



House Bill 538

Land Use – Affordable Housing – Zoning Density and Permitting (Housing Expansion and Affordability Act of 2024)

MACo Position: **SUPPORT**

To: Environment & Transportation Committee

WITH AMENDMENTS

Date: February 20, 2024

From: Dominic J. Butchko

The Maryland Association of Counties (MACo) **SUPPORTS** HB 538 **WITH AMENDMENTS**. This bill makes several changes to the land use article enabling higher density bonuses under three different scenarios, authorizing the use of manufactured housing, and loosening restrictions related to adequate public facility ordinances. Counties are pleased to join this policy discussion, and offer amendments to help implement these goals most effectively.

For the 2024 Maryland General Assembly Session, MACo has made it a priority – one of the Association’s four legislative initiatives – to *Advance Comprehensive Housing Solutions*. Much like climate change and sea level rise, the challenges surrounding affordable housing are vast and call for a large, multipronged effort. While in other policy areas, it may be easy to deduce a simple cause-and-effect relationship, housing is a complex web of multifaceted factors. Addressing challenges like workforce, financing, interest rates, broad economic trends, supply chain, and large out-of-state corporate interests – among many other obstacles – requires an all-hands-on-deck effort from policy makers at all levels.

MACo is working with sponsors to cross-file legislation to target several components of this crisis: abandonment/blight disincentives, corporate owner transparency, and short-term rental oversight. Additionally, under this initiative, counties will be supporting other pro-housing legislation which helps to advance the conversation, balances local flexibility, and ensures more Marylanders can afford a place to call home.

Counties greatly appreciate Governor Moore’s collaborative approach in developing the Administration’s housing package. For several months, staff from the Department of Housing & Community Development have been meeting with both MACo and our membership to discuss possible components of the bill. It goes without saying, HB 538 is a surgically targeted piece of legislation, aimed at preserving the foundations of local autonomy while also taking emergency measures to meet the current housing crisis.

While supportive of several concepts within the legislation, counties do have some concerns, specifically around implementation, ambiguity, and infrastructure capacity. Counties offer the following amendments to both strengthen this legislation and ease local apprehensions:

Amendment # 1: Replace “Manufactured” with “Modular”

The distinction between manufactured and modular housing may appear minute, but this precision is important. Historically, until about the 1970s, manufactured housing had been associated with trailers and trailer parks. While the quality and imagination of design has shifted since then, this type of housing still must follow HUD standards and can still take the form of a trailer. Modular housing on the other hand offers all the same benefits in terms of affordability and speed, but must comply with state and local regulations. Counties agree that modular housing should be a potential component of moving the needle on housing supply.

Additionally, section 4-104 may be interpreted so that local governments are prohibited from limiting development in single family residential areas for any project that may have a manufactured home. Counties may have a variety of reasons for limiting development, the biggest reasons being infrastructure and school capacity. In addition to replacing “manufactured” with “modular,” counties request clarifying language be added to ensure that local authority on these matters be clearly retained.

Amendment Language:

- 4-104 MODULAR
 - STRIKE LINES 3-7, AND INSERT,
 - THE GOVERNING BODY OF A POLITICAL SUBDIVISION MAY NOT PROHIBIT THE PLACEMENT OF A MODULAR HOME IN ANY ZONE THAT ALLOWS SINGLE FAMILY RESIDENTIAL DEVELOPMENT, BASED ONLY ON THE FACT THAT THE STRUCTURE IS MODULAR.
 - A MODULAR HOME FOR THIS SECTION MEANS A HOUSE BUILT IN A FACTORY IN TWO OR MORE MODULES THAT MEETS THE STATE OR LOCAL BUILDING CODES WHERE THE HOUSE WILL BE LOCATED, AND WHERE SUCH MODULES ARE TRANSPORTED TO THE BUILDING SITE, INSTALLED ON FOUNDATIONS, AND COMPLETED.
 - THIS SUBTITLE DOES NOT AFFECT THE AUTHORITY OF A GOVERNING BODY OF A POLITICAL SUBDIVISION TO ENACT AND ENFORCE STANDARDS OR REQUIREMENTS RELATED TO THE PLACEMENT OF HOUSING IN ANY ZONE THAT ALLOWS SINGLE FAMILY RESIDENTIAL DEVELOPMENT, INCLUDING MODULAR HOUSING.

Amendment #2: Clarify Applicability of Density Bonuses

Under the state density bonuses awarded in sections 7-502, 7-503, and 7-504, the administration has made it clear that their intent was to allow for multiple paths to one 30% state density bonus, instead of multiple paths to multiple stackable bonuses. If state density bonuses can be stacked, it is not inconceivable to envision a scenario where projects can quickly and dramatically escape the bounds of

local infrastructure constraints, and end with a wide variety of serious unintended consequences. This would carry a significant risk of overwhelming the schools, roads, emergency response, water and stormwater systems, along with other critical infrastructure. Counties request clarifying language be added ensuring that the bill matches the Administration's clearly stated intent.

Amendment Language:

- 7-502 (B)(5)
 - After this section, INSERT, “(6) IF A PROJECT IS AWARDED A 30% DENSITY INCREASE UNDER THIS SECTION, THEN IT IS NOT ELIGIBLE FOR A DENSITY UNIT INCREASE UNDER 7-503 (B)(5) OR 7-504 (B)(5)
- 7-503 (B)(5)
 - After this section, INSERT, “(6) IF A PROJECT IS AWARDED A 30% DENSITY INCREASE UNDER THIS SECTION, THEN IT IS NOT ELIGIBLE FOR A DENSITY INCREASE UNDER 7-502 (B)(5) OR 7-504 (B)(5)
- 7-504 (B)(5)
 - After this section, INSERT, “(6) IF A PROJECT IS AWARDED A 30% DENSITY INCREASE UNDER THIS SECTION, THEN IT IS NOT ELIGIBLE FOR A DENSITY INCREASE UNDER 7-502 (B)(5) OR 7-503 (B)(5)

Amendment #3: Align Distance from a Train Station to Reflect Infrastructure Capacity Limits

As drafted, this bill currently awards a 30% state density bonus for housing projects that meet a certain affordability threshold within 1 mile of a rail station. Counties recognize that these are areas where density should be concentrated and, in many cases, already award bonuses within a certain proximity of rail stations. While the proposed bonus itself does not necessarily cause concern, the 1-mile proximity poses some significant challenges. In most jurisdictions, the infrastructure within .25 miles may largely be able to handle additional capacity constraints. But beyond that threshold, factors like road capacity, sewer capacity, etc. begin to become more challenging to address. Counties request that the proximity state density bonus be decreased to avoid unintended consequences.

Amendment Language:

- 7-503 (A)(2)(II)
 - Strike “1” and replace with “.25.”

Amendment #4: Establish a Proportional Standard

There are extensive references to an ambiguous “unreasonable” standard which the legislation attempts to create. The broad intent of the section is to ensure that local jurisdictions do not enact certain requirements, such as setbacks and height restrictions, which may impede the ability of developers to execute on the state density bonuses they may be granted. Counties recognize the intent, but as drafted, the current language will lead to significant litigation, along with additional time and

costs, and will likely result with the courts settling issues in a manner contrary to the will of the General Assembly or the Governor. Instead, counties propose that a “proportional” standard be adopted, allowing local jurisdictions the flexibility of amending their codes to accommodate state density bonuses, preventing unintended outcomes, but still preserving the ability for residents to shape the look, smell, and feel of their communities.

Amendment Language:

- 7-501 (N)
 - Strike lines 20 through 26.
- 7-505
 - In lines 22-28, STRIKE and INSERT “A LOCAL JURISDICTION MAY IMPOSE ANY LIMITATION OR REQUIREMENTS PROPORTIONAL TO THE IMPACT OF A QUALIFIED PROJECT UNDER THIS SUBTITLE.”

Amendment #5: Align Public Hearing Requirements with Existing Law & Practice

The Administration has made it clear that the intent of this legislation is to significantly limit the number of public hearings a local jurisdiction may require for a qualified project. As drafted, the current language does not accurately reflect or address current practice or law related to public hearings. Counties request a clarifying amendment that ensures this provision can be implemented.

Amendment Language:

- 7-506
 - In lines 4-7 STRIKE and INSERT, “EXCEPT AS OTHERWISE PROVIDED OR REQUIRED BY STATE LAW, A LOCAL GOVERNMENT MAY NOT REQUIRE THAT A QUALIFIED PROJECT UNDER THIS SUBTITLE BE SUBJECT TO MORE THAN ONE PUBLIC HEARING FOR EACH REQUIRED DEVELOPMENT APPLICATION, BEFORE EACH OF THE FOLLOWING:”

Amendment #6: Flexibility Around Adequate Public Facilities

Counties are appreciative of the Administration’s willingness to engage with local leaders to try to address significant concerns related to relaxing adequate public facility ordinances (APFOs). For context, APFOs are guardrails on development to ensure that critical infrastructure – like classroom size, hospital capacity, water, stormwater, and wastewater systems, emergency response capabilities, and others – do not become overwhelmed. As the primary provider of public services, management of these services is always a top priority for counties. The Administration has agreed to place a 15-year sunset on this provision, highlighting the seriousness of the housing crisis and the need for APFOs.

Additionally, while counties recognize the Administration’s urgency to loosen APFO restrictions for certain projects, it is not clear why a market rate portion of a project should not be subjected to these

requirements. Units at or above market rate provide the same infrastructure constraints but do not have the benefit of increasing affordability. To this effect, counties request amendments balancing the need for increased unit production with the limits of infrastructure capacity.

Amendment Language:

- 7-502, 7-503, & 7-504 (B)(2)
 - Add clarifying language “EXCLUSIVELY ZONED RESIDENTIAL” and “IF ADEQUATE PUBLIC WATER AND PUBLIC SEWER IS AVAILABLE TO SERVE THE PROJECT”
- 7-502, 7-503, & 7-504 (B)(4)
 - Strike and replace with “IN AN AREA ZONED EXCLUSIVELY FOR COMMERCIAL USE AND SERVED BY PUBLIC WATER AND SEWER, A QUALIFIED PROJECT MAY CONSIST OF MIXED-USE DEVELOPMENT WITH DENSITY LIMITS THAT DO NOT EXCEED THE HIGHEST ALLOWABLE DENSITY IN THE LOCAL JURISDICTION’S MULTIFAMILY RESIDENTIAL ZONES.”
- 7-105
 - In (B)(1) INSERT “...FOR AFFORDABLE HOUSING”
 - In (B)(2) INSERT “...AFFORDABLE HOUSING PORTION OF THE...”
 - In (B)(2) (I) & (III) INSERT “PORTION OF”
 - INSERT “(C) IF A PROJECT IS DETERMINED TO NOT MEET ADEQUATE PUBLIC FACILITY REQUIREMENTS, THE LOCAL JURISDICTION SHALL HAVE TWO YEARS TO TRY TO ADD CAPACITY TO THE NECESSARY PUBLIC FACILITIES.
 - (D) IN INSTANCES WHERE A PROJECT QUALIFIES FOR THE EXEMPTION UNDER 7-105 (B), THE STATE SHALL PROVIDE ADEQUATE ADDITIONAL FUNDING TO INCREASE THE CAPACITY OF THE NECESSARY PUBLIC FACILITIES.”

Amendment #7: Extend the Effective Date

Currently, the implementation date is set for October 1, 2024. Several sections of this bill will require significant revisions to local code and processes. Counties request that the implementation date be pushed back to January 1, 2025, to allow additional time to complete any necessary revisions before implementation.

Amendment Language:

- On page 13, line 21, STRIKE: “October 1, 2024” and INSERT: “January 1, 2025”
- On page 13, line 22, STRIKE: “September 30, 2039” and INSERT “December 31, 2039”

Amendment #8: Guardrails Around Nonprofit State Density Bonus

Under this bill, nonprofits that develop projects with certain affordability thresholds are granted a state density bonus. Counties have serious concerns with this provision as it may open the door for bad actors to create nonprofits or form nonprofit divisions to take advantage of the state density bonus.

Counties request clarifying language to ensure state density bonuses are awarded to genuine nonprofits and protect against unscrupulous corporate actors who may wish to undermine the intent of the General Assembly and the Governor.

Amendment Language:

7-504 (A)

- STRIKE (A)(2)
- At line 17, INSERT:
 - “(2) "CONTROLLED BY" MEANS A BUSINESS STRUCTURE WHEREBY THE NONPROFIT ORGANIZATION IS A MANAGING MEMBER, GENERAL PARTNER, OR OTHERWISE CONTROLLING ENTITY IN A BUSINESS STRUCTURE WITH A FOR PROFIT MEMBER OR PARTNER AS DEMONSTRATED BY A LICENSED MARYLAND ATTORNEY.
 - (3) "NONPROFIT ORGANIZATION" MEANS AN ORGANIZATION THAT IS TAX-EXEMPT UNDER §501(C)(3) OF THE INTERNAL REVENUE CODE AND HAS DEMONSTRATED SUCCESSFUL RESIDENTIAL CONSTRUCTION AND/OR MANAGEMENT OF AFFORDABLE RESIDENTIAL DEVELOPMENT WITHIN THE SAME METROPOLITAN STATISTICAL AREA (AS DEFINED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT) AS THE PROPOSED DEVELOPMENT.”
- At line 19, STRIKE "(3)" and INSERT "(4)"

Amendment #9: Technical Changes

Planners almost universally define “TOWN HOUSE” as three or more connected units. Language should be amended to be consistent with terminology currently used by planning professionals.

Amendment Language:

- 7-501 (M)
 - STRIKE “TWO” INSERT “THREE.”

Require DHCD to establish a clear definition for “SUBSTANTIAL RENOVATION.”

Amendment Language:

- 7-502 (A)(1)

- Add, “AS ESTABLISHED BY THE MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (DHCD) ANNUALLY AND IDENTIFIED IN THE DHCD MULTIFAMILY RENTAL FINANCING PROGRAMS STANDARDS.”

Allow counties flexibility in determining a definition of “AFFORDABLE DWELLING UNIT” that may better align with local policies.

Amendment Language:

- 7-501 (D)
 - Add “OR DESIGNATED AS A MODERATELY PRICED DWELLING UNIT UNDER CHAPTER 25A OF THE MONTGOMERY COUNTY CODE OR ANY ADDITIONAL PROGRAM WITH THE SAME LEVEL OR GREATER OF AFFORDABILITY.”

As the frontline actor in land use, and housing policy, counties remain committed to working with all stakeholders in advancing comprehensive housing solutions. Counties gladly voice our appreciation to Governor Moore for both the targeted nature of this housing package, and for his Administration’s months-long collaboration with local leaders. While counties do have refining concerns as mentioned above, none of these issues are insurmountable. For this reason, MACo urges the Committee to give HB 538 a **FAVORABLE WITH AMENDMENTS** report.