

May 2, 2017

House 2420, *An Act building for the future of the Commonwealth*

American Institute of
Architects - Massachusetts
Citizens' Housing and Planning
Association
Conservation Law Foundation
Environmental League of
Massachusetts
Fair Housing Center of Greater
Boston
Local Initiatives Support
Corporation - Boston
Massachusetts Association of
Community Development
Corporations
Massachusetts Public Health
Association
Metropolitan Area Planning
Council

Senator Michael Moore, Chair
Representative James O'Day, Chair
Joint Committee on Municipalities and Regional Government
State House, Boston MA 02133

Dear Chairmen:

I am pleased to submit testimony in support of *An Act Building for the future of the Commonwealth* (House 2420), filed by Representatives Kulik and Peake. This important measure, known informally as the “Great Neighborhoods” bill, would comprehensively reform our planning, zoning and subdivision laws for the first time since the 1970’s. The Massachusetts Smart Growth Alliance and a broad based coalition of development, planning, environmental, municipal and public health stakeholders believe that this legislation can simultaneously promote prosperity and our high quality of life.

Our Goals

1. Make it easier for young families and seniors to stay in their communities by providing housing choices.
2. Promote healthy, active communities with good access to open space and protections for critical natural resources.
3. Provide cities and towns with the tools they need to plan for the future so they can take on their fair share of the region’s growth while improving local finances and quality of life.
4. Establish predictable permitting rules that will help small businesses, property owners, and municipalities make investments to keep our economy and communities strong.

Why We Need to Reform our Planning, Zoning and Subdivision Laws

Before outlining the specific ways that this legislation will improve land use outcomes in Massachusetts, I want to describe the shortcomings of our current legal framework, which has not been significantly updated since the 1970s.

Housing supply not meeting demand. Multiple studies have documented that Greater Boston is not building enough housing—and particularly not enough of the right types of housing—to meet demand. In January 2014, the Metropolitan Area Planning Council (MAPC) released projections for Greater Boston showing that 435,000 new housing units will be needed by the year 2040. Most of these units must be multi-family and most located in urban areas to meet projected demographic demands. While significant factors include shifts in household size and housing preference, we already have a housing deficit caused by inadequate production over the last 25 years. Over the last 15 years,

Northeastern University's Dukakis Center has issued a "Greater Boston Housing Report Card" documenting the region's chronic failure to produce enough housing.

Rising prices and rents. Inadequate supply in turn, drives up the price of buying or renting a home. As observed by the "Housing Report Card," Greater Boston has been below the vacancy rate needed for stable rents for virtually every quarter of the last 15 years. The 2016 "Housing Report Card" indicates that Greater Boston is the third most-expensive market in the country for renters (behind only New York City and San Francisco). These market forces mean that residents live farther out to lower housing costs, or devote more of their household income to housing. The former intensifies sprawl, highway congestion, raises transportation and public infrastructure costs, and increases greenhouse gas emissions. The latter puts increasing economic pressure on households. Combined housing and transportation costs are eating up a larger share of family budgets—averaging 50%. (Center for Neighborhood Technology's 2010 report proposing Housing + Transportation Index to measure housing burden.)

Racial and economic segregation. While restrictive zoning makes housing less affordable, it also perpetuates and increases the racial and economic segregation that is an abiding issue in Massachusetts. While the overall diversity of Greater Boston is increasing, those populations are not living in the same neighborhoods. MAPC's 2017 State of Equity report found that racial segregation by neighborhood is increasing and that people of color tend to live in less-affluent neighborhoods than whites with comparable income. In March 2016, the Boston Globe asked sociologists Kendra Bischoff of Cornell and Sean Reardon of Stanford to provide data comparing economic segregation in 1970 and 2014. Throughout Eastern Massachusetts, both poverty and affluence are significantly more concentrated, with mixed-income neighborhoods non-existent or disappearing.

Who is being squeezed? Rising rents and prices mean that the problem is not limited to the households who have long struggled to find housing they can afford. Urban Land Institute's "Building for the Middle" report in January 2017 found that over a third of Greater Boston's middle class is "housing cost-burdened," meaning that they are forced to spend too much of their income on housing. Within the lower middle class, 42% were cost-burdened. They include people each of us know: a millennial living in their parents' home, a young family who can't buy a starter home or rent a three-bedroom apartment they can afford, a senior on a fixed income struggling to pay rent, or a senior who can't downsize as they want.

Demographic Imperative. It is particularly critical that our Commonwealth, which has an aging work force, retain and attract the young workers who fuel our innovative economy. Both MAPC's 2014 regional projections and the "Housing Report Card" document the demographic imperatives. More than one million "Baby Boomers" will retire by 2030 and must be replaced by younger workers. These are exactly the population cohort that has a strong preference for smaller homes in walkable, transit-connected places but is having difficulty in affording such homes because of rising costs and their college debt.

Effect on future economic growth. At the same time, employers are increasing dependent on this workforce, willing to site their offices in the places that attract this talent. A 2015 study by Smart Growth America identified hundreds of employers, many in Massachusetts, which moved from less to more walkable places to attract young workers. Our economic prosperity depends in significant part on stabilizing housing and transportation costs for our workers, while keeping the quality of life that is so important.

Need to maintain healthy, livable communities. Our quality of life depends on healthy, highly livable communities. For example, over the last 25 years, obesity has been rising in Massachusetts (from 10% to 23.6% according to the Trust for America’s Health). While there are many factors involved, physical activity is a key to reducing obesity and its health risks. Numerous studies have shown the linkage between walking and the built environment. Residents are more likely to walk in a neighborhood with sidewalks and a mix of uses, i.e., frequent destinations.

Increasingly, Massachusetts residents want to live in such walkable places, but our zoning laws are often a barrier to such development by making it difficult to build multifamily projects and by limiting allowed uses.

Losing land and critical natural resources. But quality of life is not always about urban, or even town, centers. For those who live and work in rural areas, preserving our natural resources is key to their quality of life. When sprawl development needlessly pushes new construction farther from areas of existing density and infrastructure, then those who want walkable neighborhoods and those who want to preserve scenic byways and a rural lifestyle both suffer.

Every day, thirteen acres of forest and farmland are being lost to low-density, residential sprawl. The Fifth Edition of “Losing Ground” from MassAudubon shows that from 2005 through 2013, approximately 38,000 acres of forest or other undeveloped land were converted to development. Regions particularly affected during this period include the Cape and Southeastern Massachusetts, parts of Central Massachusetts and the Merrimack Valley. In the communities that “Losing Ground” characterizes as the “Sprawl Frontier,” development tends toward single-family homes and commercial development along roadways, as well as large lot-size subdivisions.

Effect on Climate. Sprawl development not only consumes land, but increases car ownership, car trips, vehicle miles, and smog. Studies by Reid Ewing, Rolf Pendall and Don Chen have created a “sprawl index” and associated sprawl patterns with these negative impacts. When the Massachusetts legislature passed the Global Warming Solutions Act in 2008, it set critical goals to cut greenhouse gas emissions. The executive branch, in its implementation plan, identified changes in land use patterns as one way to achieve reductions and noted the need to reform planning and zoning statutes.

Fiscal cost of sprawl. Sprawl is not even a sensible land use pattern from a narrow fiscal viewpoint, as distributed development is more expensive for municipalities to sustain. A

2015 Smart Growth America study on the fiscal impacts of development patterns indicated that road, water, stormwater, fire protection, school transportation and waste collection costs were all higher with low-density patterns.

Are these outcomes we choose? For the most part, Massachusetts residents have not chosen to build too few of the homes we need, live in isolated neighborhoods, or chosen to create sprawl. A major reason for these undesirable outcomes is that we are still using a zoning regime based on what worked in the 1970's.

What the Great Neighborhoods Bill Would Do

The Great Neighborhoods bill would amend Chapter 40A (zoning), Chapter 81D (master planning), and Chapter 41 (subdivisions). These are the statutes that provide the legal framework for municipalities (other than Boston) in their land use controls. House 2420 also proposes amending Chapter 151B, to make discriminatory land use practices illegal.

There is nothing proposed in House 2420 that is outside of mainstream land use practice in the rest of the United States. Indeed, this bill would bring Massachusetts more in line with the zoning and permitting rules of our competitor states—the very places that have been more effective at building additional housing than the Commonwealth over the last two decades. We have incorporated language wherever possible that has proven successful in other jurisdictions. It is the status quo in Massachusetts that is peculiarly outdated, and ineffective.

Great Neighborhoods is not a magic bullet that will quickly fix the broken land use system we now have. Our goal with House 2420 is to encourage cities and towns to think about future growth and to plan, re-zone, and streamline their permitting processes. If we do this, we believe that cities and towns will identify areas for growth and, with the support of the Commonwealth, will create places such as town centers, urban squares, and rural villages where more dense development can occur.

The key provisions of House 2420 support our four goals:

A. Increasing Housing Choices

The Great Neighborhoods bill would create more housing choices, particularly for families and seniors, by setting the bar for multifamily housing in sensible locations and for accessory apartments. Zoning reform can also increase production of housing and commercial development by making permitting prompt and predictable.

Multifamily housing: Every community would be required to provide “reasonable and realistic opportunities” for multifamily housing in smart growth locations. The bill provides cities and towns with flexibility about how to reach this standard. Multifamily zoning could be “as of right” or “special permit.” No specific density is required. This approach differs from what is proposed in House 1095 and House 1112, also being heard today, which require zoning “as of right” and per acre densities of 14 (8 for rural towns)

and 20, respectively. Many members of our Great Neighborhoods coalition believe that House 2420’s flexibility is necessary because of the varying characteristics of our cities and towns. Other coalition members believe that a specific requirement is stronger and necessary. We are united in this conclusion: incentives (e.g., Chapter 40R smart growth overlay districts) have not created enough of the zoning we need.

Accessory apartments: Accessory apartments are small units carved out of the main structure of an existing home or small units created in a detached structure on the lot, such as a garage. They are used typically for relatives, caregivers or sometimes for rentals. The bill makes accessory apartments as of right if they are within the main structure, the lot size is 5,000 square feet or more, and the accessory units are 900 square feet or less. The municipality could limit the total number of such units to 5% of the existing housing stock and could require that one unit be owner-occupied.

Artist live/work spaces: Most artists cannot afford to both pay for a home and for a studio. A number of cities and towns have relaxed zoning rules so that artist live/work spaces are possible, e.g., lofts in industrial areas. Artist live/work spaces have not only helped artists but have contributed to creating more vibrant neighborhoods. The bill would require each municipality to allow such spaces, whether by special permit with criteria of the municipality’s choosing or as of right.

Reducing the difficulty of obtaining a Special Permit: Currently a special permit requires a super-majority vote to be approved. House 2420 reduces the default vote majority to approve (from 3/3, 4/5, or 5/7, depending on size of board) down to a simple majority regardless of size of board. Since many municipalities require special permits for multi-family housing and commercial development projects, this change could have a significant impact on production.

Zoning variances: The state's current eligibility criteria is so strict that many cities and towns grant almost no zoning variances; others ignore the statute and grant them subject to no standards. There is no middle ground, and at both extremes, it is a broken statute. House 2420 rewrites the current variance statute in its entirety, expanding landowner eligibility to apply for a lawful variance and setting reasonable procedures and criteria. A more reasonable variance statute provides the intended flexibility to municipalities and property owners, especially those who need to make changes to their home as their family needs evolve.

B. Preserve Open Space, Discourage Sprawl and Promote Public Health

House 2420 results in environmental and public health gains by its effects on land use patterns. It also removes some of the zoning rules that make roadside residential and commercial development the path of least resistance.

Cluster or Open Space Residential Development: The bill provides an “open space residential development” option as of right where there is large lot zoning (40,000 square feet or more). The developer must be willing to cluster the homes on smaller lots, design

around critical natural resources and dedicate at least 30% of the remaining land to protected open space. This would apply only to proposals for five or more homes.

Walkable neighborhoods: More multifamily housing in smart growth locations and more accessory apartments will create more density in the right places. This will support a “complete streets” approach in these new and existing neighborhoods.

Modern tools for preserving open space and reducing sprawl: Modern zoning tools like natural resource protection zoning and transfer of development rights can be used by municipalities to reduce loss of forest and farmland.

Option to replace “ANR” lots with lots regulated via minor subdivision controls: Current Massachusetts law prevents communities from effectively planning or regulating development of roadside land, through the uniquely permissive “approval not required” (ANR) process. No other state law allows unregulated roadside development in this fashion. At the same time, small residential subdivisions with a new road must undergo the same process as those with 50 or 100 lots. The bill permits a community to eliminate the ANR loophole if it creates a less onerous minor subdivision review process for projects with six or fewer lots. Reform of the “ANR” provision in the Subdivision Control Law is needed because easy approval of roadside lots makes even the worst, unpaved roads in the most remote places a prescription for sprawl. It is particularly responsible for spoiling scenic roadways. In deference to parcels in the farm and forest programs, the bill exempts the creation of two ANR lots a year from these properties.

Notice to public health boards: The bill requires notice to health boards when applicants file project proposals.

C. Provide Municipalities with Tools to Plan for the Future

Municipalities intend that land use controls will enhance the quality of life for residents; one of the underlying goals of a state statutory framework for planning and zoning is to give them clear and effective tools. Through several major reforms and a number of modest ones, House 2420 will give municipalities tools to plan for their future.

Development impact fees: Massachusetts is one of the few states where assessing a fee on a developer for off-site impacts is not common practice. Rationally-based impact fees are predictable for developers and can reduce local opposition to some development projects, because there is confidence that projects will bear their fair share of impacts on public infrastructure. This allows more types of development to be permitted as-of-right instead of undergoing the lengthy and costly special permit process. This new section in the Zoning Act authorizes development impact fees and establishes a fact-based process for determining a project’s off-site impacts. The bill clearly lists the public infrastructure for which impact fees may be assessed and prohibits double-dipping. Affordable housing projects and agriculture are exempt from impact fees.

Modern zoning tools: The bill adds or expands definitions and authorizations for many useful zoning techniques, including cluster development, transfer of development rights, inclusionary zoning, natural resource protection zoning, and form-based codes. While Massachusetts municipalities have adopted local ordinances with one or more of these tools, in some cases (e.g., inclusionary zoning) they do so at the risk of legal challenge.

Master planning: Many municipalities do not create or regularly update their master plans because it is so costly and time consuming to do so. The bill streamlines the process by making more master plan elements optional. The bill also rewrites the master plan section to add language on sustainable development principles, including public health and climate change, and otherwise modernize the content of such plans.

Site plan review. Many communities already employ a form of site plan review (SPR), but because there are no explicit standards in the Zoning Act, uncertainties have plagued the SPR process. The bill adds a new section that standardizes SPR as follows: (1) decisions must be made within 95 days, with a public hearing optional; (2) when SPR overlaps with a special permit, the reviews must coincide; (3) approval is by simple majority; (4) approvals may be subject to conditions, including off-site mitigation in limited circumstances only; (5) duration shall be a minimum of two years; and (6) appeals shall be based on the existing record, not new evidence.

Vested rights. It is appropriate and fair that when zoning changes, the law should protect development projects already in the pipeline, where a substantial investment of time and money has been made. In the Zoning Act, however, some of these protections are excessively protective. The vesting loopholes for subdivisions and Approval Not Required (ANR) plans undermine thoughtful local planning and zoning modifications. The bill proposes to modify the first loophole, mainly by protecting submission of definitive subdivision plans and not preliminary ones, and would eliminate the ANR vesting loophole.

Citizen board training: Planning, zoning, and subdivision decisions in Massachusetts are made by citizen boards. Members of Planning Boards and Zoning Boards of Appeals need more and better training opportunities. While a number of other states have mandatory training, Massachusetts relies on voluntary training provided by the Citizen Planner Training Collaborative (CPTC). It provides workshops and trainings and most of its trainers provide their services without any compensation. Although CPTC accomplishes a lot on a shoestring, it is not a sustainable model and certainly does not provide the consistent, statewide coverage that we need. The bill does not require training, but does require the Department of Housing and Community Development to establish and maintain a program, in consultation with CPTC's members.

D. Predictable Permitting Rules

Appeals: House 2420 allows judges to require non-municipal parties who appeal special permits, site plan reviews, and variances to post a bond of up to \$15,000. The bill also streamlines the appeals language for site plan review, special permits, and subdivisions; providing for a record-based decision (*certiorari*) rather than a decision based on new evidence by the court evaluating a local approving authority's action; and clarifies the jurisdiction of the Land Court permit session to include residential, commercial, industrial, and mixed-use projects.

Land use dispute avoidance: House 2420 introduces a voluntary, “off-line” avenue for applicants and municipalities to work out issues in a prospective development project so that the later formal approval process may be successful.

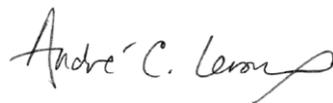
Variances, site plan review, development impact fees and lower special permit majority thresholds: Many of the changes discussed above also make permitting more reasonable and predictable.

Conclusion

The Great Neighborhoods campaign has been endorsed by a broad coalition including the American Institute of Architects/MA Chapter, American Planning Association/MA Chapter, Environmental League of Massachusetts, Massachusetts Association of Community Development Corporations, Massachusetts Public Health Association, the Massachusetts Association of Planning Directors, Transportation for Massachusetts and many other organizations.

We believe that House 2420 as drafted represents a significant step forward for planning, zoning, and permitting in the Commonwealth. Thank you once more for your consideration of this important matter.

Sincerely,



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