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Subcommittee on Regulations Meeting Minutes -December 11, 2024
Teams Meeting

This meeting was open to the public and began approximately at 10:05 AM.

Subcommittee member attendance:

- Jeff Dougan (JD)- Chairperson
- Carol Steinberg (CS)- Vice Chair
- Ana Julian (AJ)
- Paul Logan (PL)
- Patricia Mendez (PM)
- Elizabeth Myska (EM)
- Joe Prochilo (JP)- Arrives Late at 10:28 AM
- Deborah Ryan (DR)

Division of Professional Licensure Employees attendance:

- William Joyce – AAB Executive Director (WJ)
- Jamie Dalton- Board Counsel (JaD)
- Molly Griffin – Program Coordinator (MG)

JD opened the meeting for Roll Call:

CS, AJ, PL, PM, EM, DR, JP

1. 10:05 AM Public Comment- 30% Rule

- DR: I would like to comment suggesting that to those who want to submit testimony, thank you, But I urge you to add a recommendation, as receiving specific recommendations for the Board to consider has been a challenge h going back to the 70s.
- WJ: Do you want to set a time limit on comments from members of the public?
- JaD: I would suggest 5 minutes to begin with.
- WJ: We will go in order of alphabetized last names, starting with Rep. Tricia Farley-Bouvier of Pittsfield.
- Rep Farley-Bouvier, representing Pittsfield, testifies.She notes that this process is very complex and confusing and requeststhe Board could explain how much time the public has to submit testimony and if there is another time for engagement; she believes there would be more engagement if people had more notice. She states that the 30% rule is one

of the biggest barriers in the Gateway Cities for redevelopment. She notes that this has much more to do with how far away you are from Boston; all of Berkshire County is facing this problem, with a few exceptions. The Berkshire Chamber has identified this as a large barrier for housing development. A solution that has been proposed, is that instead of being dependent on assessed value, the trigger is based on replacement cost.

- Rep. Mary Keefe representing Worcester testifies. Notes she is happy to have this conversation today. She has gathered testimony from the community and plans to share. She represents downtown Worcester and sees the impact of the 30% rule all around her, especially in three-deckers. The barrier that the 30% rule presents is most evident in the poorest neighborhoods. The reason she says that they haven't moved forward on buildings like an old school is because of the 30% rule and is holding them back. She notes a substitute teacher in Worcester who is a paraplegic who can only access about 50% of their school buildings. The Worcester City Manager has suggested replacement cost be used in the Board's revised formula as well. She met with the DLC and was informed that MA is only providing 20% of needed housing for disabled people. She would also like to know the window of time for further testimony.
- Michael Muehe of the BCIL initially asks to defer oral testimony until later. Later, he testifies that he'd like to share a different perspective as a disability advocate. He thinks that developers and planners usually have the best intentions and want to do the right thing, but this is why the variance process exists. He strongly encourages building planners and owners to develop a plan and not give up before trying to meet the Board's requirements or submitting a variance application, including for temporary relief. He notes that he thinks that the subcommittee would benefit from having concrete examples to work with. He thinks the 30% rule has worked pretty well over the years.
- WJ: Notes the timeline for testimony, and that how much more testimony the Board receives at the drafting stage is up to them, then the draft would be presented to the AAB, and then more public hearings would be heard for any proposed changes would potentially be made, so this is the first of many opportunities for public input on possible revisions to this section of the regulations.
- Edward Adelman, an architect testifies. He is speaking as a private citizen and echoes the comments of the elected officials who just spoke. He thinks there is a conflict that the 30% over 30 years tends to frustrate owners who are looking to update for things such as conservation and life safety issues. He suggests exempting certain work that has no impact on access such as replacing windows, sprinkler repairs, etc.
- Andre Leroux of the Gateway Cities Innovation Institute at MassInc testifies. He notes that during their monthly meetings, this issue comes up as a major concern repeatedly. He would just like to indicate that this is very important to communities. Gives an example from Holyoke and that to get storefronts on main street activated would easily trigger the 30% rule and is a huge barrier. He endorses what both Representatives spoke about and plans on submitting written comments as well.
- John Nunnari, Executive Director of AIA Massachusetts, testifies. Notes they have seen this rule pose a challenge to owners for years and agrees with Rep. Farley-Bouvier about the challenge intensifying the further you get from Boston. He stated that AIA as a group that is interested in this and offers them as a resource as this conversation continues. He asks how the subcommittee is thinking about moving this forward, and intends to follow up with written comment as well.
- JD: Responds that today they'd like to listen and gather information and that the subcommittee hasn't made any decisions on this issue yet
- John Nunnari: asks if there will be another opportunity at the subcommittee level about the 30% rule
- CS: requests another meeting just on this rule for discussion

- Mary Mahon-McCauley of Massachusetts Office on Disability, AAB Board Member, notes that this is not a meeting for the subcommittee to make any decisions, but agrees that this is critical, but the comments she has heard thus far are great and important and all have to be taken into consideration
- DR: I think that this issue has been around for years and a solution has not been found. I don't think this subcommittee can find a solution in a 3-hour meeting. I don't know if it is appropriate for there to be a subcommittee of the subcommittee including some of the people at this meeting and some not just on this issue.
- JD: We will discuss that once we get through all public comment, but I hear your idea
- June Hailer, a disability advocate in Pittsfield: Asks how the MAAB came up with the 30% rule in the first place and thinks the rule has worked pretty well.
- JD: The rationale for the original 5% rule may be lost in time, the 30% rule I think was done in 1992, so again I think DR might know more
- DR: I can shed a little more light, so in 1975 it was the 25%, \$50,000; one of the reasons it was developed is because we wanted advocates to be able to file a complaint and have benchmark numbers, and it was a good formula for building officials and it set a concrete way of setting jurisdiction.
- CS: I was on the board for 7 years and to me it just seemed to work as a neat way to look at things, and to Michael's point, do people know about the variance process?
- Andre Leroux: Although a lot of us are new to this conversation- it could be helpful, have there been alternatives around this and why or why not was action taken? I'm not sure if people are familiar with the variance project, it's interesting to me, but this is a systemic issue in the Gateway Cities, so the number of people asking for variances would be great.
- WJ: The two major suggestions we received were deemed unworkable, one was to set a percentage change between Boston and the rest of the State; the difference was steep and the Board was afraid it was arbitrary and legally unsupportable. Local assessors should be using essentially replacement costs anyways; the Board doesn't rely on land values. There were concerns with imposing a complex formula that building officials would just not do engage with it due to their already large workloads.
- June Hailer: When a decision is made, there needs to be options, and it should be more widely known that variances can be requested
- Rep. Tricia Farley-Bouvier: I really appreciate how difficult this is. She stated that in her view the variance process does not work. It is inequitable how development happens across the state. If the variance process worked, this would be happening across the state, but it is not. What is happening right now is not working, and some kind of solution has to happen here.
- WJ: I'll offer some insight from the staff perspective. We need a rule that's bright line, based on publicly available information, is easily applicable something that your average small-business person can apply themselves without too much heavy lifting, and uniformity, this rule needs to treat everybody equally from a moral perspective and for not opening the door for more litigation. The current 30% rule has all four of those.
- JD: Just so we're all clear we're all here to talk about equity. These regulations' intentions are to make buildings safe for those with disabilities. We want to ensure that we're keeping a strong set of building codes in MA that advocates can use and that those with disabilities are a minority class.
- PL: I appreciate what WJ had to say, and I have been an advocate since 1977, and I think it's important. I wish that there were 27 members of the public attending every meeting we have. We don't take any decisions lightly. I appreciate what everybody said and I am not in a position to make a decision today, and I appreciate the number of folks here to testify.

- CS: I'm glad the Rep (Farley-Bouvier) is still here. When I was on the Board, which meets every other Monday for a full day, we were reviewing variance applications. So, how is the system not working? Maybe we have to focus on fixing that. WJ, my recollection is when Tom Hopkins was alive, he was thinking about increasing the 30% threshold slightly, do you remember that?
- WJ: Tom Hopkins had mentioned that in an off-hand way, and mentioned that Section 708 or something has sprinklers triggered at 33%, or 1/3 of the building value
- JD: Thank you to everyone today, and we will come to a fair and equitable decision as a body
- Rep. Tricia Farley-Bouvier: Just to respond, I think the variance process is not working because we do not have equitable development across the state, and we only have 20% of housing both equitable and affordable, I think it is not working because we do not have public buildings that are accessible to everybody and that is more true the farther away from Boston. I represent Pittsfield, so a lot of peoples' only option is to live in public housing. I have to think about geographic equity, and the people of Pittsfield deserve the same type of housing and public buildings as the rest of the state, and right now we are not meeting the written purpose of this policy. Increasing the percentage is not going to help because using this method is inequitable.
- JD: Part of the AAB's rule is to be more stringent than the federal counterparts, because in the real world, the ADA does not tend to cause buildings undergoing renovation to be made accessible
- Rep. Mary Keefe: Do you have a timeline of when you want to be able to bring something back to the Board?
- WJ: The subcommittee is currently engaged in a rewrite of the draft. Once all of these other sections are complete and this is a full draft, then would it go to the AAB for approval, and then a full public hearing period would follow
- Rep. Mary Keefe: Do you notify people like ourselves about meeting, or do we access that through your own schedule? Do you have a mailing list.
- WJ: We notify people at the start of the process, and then say you can submit comments, and we will discuss them when we get to the appropriate section.
- Rep. Mary Keefe: We are very happy to be here today, we might've missed this opportunity for conversation. We are going to try to be here again, so we'll have our staff watching also.
- WJ: If there are any particular areas of concern, please do not hesitate to reach out. This is really the first topic we have gotten a lot of interest on outside of adult changing tables.
- CS: I hear you Representatives loud and clear about the Gateway Cities issue, and if the variance process does not work, I'd love your ideas on that if you could submit those, and schools, do they use replacement value in this calculation?
- DR: I just want to make a couple comments. I think we're losing sight of why the 30% rule was originally written, at point in time when you are doing a renovation do you bring the building into compliance? You are prolonging the life of the building, so there has to be a point where you are renovating, and it has to be accessible. However, there are buildings like schools, where it is very easy to hit that 30% and maybe there is a way to make the first floor accessible, without the variance process, and instead of focusing on this 30% thing, but keep the end goal in mind.
- June Hailer: I'm not sure that all building inspectors and commissioners are dealing with the financial issue aspect, people should be thinking about meeting Board regulations from the very beginning (design stage), and it would help
- WJ: Presently, if you have existing multiple dwelling under 12 units, we essentially have no regulations. This would only really affect buildings over 12 units with common spaces or dwellings with over 20 units that are not meeting the 5% accessibility requirement. If

it's just 3 units in an existing building we would have no requirements, unless it is new construction

- JD: A lot of housing is getting built, but it is really hard for people with disabilities to find accessible and affordable housing
- DR: I think there is a lot of misinterpretation of the code out there, especially with housing, and it is complicated. The variance process, and I have been on both sides of this process -- it is extremely difficult to pull together a variance application for a school - -a lot of times the towns don't have the money, and you can't use that as an argument. There has to be a middle ground
- Michael Muehe: I was a little bit surprised to hear that property valuations are inconsistent throughout the commonwealth or within the municipality itself. I think most building owners want to do the right thing, but there are a subset of building owners who will bend over backwards to decrease their property value. There are opportunities for grants for accessibility across the state.
- Rep. Mary Keefe: I am not hearing that three deckers have no requirements; that's not what I am hearing at all from my city. People don't have a voice, so this idea of miseducation and misinterpretation is happening a lot.
- WJ: There was some mention of local assessors, we have no oversight over them. 521 CMR 10.1 talks about community spaces.
- CS: Is talking at the State House as an educational purpose not lobbying? I think there's misinformation out there.
- JaD: I think it depends on the context. WJ has given educational presentations before, I don't think it is appropriate for him to call a state rep and offer, but whether it is permissible would depend on the exact circumstances
- CS: What if we had a brunch an educational seminar
- JaD: That's probably not something the subcommittee could host
- JD: I would almost suggest that we adjourn and come back at this once we receive more written testimony
- WJ: JD, there are a few pieces here. There were talks about a potential separate committee and if there is going to be one, that is something the subcommittee should ask the Board to form
- DR: I think there needs to be a conversation, not just testimony, so I have a strong feeling about forming a separate committee
- JaD: Let's consider that if a new subcommittee is created, it would likely take time to onboard them, and for this subcommittee to review their recommendations. I am not sure if more layers make this decision easier, but this subcommittee could schedule additional meetings on this topic
- WJ: If a quorum of the subcommittee participates, we would need to comply with the OML
- DR: That's all I'm looking for is to just have the conversation with the people who have the knowledge
- JaD: What about a listening session?
- DR: That's what I'm looking for
- CS: I agree
- WJ: Our next meeting is in excess of 30 days from now, so maybe we put another notice out there seeking those who would want to participate before the January 22 to notify us
- JD: Can we at least as the subcommittee have this conversation at the next meeting? I think having comments in by the next meeting would be most appropriate
- JaD: I'm hearing that this topic would be on the agenda for at least the next two meetings
- JD: Yes

- Mary Mahon McCauley: My thought that having a meeting in one month or a little over one month and keep that meeting at the last week in January too, just to make this a little quicker
- Rep. Mary Keefe: We've had extensive conversations with the Secretary for EOHLC and others but we just threw out the replacement cost as an idea, but everybody understands the urgency here, and its connection to housing especially. I agree with CS
- WJ: If you want an fixed comment period, that could be posted on our website under our news section
- PL: Highly recommend that we meet 6 weeks from today on 1/22; that certainly allows enough time for people to come and be prepared to testify and then at that meeting decide if we want additional testimony
- DR: I agree with PL, because there seems to be some miscommunication about what the meeting would be about, so another meeting would be helpful, and I urge those that testified to urge constituents to come and speak or listen if they are interested
- JaD: I suggest we include the language "30% rule," on the agenda along with the other language that is already there referring to this issue
- CS: expresses support for inviting to the community and everyone here on the call and experts they may know to come to a listening session on the 30% rule, especially proposed alternatives, recommended solutions, and the rationale for them, and we will entertain written testimony in 6 weeks
- Staff acknowledges the subcommittee's direction to publish this information

Motion to Approve October 23, 2024 Meeting minutes by PL

2nd by PM

Roll Call Vote

JD- yes

CS- abstain

AJ- yes

MK- absent

PL- yes

PM- yes

EM- abstain

JP- yes

DR- abstain

5 yes, 3 abstentions, 0 no's – Motion Passes

John Nunnari: There were a lot of comments of the development community, but NAIOP was not here at the table. I think this will make it out into the world through the phone tree. I just caution you that you will get a lot more of participation, and you will hear more from people who weren't here today.

Motion to Adjourn by PL

2nd by JP

Roll Call Vote

JP- yes

EM- yes

PM- yes

PL- yes

AJ- yes

CS- yes

JD- yes

7 yes, 0 no's, 0 abstention- Motion Passes