



American Planning Association
Oregon Chapter

Creating Great Communities for All

May 9, 2023

House Committee On Rules
Representative Julie Fahey, Chair
Representative Vikki Breese-Iverson, Vice-Chair
Representative Jason Kropf, Vice-Chair

RE: Testimony from the Oregon Chapter of the American Planning Association (OAPA) in Opposition to the Variance\Adjustment Portion of HB 3414.

Dear Chair Fahey, Vice Chairs Breese-Iverson and Kropf, and Members of the Committee:

The Oregon Chapter of the American Planning Association (OAPA) is a nonprofit professional membership organization of over 800 planners and those who work with planning in formulating and implementing development and conservation policies at the state and local level.

OAPA agrees that producing housing to meet the needs of Oregon residents is an urgent priority. However, HB 3414 essentially discards all other policy goals such as providing environmental protections, addressing climate change by creating pedestrian-friendly communities to reduce dependence on cars, and providing equitable community engagement. Furthermore, HB 3414 will make it more difficult for local permitting processes to operate due to its broad, vague language, and the shifting of the burden of proof from applicants to jurisdictions.

HB 3414 has two components.

1. Limiting the ability of local governments to deny a variance or adjustment if it involves housing. OAPA opposes this portion of the bill.
2. Creating a new state office, the Housing Accountability and Production Office (HAPO), which would provide technical assistance to local governments and seek to reduce regulatory barriers to housing production through compliance with housing laws. OAPA supports the creation of the HAPO office and its proposed functions, although improvements and clarifications to the HAPO provisions in the bill are needed.

Whether it is intentional or not, HB 3414 fundamentally and dramatically alters how housing is regulated in Oregon, threatening a 50-year legacy of Oregon Planning.

Cities and counties already have variance or adjustment processes in local codes. These provisions exist to provide a relief valve for properties that may not otherwise develop appropriately due to existing regulations and physical or locational constraints. Cities and counties do not zone residential properties with the intention of never approving development. The various physical circumstances found around the state do not admit of a single result or approach. The variance or adjustment process is necessary to deal with individual circumstances, which cannot be anticipated in advance.

The efforts to create an ever-growing list of exemptions to possible variances or adjustments highlights the problem with the bill – the attempt to anticipate in advance all circumstances to justify relief is contrary to 50 years of good planning in Oregon and would be contrary to its desired result.

Increasing the housing supply need not compromise the natural environment, nor the health and safety of Oregonians. We are very concerned that the variance process will only weaken these protections on properties where housing is already allowed. On vacant properties, applicants can simply ignore many of these protections, and equally concerning, property owners may redevelop their existing residential properties and ignore those regulations in place that they find inconvenient.

Instead of changing variances and adjustments from the standpoint of what is characterized by enumerated exceptions from the ability of local governments to meet local needs while reinforcing the concomitant need to meet numerical housing standards at the same time – the two can and should coexist.

Creating a new highly discretionary variance process controlled entirely by applicants undermines the work of many jurisdictions to create clear and objective standards for housing. Switching the burden of proof to the local government to justify the denial rather than the applicant and further asking local government staff to determine whether denial of a variance is necessary to address a “health, safety or habitability issue” without any process is likely to lead to litigation.

If the legislature believes this concept may have merit, the better part of discretion is to consider that concept before the next session. OAPA is both an advocate and a resource in the statewide effort to produce the thousands of housing units needed. If the desire is to maximize housing density in residential zones, then the solution ought to address barriers to increased housing density rather than the creation of the new mandated variance process.

We suggest the following amendments if the variance language is retained however:

- Leave the burden of proof with applicants, as it is for every other permitting process;
- Limit the number of adjustments for each project;
- Rather than attempting to list appropriate exemptions, the bill should state explicitly what regulations may be adjusted with this approach. This will be easier to administer, and transparent for applicants, staff, and communities.

OAPA supports the proposed amendments related to the Housing Accountability Production Office (HAPO) as proposed in the -6 amendments posted 5/8/2023. We appreciate the focus of this new office on providing both technical assistance to local governments and resources to housing developers to support the development of housing in Oregon. The language of the -6 amendments better frames these actions as priorities before taking corrective action through receiving and investigating complaints regarding Oregon’s housing laws. In particular, we support the focus on potential violations involving review of applications for residential development, permits for housing, and divisions of land for housing. Other decisions such as updating comprehensive plans to comply with housing laws, including Goal 10, are best left to the Department of Land Conservation and Development.

With respect to the HAPO, OAPA also wants to highlight that a number of our members work for smaller cities and counties and may be the only planner on staff. In this situation, the planner works on both long range and current planning, and likely with little or no support staff. We suggest that efforts at providing technical resources focus on cities that need the help, so they can review and permit needed housing in a timely manner and also ensure their communities' plans are up to date with respect to housing including updated buildable land inventories, housing capacity analyses, and development codes.

There are some specific areas for improvement and clarity needed with respect to the HAPO provisions.

- It is unclear how this proposed review of violations will square with existing litigation routes of local governments' land use decisions: (LUBA appeal) and non-land use decisions (Circuit Court writ of review) or DLCD/LCDC for review/enforcement of comprehensive plans, UGB expansions, etc. A complainant could file simultaneous or concurrent appeals through LUBA, circuit court or to LCDC. This means a local government could be responding to three separate venues for the same complaint. When does a local government action become final and not subject to further review?
- Complaints are not limited to developers, any interested party could file complaints with the HAPO, including community members opposed to housing development.
- The bill does not include a statute of limitations for enforcement – meaning that someone could complain about a housing law violation years after the fact. This leads to uncertainty for developers, local governments and residents.

We thank you for the opportunity to provide this testimony on HB 3414.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Aaron Ray', with a stylized flourish at the end.

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President, Oregon Chapter of the American Planning Association
Relevant Resources, Better Planners, Exceptional Communities

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