

## Housing & Permit Reform Legislation

### Vermont Planners Association Recommendations



- **H.68 (as introduced) - House Environment & Energy**
- **DR 23-0091, draft 5.1, 1/19/23 (Senate Economic Development, Housing, and General Affairs)**

January 31, 2023

#### Overview

The housing crisis is real and stems from a number of factors – e.g., a slowdown in residential construction after the 2008 economic collapse, lending restrictions enacted after the great recession, increased cost of building materials, supply chain shortages since the onset of the covid pandemic in 2020, a shortage of skilled labor, rising cost of land, inadequate State and Federal funding for infrastructure, antiquated municipal and State permitting, and unwieldy and slow appeals processes.

State and local government can and should take action in the areas over which we have control. VPA strongly supports modernizing municipal land use regulations, State permitting reform (e.g., wastewater, stormwater, building codes, Act 250), as well as changes to expedite development review appeals processes. Both H.68 and the larger housing omnibus bill in the Senate include important reforms and funding. We recommend the revisions below to improve these bills, and to set the stage for even more impactful permit reform in the 2024 legislative session.

#### General Comments

1. We support most sections of the bill. We hope our comments below will help refine and improve the bill, particularly the sections that deal with municipal zoning reform. We recommend language be added to the bill to convene a commission or stakeholder group (housing advocates, municipal planners, developers, regional planning commissions, etc.) to evaluate and provide additional recommendations for action in the 2024 legislative session. Legislative studies on Act 250 and state planning designation reforms due out this year will help inform this effort.
2. Similar stakeholder engagement efforts in other states helped yield results at the state and local level. Approaches like [New Hampshire's Housing Appeals Board](#), [Maine's study](#) of land use regulations and short-term rentals, and targeted "fair share" provisions in Massachusetts and Rhode Island should be considered.
3. To achieve the most impactful reforms of municipal land use regulation, we recommend including the municipal planning practitioners that work with zoning regulations and local-level development review every day. VPA would be very willing to participate through member outreach and designation of a representative to formally serve on a stakeholder group.

#### Provisions to Rework for 2024

4. **Section 1 (both bills). Parking spaces per dwelling unit.** Right-sizing residential parking requirements to actual need makes sense, especially for one-bedroom units, multi-unit buildings, and senior housing. VPA agrees that excessive parking requirements in municipal zoning regulations can impact the viability of new housing projects, particularly in-fill and redevelopment. Context, housing type, and availability of transit are all important factors to consider. The bill should be revised to recognize these factors, so as not to constrain all municipalities to a one space per dwelling unit formula for every housing project.

- a. Even in some of Vermont’s urban centers, dwelling units with two or more bedrooms are very likely to need parking for more than one vehicle. VPA agrees that there should be less parking in growth areas than is required today to make more efficient use of limited space and reduce the cost of development. Unfortunately, transit options, on-street, and off-site parking are currently limited in Vermont villages and downtowns, and certainly in rural areas not served by transit. VPA recommends further discussion, and possibly reducing parking requirements for specific types of development in areas served by adequate public transit.
  - b. Furthermore, VPA recommends adding language to clarify that municipalities can require parking maximums as well as minimums – this is currently practiced but has been challenged based on stricter interpretations of current statute.
5. **Section 2 (portions; both bills). Residential density, building height, and density bonuses.** VPA has long advocated for higher density development in areas planned for infrastructure-supported growth. However, these pre-emptions of municipal land use regulations could be problematic and may result in unintended consequences for some communities. They should be discussed and refined by a stakeholder group for consideration in the 2024 session, perhaps working towards a statewide plan for housing growth that complements, rather than overrides, existing regional and municipal land use planning. Some of the issues include:
- a. A one-size fits all approach for all areas served by municipal water and sewer doesn’t recognize the complexity, history, and planning of these service areas. For example: shoreline areas where water/sewer service exists to address water quality issues; legacy service areas that are adjacent but outside areas planned for growth; service areas that were expanded outside of growth areas to address public health issues (mobile home parks, PFAS contamination, etc.); and floodplains, and river corridor, and other unbuildable areas within a service area.
  - b. Not all municipal water and wastewater systems have large amounts of uncommitted reserve capacity. Some communities with limited capacity have adopted local land use policies to direct this limited capacity toward redevelopment of their village and downtown cores, including housing that meets the needs of low- and moderate-income Vermonters.
  - c. Some municipal systems are subject to Act250 permit conditions that have required adoption of land use regulations and/or limit connections in order to limit sprawl. It is unclear whether the State preemption will also overturn these Act250 permit conditions. Unless clearly defined in Statute, it is possible that this will introduce litigation and unpredictability that could discourage housing investment in these communities.
  - d. Meaningful tools are also needed to address defined housing production targets in affluent exurban communities that exercise exclusionary policies simply by avoiding investment in municipal water and sewer infrastructure. This could include a combination of incentives for communities that make progress on meeting more clearly defined housing goals, as well as consequences for those that do nothing or actively avoid it, as anticipated in existing statutes.
  - e. While VPA strongly supports measures that increase affordable housing and mixed-use development, the proposed height waivers for such development likely will not work as intended. The limits to building heights in rural areas are also pragmatic – namely, the community’s ability to provide adequate water service and fire protection to taller buildings. Until these underlying issues are resolved, removing height restrictions in zoning will simply stall such projects in the permitting process. Density “bonuses” can also be addressed in other ways (reduced lot sizes and setbacks, increased lot coverage, etc.)

## **Suggested Revisions on Remaining Provisions**

6. **Section 4 (both bills) – Duplex definition.** Revise the duplex definition for clarity. We suggest requiring that two-unit dwellings be treated like single-unit dwellings in terms of density, minimum lot size, and other dimensional standards. However, we don't support treating each unit in a two-unit dwelling as a single-unit dwelling. The proposed duplex definition would be different depending on whether it was served by municipal sewer and water. Apparently, the purpose of this change is to allow each unit of a duplex to be able to add an accessory dwelling unit (ADU). As outlined in existing statute, ADUs are appropriately allowed on properties with a single-unit dwelling, and typically include requirements for owner occupancy and size limitations. Instead of expanding ADUs to properties with two-unit dwellings, we should be simplifying zoning regulations and addressing structural barriers found in State technical permitting that make infill projects difficult – e.g., wastewater rules, stormwater rules, fire safety codes, etc. We also recommend eliminating the term duplex and “family” dwelling throughout 24 V.S.A. Chapter 117 to help provide consistency, clarity, and to avoid outdated references. We recommend using the terms single-unit dwelling, two-unit dwelling, multi-unit dwelling, and accessory dwelling unit.
7. **Section 5 (both bills) – Bylaw reporting.** Revise so that municipalities are required to submit a report and bylaws/regulations to DHCD, so that DHCD can ensure consistent coding and uploading to statewide databases. More importantly, currently there is no review process to ensure that municipal bylaws are not exclusionary prior to adoption – only allowance for after-the-fact enforcement through 24 V.S.A. § 4453. Further consideration is merited on whether to empower or require RPCs to review proposed bylaws for conformance with fair housing practices as they currently do for municipal comprehensive plans (as required to receive the benefits of municipal “confirmation”).
8. **Sections 6 & 7 (both bills) - Administrative subdivision revision.** Revise to eliminate the undefined terms of minor and major subdivision. Simply authorize municipalities to allow the Administrative Officer to approve subdivisions involving three or fewer lots, as well as revisions to subdivisions previously approved by an Appropriate Municipal Panel that don't involve the creation of new lots, in accordance with the administrative review provisions found under 24 V.S.A. § 4464(c) (Administrative Review).
9. **Section 8 (both bills) – Appeals.** Revise/expand to include designated village centers, and to include any other approval that addresses character of the area (e.g., subdivision, site plan, etc.).
10. **Section 10 (H.68) – Energy codes.** Revise to clarify that RBES/CBES or stretch code is the standard, but that municipal energy codes that address aspects not covered by RBES/CBES or stretch code are allowed – e.g., prohibition on use of fossil fuel, orientation/design for solar gain, etc.
11. **Section 11 (both bills) - Appropriation to MRPF for municipal bylaw updates.** Revise to increase appropriation to \$1,000,000 if the proposed statewide zoning provisions are passed.

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*VPA is a non-profit advocacy and educational organization of over 150 planners and related professionals. We are dedicated to the advancement of community planning in Vermont at the local, regional, and state levels, to foster vibrant communities and a healthy environment.*

*Our membership is diverse, including municipal planners, regional planning commission staff, private planning consultants, state planning professionals, etc. We also work to coordinate VPA's advocacy and education with other groups involved in planning policy such as VAPDA (VT Association of Planning & Development Agencies), VLCT, and the Agency of Commerce and Community Development.*



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