

SENATE No. 96

The Commonwealth of Massachusetts

PRESENTED BY:

Michael J. Rodrigues

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:	
<i>Michael J. Rodrigues</i>	<i>First Bristol and Plymouth</i>	
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>	<i>1/23/2019</i>

SENATE No. 96

By Mr. Rodrigues, a petition (accompanied by bill, Senate, No. 96) of Michael J. Rodrigues and Paul A. Schmid, III for legislation to improve housing opportunities and the Massachusetts economy. Community Development and Small Businesses.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 94 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:

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 striking
12 out, in the fifth paragraph, the words “cluster 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 cluster developments shall be permitted by right in residential zoning
17 districts at the density permitted in the zoning district in which the property is located upon
18 review and approval by a planning board pursuant to the applicable provisions of sections 81K to
19 81GG, inclusive, of chapter 41 and in accordance with its rules and regulations governing
20 subdivision control. Zoning ordinances and by-laws shall not require the submission of a plan
21 showing a standard subdivision complying with the otherwise applicable requirements of the
22 ordinance or by-laws as a condition precedent to the approval of a cluster development plan.

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

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

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

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

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

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

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

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

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

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

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

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

80 Section 7A. Site Plan Review

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

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

98 plan review ordinance or by-law, including provisions for the imposition of reasonable fees for
99 the employment of outside consultants in the same manner as set forth in section 53G of chapter
100 44.

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

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

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

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

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

137 (g) The submission and review process for a site plan submitted in connection with an
138 application for a use that requires a special permit or use variance shall be in conjunction with
139 the submission and review of such special permit or variance application in a coordinated
140 process and shall not be subject to a separate site plan review hearing or process under this
141 section or any local ordinance or by-law.

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

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

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

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

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

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

160 If after said hearing the conservation commission, selectmen or mayor, as the case may
161 be, determine that the area on which the proposed work is to be done is significant to public or
162 private water supply, to the groundwater supply, to flood control, to storm damage prevention, to

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

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

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

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

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

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

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

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

205 If the complaint is filed by someone other than the original applicant, appellant or
206 petitioner, such original applicant, appellant, or petitioner and all members of the board of
207 appeals or special permit granting authority shall be named as parties defendant with their
208 addresses. To avoid delay in the proceedings, instead of the usual service of process, the plaintiff
209 shall within fourteen days after the filing of the complaint, send written notice thereof, with a
210 copy of the complaint, by delivery or certified mail to all defendants, including the members of
211 the board of appeals or special permit granting authority and shall within twenty-one days after
212 the entry of the complaint file with the clerk of the court an affidavit that such notice has been
213 given. If no such affidavit is filed within such time the complaint shall be dismissed. No answer
214 shall be required but an answer may be filed and notice of such filing with a copy of the answer
215 and an affidavit of such notice given to all parties as provided above within seven days after the
216 filing of the answer. Other persons may be permitted to intervene, upon motion. The clerk of the
217 court shall give notice of the hearing as in other cases without jury, to all parties whether or not
218 they have appeared.

219 The board of appeals or special permit granting authority shall transmit to the reviewing
220 court the record of its proceedings, including its minutes, findings, decisions, and, if available, a
221 true and correct transcript of its proceedings. If the proceeding was tape recorded, a transcript of
222 that tape recording is a true and correct transcript for purposes of establishing the record. The
223 court may not accept or consider any evidence outside the record of the board of appeals or
224 special permit granting authority unless that evidence was offered to the board of appeals or
225 special permit granting authority, respectively, and the court determines that it was improperly
226 excluded from the record.

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

232 The foregoing remedy shall be exclusive, notwithstanding any defect of procedure or of
233 notice other than notice by publication, mailing or posting as required by this chapter, and the
234 validity of any action shall not be questioned for matters relating to defects in procedure or of
235 notice in any other proceedings except with respect to such publication, mailing or posting and
236 then only by a proceeding commenced within ninety days after the decision has been filed in the
237 office of the city or town clerk, but the parties shall have all rights of appeal and exception as in
238 other equity cases.

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

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

249 enhanced protection, and does not conflict with the Wetlands Protection Act (G.L. Ch. 131 § 40)
250 and regulations (310 CMR 10.00) thereunder. An appeal of a decision made under a local
251 wetlands ordinance or by-law shall be made to the Department of Environmental Protection in
252 accordance with the Wetlands Protection Act (G.L. Ch. 131 § 40) and regulations (310 CMR
253 10.00) thereunder.

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

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

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

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

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