

By Mrs. Menard of Somerset, petition of Joan M. Menard relative to the powers of cities, towns and regional commissions to regulate lot sizes for the construction of affordable housing. Housing and Urban Development.

The Commonwealth of Massachusetts

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

AN ACT TO AMEND THE POWERS OF CITIES, TOWNS AND REGIONAL COMMISSIONS WITH RESPECT TO ADOPTION OF MINIMUM LOT AREAS, TO SUBJECT CERTAIN LAND USE DECISIONS OF CITIES, TOWNS AND REGIONAL COMMISSIONS TO REVIEW AND TO CREATE A ZONING APPEALS COMMITTEE IN THE DEPARTMENT OF COMMUNITY AFFAIRS SO AS TO ENCOURAGE THE CREATION OF AFFORDABLE HOUSING IN THE COMMONWEALTH.

1 *Whereas*, The deferred operation of this act would tend to defeat
2 its purpose, which is to encourage the creation of affordable housing
3 in the commonwealth by restricting future effectiveness of existing
4 local and regional land use requirements which impose minimum lot
5 area requirements in excess of two acres per dwelling unit, therefore
6 it is hereby declared to be an emergency law, necessary for the
7 immediate preservation of the public convenience.

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. It is hereby found and declared that there is a
2 shortage of affordable housing in the commonwealth, and that the
3 shortage is in part attributable to the fact that the availability of
4 land for housing has been significantly and unnecessarily
5 restricted by the adoption of local or regional land use require-
6 ments which impose a minimum lot area requirement in excess of
7 two acres per lot and by local or regional land use decisions of
8 local agencies and regional commissions that deny or condition
9 land use proposals proposing average densities of two acres or
10 more on land that is located in residential zones that are affected
11 by such minimum lot area requirements, and it is further declared

12 and found that the decisions of the courts of the commonwealth to
13 date have supported the validity of minimum lot area requirements
14 up to two acres (most of such decisions having been rendered
15 before the availability of improved disposal system and other
16 technologies which have now reduced the need for minimum lot
17 areas of the sizes supported), but have rejected minimum lot area
18 requirements above two acres as invalid exercises of the police
19 power.

1 SECTION 2. Notwithstanding any general or special law to the
2 contrary, the following terms shall have the meanings set forth
3 below for purposes of the administration of this act:—

4 “City or town” as used in sections two, five and six of this act
5 shall include every city and town of the commonwealth.

6 “Local or regional land use decision” as used in sections one,
7 two, six and seven of this act shall include any decision of a
8 regional commission or a city or town agency, board, commission
9 or committee under any general or special law; or any regional or
10 local land use requirement relating to use of land, including,
11 without limitation, any decision with respect to a special permit,
12 or variance under chapter forty A, any refusal to endorse a plan,
13 any decision as to a plan or to waive any rule or regulation under
14 chapter forty-one, any decision with respect to issuance of a deter-
15 mination of applicability or an order of conditions under section
16 forty of chapter one hundred and thirty-one, any decision as to any
17 water supply or disposal system under chapter one hundred and
18 eleven.

19 “Local or regional land use requirement” as used in sections
20 one, two, four, five, six and seven of this act shall include every
21 regulation, ordinance, by-law or policy adopted by any regional
22 commission, city or town, or by any combination of the foregoing,
23 requiring a minimum lot area in excess of two acres for any zone
24 in which residential uses are permitted, or any practices, patterns
25 of decision-making or other actions of such entities or any combi-
26 nation of such entities which effectively constitute such a policy.

27 “Regional commission” as used in sections one, two, four, five
28 and six of this act shall include any regional commission created
29 under general or special law.

1 SECTION 3. Chapter twenty-three B of the General Laws, as
2 appearing in the 1993 Official Edition, is hereby amended by
3 inserting the following new section: —

4 Section 5B. Zoning Appeals Committee Created; Membership;
5 Authority, etc.

6 There shall be within the department a zoning appeals com-
7 mittee, consisting of one member to be appointed by the secretary,
8 who may be an officer or employee of the department, and four
9 members to be appointed by the Governor for terms of one year
10 each, of whom one shall be a member of a board of selectmen,
11 one shall be a member of a city council or similar governing body
12 of a city, one shall be a member of Citizens' Housing & Planning
13 Association, Inc., or similar organization interested in the creation
14 of affordable housing, and one shall be a member of the Massa-
15 chusetts Association of Home Builders or similar organization
16 interested in the creation of housing. The members shall serve for
17 terms of five years each and the secretary shall designate the
18 chairman, provided that the Governor's appointee that is a
19 member of a board of selectmen shall serve an initial term of four
20 years, the Governor's appointee that is a member of Citizens'
21 Housing & Planning Association, Inc., or similar organization
22 interested in the creation of affordable housing, shall serve an ini-
23 tial term of three years, the Governor's appointee that is a member
24 of a city council or similar governing body of a city shall serve an
25 initial term of two years, and the Governor's appointee that is a
26 member of the Massachusetts Association of Home Builders or
27 similar organization interested in the creation of housing shall
28 serve an initial term of one year. No person may be reappointed to
29 a second term. A member of the committee shall receive no com-
30 pensation for his services, but shall be reimbursed by the com-
31 monwealth for all reasonable expenses actually and necessarily
32 incurred in the performance of his official duties. Said committee
33 shall hear all petitions for review filed under sections three A and
34 three B of chapter forty A, and shall conduct said hearings in
35 accordance with rules and regulations established by the secretary.

36 The department shall provide such space and clerical and other
37 assistance as the committee may require.

1 SECTION 4. Section 3 of chapter forty A of the General Laws,
2 as appearing in the 1993 Official Edition, is hereby amended by
3 inserting the following new paragraph: —

4 Without the prior approval of the zoning appeals committee in
5 the department of community affairs in accordance with section
6 three A of this chapter, no local or regional land use requirement
7 requiring a minimum lot area in excess of two acres for any zone
8 in which residential uses are permitted shall become effective.

1 SECTION 5. Chapter forty A of the General Laws, as
2 appearing in the 1993 Official Edition, is hereby amended by
3 inserting the following new section: —

4 Section 3A. Zoning Appeals Committee Review and Approval
5 of Minimum Lot Area Requirements in Excess of Two Acres in
6 Residential Zones.

7 Whenever a city or town or a regional commission shall adopt a
8 local or regional land use requirement requiring a minimum lot
9 area in excess of two acres for any zone in which residential uses
10 are permitted, such local or regional land use requirement shall
11 not become effective unless and until the zoning appeals com-
12 mittee in the department of community affairs shall have held a
13 hearing following a petition for review by such city, town or
14 regional commission regarding such requirement and shall have
15 determined that such local or regional land use requirement is
16 both reasonable in light of the local or regional purpose advanced
17 in support of the local or regional land use requirement by the
18 city, town or regional commission, and is the land use requirement
19 which will accomplish the local or regional purpose in the manner
20 which is the least likely to interfere with the
21 creation of affordable housing in such city, town or region.

22 Such petition for review shall be filed with the zoning appeals
23 committee within twenty days after the date on which the local or
24 regional land use requirement shall have been adopted by the city,
25 town or regional commission by filing with the zoning appeals
26 committee a statement of the reasons upon which the petition is
27 based. The zoning appeals committee shall forthwith transmit a
28 copy of such petition to the attorney general of the commonwealth
29 and shall publish notice of the pendency of such petition in a pub-
30 lication of general circulation in the city, town or region notifying
31 the public of the filing of the petition for review. A stenographic

32 record of the proceedings shall be kept and the committee shall
33 render a written decision, based upon a majority vote, stating its
34 findings of fact, its conclusions of law and the reasons for its
35 action within thirty days after the termination of the hearing,
36 unless such time shall have been extended by mutual agreement
37 between the committee and the city, town or regional commission.
38 Such decision may be reviewed in the superior court in
39 accordance with the provisions of chapter thirty A.

40 At such hearing the city, town or regional commission which
41 has adopted such local or regional land use requirement shall have
42 the burden of proof with respect to the findings which must be
43 made by such zoning appeals committee, and at such hearing the
44 attorney general of the commonwealth shall appear in opposition
45 to the necessity for such local or regional land use requirement.

1 SECTION 6. Chapter forty A of the General Laws, as
2 appearing in the 1993 Official Edition, is hereby amended by
3 inserting the following new section: —

4 Section 3B. Zoning Appeals Committee Review of Local and
5 Regional Land Use Decisions that Deny or Condition Land Use
6 Proposals Proposing Average Densities of Two Acres or More on
7 Land Located in Residential Zones Affected by Such Minimum
8 Lot Area Requirements.

9 Whenever a city or town, or any agency, board, committee or
10 commission thereof, or any regional commission, shall issue a
11 local or regional land use decision that denies or conditions land
12 use proposals proposing an average density of two acres or more
13 (or, where a local or regional land use requirement requiring a
14 minimum lot area in excess of two acres has been approved by the
15 zoning appeals committee under section three A of this chapter, an
16 average density equal to or greater than the required minimum lot
17 area) on land located in a residential zone affected by such a
18 minimum lot area requirement, the owner of the land involved, or
19 such other person or entity as may be the proponent for such proposal shall have the right to appeal such decision to the zoning
20 appeals committee in the department of community affairs as set
21 forth herein, and such decision shall not become effective unless
22 and until the zoning appeals committee shall have held a hearing
23 regarding such decisions and shall have determined either that

25 upholding such local or regional land use decision will accom-
26 plish the local or regional purpose in the manner which is the least
27 likely to interfere with the creation of affordable housing in such
28 city, town or region, or that reversal or modification of such local
29 or regional land use decision will accomplish the local or regional
30 purpose in the manner which is the least likely to interfere with
31 the creation of affordable housing in such city, town or region.

32 Such appeal shall be taken within twenty days after the date on
33 which a copy of the decision is received by the landowner or other
34 proponent (or in the case of a landowner or other proponent that
35 on the date of enactment hereof has an appeal pending under
36 chapter thirty A from a local or regional land use decision, within
37 twenty days after the enactment hereof) by filing with the zoning
38 appeals committee a statement of the reasons upon which the
39 appeal is based. The committee shall forthwith notify the city or
40 town agency, board, committee or commission, or the regional
41 commission, of the filing of the petition for review, and the latter
42 shall, within ten days of the receipt of such notice, transmit a copy
43 of its decision and the reasons therefor to the zoning appeals
44 committee. Such appeal shall be heard by the committee within
45 twenty days after receipt of the proponent's petition, and in the
46 event that more than one hearing date is required, the zoning
47 appeals committee shall schedule additional days so that the
48 hearing is concluded within sixty days after such appeal is filed
49 with the committee. A stenographic record of the proceedings
50 shall be kept and the committee shall render a written decision,
51 based upon a majority vote, stating its findings of fact, its conclu-
52 sions of law and the reasons for its action within thirty days after
53 the termination of the hearing, unless such time shall have been
54 extended by mutual agreement between the committee and the
55 landowner or other proponent. Such decision may be reviewed in
56 the superior court in accordance with the provisions of chapter
57 thirty A.

58 At such hearing the city or town agency, board, commission or
59 committee, or the regional commission, which has issued such
60 decision shall have the burden of proof with respect to the find-
61 ings which must be made by such zoning appeals committee, and
62 at such hearing the attorney general of the commonwealth shall
63 intervene in support of the proposal if requested by the proponent.

64 In the event that the zoning appeals committee finds that the
65 local or regional land use decision does not meet any of the fore-
66 going standards, the zoning appeals committee shall override such
67 local or regional land use decision by reversing the decision, or by
68 vacating or modifying any conditions which may have been
69 imposed in such decision, and shall have the power to allow such
70 modifications to the proposal resulting in increase density,
71 including increases which would reduce the average density to
72 less than two acres per dwelling unit where the housing appeal
73 committee finds appropriate.

1 SECTION 7. This act shall take effect immediately, and shall
2 apply to all local and regional land use requirements adopted after
3 the date hereof, to all local or regional land use decisions issued
4 after the date hereof, and to all local or regional land use decisions
5 presently on appeal under chapter thirty A of the General Laws,
6 1993 Official Edition, which decisions may, at the election of the
7 landowner or pro-ponent be appealed by the landowner or propo-
8 nent to the zoning appeals committee for review in accordance
9 with this act, within twenty days after the date hereof, in which
10 event the presently pending appeal under chapter thirty A of the
11 General Laws may, at the election of the landowner or proponent,
12 be stayed until the review hereunder by the zoning appeals com-
13 mittee and any appeal therefrom shall have been concluded, and
14 the review by the zoning appeals committee hereunder shall not
15 derogate from the rights of the landowner or proponent under
16 chapter thirty A of the General Laws with respect to such local or
17 regional land use decision, but shall be in addition thereto, and the
18 decision of such zoning appeals committee also may be reviewed
19 under such chapter thirty A upon issuance of a decision of the
20 zoning appeals committee under this act.

