

HOUSE No. 2317

The Commonwealth of Massachusetts

PRESENTED BY:

Brian W. Murray

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 relative to zoning.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>1/16/2025</i>

HOUSE No. 2317

By Representative Murray of Milford, a petition (accompanied by bill, House, No. 2317) of Brian W. Murray relative to zoning. Municipalities and Regional Government.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Fourth General Court
(2025-2026)**

An Act relative to zoning.

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. Chapter 40A of the General Laws, as most recently amended by section 10
2 of chapter 150

3 of the acts of 2024, is hereby amended in section 6 by striking out the word “issued” in
4 line 3 and

5 inserting in place thereof the following words:- or other entitlement under this chapter
6 applied for;

7 and by inserting after the second sentence, in line 16, the following new sentence:-

8 Additionally, structures on lots with pre-existing nonconformities as to lot size or shape,
9 frontage, lot

10 coverage, or floor area ratio may be extended or altered as of right provided such
11 expansion or alteration

12 complies with the current dimensional regulations regarding height, stories, and setback;

13 and by striking out the second and third paragraphs and inserting in place thereof the

14 following two

15 paragraphs:-

16 A zoning ordinance or by-law shall provide that construction or operations under a

17 building permit shall

18 conform to any subsequent amendment of the ordinance or by-law unless the use or

19 construction is

20 commenced within a period of not more than 24 months after the issuance of the last

21 permit necessary

22 for construction and, in cases involving construction, unless such construction is

23 continued through to

24 completion as continuously and expeditiously as is reasonable. The 24-month period shall

25 be tolled

26 during any time the applicant is actively seeking or obtaining other necessary permits.

27 Construction or

28 operations under a special permit issued pursuant to section 9 or site plan approval

29 pursuant to the local

30 ordinance or by-law shall conform to any subsequent amendment of the zoning ordinance

31 or by-law or

32 of any other local land use regulations unless the use or construction is commenced
33 within a period of 3
34 years after the issuance of the special permit or site plan approval and, in cases involving
35 construction,

36 unless such construction is continued through to completion as continuously and
37 expeditiously as is

38 reasonable. For the purpose of the prior sentence, construction involving the
39 redevelopment of

40 previously disturbed land shall be deemed to have commenced upon substantial
41 investment in site

42 preparation or infrastructure construction, and construction of developments intended to
43 proceed in

44 phases shall proceed expeditiously, but not continuously, among phases.

45 A zoning ordinance or by-law may define and regulate nonconforming uses and
46 structures abandoned or

47 not used for a period of four years or more.

48 SECTION 2. Said section 6 is hereby further amended by striking out the words “for
49 single and two

50 family residential use” in line 46 and inserting in place thereof the words:- a lot

51 SECTION 3. Said section 6 is hereby further amended in the fifth paragraph by inserting
52 at the end

53 thereof the following sentence:-

54 Further, adjacent lots under common ownership shall not be treated as a single lot for
55 local zoning

56 purposes, unless doing so would eliminate a pre-existing lawful nonconformity as to lot
57 size, frontage,

58 or setback, and at least one of the lots under common ownership is undeveloped.

59 SECTION 4. Section 9 of said chapter 40A of the General Laws, is hereby amended in
60 the twelfth

61 paragraph by inserting after the second sentence the following new sentence:-

62 Any public hearing on a special permit application shall extend for no more than one
63 hundred and fifty

64 days from the date the hearing is opened.

65 and in the thirteen paragraph by striking out the first two sentences and inserting in place
66 thereof the

67 following two sentences:-

68 Failure by the special permit granting authority to open the public hearing on an
69 application within

70 sixty-five days, conclude the public hearing within one hundred and fifty days, or take
71 final action

72 within 30 days or within an otherwise agreed-upon extended time, if applicable, shall be
73 deemed to be a

74 grant of the special permit. The petitioner who seeks such approval by reason of the
75 failure of the special

76 permit granting authority to act within such time prescribed, shall notify the city or town
77 clerk, in

78 writing within fourteen days from the expiration of said period or extended time, if
79 applicable, of such

80 approval and that notice has been sent by the petitioner to parties in interest.

81 SECTION 5. Said chapter 40A of the General Laws is hereby amended by striking out
82 section 10 and

83 inserting in place thereof the following:-

84 Section 10. The permit granting authority shall have the power, after public hearing for
85 which notice has

86 been given by publication and posting as provided in section eleven and by mailing to all
87 parties in

88 interest, to grant upon appeal or upon petition with respect to particular land or structures
89 a variance

90 from the terms of the applicable zoning ordinance or by-law where such permit granting
91 authority

92 specifically finds that a literal enforcement of the provisions of the ordinance or by-law
93 would result in a

94 practical difficulty. In making its determination, the permit granting authority shall weigh
95 the benefits to

96 the appellant/petitioner and to the public interest including the interest in supporting the
97 production of

98 housing against the detriment to the health, safety, and welfare of the neighborhood, and
99 may also

100 consider: (1) whether the practical ;difficulty relates to soil conditions, shape, or
101 topography of such land

102 or structures; (2) whether the literal enforcement would impose a financial hardship on
103 the

104 appellant/petitioner; (3) whether the benefit sought by the appellant/petitioner can be
105 achieved by some

106 other method feasible for the appellant/petitioner to achieve; and (4) whether the practical
107 difficulty was

108 self-created.

109 Except where local ordinances or by-laws shall expressly permit variances for use, no
110 variance may
111 authorize a use or activity other than residential, not otherwise permitted in the district in
112 which the land
113 or structure is located; provided, however, that such variances properly granted prior to
114 January first,
115 nineteen hundred and seventy-six but limited in time, may be extended on the same terms
116 and conditions
117 that were in effect for such variance upon said effective date.
118 If the rights authorized by a variance are not exercised within two years of the date of
119 grant of such
120 variance, which shall not include such time required to pursue other entitlements
121 necessary to construct
122 the project authorized by the variance or await the determination of an appeal referred to
123 in section
124 seventeen, such rights shall lapse; provided, however, that the permit granting authority
125 in its discretion
126 and upon written application by the grantee of such rights may extend the time for
127 exercise of such rights

128 for a period not to exceed two-years; and provided, further, that the application for such
129 extension is filed
130 with such permit granting authority prior to the expiration of such two-year period. If the
131 permit granting
132 authority does not grant such extension within thirty days of the date of application
133 therefor, and upon the
134 expiration of the original two-year period, such rights may be reestablished only after
135 notice and a new
136 hearing pursuant to the provisions of this section.

137 SECTION 6. Section 15 of said chapter 40A is hereby amended in the fifth paragraph by
138 striking out the

139 first seven sentences and inserting in place thereof the following seven sentences:-

140 All hearings of the board of appeals shall be open to the public and shall be opened
141 within thirty days of

142 any petition or application. Any such public hearing of the board of appeals shall extend
143 for no more

144 than sixty days from the date the hearing is opened. The decision of the board shall be
145 made within one

146 hundred days after the date of the filing of an appeal, application or petition, except in
147 regard to special

148 permits, as provided for in section nine. The required time limits for a public hearing and
149 said action,

150 may be extended by written agreement between the applicant and the board of appeals. A
151 copy of such

152 agreement shall be filed in the office of the city or town clerk. Failure by the board to act
153 within the

154 times prescribed or extended time, if applicable, shall be deemed to be the grant of the
155 appeal,

156 application or petition. The petitioner who seeks such approval by reason of the failure of
157 the board to

158 act within the time prescribed shall notify the city or town clerk, in writing, within
159 fourteen days from

160 the expiration of said period or extended time, if applicable, of such approval and that
161 notice has been

162 sent by the petitioner to parties in interest.

163 SECTION 7. Section 17 of said chapter 40A, is hereby amended in the first paragraph by
164 striking out

165 the last sentence and inserting in place thereof the following sentence:-

166 If the complaint is filed by someone other than the original applicant, appellant or
167 petitioner, then each

168 plaintiff, whether or not previously constituting parties in interest for notice purposes,
169 shall also

170 sufficiently allege and must plausibly demonstrate that measurable injury, which is
171 special and different

172 as to such plaintiff, to a private legal interest that will likely flow from the decision
173 through credible

174 evidence; and by striking out the second paragraph and inserting in place thereof the
175 following paragraph:-

176 If the complaint is filed by someone other than the original applicant, appellant or
177 petitioner, such

178 original applicant, appellant, or petitioner and the board of appeals or special permit
179 granting authority

180 shall be named as parties defendant with their addresses. To avoid delay in the
181 proceedings, instead of

182 the usual service of process, the plaintiff shall within fourteen days after the filing of the
183 complaint, send

184 written notice thereof, with a copy of the complaint, by delivery or certified mail to all
185 defendants, and

186 shall within twenty-one days after the entry of the complaint file with the clerk of the
187 court an affidavit

188 that such notice has been given. If no such affidavit is filed within such time the
189 complaint shall be
190 dismissed. No answer shall be required but an answer may be filed. Other persons
191 aggrieved may be
192 permitted to intervene, upon motion. The clerk of the court shall give notice of the
193 hearing as in other
194 cases without jury, to all parties whether or not they have appeared. The court's review of
195 the evidence
196 on the merits, but not as to jurisdiction, shall be limited to the record before the board of
197 appeals or
198 special permit granting authority as provided in chapter 30A, section 14, subsections (4)
199 – (6), provided,
200 however, that within forty-five days of filing the complaint, the plaintiff shall be
201 responsible for filing
202 either an electronic or paper copy of the record before the board or special permit
203 granting authority, and
204 the municipality shall cooperate in making the record available to the plaintiff in either
205 electronic or
206 paper format. Any party may, without leave of court, within thirty days of the submission
207 of the record

208 to the court, submit reports from consultants or experts, such reports to state the
209 qualifications of the
210 consultant or expert, the question to be answered or issue addressed, the facts considered,
211 the conclusion
212 of such consultant or expert, and the bases for the conclusion. And based on the record
213 evidence, as may
214 be supplemented and provided herein, the court may annul such decision or make such
215 other decree as
216 justice and equity may require., upon a showing by the plaintiff that the decision
217 exceeded the authority
218 of the board or special permit granting authority or was otherwise unsupported by the
219 record evidence.
220 The foregoing remedy shall be exclusive, notwithstanding any defect of procedure or of
221 notice other
222 than notice by publication, mailing or posting as required by this chapter, and the validity
223 of any action
224 shall not be questioned for matters relating to defects in procedure or of notice in any
225 other proceedings
226 except with respect to such publication, mailing or posting and then only by a proceeding
227 commenced

228 within ninety days after the decision has been filed in the office of the city or town clerk,
229 but the parties

230 shall have all rights of appeal and exception as in other equity cases. The court, in its
231 discretion, may

232 require a plaintiff in an action under this section appealing a decision of the board of
233 appeals or any

234 special permit granting authority to post a surety or cash bond in an amount of not more
235 than \$250,000

236 to secure the payment of and to indemnify and reimburse damages and costs and
237 expenses incurred in

238 such an action if the court finds that the harm to the defendant or to the public interest
239 resulting from

240 delays caused by the appeal outweighs the financial burden of the surety or cash bond on
241 the plaintiffs.

242 The court shall consider the relative merits of the appeal and the relative financial means
243 of the plaintiff

244 and the defendant. Nothing in this section shall require bad faith or malice of a plaintiff
245 for the court to

246 issue a bond under this section;and by striking out the fifth paragraph and inserting in
247 place thereof the following paragraph:- Costs, including reasonable attorneys' fees, in an amount

248 to be fixed by the court may be allowed against the party appealing from the decision of the
249 board or special permit granting authority if the court finds that the appellant or appellants acted
250 in bad faith or with malice in making the appeal to court.