



Comments to Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions

Introduction.....1

Guiding Principles for Good Growth1

 Fair.....2

 Practical.....2

 Predictable2

MEREDA Engagement, Advocacy to Streamline State and Local Laws: a Case Study3

 The Problem: Redundant, Unnecessary Review of the Interior Division of a Building into Housing Units..4

 The Fix: A Legislative Solution4

 The Lesson: Small Change, Big Lift.....5

Conclusion.....5

Introduction

The Maine Real Estate and Development Association (MEREDA) Public Policy Committee offers the following comments to the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions.

MEREDA is a statewide, membership-based organization founded in 1985, whose members include real estate owners, for profit and nonprofit developers, architects, engineers, bankers, property managers and other related professionals. The mission of MEREDA is to support responsible development and real estate ownership throughout Maine. Through the work of its Public Policy and Local Issues Committees, MEREDA pursues a more **fair, predictable and practical policy environment**.

Guiding Principles for Good Growth

Maine is geographically huge and diverse – there is no one size fits all solution, and MEREDA recognizes that there are matters that are local in nature and which are best addressed locally. However, the State is empowered to mandate certain land use laws in municipalities, and it is appropriate for the State to utilize that power when it is in the best interest of all Maine people.

The Commission has been presented with, or has suggested, a number of recommendations to accelerate good housing growth in Maine. Rather than respond to each of those recommendations in detail, MEREDA offers the following general comments consistent with our own guiding principles.



Fair

MEREDA applauds the work of this Commission in looking at the challenging issues underpinning the lack of affordable and workforce housing in Maine. We agree that there is a housing crisis, and that we must all work collectively to ensure that all Maine people have access to safe, affordable housing. MEREDA supports the Commission's efforts to look at historical inequities in zoning and housing laws and ordinances.

The impact of these historical practices very much informs our current zoning landscape – they have increased sprawl and decreased innovation in density development, including by discouraging innovation in clean transportation and energy, and making it difficult for individuals to live within an accessible distance of services they may need.

MEREDA encourages this Commission to take action that will create more accessibility in Maine's housing market, promote home ownership for all Maine people, and level the playing field for housing creation and accessibility, in all our communities.

Practical

In some ways, this is the key principle in considering policies to incentivize housing development. If it is not practical to build a housing project, it will not be built. The biggest factor in practicality is cost. MEREDA believes the Commission has a role to play in encouraging policies that will reduce costs and make it more practical to build more dwelling units.

MEREDA supports advancing recommendations that will help offset rising costs – particularly where those costs are being driven up as a result of land use policy. For example, *incentive programs and density bonuses* can help offset restrictions like *minimum setbacks or height restrictions*. Reduced or modified *lot size and parking requirements* would also incentivize housing construction by reducing barriers while encouraging smart city planning and cleaner transportation solutions.

Additionally, action to ensure that *building codes do not disproportionately increase construction costs* will be critical to ensuring that clean energy housing construction remains practical. Recently, the legislature enacted a law to allow towns to adopt an energy "stretch" code. Portland has since adopted a more stringent energy code than is required across the rest of the state. This will drive up housing construction costs in Portland, making it impractical to build housing that is affordable. Similarly, *fees for various land use activities* can drive up costs beyond what is practical. Both state and local fees need to be lowered to make it practical to achieve the kind of accelerated housing construction we need.

The Commission has also discussed promoting the construction of *Accessory Dwelling Units (ADU's)*. MEREDA has long supported action to make it easier to build ADU's, and believes they have a role to play in adding housing units. Additionally, the Commission has discussed the elimination of zoning that permits only one residential dwelling per lot (single family zoning). MEREDA believes there is merit to discussing these concepts further before the legislature and welcomes an opportunity to debate the merits of these proposals and their potential to increase housing construction in Maine.

To the extent there is ongoing tension between state and local priorities, MEREDA encourages the Commission to promote coordination between municipalities and to craft nuanced policy that will achieve the broader goals of the Commission without harming our local communities. One suggestion to help balance those priorities is the establishment of *Priority Development Areas (PDA's)* to encourage housing construction in areas where it makes sense – where it is practical.

Predictable

Just as the rules for development must be practical, they must also be predictable. In recent years, the state and some municipalities have considered action that could lead to a patchwork of regulations. The stretch code mentioned above is one example – another is the stringent tree cutting ordinance currently under consideration in South Portland.

Inclusionary zoning is similarly being applied in a disparate fashion in some communities but not others. Worse, some communities are combining patchwork solutions to create ordinances that are nearly unworkable for housing developers. Portland provides a useful example. In 2020, Portland voters

supported a “Green New Deal” ordinance that included a requirement that any housing development with 10 or more units include at least 25% of those units as affordable to renters or buyers at 80% of median income. Until just recently, no developer had been able to financially square a project in Portland under these new requirements. The one developer who has succeeded in getting a project approved before the Planning Board since that ordinance took effect has stated publicly that the project is only possible due to a *density bonus* and the purchase of land at a discounted rate.¹ While those incentives worked in this instance, they are not universal and developers interested in starting projects cannot predict whether they might be eligible for similar incentives.

This recent trend of patchwork, unpredictable regulation, is concerning. In the early 2010’s, in recognition of the importance of universally recognized, data-driven and predictable building codes, Maine enacted the Maine Uniform Building and Energy Code (MUBEC). The MUBEC has been critical to ensuring that safe and energy efficient housing development is consistent across town lines. It has also been critical to streamlining costs, by allowing developers to predict what resources they will need and understand what standards must be met. The MUBEC represents a successful statewide policy that protects Maine people while providing a predictable set of regulations for developers.

The unraveling of statewide standards, like the MUBEC, and the implementation of stand-alone land use ordinances in some Maine towns, like inclusionary zoning, threaten to return Maine to a landscape of scattered regulation. Unpredictable regulation discourages innovative planning and development, and creates an uneven playing field across Maine’s communities.

MEREDA encourages this Commission to look closely at the current balance between statewide regulation and local control, and to implement policies that ensure predictability for housing developers across the state. Specifically, MEREDA would encourage this Commission not to allow a further unspooling of the MUBEC, and to consider incentives for municipalities who adopt certain land use ordinances that encourage housing development under certain conditions and standards as determined by the state and informed by the work of this commission.

For example, this Commission is considering two recommendations that would create more statewide predictability: 1) Ensuring that Accessory Dwelling Units (ADUs) may be built as a matter of right on residential property; and 2) Eliminating the option of a single family residential zone. Both of these recommendations would set statewide standards, requiring municipalities to adopt ordinances to effectuate them. At this time, MEREDA does not take a position on the two recommendations, but does believe that further conversation and debate at the legislature would be appropriate. We also believe these recommendations represent the type of statewide solution that will drive real change, and we applaud the Commission for considering bold action.

MEREDA Engagement, Advocacy to Streamline State and Local Laws: a Case Study

MEREDA has long been engaged in working with the Legislature to streamline municipal and environmental review of housing construction projects, ensure balance in regulations and financial burdens, and promote practical, effective policies to accelerate housing construction. This work is not always easy, or expeditious.

In 2019, MEREDA worked with allies and policymakers to enact a common sense exemption to State subdivision review requirements. MEREDA hopes that the following overview of that process, which aimed to make only a small change in zoning law, will prove useful to the Commission in understanding the challenges that lay may lay ahead in implementing larger changes to Maine’s zoning and land use laws.

¹ A Portland development will be the first under new affordability rules, Mainebiz.biz, October 26, 2021, available at https://www.mainebiz.biz/article/a-portland-development-will-be-the-first-under-new-affordability-rules?utm_source=Newsletter&utm_medium=email&utm_content=Real+Estate+Insider%3A+New+rules+apply+to+Portland+development&utm_campaign=REI+102821+v2

The Problem: Redundant, Unnecessary Review of the Interior Division of a Building into Housing Units

Prior to 2019, a proposed project to divide the interior of an existing building (such as a schoolhouse), into three or more housing units, triggered municipal review under the state's subdivision review laws. As a general matter, state subdivision review statutes preempt local ordinances insofar as municipalities are required to adopt the provisions of the state subdivision law and apply them to projects in their towns. Accordingly, municipalities were required to apply state subdivision law to the any project application for the interior division of a building into three or more dwelling units.

Often, the requirements of the state subdivision law were inappropriate for the interior division of a building. For example, state subdivision law might require a certain street width or sidewalk design to accommodate a traditional subdivision which would have multiple homes on multiple parcels of land. That requirement is inappropriate to the interior division of a building into dwelling units – there won't be sidewalks inside the building. The disconnect between state subdivision requirements and the type of project at issue caused developers to seek multiple waivers for the redundant or inappropriate requirements, adding time and cost to the project.

At the same time, the town's land use review entity would conduct a municipal site plan review of the project. A municipal site plan review is a comprehensive and town-specific set of requirements related to all aspects of a project including size, sewer and water, parking, etc. It addresses all of the relevant concerns a town may have in the interior division of a building – such as appropriate parking, lighting, sewer and electrical infrastructure, etc.,

In other words, developers were forced to undergo two separate review processes, one of which was largely redundant or irrelevant. At the same time, the municipal land use review boards were spending too much time dealing with waivers and the clunky interplay between the laws.

The Fix: A Legislative Solution

MEREDA sought and received an exemption, from the 129th Legislature, to the state subdivision review law for projects that undergo appropriate municipal site plan review. That exemption, now codified at 30 MRSA § 4402(6) is reproduced below. The exemption allows a municipality to conduct a municipal site plan review of a project to divide the interior of a building into three or more dwelling units without the need for additional state subdivision review.

30 MRSA § 4402(6)

[...]

6. Division of new or existing structures. *Beginning July 1, 2018, a division of a new or existing structure into 3 or more dwelling units whether the division is accomplished by sale, lease, development or otherwise in a municipality where the project is subject to municipal site plan review.*

A. For the purposes of this subsection, "municipal site plan review" means review under a municipal ordinance that sets forth a process for determining whether a development meets certain specified criteria, which must include criteria regarding stormwater management, sewage disposal, water supply and vehicular access and which may include criteria regarding other environmental effects, layout, scale, appearance and safety.

B. The municipal reviewing authority in each municipality shall determine whether a municipal site plan review ordinance adopted by the municipality meets the requirements of paragraph A.

The Lesson: Small Change, Big Lift

While the enactment of this exemption is an example of successful advocacy to amend municipal zoning review at the state level, it also serves as a cautionary tale. It took MEREDA, working with interested parties and lawmakers, an entire legislative session and many meetings and negotiations to get the law approved by the legislature.

MEREDA believes this Commission has a unique opportunity to move the needle in a big way. As demonstrated by the above, incremental change comes too slowly and takes too many resources to get the state where we need to be with housing creation. We believe there are steps, as discussed at the beginning of these comments, which the state can take now to generate real change and promote housing construction.

Conclusion

The task before the Commission is substantial, and comes at a time when many competing policy priorities might make it a challenge to really move the needle on housing access and development in Maine. However, we believe the conversation that is taking place now is timely, ambitious, and very much necessary. MEREDA applauds the work of this Commission in looking at creative, smart-growth driven ways to help solve Maine's housing access and affordability crisis. We welcome the opportunity to continue to be a part of these conversations, and we stand ready to assist with whatever expertise we can provide.