

HOUSE No. 233

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.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>1/11/2023</i>

HOUSE No. 233

By Representative Puppolo of Springfield, a petition (accompanied by bill, House, No. 233) of Angelo J. Puppolo, Jr. relative to zoning ordinances and by-laws and improving housing opportunities. Community Development and Small Businesses.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act improving housing opportunities.

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

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

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

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

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

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

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

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

32 Zoning ordinances and by-laws shall classify “accessory dwelling unit,” as defined
33 herein, as a use permitted by right in all single-family residential zoning districts. No zoning
34 ordinance or by-law shall unreasonably regulate the location, dimensions, or design of an

35 accessory dwelling unit on a lot. As used herein, “accessory dwelling unit” is a self-contained
36 housing unit incorporated within a single-family dwelling or detached accessory structure that is
37 clearly subordinate to the single-family dwelling and complies with the use, dimensional, and
38 design requirements of the local zoning ordinance or by-law.

39

40 SECTION 6. Chapter 40A is hereby amended by inserting after the Section 7 the
41 following section:-

42 Section 7A. Site Plan Review

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

54 (b) Cities and towns may require such site plan review under a local ordinance or by-law
55 adopted prior to the effective date of this section, or thereafter under this section. Site plan
56 review may be required before a building permit is granted for the construction, reconstruction,

57 or expansion of structures for a use not requiring a special permit or variance, as well as before
58 the commencement of site development not requiring a building or special permit. The planning
59 board may adopt, and from time to time amend, rules and regulations to implement the local site
60 plan review ordinance or by-law, including provisions for the imposition of reasonable fees for
61 the employment of outside consultants in the same manner as set forth in section 53G of chapter
62 44.

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

73 (d) The decision of the planning board may require only those conditions that the
74 applicant has agreed to make or that otherwise are within the planning board's power under the
75 applicable ordinance or by-law and is determined by the planning board to be necessary to
76 ensure substantial compliance of the proposed improvements with the requirements of the zoning
77 ordinance or by-law or to reasonably mitigate any extraordinary direct adverse impacts of the
78 proposed improvements on adjacent properties. A site plan application may be denied only on
79 the grounds that: (i) the proposed site plan cannot be conditioned to meet the requirements set

80 forth in the zoning ordinance or by-law; (ii) the applicant failed to submit the information and
81 fees required by the zoning ordinance or by-law necessary for an adequate and timely review of
82 the design of the proposed land or structures; or (iii) there is no feasible site design change or
83 condition that would adequately mitigate any extraordinary direct adverse impacts of the
84 proposed improvements on adjacent properties.

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

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

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

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

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

108 SECTION 7. The twelfth paragraph of Section 9 of chapter 40A, as so
109 appearing, is hereby amended by deleting the words “a two-thirds vote of boards with more than
110 five members, a vote of at least four members of a five member board, and a unanimous vote of
111 a three member board” and inserting in place thereof the following words:-

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

113 SECTION 8. The fourth paragraph of Section 15 of chapter 40A, as so appearing, is
114 hereby amended by deleting the words “all members of the board of appeals consisting of three
115 members, and a concurring vote of four members of a board consisting of five members” and
116 inserting in place thereof the following words:-

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