HOUSE DOCKET, NO. 188 FILED ON: 1/8/2019

HOUSE . . . . . No. 187

The Commonwealth of Massachusetts

PRESENTED BY:

Angelo J. Puppolo, Jr.

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 improving housing opportunities and the Massachusetts economy.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Angelo J. Puppolo, Jr.	*12th Hampden*	*1/8/2019*
Russell E. Holmes	*6th Suffolk*	*2/1/2019*
Bud L. Williams	*11th Hampden*	*1/30/2019*

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HOUSE . . . . . No. 187

By Mr. Puppolo of Springfield, a petition (accompanied by bill, House, No. 187) of Angelo J. Puppolo, Jr., Russell E. Holmes and Bud L. Williams relative to zoning ordinances and by-laws and improving housing opportunities. Community Development and Small Businesses.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *1112* OF 2017-2018.]

The Commonwealth of Massachusetts

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

An Act improving housing opportunities and the Massachusetts economy.

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 9 of chapter 40A, as so appearing, is hereby amended by inserting after the second paragraph the following paragraph:-

Zoning ordinances or by-laws shall permit multifamily development by right in one or more zoning districts that together cover not less than 1.5% of the developable land area in a city or town and which, by virtue of its infrastructure, transportation access, existing underutilized facilities, and/or location, are suitable for multifamily residential development. Zoning ordinances or by-laws shall establish a housing density for by-right multifamily development in such zoning districts of not less than twenty (20) dwelling units per acre. As used herein, "multifamily housing" means apartment or condominium units in buildings which contain or will contain more than three (3) such units.

SECTION 2. Section 9 of chapter 40A, as so appearing, is hereby amended by striking out, in the fifth paragraph, the words “cluster developments or”.

SECTION 3. Section 9 of chapter 40A, as so appearing, is hereby amended by striking out the sixth paragraph and inserting in place thereof the following paragraph:-

Notwithstanding any provision of this section to the contrary, zoning ordinances or by-laws shall provide that cluster developments shall be permitted by right in residential zoning districts at the density permitted in the zoning district in which the property is located upon review and approval by a planning board pursuant to the applicable provisions of sections 81K to 81GG, inclusive, of chapter 41 and in accordance with its rules and regulations governing subdivision control. Zoning ordinances and by-laws shall not require the submission of a plan showing a standard subdivision complying with the otherwise applicable requirements of the ordinance or by-laws as a condition precedent to the approval of a cluster development plan.

SECTION 4. Section 81Q of chapter 41, as so appearing, is hereby amended by inserting after the second sentence the following sentence:-

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

SECTION 5. Section 3 of chapter 40A, as so appearing, is hereby amended by inserting after the tenth paragraph the following paragraph:-

Zoning ordinances and by-laws shall classify “accessory dwelling unit,” as defined herein, as a use permitted by right in all single-family residential zoning districts. No zoning ordinance or by-law shall unreasonably regulate the location, dimensions, or design of an accessory dwelling unit on a lot. As used herein, “accessory dwelling unit” is a self-contained housing unit incorporated within a single-family dwelling or detached accessory structure that is clearly subordinate to the single-family dwelling and complies with the use, dimensional, and design requirements of the local zoning ordinance or by-law.

SECTION 6. Section 9 of chapter 40A, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

Zoning ordinances or by-laws shall provide for specific types of uses which shall only be permitted in specified districts upon the issuance of a special permit. Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or by-law, shall be subject to general or specific provisions set forth therein, and shall run with the land and shall not be personal to the applicant or owner of the property. Such permits may also impose conditions, safeguards and limitations on time or use.

SECTION 7. Section 10 of chapter 40A, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraphs:-

The permit granting authority shall have the power, after public hearing for which notice has been given by publication and posting as provided in section eleven and by mailing to all parties in interest, to grant a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds that a literal enforcement of the provisions of the ordinance or by-law would result in a practical difficulty. In making its

determination, the permit granting authority shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood by such grant. In making such determination, the permit granting authority shall also consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a significant detriment to nearby properties will be created in the granting of the dimensional variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a dimensional variance; (3) whether the requested dimensional variance is substantial; (4) whether the proposed variance will have a significant adverse impact on the physical conditions in the neighborhood; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the permit granting authority, but shall not necessarily preclude the granting of the dimensional variance.

Except where local ordinances or by-laws shall expressly permit variances for use, no variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located; provided, however, that such variances properly granted prior to January first, nineteen hundred and seventy-six but limited in time, may be extended on the same terms and conditions that were in effect for such variance upon said effective date. No variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located unless the permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief

may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

SECTION 8. Chapter 40A is hereby amended by inserting after the Section 7 the following section:-

Section 7A. Site Plan Review

(a) As used in this section, "site plan review" shall mean a separate review under a municipality's zoning ordinance or by-law, by the planning board, of a plan showing the proposed on-site arrangement of, parking, pedestrian and vehicle circulation, utilities, grading and other site features and improvements existing or to be placed on a parcel of land, in connection with the proposed use of land or structures. Under site plan review, an applicant proposing the development or redevelopment of land for a use that is authorized by right under the local zoning ordinance or by-law presents a plan and other information relevant to the site design of the proposed development to the planning board, which may take input from municipal departments and parties in interest. Such review shall take place under this section only where the proposed use does not require a special permit or variance under the local by-law or ordinance.

(b) Cities and towns may require such site plan review under a local ordinance or by-law adopted prior to the effective date of this section, or thereafter under this section. Site plan review may be required before a building permit is granted for the construction, reconstruction, or expansion of structures for a use not requiring a special permit or variance, as well as before the commencement of site development not requiring a building or special permit. The planning board may adopt, and from time to time amend, rules and regulations to implement the local site

plan review ordinance or by-law, including provisions for the imposition of reasonable fees for the employment of outside consultants in the same manner as set forth in section 53G of chapter 44.

(c) An ordinance or by-law requiring site plan review, whether adopted under this section or previously adopted under the municipality's home rule authority, shall comply with the provisions of this and all following subsections of Section 7A. The ordinance or by-law shall establish the submission, review, and approval process for applications, which may include the requirement of a public hearing held pursuant to the provisions of section eleven of this chapter. Approval of a site plan shall require a simple majority vote of the planning board and the planning board's written decision shall be filed with the city or town clerk within the time limits prescribed by the ordinance or by-law, not to exceed 90 days from the date of filing of the application. If no decision is filed within the time limit prescribed, the site plan shall be deemed constructively approved as provided in section 9, paragraph 11 of this chapter.

(d) The decision of the planning board may require only those conditions that the applicant has agreed to make or that otherwise are within the planning board's power under the applicable ordinance or by-law and is determined by the planning board to be necessary to ensure substantial compliance of the proposed improvements with the requirements of the zoning ordinance or by-law or to reasonably mitigate any extraordinary direct adverse impacts of the proposed improvements on adjacent properties. A site plan application may be denied only on the grounds that: (i) the proposed site plan cannot be conditioned to meet the requirements set forth in the zoning ordinance or by-law; (ii) the applicant failed to submit the information and fees required by the zoning ordinance or by-law necessary for an adequate and timely review of the design of the proposed land or structures; or (iii) there is no feasible site design change or

condition that would adequately mitigate any extraordinary direct adverse impacts of the proposed improvements on adjacent properties.

(e) Zoning ordinances or by-laws shall provide that a site plan approval granted under this section shall lapse within a specified period of time, not less than two years from the date the planning board files its decision with the city or town clerk, if substantial use or construction, including substantial investment in site preparation or infrastructure construction, has not yet begun. The aforesaid minimum period of two years may, by ordinance or by-law, be increased to a longer period. If an appeal is filed, the commencement of the lapse period shall be measured from the date of the dismissal of the appeal or entry of final judgment in favor of the applicant. The period for lapse may be extended for good cause by a majority vote of the planning board.

(f) Site plan review decisions may be appealed under Section 17 in the same manner as a special permit. A complaint by a plaintiff challenging a site plan approval under this section shall allege the specific reasons why the planning board exceeded its authority in approving the site plan and shall allege specific facts establishing how the plaintiff is aggrieved by such decision. The planning board's decision in such a case shall be affirmed unless the court concludes that the decision exceeded the planning board's authority under subsection (d).

(g) The submission and review process for a site plan submitted in connection with an application for a use that requires a special permit or use variance shall be in conjunction with the submission and review of such special permit or variance application in a coordinated

process and shall not be subject to a separate site plan review hearing or process under this section or any local ordinance or by-law.

(h) In municipalities that adopted a zoning ordinance or by-law requiring some form of site plan review prior to the effective date of this act, the provisions of this Section 7A shall not be effective with respect to such zoning ordinance or by-law until one year after the effective date of this act.

SECTION 9. Chapter 40A of the General Laws, as so appearing, is hereby amended by inserting the following section:-

Section 18. Exactions. No decision under this chapter shall be based on the exaction of monetary payment or property from the applicant or landowner unless the decision contains explicit findings of fact and conclusions demonstrating that the exaction so required or requested satisfies federal constitutional requirements.

SECTION 10. Section 81Q of chapter 41, as so appearing, is hereby amended by inserting after the eleventh sentence the following sentence:-

No decision concerning a plan of a subdivision shall be based on the exaction of monetary payment or property from the applicant or landowner unless the decision of the planning board contains explicit findings of fact and conclusions demonstrating that the exaction so required or requested satisfies federal constitutional requirements.

SECTION 11. Section 40 of chapter 131, as so appearing, is hereby amended by striking out the eighteenth paragraph and inserting in place thereof the following paragraph:-

If after said hearing the conservation commission, selectmen or mayor, as the case may be, determine that the area on which the proposed work is to be done is significant to public or private water supply, to the groundwater supply, to flood control, to storm damage prevention, to prevention of pollution, to protection of land containing shellfish, to the protection of wildlife habitat or to the protection of fisheries or to the protection of the riverfront area consistent with the following purposes: to protect the private or public water supply; to protect the ground water; to provide flood control; to prevent storm damage; to prevent pollution; to protect land containing shellfish; to protect wildlife habitat; and to protect the fisheries, such conservation commission, board of selectmen or mayor shall by written order within twenty-one days of such hearing impose such conditions as will contribute to the protection of the interests described herein, and all work shall be done in accordance therewith. No order shall be based on the exaction of monetary payment or property from the applicant or landowner unless the written order contains explicit findings of fact and conclusions demonstrating that the exaction so required or requested satisfies federal constitutional requirements. If the conservation commission, selectmen or mayor, as the case may be, make a determination that the proposed activity does not require the imposition of such conditions, the applicant shall be notified of such determination within twenty-one days after said hearing. Such order or notification shall be signed by the mayor or a majority of the conservation commission or board of selectmen, as the case may be, and a copy thereof shall be sent forthwith to the applicant and to the department.

SECTION 12. The twelfth paragraph of Section 9 of chapter 40A, as so appearing, is hereby amended by deleting the words “a two-thirds vote of boards with more than five members, a vote of at least four members of a five member board, and a unanimous vote of a three member board” and inserting in place thereof the following words:-

the concurring vote of a majority of the members then in office.

SECTION 13. The fourth paragraph of Section 15 of chapter 40A, as so appearing, is hereby amended by deleting the words “all members of the board of appeals consisting of three members, and a concurring vote of four members of a board consisting of five members” and inserting in place thereof the following words:-

the concurring vote of a majority of the members of the board of appeals then in office.

SECTION 14. Section 53G of chapter 44, as so appearing, is hereby amended by inserting after the first sentence the following paragraph:

Such rules shall require that the city or town establish and update as necessary a list of approved outside consultants having the minimum qualifications in one or more fields in which the local permitting boards or commission reasonably expect to require outside consultants in reviewing applications. The list shall be certified by the city clerk or town clerk and shall contain not less than three outside consultants in each field. The applicant shall have the right to select the outside consultant(s) from the certified list and to request and receive a proposal from each consultant prior to making such selection. An applicant or petitioner shall not be charged with the travel costs of an outside consultant. Where a proposed project requires the review and approval of more than one local board, commission, or official, the respective local boards, commissions, and officials shall coordinate in their use of outside consultants in order to avoid unnecessary duplication.

SECTION 15. The second paragraph of Section 17 of chapter 40A, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following paragraphs:-

If the complaint is filed by someone other than the original applicant, appellant or petitioner, such original applicant, appellant, or petitioner and all members of the board of appeals or special permit granting authority 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 fourteen 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 board of appeals or special permit granting authority and shall within twenty-one 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 seven 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 board of appeals or special permit granting authority shall transmit to the reviewing court the record of its proceedings, including its minutes, findings, decisions, and, if available, a true and correct transcript of its proceedings. If the proceeding was tape recorded, a transcript of that tape recording is a true and correct transcript for purposes of establishing the record. The court may not accept or consider any evidence outside the record of the board of appeals or special permit granting authority unless that evidence was offered to the board of appeals or special permit granting authority, respectively, and the court determines that it was improperly excluded from the record.

The court shall examine the record upon which the decision of the board of appeals or special permit granting authority is based, and upon such record determine only whether or not the decision is arbitrary, capricious, or illegal. A decision of a board of appeals or special permit granting authority is valid if the decision is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal.

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 ninety 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.

SECTION 16. Section 8C of chapter 40, as so appearing, is hereby amended by inserting after the second paragraph the following paragraph:-

A Conservation Commission may administer and enforce a local wetlands ordinance or by-law that is adopted by a municipality, only to the extent that it imposes standards or other requirements that are more stringent than or otherwise exceed those set forth in Wetlands Protection Act (G.L. Ch. 131 § 40) and regulations (310 CMR 10.00) thereunder, and only if, prior to adoption by a municipality, the Department of Environmental Protection shall review and approve any such proposed local wetlands ordinance or by-law based upon findings that the proposed ordinance or by-law has a generally recognized scientific basis, is a recommended best practice technique, is necessary to protect unusual local resources that warrant special or

enhanced protection, and does not conflict with the Wetlands Protection Act (G.L. Ch. 131 § 40) and regulations (310 CMR 10.00) thereunder. An appeal of a decision made under a local wetlands ordinance or by-law shall be made to the Department of Environmental Protection in accordance with the Wetlands Protection Act (G.L. Ch. 131 § 40) and regulations (310 CMR 10.00) thereunder.

SECTION 17. Section 13 of chapter 21A, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

A board of health may adopt a local on-site sewage disposal systems regulation, only to the extent that it imposes standards or other requirements that are more stringent than or otherwise exceed those set forth in Title 5 of the State Environmental Code, 310 CMR 15.000, and only if, prior to adoption by the board of health, the Department of Environmental Protection shall review and approve any such proposed on-site sewage disposal systems regulation based upon findings that the proposed regulation has a generally recognized scientific basis, is a recommended best practice technique, is necessary to protect unusual local resources that warrant special or enhanced protection, and does not conflict with Title 5 of the State Environmental Code, 310 CMR 15.000.

SECTION 18. The first paragraph of Section 31 of chapter 111, as so appearing, is hereby amended by inserting after the second sentence the following sentence:-

A board of health may adopt local on-site sewage disposal systems regulations that contain standards or other requirements that are more stringent than or otherwise exceed those set forth in Title 5 of the State Environmental Code, 310 CMR 15.000, only if, prior to adoption by the board of health, the Department of Environmental Protection shall review and approve

any such proposed on-site sewage disposal systems regulation based upon findings that the proposed regulation has a generally recognized scientific basis, is a recommended best practice technique, is necessary to protect unusual local resources that warrant special or enhanced protection, and does not conflict with Title 5 of the State Environmental Code, 310 CMR 15.000.