HOUSE DOCKET, NO. 2368 FILED ON: 1/20/2011

HOUSE . . . . . No. 2112

The Commonwealth of Massachusetts

PRESENTED BY:

Garrett J. Bradley

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act standardizing zoning appeals processes.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Garrett J. Bradley	*3rd Plymouth*	*1/20/2011*

HOUSE DOCKET, NO. 2368 FILED ON: 1/20/2011

HOUSE . . . . . No. 2112

By Mr. Bradley of Hingham, a petition (accompanied by bill, House, No. 2112) of Garrett J. Bradley relative to the production and preservation of affordable housing in the Commonwealth. Housing.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *1188* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act standardizing zoning appeals processes.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 20 of chapter 40B of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in line 31, the words "board of zoning appeals" and inserting in place thereof the following words:— planning board established under section 70 of chapter 41.

SECTION 2. Chapter 40B of the General Laws, as so appearing, is hereby amended by striking out sections 21, 22 and 23 and inserting in place thereof the following 3 sections:—

Section 21. Any public agency or nonprofit organization or limited dividend organization proposing to build low or moderate income housing under the provisions of sections 20 to 23 of this chapter shall file a single application with the city or town clerk for a "comprehensive permit" and a copy of said application, including the date and time of filing certified by the city

or town clerk, shall be filed forthwith by the petitioner with the planning board. The planning board shall hold a public hearing, for which notice has been given as provided in section 11 of chapter 40A, on any application for a comprehensive permit within 65 days from the date of filing such application; provided however that a city council having more than 5 members designated to act upon such application may appoint a committee of such council to hold the public hearing. The planning board shall forthwith notify each such local board, as applicable, of the filing of such application by sending a copy thereof to such local boards for their recommendations. The planning board shall request the appearance at said hearing of such representatives of said local boards as are deemed necessary or helpful in making its decision upon such application and shall have the same power to issue permits or approvals as any local board or official who would otherwise act with respect to such application, including but not limited to the power to attach to said permit or approval conditions and requirements with respect to height, site plan, size or shape, or building materials as are consistent with the terms of this section. The planning board, in making its decision on said application, shall take into consideration the recommendations of the local boards and shall have the authority to use the testimony of consultants. The planning board shall adopt rules, not inconsistent with the purposes of this chapter, for the conduct of its business pursuant to this chapter and shall file a copy of said rules with the city or town clerk. The provisions of section 11 of chapter 40A shall apply to all such hearings. The decision of the planning board shall be made within 90 days following the date of such public hearing. The required time limits for a public hearing and said action may be extended by written agreement between the petitioner and the planning board. A copy of such agreement shall be filed in the office of the city or town clerk. A comprehensive permit issued by a planning board shall require a two-thirds vote of boards with more than 5

members, a vote of at least 4 members of a 5 member board, and a unanimous vote of a 3 member board.

If the complaint is filed by someone other than the original applicant or appellant, such original applicant or appellant and all members of the planning board shall be named as parties defendant with their addresses. To avoid delay in the proceedings, instead of the usual service of process, the plaintiff shall within 14 days after the filing of the complaint, send written notice thereof, with a copy of the complaint by delivery or certified mail to all defendants including the members of the planning board and shall within 21 days after the entry of the complaint file with the clerk of the court an affidavit that such notice has been given. If no such affidavit is filed within such time the complaint shall be dismissed. No answer shall be required but an answer may be filed and notice of such filing with a copy of the answer and an affidavit of such notice given to all parties as provided above within 7 days after the filing of the answer. Other persons may be permitted to intervene, upon motion. The clerk of the court shall give notice of the hearing as in other cases without jury, to all parties whether or not they have appeared. The court shall hear all evidence pertinent to the authority of the planning board and determine the facts, and, upon the facts as so determined, annul such decision if found to exceed the authority of such planning board or make such other decree as justice and equity may require. The foregoing remedy shall be exclusive, notwithstanding any defect of procedure or of notice other than notice by publication, mailing or posting as required by this chapter, and the validity of any action shall not be questioned for matters relating to defects in procedure or of notice in any other proceedings except with respect to such publication, mailing or posting and then only by a proceeding commenced within 90 days after the decision has been filed in the office of the city

or town clerk, but the parties shall have all rights of appeal and exception as in other equity cases.

Failure by the planning board to take final action within said 90 days or extended time, if applicable, shall be deemed to be a grant of the comprehensive permit. The applicant who seeks such approval by reason of the failure of the planning board to act within such time prescribed, shall notify the city or town clerk, in writing within 14 days from the expiration of said 90 days or extended time, if applicable, of such approval and that notice has been sent by the applicant to parties in interest. The applicant shall send such notice to parties in interest by mail and each such notice shall specify that appeals, if any, shall be made pursuant to section 17 of chapter 40A and shall be filed within 20 days after the date the city or town clerk received such written notice from the applicant that the planning board failed to act within the time prescribed. After the expiration of 20 days without notice of appeal pursuant to said section 17, or, if appeal has been taken, after receipt of certified records of the court in which such appeal is adjudicated, indicating that such approval has become final, the city or town clerk shall issue a certificate stating the date of approval, the fact that the planning board failed to take final action and that the approval resulting from such failure has become final, and such certificate shall be forwarded to the applicant. The planning board shall cause to be made a detailed record of its proceedings, indicating the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reason for its decision and of its official actions, copies of all of which shall be filed within 14 days in the office of the city or town clerk and shall be deemed a public record, and notice of the decision shall be mailed forthwith to the applicant or appellant, to the parties in interest designated in section 11 and to every person present at the hearing who requested that notice be sent to him and stated the address to which such notice was

to be sent. Each such notice shall specify that appeals, if any, shall be made pursuant to said section 17 and shall be filed within 20 days after the date of filing of such notice in the office of the city or town clerk.

Zoning ordinances or by-laws shall provide that a comprehensive permit granted under this section shall lapse within a specified period of time, not more than 2 years, which shall not include such time required to pursue or await the determination of an appeal referred to in said section 17, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.

Section 22. In accordance with section 11 of chapter 40A, in all cases where notice of a public hearing is required, notice shall be given by publication in a newspaper of general circulation in the city or town once in each of 2 successive weeks, the first publication to be not less than 14 days before the day of the hearing and by posting such notice in a conspicuous place in the city or town hall for a period of not less than 14 days before the day of such hearing. In all cases where notice to individuals or specific boards or other agencies is required, notice shall be sent by mail, postage prepaid. “Parties in interest” as used in this chapter shall mean the petitioner, abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the petitioner as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town, the planning board of the city or town, and the planning board of every abutting city or town. The assessors maintaining any applicable tax list shall certify to the planning board the names and addresses of parties in interest and such certification shall be conclusive for all purposes. The planning board may accept a waiver of notice from, or an

affidavit of actual notice to any party in interest or, in his stead, any successor owner of record who may not have received a notice by mail, and may order special notice to any such person, giving not less than 5 nor more than 10 additional days to reply.

Publications and notices required by this section shall contain the name of the applicant, a description of the area or premises, street address, if any, or other adequate identification of the location, of the area or premises which is the subject of the application, the date, time and place of the public hearing, the subject matter of the hearing, and the nature of action or relief requested if any. No such hearing shall be held on any day on which a state or municipal election, caucus or primary is held in such city or town.

Upon the granting of a comprehensive permit, or any extension, modification or renewal thereof, the planning board shall issue to the applicant a copy of its decision, certified by the planning board, containing the name and address of the applicant, identifying the land affected, setting forth compliance with the statutory requirements for the issuance of such permit and certifying that copies of the decision and all plans referred to in the decision have been filed with the city or town clerk. No comprehensive permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office off the city or town clerk and no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied, and if it is a comprehensive permit which has been approved by reason of the failure of the planning board to act thereon within the time prescribed, a copy of the application for the comprehensive permit accompanied by the certification of the city or town clerk stating the fact that the planning board failed to act within the time prescribed and no appeal has been filed and that the grant of the application resulting from such failure to act has become final or that if an

appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the owner or applicant.

Section 23. Any person aggrieved by a decision of the planning board or by the failure of the planning board to take final action concerning any appeal or application within the required time whether or not previously a party to the proceeding, or any municipal officer or board may appeal to the land court department, the superior court department in which the land concerned is situated or, if the land is situated in Hampden county, either to said superior court department or to the division of the housing court department for said county, or if the land is situated in a county, region or area served by a division of the housing court department either to said superior court department or to the division of said housing court department for said county, region or area, or to the division of the district court department within whose jurisdiction the land is situated except in Hampden county, by bringing an action within 20 days after the decision has been filed in the office of the city or town clerk. If said appeal is made to said division of the district court department, any party shall have the right to file a claim for trial of said appeal in the superior court department within 25 days after service on the appeal is completed, subject to such rules as the supreme judicial court may prescribe. Notice of the action with a copy of the complaint shall be given to such city or town clerk so as to be received within such 20 days. The complaint shall allege that the decision exceeds the authority of the board or authority, and any facts pertinent to the issue, and shall contain a prayer that the decision be annulled. There shall be attached to the complaint a copy of the decision appealed from, bearing the date of filing thereof, certified by the city or town clerk with whom the decision was filed.

A city or town may provide any officer or board of such city or town with independent legal counsel for appealing, as provided in this section, a decision of a planning board and for taking such other subsequent action as parties are authorized to take.

Costs shall not be allowed against the planning board unless it shall appear to the court that the planning board in making the decision appealed from, acted with gross negligence, in bad faith or with malice.

Costs shall not be allowed against the party appealing from the decision of the planning board unless it shall appear to the court that said appellant or appellants acted in bad faith or with malice in making the appeal to the court.

The court shall require non municipal plaintiffs to post a surety or cash bond in a sum of not less than $2,000 nor more than $15,000 to secure the payment of such costs in appeals of decisions approving comprehensive permits.

All issues in any proceeding under this section shall have precedence over all other civil actions and proceedings.