

The Commonwealth of Massachusetts

REPORT

OF THE

SPECIAL COMMISSION ON PLANNING, ZONING
AND SUBDIVISION CONTROL

CREATED BY CHAPTER 97, RESOLVES OF 1954

JANUARY, 1955

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The Commonwealth of Massachusetts

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Sen. EDMUND DINIS of New Bedford.
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EMIL S. SKOP of Brockton, *Secretary.*

The Commonwealth of Massachusetts

RESOLVE OF AUTHORIZATION.

CHAPTER 97.

RESOLVE PROVIDING FOR AN INVESTIGATION AND STUDY BY A SPECIAL COMMISSION RELATIVE TO PLANNING, ZONING AND SUBDIVISION CONTROL.

Resolved, That an unpaid special commission, to consist of three members of the senate to be designated by the president thereof, five members of the house of representatives to be designated by the speaker thereof, and four persons to be appointed by the governor, one of whom shall be a builder of dwelling houses, one of whom shall be a broker of residential real estate, one of whom shall be a representative of the planning profession, and one of whom shall be a member of the planning division of the department of commerce, hereinafter called the commission, is hereby established for the purpose of making an investigation and study of the advisability and feasibility of establishing a state board of appeals to which appeals may be made from the decisions of local boards in planning, zoning and subdivision control matters, and in matters relating to land development, subdivision of land and the building of dwelling houses, and any other matter pertaining to planning, zoning and subdivision control. Said commission shall, in the course of its investigation and study, consider the subject matter of current senate documents numbered 59, relative to amending the subdivision control law, 150, relative to the powers and duties of local boards of appeal, and 375, relative to authorizing the preservation of the integrity of official maps; of current house documents numbered 1253, relative to planning boards and the subdivision control law, 1254, providing for an investigation relative to the advisability and feasibility of establishing a state board of appeals in zoning, planning, subdivision, land development, building and related matters, and 2224, relative to planning boards and the subdivision control law, so called. Said commission shall be provided with quarters in the state house or elsewhere, may hold hearings, may require by summons the attendance and testimony of witnesses and the production of books and papers, may travel within and without the commonwealth, and may expend for legal, clerical and other assistance and for expenses such sums as may be appropriated therefor. Said commission shall report to the general court the results of its investigation and study, and its recommendations, if any, together with drafts of legislation necessary to carry its recommendations into effect, by filing the same with the clerk of the house of representatives on or before the third Wednesday of January, nineteen hundred and fifty-five.

Approved June 9, 1954.

The Commonwealth of Massachusetts

REPORT OF THE SPECIAL COMMISSION ON PLANNING, ZONING AND SUBDIVISION CONTROL.

There is no one municipal activity which is going to have more profound and long-range effect on Massachusetts communities today and tomorrow than the field of planning, zoning and subdivision control. The rapid growth of the State and its communities, because of high birth rates and immigration, has created problems that can only be adequately resolved by an intelligent, sound and dynamic community planning program.

Today, Massachusetts ranks third only to Rhode Island and New Jersey in population density. This growth characteristic is certain to continue and increase. The people of our Commonwealth must become more conscious of their responsibilities and their opportunities, to build pleasant and efficient communities in which to live, and to work, and to play and to rear their families.

There is enabling legislation giving communities the "tools" to do an effective improvement and development job. Some of these "tools" are planning, zoning and subdivision control legislation which was purposely designed to achieve livable environments in our municipalities. These "tools" must be kept "sharp" so as to meet the constant physical, social and economic changes of the times. In anticipation of the needs of the times and of the future, they must be wisely used and fairly administered.

Throughout its study the Commission has been keenly aware of the Commonwealth's duty to maintain superior planning, zoning and subdivision control legislation for the benefit of the economic and physical health of its 351 municipalities. Toward this end the Commission has studied these matters assiduously and prepared its recommendations discriminately.

Of the six bills submitted to the Commission, three (Senate, No. 59, House, No. 1253 and House, No. 2224) dealt

with details of the Subdivision Control Law. It seemed neither necessary nor wise to recommend any of these proposed changes at this time. Of the remaining three bills, two (Senate, No. 150 and Senate, No. 375) have led to recommendations for legislation in this report. The last (House, No. 1254) is the resolve calling for a study of the advisability of establishing a State Board of Appeals in zoning, planning, subdivision control and related matters. Because of the interest in and importance of this subject, it is treated first.

THE QUESTION OF A STATE BOARD OF APPEALS.

There was considerable interest in the question of a state board to hear appeals from the decisions of local planning boards and zoning boards of appeal. The Commission was divided in this matter. The majority felt that such a board would be unnecessary interference in local government. The position of the majority is outlined below. The position of those favoring a state-wide board is contained in a communication following the majority's comments.

Throughout the hearings and executive sessions of the Commission the majority was impressed by the following:—

A. Each community has planning and zoning needs that are peculiar to its character. A state-wide appeal board would find it most difficult to review the varied local zoning ordinances, to interpret them in the best interests of the local community and to decide specific cases.

B. The establishment of a state board of appeals would tend to weaken the local appeal boards. Local boards would conceivably pass responsibility upward rather than decide cases which would normally be within their sphere. Further, the existence of a state board would cause appellants to lose some of their respect for local boards of appeal.

C. The state board would be much busier and have to do considerably more research than a local board in order to arrive at a decision. The processing of appeals, therefore, might result in further delays rather than the speedier adjudication that a local board could provide because of its understanding of local conditions.

D. Finally, planning and zoning has been recognized as

a local issue through the adoption of enabling legislation. The creation of a state board of appeals would contradict this long-established policy. It was evident at the Commission's hearings that the municipal officials desired to retain control of and responsibility for these legal means to guide and direct the growth and development of their communities.

It was for the above reasons that the majority of the Commission did not favor a state board of appeals in zoning and planning matters.

Following is the statement of L. Robert Rolde, the building member of the Commission:

I regret that I am compelled to differ with my colleagues on the Commission on two important conclusions reached by the majority: (1) their failure to recommend the establishment of a state board of appeals and, (2) their recommendation to eliminate the present exemption of industrial land from the subdivision control law.

I am firmly convinced from my own experience as a land developer and a home builder and from the experience of others in these fields that a state board of appeals is necessary and desirable to correct what in my opinion are widespread abuses by local boards and officers. Resort to the courts is often expensive and the resultant delay is costly to a builder. For this reason a builder may be inclined to abandon a project in the face of manifest hostility with the result that homes for our citizens may not be built.

I firmly believe that some local boards are dedicated to the discouragement of the building of any substantial number of homes for persons of modest incomes and impose one obstacle after another. The extent of this practice is, I believe, not fully realized by the public. Had home-builders and developers had sufficient time and opportunity to inform the public and local boards and officials of the actions of various boards, I feel that there would have been little, if any, opposition to the proposal.

It is my firm conviction that the mere existence of a state board of appeals would go far toward preventing arrogant, arbitrary or autocratic attitudes by local boards and officials and would also by its decisions establish a pattern for intelligent, co-operative solutions of problems that are of importance not only to local governments but to the citizens who seek homes for their families. It could have a salutary effect on the all too prevalent opinion that some of our municipalities have erected an iron curtain against any new and substantial home ownership by moderate income families.

Without repeating the arguments of the proponents of the establishment of such a board, set forth elsewhere in this report, I can best demonstrate what occurs in some cases by reciting an actual experience.

In August of 1954, I submitted a subdivision plan for preliminary approval to a planning board in this State and since then I have resubmitted it twice with various suggested changes. After all this time the planning board has now taken the position that it will require an unlimited amount of time for future study of the entire neighborhood before it would advise me to submit the final plan. The board admits that a year or more might be involved. In my opinion many obstacles have been interposed to discourage proceeding with the plan.

The issue raised by the proposal for a state board of appeals will have to be faced if residential building is not to be unduly impeded and people thereby deprived of the right of home ownership. While municipal planning is desirable within certain limitations, I feel that the laws relating to it were not intended to be and should not be a means whereby communities can for selfish reasons discriminate in favor of present home owners against those who seek the same right.

I am also opposed to the recommendation of the majority that the present exemption of industrial land from the subdivision control law be eliminated. While it may be desirable to have some general over-all program of industrial development, as a practical matter, the development of industrial areas is not adaptable to the same sort of long range planning used in residential areas. Industrial areas cannot be divided into lots in advance because the needs vary with every plant; one industry may need 100,000 square feet and the next industry may need only 10,000 square feet for its business. Each need must be met as it arises. I submit that with the Commonwealth devoted to the attraction of more industries this is no time to obstruct the program. Many municipalities urgently need new industries to furnish employment and to provide tax revenues to help relieve the already overtaxed home owner. I believe that providing employment and additional revenue is at present an infinitely more critical need than the regulation of and subdivision of industrial land.

L. ROBERT ROLDE.

The real estate member of the Commission, George W. Odell, concurred with the comments of Mr. Rolde (as outlined above) in so far as the state board of appeals is concerned.

SUBDIVISION CONTROL.

Several bills were referred to the Commission on the question of subdivision control. They were carefully studied and the subject of much discussion at the public hearing. The Commission recommends that in five minor particulars the subdivision control law should be amended. These recommendations include the following subjects.

Public Hearings on Proposed Subdivision Rules and Regulations.

It is generally accepted procedure for local planning boards to give notice and hold public hearings in the course of adopting subdivision control regulations, but nothing in the subdivision control law requires that this be done. The Commission believes that public hearings are advisable in all cases and should be made a matter of law.

Recommended. — Planning boards must hold public hearings before adoption of rules and regulations on subdivision control. (See Appendix A.)

Delegation by Planning Boards of Endorsement on Plans not Requiring Subdivision Approval.

Under the present law, where a plan does not require subdivision approval, the planning board must make this determination and every member must endorse the plan to this effect within fourteen days. Since many of these endorsements are entirely routine, the time consumed in obtaining the individual endorsements could be reduced by permitting planning boards to delegate the endorsement after the board's determination to an authorized individual. Such delegation has the support of local planning agencies as well as local builders.

Recommended. — Delegation of endorsement be authorized. (See Appendix B.)

Time Limit for Holding Undeveloped Park Areas.

Under section 81U of the subdivision control law, planning boards may, in proper cases, require a plan to show reasonable park areas and may thereafter prohibit the erection of buildings in such areas. The owners of these areas cannot be forced to give them to the municipality without compensation, but no limit is set upon the time within which the municipality must act. It was suggested to the Commission that a time limit of three years be set on the power of the community to prohibit the erection of buildings. This would permit ample time to bring each proposal before

an annual town meeting and to complete the legal formalities connected with taking title to the land. This time limit, for the benefit of conveyancers, should be made a matter of record on the plan.

Recommended. — A three-year time limit on holding of undeveloped park areas. (See Appendix C.)

Advancement of Court Appeals from Planning Boards or Boards of Appeal.

The expenses and complications inherent in a subdivision development are sufficiently large to justify rapid decisions in case of disagreement between the subdivider and the local planning board. Delays may be expensive and for this reason subdividers, under pressure to avoid court actions, may accede to unreasonable or arbitrary actions of local officials. It is important that subdivision appeals to the courts should be advanced over all other appeals so that those aggrieved may be confident of prompt court action. Court priority is fully as important for subdivision as for zoning where it is already authorized.

Recommended. — Court appeals be advanced in subdivision cases. (See Appendix D.)

Subdivision Control of Industrial Land Developments.

At the Commission meetings, several witnesses protested the complete exemption of industrial land from subdivision control. It was pointed out that communities are reluctant to zone suitable land for industry if in so doing they must lose all control over its future development. The Commission devoted considerable time and thought to this problem. The facts are that in any community the lines of major streets and public utilities shape the entire course of future development. If they are not carefully planned, the result is years of waste followed by costly reconstruction.

Whether land is residential or industrial, a street is still a street and a utility is still a utility. In the opinion of the Commission, reasonable subdivision control over industrial developments would encourage industrial expansion in a

community. The advantages of such control are demonstrated in the New England Industrial Center in Needham. In this instance, the developer and the town worked together under the then-existing subdivision control law to produce a well-designed industrial district of great economic value to the entire Commonwealth. Developers, unwilling to reflect to such a degree the needs of the surrounding community, are unlikely to attract sound and stable industries.

Some of those appearing before the Commission expressed concern regarding the detail to which industrial subdivision control might go. Study of the matter revealed that industrial regulations normally differ from residential regulations, and as for the special problems of industrial lots, developers need have no fear of detailed supervision because the present subdivision control law specifically prohibits any regulations by a planning board dealing with lots, residential or industrial.

Recommended. — Industrial land should be included within the subdivision control law. (See Appendix E.)

The building member of the Commission, L. Robert Rolde, was not in agreement with the recommendation of the Commission on this matter. His observations on this industrial exemption are contained in his statement on page 7 in the section, "The Question of the State Board of Appeals."

ZONING.

The Commission recommends that in two minor particulars the zoning enabling law be amended. These recommendations include the following subjects.

Establishment of Uniform Basis of Zoning Appeals for Local Officers.

At present it is mandatory for a local board of appeals to hear an appeal under zoning laws by "any person aggrieved by reason of his inability to obtain a permit from any administrative official." It is only permissive for a local appeal board to hear appeals by boards, officials or other aggrieved persons if the local zoning by-law or ordinance so

permits. Hence the powers and duties of boards of appeals are not uniform throughout the State. The Commission believes that any aggrieved person or municipal officer or agency should have the right of appeal.

Recommended. — Boards of appeals be required to hear appeals from all officials, boards or aggrieved persons. (See Appendix F.)

Unanimity Rule in Votes of Local Zoning Boards of Appeal.

A concurring vote of all the members of the local zoning boards of appeal is currently required to reverse an order or decision under a zoning by-law or ordinance. Actions of boards of appeal may amount to a reversal of a local legislative determination by administrative discretion. Such a reversal should not be a routine matter, but should require substantial agreement among the members of the board of appeal. Nevertheless, the Commission is aware that a requirement of a unanimous vote is an exacting one and may, on occasions, result in injustice because of the personal prejudice or the uncompromising attitude of a single person. In the case of a board consisting of five or more members the Commission believes that favorable action should be permitted despite a single dissent.

Recommended. — Appeal boards of five members or more be empowered to act despite a single dissenting vote. (See Appendix G.)

Prohibition of Building on Ways established on Official Maps.

A previous special commission (House, No. 2249 of 1953) after careful study, recommended the adoption of legislation for the preservation of the integrity of official maps in cities and towns. The historical development of this proposed legislation was thoroughly reviewed in the report, and has been given careful study by this Commission. At present, such legislation is in effect in California, Colorado, New Jersey, New York, and other States. It has induced communities in those States to make beneficial use of official map procedures. In Massachusetts, two municipalities

have adopted official maps, Worcester and Weston. During the Commission's hearing a number of towns indicated an interest in undertaking official maps, especially if maps drafted under such legislation will be protected.

Under present statutes, a property owner could build on land through which a municipality has voted a new way even though the new way was recorded on an official map. Subsequently, the municipality would be forced to pay the owner for his building and for damages when the land was taken. Originally, state laws provided that such an owner would not be compensated for a building erected on a proposed public way; but the courts have voided this statute as unconstitutional. It is far more logical to prevent such a building from being erected. In cases of demonstrated hardship to an individual landowner an appeal procedure should be established.

Recommended. — Issuance of a building permit be restrained on rights of way recorded on an official map. (See Appendix H.)

BUILDING CODES.

State Review of Alternative Materials and Methods of Construction.

Under the terms of chapter 631 of the Acts of 1947, the Board of Standards in the Department of Public Safety was authorized to review new materials and construction systems proposed as alternatives to the requirements of local building codes. Once the Board of Standards has satisfied itself that a new material or construction system was acceptable as an alternative, it was empowered to issue a regulation to that effect, and thenceforth any local building inspector could be required to approve the new material or construction system. Subsequently, the law was further amended to require a local building inspector to accept any new material or construction system bearing no more evidence than the certification of a registered professional engineer. This blanket delegation of the power to regulate building construction led to abuses, and as a result, it was repealed. At time of repeal, local acceptance of regulations

of the Board of Standards became optional. The Commission believes that the regulations of the Board of Standards should again be effective at the local level. Construction requirements are not local in character, but are highly technical and are applicable to the entire State; and so, they are well suited to careful review by a qualified state agency. The Board of Standards should be responsible for furnishing to local building departments regulations governing the use of tested and approved materials and construction methods.

Recommended. — Board of Standards establish regulations further governing use of materials and methods of construction. (See Appendix I.)

REGIONAL PLANNING.

The Commission believes that some of the objectives of those who proposed a state board of appeals could be accomplished by consideration of planning, zoning and subdivision control problems over an entire metropolitan or regional area instead of limiting consideration exclusively to a single municipality. Without taking the final power away from local communities, the Commission believes that a way should be found to let groups of them work together in the form of regional planning agencies, so that the advantages of self-education and joint discussion of experiences on common problems will help to achieve proper and fair administration of municipal planning in the several communities. The Commission would endorse such enabling legislation.

STATE DIVISION OF PLANNING.

The Commission wishes to call attention to the outstanding work being done by the Division of Planning in the Department of Commerce. Not only has this Division contributed valuable and much appreciated services to this Commission in the course of its work, but also it carries on an effective program of co-operation with and assistance to local communities in matters of planning, zoning and subdivision control. The Commission believes that this program of local service should be continued and expanded.

It is the firm conviction of the Commission that most of the instances brought to our attention of injustices to builders or developers by local planning boards or boards of appeal stem from misconception on the part of these local boards regarding the nature and extent of their powers and duties. The Commission believes that an extended educational program carried on among these local boards by the Division of Planning, setting out clearly the framework under which they should operate and identifying sharply the limits of their jurisdiction and authority, would go far towards correcting the inconsistencies that may exist.

For this reason, the Commission further recommends that the budget of the Division of Planning be increased to permit the assignment of additional staff and effort to this essential function.

We, the undersigned members of the Special Commission on Planning, Zoning and Subdivision Control established under chapter 97 of the Resolves of 1954 submit our report.

Respectfully submitted,

Sen. HASTINGS KEITH,

Chairman.

Rep. JAMES C. BAYLEY,

Vice-Chairman.

CHARLES E. DOWNE,

Clerk.

BURNHAM KELLY.

L. ROBERT ROLDE.

GEORGE W. ODELL.

Rep. CLIFTON H. BAKER.

Sen. ALFRED B. CENEDELLA, JR.

Sen. EDMUND DINIS.

Rep. ERNEST W. APRIL.

Rep. JOSEPH F. McEVOY, JR.

Rep. LEO SONTAG.

PROPOSED LEGISLATION.

APPENDIX A.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Five.

AN ACT REQUIRING PLANNING BOARDS TO HOLD PUBLIC HEARINGS ON PROPOSED SUBDIVISION RULES AND REGULATIONS.

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 81Q of chapter 41 of the General Laws, as
2 appearing in section 7 of chapter 674 of the acts of 1953,
3 is hereby amended by striking out the first sentence and
4 inserting in place thereof the following sentence:—
5 After due notice and a public hearing a planning board
6 shall adopt, and may from time to time amend, reason-
7 able rules and regulations relating to subdivision con-
8 trol law or with any other provisions of a statute or of
9 any valid ordinance or by-law of the city or town.

APPENDIX B.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Five.

AN ACT PERMITTING PLANNING BOARDS TO DELEGATE CERTIFICATION OF PLANS NOT REQUIRING SUBDIVISION APPROVAL.

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 81P of chapter 41 of the General
2 Laws, as appearing in section 7 of chapter 674 of the
3 acts of 1953, is hereby amended by striking out the first
4 sentence and inserting in place thereof the following:—
5 Any person wishing to cause to be recorded a plan of
6 land situated in a city or town in which the subdivision
7 control law is in effect, who believes that his plan does
8 not require approval under the subdivision control law,
9 may submit his plan to the planning board of such city
10 or town, and, if the board finds that the plan does not
11 require approval, it shall without a public hearing and
12 without unnecessary delay cause to be endorsed thereon
13 by a person authorized thereto by the planning board
14 the words “approval under the subdivision control law
15 not required”, or words of similar import, and such
16 endorsement shall be conclusive on all persons.

1 SECTION 2. Section 81P of chapter 41 of the General
2 Laws is hereby further amended by adding at the end
3 thereof the following sentence:— The planning board
4 of a city or town which has authorized any person, other
5 than a majority of the board, to endorse on a plan the
6 approval of the board or to make any other certificate

7 under the subdivision control law, shall transmit a writ-
 8 ten statement to the register of deeds and the recorder
 9 of the land court, signed by a majority of the board,
 10 giving the name of the person so authorized.

APPENDIX C.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Five.

AN ACT RELATIVE TO SETTING ASIDE CERTAIN LAND IN CERTAIN SUBDIVISIONS AND DEVELOPMENT PROJECTS FOR PARK PURPOSES.

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 81U of chapter 41 of the General Laws, as
2 appearing in section 7 of chapter 674 of the acts of 1953,
3 is hereby amended by striking out the last sentence and
4 inserting in place thereof the following sentence:— Be-
5 fore approval of a plan by a planning board, it may also
6 in proper cases require the plan to show a park or parks
7 suitably located for playground or recreation purposes
8 or for providing light and air, and not unreasonable in
9 area in relation to the land being subdivided and the
10 prospective uses of such land, and may by appropriate
11 endorsement on the plan require that no building be
12 erected upon such park or parks for a period of not more
13 than three years without its approval.

APPENDIX D.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Five.

AN ACT PROVIDING THAT CERTAIN APPEALS FROM PLANNING
BOARDS OR BOARDS OF APPEAL TO THE SUPERIOR COURT
BE ADVANCED FOR HEARING.

*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 81BB of chapter 41 of the General Laws, as
2 appearing in section 7 of chapter 674 of the acts of 1953,
3 is hereby amended by adding at the end the following
4 paragraph:—

5 All issues in any proceeding under this section shall
6 have precedence over all other civil actions and proceed-
7 ings.

APPENDIX E.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Five.

AN ACT TO INCLUDE INDUSTRIAL LAND UNDER THE PROVISIONS OF THE SUBDIVISION CONTROL LAW.

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 81R of chapter 41 of the General
2 Laws, as amended by section 7 of chapter 674 of the
3 acts of 1953, is hereby further amended by striking out
4 the second paragraph.

1 SECTION 2. Section 81L of chapter 41 of the General
2 Laws, as so appearing, is hereby amended by striking out
3 the definition of "Industrial" as appearing in the
4 second paragraph.

APPENDIX F.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Five.

AN ACT RELATING TO THE POWERS AND DUTIES OF LOCAL
ZONING BOARDS OF APPEAL.

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 is
2 hereby amended by striking out section 13, as appear-
3 ing in section 2 of chapter 368 of the acts of 1954, and
4 inserting in place thereof the following section: —

5 *Section 13.* An appeal to the board of appeals estab-
6 lished under section fourteen may be taken by any per-
7 son aggrieved by reason of his inability to obtain a permit
8 from any administrative official under the provisions of
9 this chapter, or by any officer or board of the city or town,
10 or by any person aggrieved by any order or decision of
11 the inspector of buildings or other administrative offi-
12 cial in violation of any provision of this chapter, or any
13 ordinance or by-law adopted thereunder.

14 A zoning ordinance or by-law may prescribe a reason-
15 able time within which appeals under this section may be
16 taken.

1 SECTION 2. Section 15 of said chapter 40A, as so ap-
2 pearing, is hereby amended by striking out paragraph 1
3 and inserting in place thereof the following paragraph: —

4 1. To hear and decide appeals taken as provided in
5 section thirteen.

APPENDIX G.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Five.

**AN ACT RELATING TO THE POWERS AND DUTIES OF LOCAL
ZONING BOARDS OF APPEAL.**

*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 19 of chapter 40A of the General Laws, as
2 appearing in section 2 of chapter 368 of the acts of 1954,
3 is hereby amended by striking out the second paragraph
4 and inserting in place thereof the following paragraph: —
5 The concurring vote of all the members of a board of
6 appeals consisting of not more than four members, and
7 the concurring vote of all except one member of a board
8 consisting of more than four members, shall be necessary
9 to reverse any order or decision of any administrative
10 official under this chapter, or to decide in favor of the
11 applicant on any matter upon which it is required to
12 pass under any zoning ordinance or by-law, or to effect
13 any variance in the application of any such ordinance
14 or by-law.

APPENDIX H.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Five.

AN ACT TO RESTRAIN THE ISSUANCE OF A BUILDING PERMIT
ON RIGHTS OF WAY RECORDED ON AN OFFICIAL MAP.

*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 81F of chapter 41 of the General Laws, as
2 amended by section 4 of chapter 674 of the acts of 1953,
3 is hereby further amended by adding at the end the
4 following paragraph:—

5 For the purpose of preserving the integrity of an official
6 map as adopted under section eighty-one E, and as
7 changed or added to under section eighty-one F, any
8 city or town which has adopted such a map may by or-
9 dinance or by-law provide that no permit shall be issued
10 by the inspector of buildings of such city or town, or the
11 board or officer having power to issue permits under the
12 building or zoning ordinance or by-law of such city or
13 town, for the erection of a building in the location of a
14 proposed way, or in the strip of land adjacent to a pub-
15 lic way proposed to be included in such way by the widen-
16 ing thereof, as shown on such official map. Any person
17 aggrieved by the inclusion of his land within the location
18 of a proposed way on an official map, or within a strip
19 of land adjacent to a public way proposed to be included
20 in such a way on such map, may, within six months after
21 the change or addition to such map, under which his
22 land was so included, was recorded in the registry of
23 deeds, appeal to the planning board of the town in which
24 his land is situated. Such appeal shall be in writing,

25 shall be signed by or on behalf of the person making the
26 appeal, and shall state the grounds of the appeal and the
27 address to which notice of the decision of the planning
28 board on such appeal shall be sent. If such planning
29 board, after a public hearing of which ten days' notice
30 has been given by advertisement in a newspaper of gen-
31 eral circulation in the town, finds that the land of the
32 appellant of which the proposed location or widening
33 forms a part cannot yield a reasonable return to the
34 owner if the prohibition contained in this paragraph is
35 literally enforced, or that such prohibition imposes an
36 unnecessary or unreasonable hardship upon such owner,
37 it may rescind or modify such prohibition, leaving in
38 force such reasonable requirements as will as little as
39 practicable increase the cost of laying out and construct-
40 ing said proposed public way or widening such way, as
41 the case may be. In determining such an appeal the
42 planning board may change the location of the proposed
43 public way or the proposed widening of the existing pub-
44 lic way if all of the land included by such change in the
45 proposed way or the proposed widening is owned by the
46 appellant and he consents in writing to such change and
47 waives his right of appeal under this paragraph, as here-
48 inafter set forth. In such case, no hearing before the
49 city council or a committee thereof, or before the select-
50 men, and no action by the city council or the town meet-
51 ing, shall be required to effectuate such change. The
52 planning board shall forthwith notify the appellant of
53 its action upon his appeal by registered mail, postage
54 prepaid. Any owner of land aggrieved by the action of a
55 planning board in denying him the relief prayed for by
56 him under this paragraph, in whole or in part, or by the
57 failure of the planning board to render a decision upon
58 his appeal within sixty days after it was submitted to
59 such board, may appeal to the superior court sitting in
60 equity for the county in which such land is situated
61 within fifteen days after notice of the decision of such
62 board was received at the address designated by him,
63 or within fifteen days after the required time aforesaid.

64 The court shall hear all pertinent evidence and deter-
 65 mine the facts, and, if it finds that the enforcement of
 66 the prohibition contained in this paragraph will consti-
 67 tute the taking of his property for the public use without
 68 just compensation, or deprive him of his property with-
 69 out due process of law, or deny him the equal protection
 70 of the laws, it shall modify such prohibition to such an
 71 extent that it shall not constitute such a taking, dep-
 72 rivation or denial, or shall make such other decree as
 73 justice and equity may require. The foregoing remedy
 74 shall be exclusive, but the parties shall have all the rights
 75 of appeal and exception as in other equity cases.

APPENDIX I.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Five.

**AN ACT TO PROVIDE REVIEW OF ALTERNATIVE MATERIALS
AND METHODS OF CONSTRUCTION.**

*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. The first paragraph of section 3J of
2 chapter 143 of the General Laws is hereby amended by
3 striking out the last sentence, as amended by section 1
4 of chapter 534 of the acts of 1950, and inserting in place
5 thereof the following sentence: — The board shall de-
6 posit a certified copy of such regulations with the state
7 secretary and upon such deposit said regulations shall
8 have the force of law.

1 SECTION 2. Said section 3J of chapter 143 of the
2 General Laws is hereby further amended by striking out
3 the third sentence of the second paragraph, as appear-
4 ing in said section 1 of chapter 534 of the acts of 1950,
5 and inserting in place thereof the following paragraph: —
6 In cases where the plans and specifications accom-
7 panying an application fail to comply with the provi-
8 sions of ordinances, by-laws or regulations, or any special
9 law applicable to a particular city or town and relative
10 to such construction, reconstruction, alteration, repair,
11 demolition, removal, use or occupancy, an inspector of
12 buildings shall issue a permit or certificate for such con-
13 struction, reconstruction, alteration, repair, demolition,
14 removal, use or occupancy if said plans and specifications
15 comply with the alternatives set forth in the regulations
16 referred to in this section.

