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TESTIMONY

SETTING MINIMUM ZONING REQUIREMENTS FOR MULTIFAMILY HOUSING

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Massachusetts Joint Committee on Community Development and Small Business

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Chairman Payano, Chairman Collins, Vice-Chairmen McMurtry and Zlotnik, and members of the Joint Committee on Community Development and Small Business, thank you for allowing me to offer informational testimony relating to House Bill 233, "An Act Improving Housing Opportunities." I am Charles Gardner, and I'm a research fellow at the Mercatus Center at George Mason University. I study housing policy and affordability across the country and how reforms like those proposed in this bill have affected housing market outcomes.

SETTING MINIMUM ZONING REQUIREMENTS FOR MULTIFAMILY HOUSING

The proposed bill requires Massachusetts cities and towns to set aside no less than 1.5 percent of their suitable developable land for by-right multifamily development of at least 20 dwelling units per acre. According to a study conducted in 2019, of 33 towns in the greater Boston area that were surveyed, at least 20 did not have any zoning districts allowing multifamily housing of a density of even 12 units per acre or greater, and six did not have zoning districts allowing multifamily housing at a density of four units per acre or greater.[1] Accordingly, many Massachusetts municipalities have entirely excluded the relatively modest multifamily density proposed in this bill, and its enaction would be expected to result in material changes to local zoning maps.

Increased zoned capacity in the form of greater allowed density can provide benefits ranging from increased transit ridership to lessened automobile dependence, but fundamentally is a means of addressing soaring housing costs. In high-cost markets with a limited quantity of undeveloped land, the price of land is a major obstacle to providing homes at a reasonable cost. Allowing more than one home to be built on an existing residential plot is a necessary step toward controlling housing prices. That in turn would make it feasible for newly constructed homes to be less expensive than they currently are by

[1] Amy Dain, "The State of Zoning for Multi-Family Housing in Boston," June 2019, https://ma-smartgrowth.org/wp-content/uploads/2019/06/03/FINAL_Multi-Family_Housing_Report.pdf.

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allowing homebuilders to provide new supply in the form of multifamily in a variety of forms, and with as few as three units per structure.

While towns and cities are often skeptical of state intervention in local zoning matters, asserting that municipalities are more familiar with local issues than state lawmakers, the approach of establishing only a base zoning category and area leaves the specifics of location and implementation to the locality. This method of state zoning reform is one means of striking a reasonable balance between the urgent housing needs of the state and the desire of residents to retain control over the essential planning decisions that govern the form and development of their communities.

FACILITATING OPEN SPACE RESIDENTIAL DEVELOPMENT

New England's topography, characterized by rocky terrain and abundant wetlands, presents challenges to the development of housing due to the abundance of unbuildable land and the need to protect the shallow groundwater which feeds residential wells. The traditional approach of requiring homes to be built at very low densities—with one home being required to occupy one, two, or even three acres, with unbuildable land often excluded from the calculation—addresses these environment concerns at the cost of limiting the potential supply of housing and contributing to the ongoing shortage of homes.

Open space developments, though they do not change maximum allowable residential density as it appears on paper, allow for flexibility in approaching or meeting those maximums without impairing environmental objectives. They take a holistic view of environmental impact, acknowledging that density in one location can facilitate the preservation of other areas. The advantages of this approach have led increasing numbers of New England municipalities to incorporate open space developments into their zoning codes over the past 10 to 20 years, with advantages for both residential supply and land conservation.

HOUSING AFFORDABILITY AND ACCESSORY DWELLING UNITS

The proposed bill would require all single-family residential zoning districts in Massachusetts to allow accessory dwelling units (ADUs) by right and without unreasonable restriction on dimensions or siting. Accessory dwelling units offer Massachusetts residents several potential benefits. They create an opportunity for homeowners to offset a portion of their mortgage payment by renting out part of their space. They also create opportunities for greater housing flexibility to meet residents' needs as the country's demographics change. They make intergenerational living feasible, allowing young adults or elderly people to live with family members in spaces that can be built to accommodate any accessibility requirements.[2]

Accessory dwelling units also tend to be less costly than alternative types of housing for renters. Because ADUs are built on land that is already attached to a single-family home, their land cost is effectively zero. In Washington, DC, basement apartments are the most common type of ADU, and they tend to rent for hundreds of dollars less per month than standard one-bedroom apartments in the same neighborhood. A survey of homeowners with ADUs in Los Angeles County found that ADUs typically rent for $400 less per month than the county's median rent.

[2] Emily Hamilton and Abigail Houseal, "A Taxonomy of State Accessory Dwelling Unit Laws," (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, March 30, 2023.

State legislation promoting ADUs has proliferated in recent years. To date, lawmakers in nine states have passed laws allowing homeowners to add ADUs to their properties, with laws in four states (Idaho, Maine, Montana and Washington) having been passed in 2023 alone. At least 14 other states introduced bills concerning ADUs since the start of 2023. Massachusetts, which has residential lots that tend to be larger than those of most other states outside New England due in part to the prevalence of large minimum lot-size requirements, is particularly well-suited to accommodating ADUs given that many homeowners have ample unbuilt land on their properties.[3]

ESTABLISHING A STATUTORY FRAMEWORK FOR SITE PLAN REVIEW

Since the Massachusetts Supreme Judicial Court affirmed the authority of Massachusetts municipalities to conduct site plan reviews in 1970,[4] towns and cities in the Commonwealth have adopted numerous and varying procedures for the site plan review process. The result has been what one judge recently characterized as a "hodge-podge" of approaches that "cries out for a legislative solution in the form of an amendment to G. L. c. 40A providing municipalities with a standard procedure and appellate path for review of site plans."[5]

The bill under consideration proposes one such solution, establishing uniform standards and requirements for those municipalities that choose to implement site plan review as part of their land use application process. Notable among these standards are clear timeframes for the process as well as enumerated criteria for denial of site plan applications. Uniform procedures for approvals such as these stand to benefit state economies by reducing local barriers to housing production. They also relieve localities of the bureaucratic burden of drafting and administering a process that without state guidelines can result in costly and unwanted litigation.

The proposed language does, however, contain an allowance for public hearings as a part of the site plan review process. Although public hearings are a common element of American local land use procedure, they are generally not required for "by right" development and tend to delay applications while privileging the voices of a minority with the time and motivation to appear for the hearings. In the context of the proposed bill, where the criteria for denial of a site plan application are narrow and largely non-discretionary, it is unclear what non-expert public testimony could contribute toward a planning board's decision-making process.

CONCLUSION

Local government authority to regulate housing is based upon the state-granted power to protect health, safety, and the general welfare. The effects of local rules that prevent homes from being built in one locality are not confined to that locality, however, but spill over to the next. Local land use regulations that limit population growth, economic growth, and income mobility within one municipality limit growth and opportunity for the state as a whole. When local authority is employed in a manner that interferes with the urgent housing needs of state residents, lawmakers have the responsibility to consider interventions tailored to advancing the welfare of all state

[3] Emily Hailton and Abigail Houseal, "Legalizing Accessory Dwelling Units at the State Level: A New Hampshire Case Study," (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, March 30, 2023.

[4] Y.D. Dugout, Inc. v. Board of Appeals of Canton, 357 Mass. 25, 31, 255 N.E.2d 732 (1970).

[5] Corner v. Forest Delahunt Dev., LLC, No. 18 MISC 000316 (HPS) at *6 (Mass. Land Ct. Aug. 19, 2019).

residents. Legalizing open space residential developments and ADUs and implementing a limited multifamily zoning mandate are sensible approaches to reform that have been proposed or enacted in other states as well. The local site plan review process, an issue that has remained unaddressed by the Commonwealth for over 50 years, likewise deserves the attention the legislature is giving it in the proposed bill.