

Testimony of David Beseda, Portland

Before the Committee on Labor and Housing

In Support of L.D. 2003, Bill "An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions"

March 7, 2022

Members of the Committee on Labor and Housing, my name is David Beseda.

I have served as a developer of affordable housing in Maine since 1995, first as the initial Director of Community Housing of Maine, and then as a developer of affordable housing for York County Shelter Programs and for York County Community Action Corporation. I have been involved in developing over 50 multi-unit affordable housing sites, valued at over \$40 million located in towns and cities throughout Maine, from Orno to Kittery.

I also serve as a Board Member of the Maine Affordable Housing Coalition (MAHC). MAHC is a diverse coalition of more than 135 private and public sector organizations including developers, architects, engineers, builders, investors, community action programs, public housing authorities, housing and service providers, advocates, and others working to advance solutions that create and preserve affordable housing in Maine.

My very first affordable housing development project in Maine, in 1995-96 nearly failed due to a local, restrictive zoning ordinance in the City of Waterville. The Maine Department of Mental Health, (now a division of the Department of Health and Human Services) had determined that there was a need for a residence in Waterville which could serve as affordable housing for local adult men and women who needed mental health services, but not to the extent of needing hospitalization. The residence was to be staffed 24-hours-a-day with professional, clinical support staff.

In collaboration with The Maine Department of Mental Health, funding was secured for purchasing and renovating a residential property in Waterville, and as the developer for Community Housing of Maine, I proceeded with due diligence, and we purchased a suitable property in a residential neighborhood. Community Housing of Maine secured a building permit from the City Code office, and our contractor began renovation work to upgrade an existing housing property on Park Street. Soon after we began construction, we received a Stop Work Order from the City Code office because it turned out that a City Councilor had a home next to the property on Park Street which we were renovating. The neighboring City Councilor met with the City Code Office, and the Stop Work Order was based upon a Waterville City ordinance which stated that there could not be a "group home" within 500 feet of another "group home". Unbeknownst to us, there was an existing community residence nearby in this residential area.

With the help of legal counsel for Community Housing of Maine, and with support from the State Attorney General's office (and a young AAG named Drew Gattine), we appealed to the Waterville

Zoning Board of Appeals to reinstate our building permit based upon the fact that the City's restrictive ordinance was a violation of the Americans with Disabilities Act, and it was also a violation of the Federal Fair Housing Act. The Zoning Board of Appeals members initially voted to deny our appeal to reinstate our building permit, but after several hearings, and on the advice of the City's legal counsel, the Zoning Board of Appeals later, reluctantly granted Community Housing of Maine a "nonconforming use of a structure" and the Code Office was allowed to reinstate our building permit.

In 1997, during the State of Maine 118TH LEGISLATURE First Regular Session, LD 943 An Act to Amend the Law Governing Municipal Zoning with Respect to Community Living Arrangements was submitted and voted into law, finally "to strike the current law regarding municipal ordinances and community living arrangements in order to repeal provisions that violate federal law and to rewrite and clarify the remaining provisions."

Quoting from the "BILL SUMMARIES JOINT STANDING COMMITTEE ON STATE AND LOCAL GOVERNMENT",

"Enacted law summary: Public Law 1997, chapter 442 strikes the current law regarding municipal ordinances and group housing facilities for persons with disabilities, known as "community living facilities" in order to repeal provisions that violate federal law and to rewrite and clarify the remaining provisions. The law continues the requirement that municipalities consider community living arrangements to be single-family uses of property for purposes of zoning and repeals the provisions of current law setting density limits, requiring public hearings in certain circumstances and specifying what type of municipal ordinances can be enacting affecting such facilities."

I have attached "MRS Title 30-A, §4357-A. COMMUNITY LIVING ARRANGEMENTS" for your easy reference.

Public Law 1997, chapter 442 did remove those specific violations of federal law and imposed upon municipalities that they "implement the policy of this State that persons with disabilities are not excluded by municipal zoning ordinances from the benefits of normal residential surroundings, a community living arrangement is deemed a single-family use of property for the purposes of zoning." However, this law and statute did not remove the many barriers to affordable housing that are blocked by restrictive single-family zoning.

Many Maine men and women with disabilities have the skills and desire to live in "single family" residential areas, and yet, they do not want to be forced to live in "community living arrangements" to qualify to live in these zones. They would like to have their own apartment and home, but in "single family" zones, even modest multi-family units are not permitted.

Additionally, many municipalities have "single-family" lot size requirements that make it impossible for housing development to be affordable to low- and moderate-income households. In the town of Alfred, for example, the minimum lot size for a new dwelling unit in the "Rural Residential" zone is required to be at least 3 acres or larger. The "Rural Residential" zone makes up about 2/3rds of the land mass of the town of Alfred. Multi-family units are also not permitted in this, and several other town zones.

I would suggest that the provisions of L.D. 2003, and the zoning and land use changes will allow for expanding Mainer's access to desperately needed housing. All municipalities are struggling with wide-spread needs for affordable and workforce housing.

Maine has a combined statewide waiting list with 25,000 households seeking a federal housing voucher because of the state-wide lack of affordable housing. Without some large, impactful system-wide changes, it will be decades before those households have access to affordable housing. And even for households with relatively stable and median incomes, homeownership is a nearly impossible task because families cannot find available, affordable quality housing within their budget and near to where they work.

Thank you for your time, and please support LD 2003.

§4357-A. Community living arrangements

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Community living arrangement" means a housing facility for 8 or fewer persons with disabilities that is approved, authorized, certified or licensed by the State. A community living arrangement may include a group home, foster home or intermediate care facility. [PL 1997, c. 442, §2 (NEW).]

B. "Disability" has the same meaning as the term "handicap" in the federal Fair Housing Act, 42 United States Code, Section 3602. [PL 1997, c. 442, §2 (NEW).]
[PL 1997, c. 442, §2 (NEW).]

2. Single-family use. In order to implement the policy of this State that persons with disabilities are not excluded by municipal zoning ordinances from the benefits of normal residential surroundings, a community living arrangement is deemed a single-family use of property for the purposes of zoning. [PL 1997, c. 442, §2 (NEW).]

SECTION HISTORY

PL 1997, c. 442, §2 (NEW).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the First Special Session of the 130th Maine Legislature and is current through October 31, 2021. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.