The Affordable Homes Act: 4 Policy Changes Municipalities Can't Afford to Miss

On August 6, 2024, Governor Maura Healy signed the Affordable Homes Act ("AHA"), which includes $5.1B in authorizations and 9 new policy initiatives to address the affordability of housing in the Commonwealth. You can read the AHA here. Municipalities all need to be aware of 4 substantive changes to G.L. c. 40A, the Zoning Act included in the AHA. They are summarized below.

ADUs. The AHA amends G.L. c. 40A, §§ 1A and 3, representing a large shift in the regulation of Accessory Dwelling Units ("ADUs"). ADUs are now allowed "as of right" in single-family residentially zoned districts. Practically, this means that municipalities' power to limit the erection of ADUs, or the conversion of currently existing structures into ADUs, is greatly curtailed. In addition, cities and towns may no longer impose owner-occupancy requirements on ADUs or primary dwellings on lots containing ADUs, or otherwise "unreasonably restrict the creation or rental of an accessory dwelling unit." Importantly, the ADUs may still be subject to reasonable regulations including site plan review, dimensional setbacks, bulk and height requirements, and prohibitions on short-term rentals. The amendment also limits parking requirements to not more than one additional parking space for ADUs, or zero parking spaces for ADUs located within a half mile from public transportation. Further, municipalities may still require a special permit for a property with more than one ADU. It remains to be seen what courts will consider to be "unreasonable restrictions" on ADUs. We can expect litigation to come in on this topic.

These provisions take effect on **February 2, 2025**.

Zoning appeals under G.L. c. 40A, § 17. Under the AHA, third-party appeals of zoning decisions under c. 40A § 17 (i.e., abutter appeals opposing development grants) are more difficult. Now, if an appeal under c. 40A § 17 is filed by someone other than the original applicant, each plaintiff must sufficiently allege and plausibly demonstrate that measurable injury to a private legal interest will likely flow from the challenged decision.

The new legislation also changes the bond requirements courts may impose in response to appeals of decisions to approve a special permit, variance, or site plan. Courts may now require such appellants to post a $250,000 bond—a dramatic increase from the previous $50,000 requirement. And that bond is no longer just to secure the payment of costs, but also to indemnify and reimburse damages and expenses incurred in such an action. Appellants may be required to post such bonds even in the absence of bad faith or malice of a plaintiff.

Housing preference for veterans. Under the AHA, municipalities that have met certain inclusionary requirements (inclusionary zoning, incentive zoning, a density bonus bylaw or a housing production plan) may now enter into agreements with residential developers to provide preferential housing to low- or moderate-income veterans for up to 10% of the affordable units in any particular development. This change is memorialized in Section 18. The statute also provides guidance on how such agreements must work.

Merger doctrine. Finally, the AHA revises parts of c. 40A § 6 that impact the so-called merger doctrine. Under the new G.L. c. 40A §. 6, adjacent lots under common ownership shall not be treated as a single lot for local zoning purposes, if the lots are of a certain size, located in a single-family residential district and, at the time of record or endorsement, conformed to certain then-existing dimensional requirements. This is likely meant to allow more than one home on adjacent, non-conforming lots, where those lots would previously have been considered merged into one lot for zoning purposes, thus requiring compliance for the one merged lot comprised of the two lots, to the extent possible.

Takeaway. Municipalities should be aware of these changes and prepared to amend their Zoning Bylaws accordingly.