

HOUSE No. 1761

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