defendants admit that Paragraph 56 includes an accurate quotation of a portion of the letter referenced in Paragraph 56, and refer the Court to that document for its content and meaning.

57. Defendants deny the allegations of Paragraph 57.

58. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 58 and, therefore, leave Plaintiffs to their proof.

59. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 59 and, therefore, leave Plaintiffs to their proof.

60. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 60 and, therefore, leave Plaintiffs to their proof.

61. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 61 and, therefore, leave Plaintiffs to their proof.

62. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 62 and, therefore, leave Plaintiffs to their proof.

63. Defendants admit that the Town did not require the Center for Discovery to apply for a Special Exception. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the remaining allegations of Paragraph 63 and, therefore, leave Plaintiffs to their proof.

64. Defendants admit that the Town's website includes information concerning the Center for Discovery, and refer the Court to the Town's website for the content of that information. Defendants deny the allegations of Paragraph 64 to the extent they are inconsistent with their answer.

65. Defendants deny the allegations of Paragraph 65.

66. Defendants deny the allegations of Paragraph 66.

67. Defendants deny the allegations of Paragraph 67.

68. Defendants deny the allegations of Paragraph 68.

69. Defendants deny the allegations of Paragraph 69.

70. Defendants deny the allegations of Paragraph 70.

71. Defendants deny the allegations of Paragraph 71.

72. Defendants deny the allegations of Paragraph 72.

73. Defendants deny the allegations of Paragraph 73.

74. Defendants deny the allegations of Paragraph 74.

75. Defendants deny the allegations of Paragraph 75.

76. Defendants deny the allegations of Paragraph 76.

VII. INJURY TO PLAINTIFFS

- 77. Defendants deny the allegations of Paragraph 77.
- 78. Defendants deny the allegations of Paragraph 78.
- 79. Defendants deny the allegations of Paragraph 79.
- 80. Defendants deny the allegations of Paragraph 80.
- 81. Defendants deny the allegations of Paragraph 81.
- 82. Defendants deny the allegations of the first sentence of Paragraph 82.

Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the remaining allegations of Paragraph 82 and, therefore, leave Plaintiffs to their proof.

- 83. Defendants deny the allegations of Paragraph 83.
- 84. Defendants deny the allegations of Paragraph 84.
- 85. Defendants deny the allegations of Paragraph 85.
- 86. Defendants deny the allegations of Paragraph 86.
- 87. Defendants deny the allegations of Paragraph 87.
- 88. Defendants deny the allegations of Paragraph 88.
- 89. Defendants deny the allegations of Paragraph 89.

CAUSES OF ACTION

COUNT ONE (All Plaintiffs Against All Defendants)

Unlawful Discrimination under the Fair Housing Act, 42 U.S.C. § 3601, et seq.

90. Defendants repeat and restate their answers to Paragraphs 1 through 84 above, as and for their answer to Paragraphs 1 through 84 of Count One as if fully set forth herein.

91. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 91 and, therefore, leave Plaintiffs to their proof.

92. Defendants deny the allegations of Paragraph 92.

93. Defendants deny the allegations of Paragraph 93.

94. Defendants deny the allegations of Paragraph 94.

95. Defendants deny the allegations of Paragraph 95.

96. Defendants deny the allegations of Paragraph 96.

COUNT TWO

**(All Plaintiffs Against Town of Fairfield and
Brenda L. Kupchick in her Official Capacity)**

Americans with Disabilities Act, 42 U.S.C. § 12131, et seq.

97. Defendants repeat and restate their answers to Paragraphs 1 through 84 above, as and for their answer to Paragraphs 1 through 84 of Count Two as if fully set forth herein.

98. Defendants deny the allegations of Paragraph 98.

99. Defendants deny the allegations of Paragraph 99.

COUNT THREE

**(All Plaintiffs Against Town of Fairfield and
Brenda L. Kupchick in her Official Capacity)**

Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, et seq.

100. Defendants repeat and restate their answers to Paragraphs 1 through 84 above, as and for their answer to Paragraphs 1 through 84 of Count Three as if fully set forth herein.

101. Defendants deny the allegations of Paragraph 101, including the allegations of subparagraphs (a) through (d).

102. Defendants deny the allegations of Paragraph 102.

**COUNT FOUR
(All Plaintiffs Against All Defendants)**

Connecticut Fair Housing Act, C.G.S. § 46a-64c

103. Defendants repeat and restate their answers to Paragraphs 1 through 84 above, as and for their answer to Paragraphs 1 through 84 of Count Four as if fully set forth herein.

104. Defendants lack knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 104 and, therefore, leave Plaintiffs to their proof.

105. Defendants deny the allegations of Paragraph 105.

106. Defendants deny the allegations of Paragraph 106.

107. Defendants deny the allegations of Paragraph 107.

108. Defendants deny the allegations of Paragraph 108.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiffs have failed to state any cause of action upon which relief may be granted.

Second Affirmative Defense

Plaintiffs' claims are barred by the doctrine of unclean hands.

Third Affirmative Defense

Plaintiffs' claims are barred by the doctrine of waiver.

Fourth Affirmative Defense

Plaintiffs' claims are barred by the doctrine of estoppel.

Fifth Affirmative Defense

If Plaintiffs have suffered damages, the existence of which Defendants deny, such damages were caused by a person or persons for whose conduct Defendants were not and are not legally responsible.

Sixth Affirmative Defense

If Plaintiffs have suffered damages, the existence of which Defendants deny, such damages were not proximately caused by any action or inaction attributable to Defendants.

Seventh Affirmative Defense

Plaintiffs have failed to mitigate any alleged damages, the existence of which Defendants deny.

Eighth Affirmative Defense

Plaintiffs' claims are barred due to their failure to exhaust their administrative remedies following the Town's denial of their request for issuance of certificates of occupancy for the residences at issue.

WHEREFORE, Defendants Town of Fairfield and Brenda L. Kupchick respectfully request that this Court enter judgment in their favor and against Plaintiffs with respect to all claims for relief asserted in their Amended Complaint dated March 30, 2021, with the Defendants' attorneys' fees and costs awarded.

DEFENDANTS
TOWN OF FAIRFIELD AND
BRENDA L. KUPCHICK

By: /s/ Douglas J. Varga
Douglas J. Varga (ct18885)

Scott R. Lucas (ct00517)
LUCAS & VARGA LLC
2425 Post Road, Suite 200
Southport, CT 06890
Tel: (203) 227-8400
Fax: (203) 227-8402
E-Mail: dvarga@lucasvargalaw.com
slucas@lucasvargalaw.com

Their Attorneys

CERTIFICATION

I hereby certify that a copy of the foregoing Answer and Affirmative Defenses to Amended Complaint was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

Dated at Southport, Connecticut this 20th day of April, 2021.

/s/ Douglas J. Varga