

**HOUSE . . . . . No. 1761**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Natalie M. Blais*

*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 promoting cluster residential development.**

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Natalie M. Blais</i>	<i>1st Franklin</i>	<i>1/16/2019</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>1/27/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/27/2019</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>1/28/2019</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	<i>2/1/2019</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/1/2019</i>
<i>Stephan Hay</i>	<i>3rd Worcester</i>	<i>1/28/2019</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>1/30/2019</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>	<i>1/30/2019</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>2/1/2019</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>	<i>1/31/2019</i>

**HOUSE . . . . . No. 1761**

By Ms. Blais of Sunderland, a petition (accompanied by bill, House, No. 1761) of Natalie M. Blais and others relative to zoning ordinances or bylaws that permit open space residential development. Municipalities and Regional Government.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-First General Court  
(2019-2020)**

An Act promoting cluster residential development.

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

1 Chapter 40A is hereby further amended by inserting after section 3 the following  
2 section:-

3 Section 3A.

4 (1) A zoning ordinance or bylaw that permits open space residential development by right  
5 or by special permit shall:

6 (a) permit the development of new dwellings at least equal to the number allowed under  
7 a conventional subdivision plan. In order to confirm the accuracy of such number a municipality  
8 may require either a sketch plan showing the layout under a conventional subdivision scheme or  
9 a calculation that deducts for roadways, wetlands and other site or legal constraints and divides  
10 by an underlying lot area requirement in order to determine the allowed housing units in the  
11 development, but may not require a preliminary design or engineering tests to prove the yield  
12 from a conventional subdivision on the property.

13 (b) require the proposed development to identify the significant natural and cultural  
14 features of the land and concentrate development by use of reduced dimensional requirements to  
15 preserve those features.

16 (c) require the development to permanently preserve a certain percentage of substantially  
17 contiguous developable land, ranging from 30 to 60 percent, in a natural, scenic or open  
18 condition, or in agricultural, forestry, or passive outdoor recreational use. For the purposes of  
19 calculating the percentage of land to be preserved, the land's developable area shall be  
20 determined pursuant to applicable state and local land use and environmental laws and  
21 regulations, and the zoning ordinance or by-law, without regard in either case to the suitability of  
22 soils or groundwater for on-site wastewater disposal as such is separately regulated by local  
23 boards of health.

24 (2) If a zoning ordinance or bylaw contains no provisions permitting open space  
25 residential development, then a proposed open space residential development of five or more  
26 new single family residential dwellings on a parcel as a subdivision under Chapter 41 in a zoning  
27 district that requires a minimum lot area of 30,000 square feet or greater for a single-family  
28 residential dwelling shall be allowed as of right if it meets the requirements of this sub-section,  
29 except upon a specific finding by the planning board that such development is not feasible or the  
30 land and natural resource conservation objectives of such development are achieved on the site  
31 through alternate means already adopted by the municipality, such as the transfer of development  
32 rights or natural resource protection zoning. Such developments shall meet the requirements of  
33 paragraphs (a) and (b) of sub-section (1) and shall further permanently preserve at least 40  
34 percent of the parcel's substantially contiguous developable area. In districts where Title 5 of the  
35 Environmental Code is in effect, and which are in nitrogen-sensitive areas where the number of

36 bedrooms is calculated at one bedroom per 10,000 square feet of land area, the provisions of this  
37 section shall not apply if the required lot area is 30,000 square feet or less, unless the local board  
38 of health approves an aggregate calculation of land area that includes the preserved land, and if  
39 the required lot area is more than 30,000 square feet, the minimum preservation requirement set  
40 forth in this section shall be modified to equal the percentage resulting from: the subtraction of  
41 30,000 square feet from the lot size requirement: that difference divided by the lot size  
42 requirement: and multiplied by 100, except to the extent inconsistent with requirements adopted  
43 by a regional planning agency under chapter 716 of the Acts of 1989 or chapter 831 of the Acts  
44 of 1977, as those acts may be amended. A proposed development meeting the requirements of  
45 this sub-section shall be permitted upon review and approval by a planning board pursuant to  
46 section 81K to 81GG, inclusive, of chapter 41 and in accordance with a planning board's rules  
47 and regulations governing subdivision control.

48 Allowance of open space residential development by right in accordance with this sub-  
49 section shall not preclude increases in the permissible number of dwelling units within an open  
50 space residential development by special permit or otherwise.