

June 7, 2023

RE: HB 3414 (Limits conditions under which local governments may deny variance for housing development within urban growth boundary.)

House Committee on Rules,

I am an Oregon planner with a background in community development and strong investment in seeing affordable housing grow. Among the many well-intentioned moves toward addressing our ongoing housing crisis, I see some proposals that unfortunately fail to hit the mark---that are unlikely to address meaningful barriers for housing, while undermining other worthy goals important to our communities. HB 3414 is such a bill, presenting an overly broad decree preventing a jurisdiction from denying a variance to nearly any development code standard presented for nearly any reason. The dash-17 amendment to HB 3414 seemingly makes this proposal even worse, undermining key land use goals while ignoring the real issues holding development back on available land inside the UGB, particularly the lack of funding for infrastructure.

While I am open to having more focused development standards, there are also good reasons to require many of the standards presented in development codes throughout the state, from balancing the need for development with reducing impacts to natural resources like wetlands, ensuring what we can for decent pedestrian access, or relatively simple measures to protect our tree canopy where feasible. To the extent this bill is written to allow any variance request, it essentially undermines all standards, while ironically retaining the variance process and related fees.

Even if the legislature wishes to remove certain standards statewide, a better approach would be to invalidate certain kinds of standards writ large to remove the process and fee barriers related to most variances, and free up local staff time to focus on meaningful review. In my experience as a planner in development review, many of the time-based barriers relate directly to low staffing levels, and juggling an influx of variances to be processed but where meaningful review isn't possible (short of an extremely extensive process for defending how the standard relates to health/safety where the burden of proof has been shifted to the jurisdiction) is going to make that worse.

Overly Broad

Here are just a few of the types of standards that could potentially be invalidated through a Variance if this law is passed:

- Simple standards to include a walkway from the street to one of the doors on a site
- Clear and objective standards to protect neighboring trees from development impacts where feasible
- Clear and objective standards limiting incursions in environmental zones
- Standards intended to prevent avoidable erosion and ensure slope stability
- Requirements for inclusion of a modest amount of outdoor space
- Requirements for street trees
- Standards that limit overbuilding parking and that encourage safe places to walk along frontages

Puts the Burden of Proof on the Jurisdiction /At Odds with Clear and Objective Requirements

Under the wording of this bill, the applicant would not even have to give a reason for the Variance or show how it is needed to support their housing objectives. They could very well obtain a Variance to

nearly all standards. The burden of proof that the standard relates to the poorly defined “health, safety or habitability” falls on the reviewing jurisdiction to guard against every standard. While jurisdictions already are otherwise required to hold developers to clear and objective standards, jurisdictions would then be left holding only potentially discretionary arguments for standards that were previously adopted through democratic community-driven processes.

For example, I included above the example of standards for erosion control and slope stability. Say a jurisdiction has a standard that allows no more than X% or so-many-thousand square feet per home site in an area identified as having steep slopes and at risk for potential slope failure. The developer in this example could request a “Variance” allowing full clearcutting and heavy grading of the site well beyond what was needed for the intended home or homes (views are a big motivator). While there are absolutely public health and safety justifications for these standards, putting the burden of proof on the jurisdiction poses many technical challenges versus following established clear and objective standards, undermining the intent to preserve health/safety-related standards. Under the current paradigm, developers could most likely still vary from the clear and objective off-the-shelf standard, but would be responsible for showing they still met health/safety needs by submitting a geotech report and making the case that the mega-mansion of their dreams will include some really good retaining walls that will help the slope. If the jurisdiction instead holds the burden of proof, it is less likely they will be able to implement the standard since the jurisdiction will instead be responsible for gathering information outside of their purview and what they can access---the reviewing jurisdiction can't, for example, know what alternative building techniques might be in reach, and will be fighting an uphill battle to defend every standard in their code, stressing local resources beyond reason, and even taking away staff time that could be better spent sharing information and providing reviews to other housing projects.

Disadvantages Small Builders and Owners

Additionally, even if the Legislature really does want to see Variances to every standard down to simple walkways, it would actually be more honest and fair to legislatively invalidate local standards that the Variance rule would apply to across the board. Why make people pay Variance fees and slog through the review process, and waste local staff time processing these requests, when the answer is a guaranteed yes? The only advantage of requiring a Variance at that point would be to give a leg up to the most advantaged developers with the resources to watch legislative proceedings, and disadvantage the average homeowner or small builder who would benefit from skipping out on the same standards.

Doesn’t Address Real Barriers

Overall, I am supportive of other areas where the legislature can step in for housing, but unfortunately some of the real barriers for housing development are more complex issues than this bill acknowledges.

One of the biggest things Oregonians need from the legislature is support for local infrastructure, from sidewalks to stormwater systems. There are areas in the Portland region that are well within the Urban Growth Boundary and zoned and ready for development, but that will require substantial investments to extend sanitary sewer systems, study pump stations, and otherwise get ready for lot-level development. We experience neglected public infrastructure systems in our established communities, and struggle to provide efficient new systems in growing areas in a timely way that allows them to flourish. We’ve lost traction on the notion that we can pay for these critical improvements primarily through incremental development-driven investment, and the State is not making up the difference. Our communities need meaningful tax reforms and other measures that meaningfully fund infrastructure, not libertarian fantasies that if we don’t require those pesky tree protection fences, somehow our housing woes will be solved, even if the face of massive gaps in roads and sewer lines.

Secondly, approaches that target deregulation as the primary tool for spurring housing naively underestimate the savvy of brokers and developers in bidding for land. People will pay more for land perceived as cheaper or easier to develop; sellers and brokers regularly study their property's development potential. Signally a free-for-all on development standards as HB 3414 would, risks driving land prices up, even as real technical barriers underpinning the reason for many development code standards remain. Correcting failures of accurate information in the market would only be more challenging in an environment where any written standard can be varied without question, but remains on the books.

If the legislature truly wants to see certain common standards wiped from more local communities, a better approach would be working through DLCD, as with other efforts like middle housing, to come up with guideposts around standards for housing. The legislature would also do better to help ensure that cities and counties have the resources for adequate staffing in their departments as the most meaningful approach to ensuring timely reviews.

I wish the committee the best of luck with some of the other proposals to support affordable housing that are under consideration this session. HB 3414 however should not be among those that move forward.

Thank you for your consideration,

Tabitha Boschetti
97215