

HOUSE No. 1253

By Mr. Hynes of Marshfield, petition of Frank M. Hynes and Garrett J. Bradley relative to the production and preservation of affordable housing in the Commonwealth. Housing.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT STANDARDIZING ZONING APPEALS PROCESSES.

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 20 of chapter 40B of the General Laws, as
2 appearing in the 2000 Official Edition, is hereby amended by
3 striking out, in line 31, the words “board of zoning appeals” and
4 inserting in place thereof the following words:— planning board
5 established under section 70 of chapter 41.

1 SECTION 2. Chapter 40B of the General Laws, as so appearing,
2 is hereby amended by striking out sections 21, 22 and 23 and
3 inserting in place thereof the following 3 sections:—

4 Section 21. Any public agency or nonprofit organization or lim-
5 ited dividend organization proposing to build low or moderate
6 income housing under the provisions of sections 20 to 23 of this
7 chapter shall file a single application with the city or town clerk for a
8 “comprehensive permit” and a copy of said application, including
9 the date and time of filing certified by the city or town clerk, shall be
10 filed forthwith by the petitioner with the planning board. The plan-
11 ning board shall hold a public hearing, for which notice has been
12 given as provided in section 11 of chapter 40A, on any application
13 for a comprehensive permit within 65 days from the date of filing
14 such application; provided however that a city council having more
15 than 5 members designated to act upon such application may appoint
16 a committee of such council to hold the public hearing. The planning
17 board shall forthwith notify each such local board, as applicable, of
18 the filing of such application by sending a copy thereof to such local

19 boards for their recommendations. The planning board shall request
20 the appearance at said hearing of such representatives of said local
21 boards as are deemed necessary or helpful in making its decision
22 upon such application and shall have the same power to issue per-
23 mits or approvals as any local board or official who would otherwise
24 act with respect to such application, including but not limited to the
25 power to attach to said permit or approval conditions and require-
26 ments with respect to height, site plan, size or shape, or building
27 materials as are consistent with the terms of this section. The plan-
28 ning board, in making its decision on said application, shall take into
29 consideration the recommendations of the local boards and shall
30 have the authority to use the testimony of consultants. The planning
31 board shall adopt rules, not inconsistent with the purposes of this
32 chapter, for the conduct of its business pursuant to this chapter and
33 shall file a copy of said rules with the city or town clerk. The provi-
34 sions of section 11 of chapter 40A shall apply to all such hearings.
35 The decision of the planning board shall be made within 90 days
36 following the date of such public hearing. The required time limits
37 for a public hearing and said action may be extended by written
38 agreement between the petitioner and the planning board. A copy of
39 such agreement shall be filed in the office of the city or town clerk.
40 A comprehensive permit issued by a planning board shall require a
41 two-thirds vote of boards with more than 5 members, a vote of at
42 least 4 members of a 5 member board, and a unanimous vote of a
43 3 member board.

44 If the complaint is filed by someone other than the original appli-
45 cant or appellant, such original applicant or appellant and all
46 members of the planning board shall be named as parties defendant
47 with their addresses. To avoid delay in the proceedings, instead of
48 the usual service of process, the plaintiff shall within 14 days after
49 the filing of the complaint, send written notice thereof, with a copy
50 of the complaint by delivery or certified mail to all defendants
51 including the members of the planning board and shall within 21
52 days after the entry of the complaint file with the clerk of the court
53 an affidavit that such notice has been given. If no such affidavit is
54 filed within such time the complaint shall be dismissed. No answer
55 shall be required but an answer may be filed and notice of such
56 filing with a copy of the answer and an affidavit of such notice given
57 to all parties as provided above within 7 days after the filing of the

58 answer. Other persons may be permitted to intervene, upon motion.
59 The clerk of the court shall give notice of the hearing as in other
60 cases without jury, to all parties whether or not they have appeared.
61 The court shall hear all evidence pertinent to the authority of the
62 planning board and determine the facts, and, upon the facts as so
63 determined, annul such decision if found to exceed the authority of
64 such planning board or make such other decree as justice and equity
65 may require. The foregoing remedy shall be exclusive, notwith-
66 standing any defect of procedure or of notice other than notice by
67 publication, mailing or posting as required by this chapter, and the
68 validity of any action shall not be questioned for matters relating to
69 defects in procedure or of notice in any other proceedings except
70 with respect to such publication, mailing or posting and then only by
71 a proceeding commenced within 90 days after the decision has been
72 filed in the office of the city or town clerk, but the parties shall have
73 all rights of appeal and exception as in other equity cases.

74 Failure by the planning board to take final action within said 90
75 days or extended time, if applicable, shall be deemed to be a grant of
76 the comprehensive permit. The applicant who seeks such approval
77 by reason of the failure of the planning board to act within such time
78 prescribed, shall notify the city or town clerk, in writing within 14
79 days from the expiration of said 90 days or extended time, if applic-
80 able, of such approval and that notice has been sent by the applicant
81 to parties in interest. The applicant shall send such notice to parties
82 in interest by mail and each such notice shall specify that appeals, if
83 any, shall be made pursuant to section 17 of chapter 40A and shall
84 be filed within 20 days after the date the city or town clerk received
85 such written notice from the applicant that the planning board failed
86 to act within the time prescribed. After the expiration of 20 days
87 without notice of appeal pursuant to said section 17, or, if appeal has
88 been taken, after receipt of certified records of the court in which
89 such appeal is adjudicated, indicating that such approval has become
90 final, the city or town clerk shall issue a certificate stating the date of
91 approval, the fact that the planning board failed to take final action
92 and that the approval resulting from such failure has become final,
93 and such certificate shall be forwarded to the applicant. The plan-
94 ning board shall cause to be made a detailed record of its proceed-
95 ings, indicating the vote of each member upon each question, or if
96 absent or failing to vote, indicating such fact, and setting forth

97 clearly the reason for its decision and of its official actions, copies of
98 all of which shall be filed within 14 days in the office of the city or
99 town clerk and shall be deemed a public record, and notice of the
100 decision shall be mailed forthwith to the applicant or appellant, to
101 the parties in interest designated in section 11 and to every person
102 present at the hearing who requested that notice be sent to him and
103 stated the address to which such notice was to be sent. Each such
104 notice shall specify that appeals, if any, shall be made pursuant to
105 said section 17 and shall be filed within 20 days after the date of
106 filing of such notice in the office of the city or town clerk.

107 Zoning ordinances or by-laws shall provide that a comprehensive
108 permit granted under this section shall lapse within a specified
109 period of time, not more than 2 years, which shall not include such
110 time required to pursue or await the determination of an appeal
111 referred to in said section 17, from the grant thereof, if a substantial
112 use thereof has not sooner commenced except for good cause or, in
113 the case of permit for construction, if construction has not begun by
114 such date except for good cause.

115 Section 22. In accordance with section 11 of chapter 40A, in all
116 cases where notice of a public hearing is required, notice shall be
117 given by publication in a newspaper of general circulation in the city
118 or town once in each of 2 successive weeks, the first publication to
119 be not less than 14 days before the day of the hearing and by posting
120 such notice in a conspicuous place in the city or town hall for a
121 period of not less than 14 days before the day of such hearing. In all
122 cases where notice to individuals or specific boards or other agencies
123 is required, notice shall be sent by mail, postage prepaid. "Parties in
124 interest" as used in this chapter shall mean the petitioner, abutters,
125 owners of land directly opposite on any public or private street or
126 way, and abutters to the abutters within 300 feet of the property line
127 of the petitioner as they appear on the most recent applicable tax list,
128 notwithstanding that the land of any such owner is located in another
129 city or town, the planning board of the city or town, and the planning
130 board of every abutting city or town. The assessors maintaining any
131 applicable tax list shall certify to the planning board the names and
132 addresses of parties in interest and such certification shall be conclu-
133 sive for all purposes. The planning board may accept a waiver of
134 notice from, or an affidavit of actual notice to any party in interest
135 or, in his stead, any successor owner of record who may not have

136 received a notice by mail, and may order special notice to any such
137 person, giving not less than 5 nor more than 10 additional days to
138 reply.

139 Publications and notices required by this section shall contain the
140 name of the applicant, a description of the area or premises, street
141 address, if any, or other adequate identification of the location, of the
142 area or premises which is the subject of the application, the date,
143 time and place of the public hearing, the subject matter of the
144 hearing, and the nature of action or relief requested if any. No such
145 hearing shall be held on any day on which a state or municipal elec-
146 tion, caucus or primary is held in such city or town.

147 Upon the granting of a comprehensive permit, or any extension,
148 modification or renewal thereof, the planning board shall issue to the
149 applicant a copy of its decision, certified by the planning board, con-
150 taining the name and address of the applicant, identifying the land
151 affected, setting forth compliance with the statutory requirements for
152 the issuance of such permit and certifying that copies of the decision
153 and all plans referred to in the decision have been filed with the city
154 or town clerk. No comprehensive permit, or any extension, modifi-
155 cation or renewal thereof, shall take effect until a copy of the deci-
156 sion bearing the certification of the city or town clerk that 20 days
157 have elapsed after the decision has been filed in the office of the
158 city or town clerk and no appeal has been filed or that if such appeal
159 has been filed, that it has been dismissed or denied, and if it is a
160 comprehensive permit which has been approved by reason of the
161 failure of the planning board to act thereon within the time pre-
162 scribed, a copy of the application for the comprehensive permit
163 accompanied by the certification of the city or town clerk stating the
164 fact that the planning board failed to act within the time prescribed
165 and no appeal has been filed and that the grant of the application
166 resulting from such failure to act has become final or that if an
167 appeal has been filed, that it has been dismissed or denied, is
168 recorded in the registry of deeds for the county and district in which
169 the land is located and indexed in the grantor index under the name
170 of the owner of record or is recorded and noted on the owner's
171 certificate of title. The fee for recording or registering shall be paid
172 by the owner or applicant.

173 Section 23. Any person aggrieved by a decision of the planning
174 board or by the failure of the planning board to take final action con-
175 cerning any appeal or application within the required time whether
176 or not previously a party to the proceeding, or any municipal officer
177 or board may appeal to the land court department, the superior court
178 department in which the land concerned is situated or, if the land is
179 situated in Hampden county, either to said superior court department
180 or to the division of the housing court department for said county, or
181 if the land is situated in a county, region or area served by a division
182 of the housing court department either to said superior court depart-
183 ment or to the division of said housing court department for said
184 county, region or area, or to the division of the district court depart-
185 ment within whose jurisdiction the land is situated except in Ham-
186 pden county, by bringing an action within 20 days after the decision
187 has been filed in the office of the city or town clerk. If said appeal is
188 made to said division of the district court department, any party shall
189 have the right to file a claim for trial of said appeal in the superior
190 court department within 25 days after service on the appeal is com-
191 pleted, subject to such rules as the supreme judicial court may pre-
192 scribe. Notice of the action with a copy of the complaint shall be
193 given to such city or town clerk so as to be received within such 20
194 days. The complaint shall allege that the decision exceeds the
195 authority of the board or authority, and any facts pertinent to the
196 issue, and shall contain a prayer that the decision be annulled. There
197 shall be attached to the complaint a copy of the decision appealed
198 from, bearing the date of filing thereof, certified by the city or town
199 clerk with whom the decision was filed.

200 A city or town may provide any officer or board of such city or
201 town with independent legal counsel for appealing, as provided in
202 this section, a decision of a planning board and for taking such other
203 subsequent action as parties are authorized to take.

204 Costs shall not be allowed against the planning board unless it
205 shall appear to the court that the planning board in making the deci-
206 sion appealed from, acted with gross negligence, in bad faith or with
207 malice.

208 Costs shall not be allowed against the party appealing from the
209 decision of the planning board unless it shall appear to the court that
210 said appellant or appellants acted in bad faith or with malice in
211 making the appeal to the court.

212 The court shall require nonmunicipal plaintiffs to post a surety or
213 cash bond in a sum of not less than \$2,000 nor more than \$15,000 to
214 secure the payment of such costs in appeals of decisions approving
215 comprehensive permits.

216 All issues in any proceeding under this section shall have
217 precedence over all other civil actions and proceedings.