

HOUSE No. 3844

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 27, 2017.

The committee on Housing to whom were referred the petition (accompanied by bill, House, No. 668) of Kevin G. Honan relative to multifamily housing construction and the petition (accompanied by bill, House, No. 684) of Bradley H. Jones, Jr. and others that cities and towns be authorized to increase the density of property zoned for residential usage to provide additional affordable housing units, reports recommending that the accompanying bill (House, No. 3844) ought to pass [Representatives Diehl of Whitman and DeCoste of Norwell dissent].

For the committee,

KEVIN G. HONAN.

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**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act to expedite multifamily housing construction.

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

1 SECTION 1. Section 3 of chapter 40A of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by inserting after the tenth paragraph the following
3 paragraph:—

4 No zoning ordinance or by-law shall prohibit or unreasonably regulate the use of land for
5 open space residential development in any district zoned for residential use. For the purposes of
6 the section, the term “open space residential development” shall be as defined in section 9 of this
7 chapter.

8 SECTION 2. Section 3 of chapter 40A, as so appearing, is hereby amended by inserting
9 after the tenth paragraph the following:-

10 Zoning ordinances and by-laws shall classify “accessory dwelling unit,” as defined
11 herein, as a use permitted by right in all single-family residential zoning districts. For the
12 purposes of this section, “accessory dwelling unit” shall mean a self-contained housing unit,
13 inclusive of sleeping, cooking and sanitary facilities, incorporated within a single-family

14 dwelling or detached accessory structure that is clearly subordinate to the single-family dwelling
15 and complies with the use, dimensional, and design requirements of the local zoning ordinance
16 or by-law.

17 An accessory dwelling unit shall be built on a lot of sufficient area to meet the
18 requirements of title 5 of the state environmental code established by section 13 of chapter 21A,
19 if applicable; provided, however, that no zoning ordinance, by-law, or local regulations shall
20 unreasonably regulate the location, dimensions, or design of an accessory dwelling unit on a lot.

21 Zoning ordinances and bylaws shall require all accessory dwelling units be subject to the
22 following:

23 (i) maintains a separate entrance, either directly from the outside or through an entry
24 hall or corridor shared with the principal dwelling sufficient to meet the requirements of the state
25 building code for safe egress;

26 (ii) shall not be sold separately from the principal dwelling; and

27 (iii) is not larger in floor area than 1/2 the floor area of the principal dwelling or 900
28 square feet, whichever is smaller.

29 Zoning ordinances and by-laws shall not require more than 1 additional parking space for
30 an accessory dwelling unit; provided, however, that, if parking is required for the principal
31 dwelling, that parking shall be retained or replaced.

32 Zoning ordinances and by-laws may require that the principal dwelling or the accessory
33 dwelling unit be continuously owner-occupied and may limit the total number of accessory

34 dwelling units in the municipality to not less than 5 per cent of the total non-seasonal single-
35 family housing units in the municipality.

36 Exterior alterations of the principal dwelling to allow separate primary or emergency
37 access to the accessory dwelling unit shall be allowed without a special permit if such alterations
38 are within applicable dimensional setback requirements.

39 Nothing in this section shall authorize an accessory dwelling unit to violate or avoid
40 compliance with the building, fire, health or sanitary codes, historic or wetlands laws, ordinances
41 or by-laws or title 5 of the state environmental code established by said section 13 of said chapter
42 21A, if applicable.

43 The department of housing and community development may by regulation exempt a
44 municipality from this paragraph if the department determines that: (1) the municipality has a
45 number of multifamily units greater than required under section 3A by a number of housing units
46 not less than 5 per cent of the total non-seasonal housing units in the municipality; or (2) housing
47 sale prices in the municipality have declined over the previous 3-year period.

48 SECTION 3. Chapter 40A of the General Laws, as appearing, in the 2014 Official
49 Edition, is hereby amended by adding the following section:-

50 Section 3A.

51 (a) For purposes of this section, unless the context clearly requires otherwise, the
52 following words shall have the following meanings:

53 “As of right”, development may proceed under a zoning ordinance or by-law without the
54 need for a special permit, variance, zoning amendment, waiver, or other discretionary zoning
55 approval.

56 "Eligible locations", (1) areas near transit stations, including rapid transit, commuter rail
57 and bus and ferry terminals; (2) areas of concentrated development, including town and city
58 centers, other existing commercial districts in cities and towns, and existing rural village centers;
59 or (3) areas that by virtue of their infrastructure, transportation access, existing underutilized
60 facilities, and/or location make highly suitable locations for residential multi-family housing.

61 “Gross density”, is a units-per-acre density measurement that includes in the calculation,
62 land occupied by public rights-of-way, recreational, civic, commercial, and other non-residential
63 uses.

64 "Lot", shall mean an area of land with definite boundaries, used, or available for use, as
65 the site of one or more buildings.

66 "Multi-family housing”, (i) A residential building with three or more dwelling units; or
67 (ii) Two or more residential buildings on the same lot with more than one dwelling unit in each
68 building.

69 “Rural town”, a municipality with a population density of less than 500 persons per
70 square mile as determined by the most recent decennial federal census.

71 “The department”, Department of Housing and Community Development.

72 (b) Within three years of the effective date of this section, zoning ordinances and bylaws
73 shall provide one or more districts in which multi-family housing is a permitted use as of right.

74 For the purposes of this section, districts shall satisfy the following minimum requirements:

75 1. Include multi-family housing without age restrictions, which is suitable for families
76 with children;

77 2. accommodate a reasonable share of the regional need for multi-family housing;

78 3. a minimum gross density of eight units per acre in rural towns subject to any further
79 limitations imposed by the state Wetlands Protection Act pursuant to section 40 of chapter 131 of
80 the General Laws and Title 5 of the State Environmental Code pursuant to section 13 of chapter
81 21A of the General Laws. All other municipalities shall have a minimum gross density of fifteen
82 units per acre; and

83 4. be in eligible locations.

84 A city or town may elect to satisfy the requirement of subsection (b) of this section by
85 obtaining a determination from the department, acting directly or through a regional planning
86 agency as its designee, that the multi-family provisions of its zoning ordinance or bylaw are
87 consistent with the department's guidelines. If a city or town obtains a determination from the
88 department under this section, the city or town may use the determination as verification of
89 compliance when applying for discretionary funding by state agency programs that have
90 included a preference or priority for multi-family zoning pursuant to this section.

91 (c) The department shall publish guidelines which may be used to determine if a city or
92 town has satisfied the requirements established in subsection (b) of this section.

93 SECTION 4. Section 5 of Chapter 40A, as so appearing, is hereby amended by inserting
94 after the words “town meeting;” in line 82 the following;-

95 “provided, however, if a city or town has failed to meet the minimum requirements of
96 subsection (b) of section 3A of Chapter 40A, any zoning ordinance or by-law that is consistent
97 with the requirements of section 3A of chapter 40A shall be adopted by a vote of a simple
98 majority of all members of the town council, or of the city council where there is a commission
99 form of government or a single branch, or of each branch where there are two branches, or by a
100 vote of a simple majority of a town meeting;”

101 SECTION 5. Section 9 of chapter 40A of the General Laws, as appearing in the 2014
102 Official Edition, is hereby amended by striking out, in line 35, the word “cluster” and inserting in
103 place thereof the following:— open space residential

104 SECTION 6. Section 9 of chapter 40A of the General Laws, as so appearing, is hereby
105 amended by striking out, in line 39, the word “cluster” and inserting in place thereof the
106 following:— open space residential

107 SECTION 7. Section 9 of chapter 40A of the General Laws, as so appearing, is hereby
108 amended by striking out the seventh paragraph and inserting in place thereof the following
109 paragraph:—

110 “Open space residential development” means a residential development in which the
111 buildings and accessory uses are clustered together into one or more groups separated from
112 adjacent property and other groups within the development by intervening open land. An open
113 space residential development shall be permitted only on a plot of land of such minimum size as
114 a zoning ordinance or by-law may specify which is divided into building lots with dimensional

115 control, density and use restrictions of such building lots varying from those otherwise permitted
116 by the ordinance or by-law and open land. Such open land when added to the building lots shall
117 be at least equal in area to the land area required by the ordinance or by-law for the total number
118 of units or buildings contemplated in the development. Such open land may be situated to
119 promote and protect maximum solar access within the development. Such open land shall either
120 be conveyed to the city or town and accepted by it for park or open space use, or be conveyed to
121 a non-profit organization the principal purpose of which is the conservation of open space, or to
122 be conveyed to a corporation or trust owned or to be owned by the owners of lots or residential
123 units within the plot. If such a corporation or trust is utilized, ownership thereof shall pass with
124 conveyances of the lots or residential units. In any case where such land is not conveyed to the
125 city or town, a restriction enforceable by the city or town shall be recorded providing that such
126 land shall be kept in an open or natural state and not be built for residential use or developed for
127 accessory uses such as parking or roadway.

128 SECTION 8. Section 81Q of chapter 41, as so appearing, is hereby amended by inserting
129 after the second sentence the following sentence:-

130 Such rules shall not require the submission of a plan showing a standard subdivision
131 complying with the requirements of the local zoning ordinance or by-laws as a condition
132 precedent to the approval of a plan depicting a cluster development pursuant to section 9 of
133 chapter 40A.