

Submitter: Colin Cortes

On Behalf Of:

Committee: House Committee On Housing and Homelessness

Measure: HB3414

Dear Members of the House Committee on Housing and Homelessness:

I am a practicing city planner who writes concerning two bills that are in committee and specifically scheduled for March 23, 2023 public hearings by the House Committee on Housing and Homelessness: HB 3414, "Limits conditions under which local governments may deny variance for housing development within urban growth boundary", and HB 3569, "Establishes alternative process by which local government must approve application to develop housing on lands zoned to allow residential uses". Below I focus on HB 3414.

HB 3414:

Particularly Sections 1 and 2 of the bill are dumb because by definition a variance is discretionary process and premised on the idea of a provable hardship necessitating non-conformance with the local land use regulation in question. A variance is also premised on a requirement or standard being just that, and made to go way only through discretionary process with a great burden of proof upon an applicant. This is particularly the case for local governments that allow for adjustment, akin to a minor variance, to do just that, adjust how development meets a requirement or standard to do something different that meets the intent of the requirement or standard and to do so more easily than through variance.

The bill can only be interpreted to mean that all local government land use regulation is meaningless and void because local land use regulations are typically set up to allow variance request for any regulation other than a few common exceptions such as maximum density per a Comprehensive Plan and zoning district. At present, developers can request variances for most anything in local land use regulations. It could be argued – as developers would – that the bill means that developers can apply for variance even when local law does not provide for such and that cities must approve them, leading back to the idea that all local government land use regulation is meaningless and void. With this bill, it is reasonable to expect local governments to abolish variance or to amend the process to preclude it in all but a few cases, for example, that variance is allowed only relating to septic tank and city sewerage development issues, and some similar limited and technical issues related to public health. Or, local governments would re-term the variance process to something other than the word "variance" and so neuter the bill (because neither ORS 197 that the bill would amend or the bill itself defines the term -- thankfully).

In closing, I urge the Committee to let the proposed bill expire.

Sincerely,

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