



September 28, 2017

Andrew Gottlieb
Executive Director

Senator Julian Cyr, Senate Chair
Joint Committee on Community Development and Small Businesses
Room 218, State House

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Representative Edward Copping, House Chair
Joint Committee on Community Development and Small Businesses
Room 26, State House

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Vice President

RE: Testimony Regarding S.81, An Act Promoting Housing and Sustainable Development

Robert Summersgill
Treasurer

Dear Chairman Cyr and Chairman Copping:

Elizabeth Jenkins
Clerk

The Association to Preserve Cape Cod (APCC) thanks the Joint Committee on Community Development and Small Businesses for the opportunity to provide written testimony on S.81, An Act Promoting Housing and Sustainable Development.

Elliott Carr

Michael Corrigan

Anne Ekstrom

Katherine Garofoli

DeeDee Holt

Thomas Huettner

Pat Hughes

Cheryl Lubin

Founded in 1968, APCC is the Cape Cod region's leading nonprofit environment advocacy and education organization, working for the adoption of laws, policies and programs that protect and enhance Cape Cod's natural resources and quality of life. As an organization having extensive firsthand experience in understanding the vital role that smart land use planning plays in our ability to protect Massachusetts' environment and improve the livability of its communities, APCC strongly encourages the committee to focus its energy on moving forward on a comprehensive zoning reform bill in a timely manner, but one that is substantially different from the language contained in S.81.

Blue Magruder

Eliza McClennen

Maureen O'Shea

Donald Palladino

We respectfully urge the committee to amend S.81 by replacing current problematic provisions in the bill with related language in H.2420, An Act Building for the Future of the Commonwealth, filed by Rep. Stephen Kulik and Rep. Sarah Peake. We further request that the committee delete Section 34A of S.81 pertaining to exclusionary practices.

Daniel Webb

For over one and a half decades, APCC has been an active member of the Zoning Reform Working Group, a broad-based, state-wide coalition of professional planners, environmental organizations, housing advocates, public health organizations, land use attorneys, and officials from the state, regional and municipal levels that has worked in close collaboration with members of the state legislature on the effort to reform and update the Commonwealth's antiquated and ineffective zoning, planning and land use laws.

The coalition's efforts have concentrated on a number of much-needed priority reforms to state zoning law that are accepted nationally as modern planning and land use practices, but that are poorly written in—or missing from—Massachusetts state law. These zoning reform priorities include statutory corrections such as:

- Amendments to vested rights provisions that level the playing field between developers and municipalities by providing fair protections for developers but

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that also protect the ability of a municipality to propose and adopt zoning changes by adjusting the point at which vesting occurs and by freezing the zoning for the proposed plan only.

- Major modifications to the Approval Not Required provision, a provision that is found nowhere except Massachusetts and that is responsible for unregulated sprawling development, frequently on substandard roads.
- Reasonable increased flexibility to grant variances that is still compatible with the intent of the local zoning and the character of the surrounding neighborhoods.

These core zoning reform principles, along with many other important updates to state zoning law, are included in H.2420 and are based on national norms for zoning and land use.

Unfortunately, these same zoning reform principles described above, which are at the heart of the state-wide zoning reform effort, are written in such a way in S.81 as to further impede good municipal planning and perpetuate harmful, sprawling development patterns that have plagued Massachusetts for too long.

APCC recommends the following amendments:

Vesting Rights: Amend Sections 11 – 15 in S.81 by replacing them with Sections 11 – 17 of H.2420.

Approval Not Required/Minor Subdivisions: Amend Sections 26 – 29 and Section 32 in S.81 by replacing them with Sections 29 – 32 and Section 34 of H.2420.

Variances: Amend Section 22 in S.81 with Section 24 of H.2420.

Also, in contrast to the language in H.2420 that requires all municipalities to provide multi-family housing according to community and regional needs, S.81 mandates a “one size fits all” density approach that is not appropriate in all communities and would not be workable in many cases due to infrastructure constraints and traditional rural development patterns. To provide for multi-family housing, but in a manner that acknowledges the differences in communities across the Commonwealth, APCC recommends the following amendment:

Multi-Family Housing Requirement: Amend Sections 6 and 8 in S.81 with Sections 6 and 8 of H.2420.

H.2420 achieves a carefully crafted balance of zoning reform, planning and housing production provisions that enjoy enthusiastic support among a large and diverse group of stakeholders, as evidenced by the strong support the bill received in a hearing held by the Joint Committee on Municipalities and Regional Government on May 2nd of this year. There are desirable provisions in S.81, such as inclusionary zoning, accessory dwelling units by right, development impact fees, natural resource protection zoning and cluster development, to name a few, but these same provisions are also found in H.2420. Amending S.81 with the language from H.2420 recommended above would not eliminate these and other important planning tools.

However, APCC must point out Section 34A in S.81, the so-called exclusionary practices provision, which attempts to address discriminatory land use practices. It is APCC’s position that this provision, although commendable in its purpose, would turn unintended consequences from any bylaw, regulation, ordinance or policy into a potential discriminatory land use practice. It places the burden of proof (and the costs) on the municipality to show that its actions were not motivated by discrimination. The ambiguous language of the provision means practically every zoning change could result in such an

allegation, leaving little incentive for a municipality to make any changes to its land use regulations, even for improvements that produce a greater community benefit. We recommend that this section be removed in its entirety.

The time for meaningful, comprehensive zoning reform is overdue in Massachusetts. The Joint Committee on Community Development and Small Businesses has the opportunity to move forward on zoning reform legislation that will set Massachusetts on the right course for building strong, vibrant, desirable communities in the 21st century. But, it is critically important that the correct legislative package of reforms be supported by the committee in this endeavor. Amending key sections of S.81 by substituting them with the language of H.2420, which has wide stakeholder support, will achieve this goal.

APCC thanks the committee chairs and the members of the committee for their consideration of and attention to this important legislation.

Sincerely,



Don Keeran
Assistant Director

cc: Rep. Stephen Kulik Rep. William Crocker
 Rep. Sarah Peake Rep. David Vieira
 Sen. Viriato deMacedo Rep. Dylan Fernandes
 Rep. Timothy Whelan Rep. Randy Hunt