

To: Members of the House Committee on Rules

Date: May 10, 2023

Subject: Part Support, Part Opposition to HB 3414

Chair Fahey, Vice-Chairs Breese-Iverson and Kropf and members of the committee:

My name is Eli Spevak. I am an in-fill homebuilder, affordable housing developer, long-time planning commissioner in Portland, OR, and consultant nationally on zoning reforms to expand housing options in residential neighborhoods. I appreciate the intent behind HB 3414 - and support a couple elements of it. But I encourage your committee to leave the core of the bill related to auto-approved adjustments on the cutting room floor. My comments focus on the -6 amendments, although some apply to both.

Support:

- **Award attorney fees for challenges to needed housing** to the applicant, rather than just in situations where regulated affordable housing is proposed. This would reduce the risk and frequency of legal challenges to housing that Oregonians need – across the income spectrum.
- **Create and empower an Oregon Housing Accountability and Production Office** to identify & remove barriers to housing production. Leadership already exists at the state and many local jurisdictions for regulated affordable housing, which is great. But the vast majority of housing in our state has and will continue to be market rate. We need that too – and a greater focus on ensuring it actually gets built.

Oppose:

The intention of Section 2 of the bill is to prevent local jurisdictions from adding costs or constraints to the construction of needed housing. I recognize that some jurisdictions, including my own (Portland), sometimes go too far in this regard. But the proposed cure is worse than the disease.

As Mayor Heidi Lueb of Tigard shared in her testimony: “This bill will effectively remove all siting and design standards for all housing development. A by-right allowance for a variance has the same effect as repealing all regulatory standards. This will unconditionally remove the city’s power to grant variances only in instances where developers meet city climate, equity, or connectivity goals.”

As one example, Section 2 would provide free reign to some of the worst impulses of individual property owners and of the development industry. For instance:

- Builders could design housing that turns its back entirely to the public realm. An extreme (but still imaginable) scenario would be a street frontage of windowless garages, built right up to the sidewalk and with curb cuts that commandeer all on-street parking for private parking access. Builders could also obtain auto-adjustments to entirely bypass landscape site & perimeter requirements – and plant nothing at all.
- Individuals could create private fortresses at the expense of the public realm and immediate neighbors. Under this bill, someone could erect 12+’ tall fences on all sides of their property (including the street frontage) in conjunction with a new house. They could also site the house right on any property line, up to the height limit, so long as the property line wall is built with concrete block to meet fire code. Either of these would cost (a lot) more money, but cost savings is not a criteria for earning an auto-adjustment.

Of course, most folks won’t build homes w/ 20’ tall fences surrounding their entire property – or build 3-story homes right up to the property line with a neighbor (or with a towering retaining wall along one side). And most developers won’t build windowless walls facing the street. But a few will. And it’ll piss people off, hammer the

public realm, and there won't be any way for a local jurisdiction to intercede - or to offer any assurance to residents that the same thing won't happen to them too. Because it might.

Although these examples relate the public realm and how much one neighbor can impact another, they aren't the only issue areas where locally-negotiated zoning code provisions have been adopted to meet important community needs – and which would be rendered un-enforceable should this bill pass. Some advocates on these issues have discovered HB 3414 and are weighing in (loudly!); others clearly haven't discovered it – yet. Do we really want a bill that will mobilize the wrath of all of the following interest groups over a new state-level intervention in local land use?

- Aging advocates (multiple steps, visitability, ...)
- Public realm advocates (glazing in fascades, garages pulled back, fence heights...)
- Bike advocates (off-street bike parking; climate-friendly transportation choices)
- Tree advocates (tree protection in the code; shade equity)
- Design advocates (clear & objective point system for taller residential buildings)

Even while acknowledging that some zoning rules on these issue areas may go too far, Section 2 of this bill allows no room for compromise. It muzzles the ability of zoning to address any of these issues, even in a nuanced fashion, for the coming decade.

Lastly, I'll share a few technical concerns:

- Could a housing developer get an automatic-adjustment out of state-required zoning code provision (e.g. multi-family EV charging infrastructure)? Seems like one part of the state fighting another...
- If passed, cities could easily game large portions of Section 2. Wherever it allows up to a ___% change to a standard, the city could adjust its standards by the same (or greater) amount in the opposite direction to nullify the impact.
- What is the threshold for vesting – and duration of that vesting - ahead of the proposed sunset date (in 2033)?
- Most zoning codes clarify which standards are (or aren't) adjustable, in a code chapter and/or interspersed through the code (e.g. "adjustments to this standard are prohibited"). Would Section 2 of this legislation over-rule all of those determinations? I suspect so. But if not, wouldn't jurisdictions just respond by adding language to their code establishing their own rules on what can/can't be adjusted.

Ultimately, the production of needed housing in Oregon is more threatened by zoning maps (a core issue, thoughtfully addressed with HB2001), permitting timelines, and financing costs more so than by by-right zoning standards.

Let's pursue those items rather than tossing out the positive benefits of residential zoning for the public realm, neighbor relations, and other community & climate benefits.

Thank you for your consideration.



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