

PREDICTABLE PERMITTING

Solving the Commonwealth's Housing Crisis Takes Ideas, Big and Small

What You Need to Know About Important Changes to Zoning Laws

By Daniel Dain, Douglas Troyer, and Nicholas Shapiro | Special to Banker & Tradesman | Jul 26, 2026 |

[Reprints](#) | [Unlock Link](#) | [Print](#)



Dan Dain

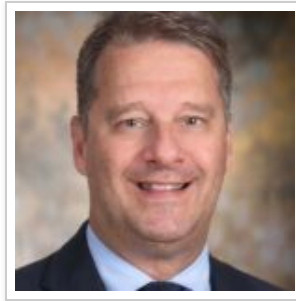
Good things come to those who wait.

Almost a year ago this month, the three of us [penned an opinion piece in these pages](#) describing an initiative by the Real Estate Bar Association to propose zoning reforms that would make the process for permitting housing more straightforward and predictable in the 350 communities across the commonwealth subject to the state's Zoning Act, General Law chapter 40A, which does not apply in Boston.

We were thrilled to see much of the language we had drafted in an Act Relative to Zoning (H.2317) make it into the fiscal year 2027 state budget (Chapter 137 of the Acts of 2026) signed by Gov. Maura Healey on

July 9 of this year.

The initiative started back in 2024 when Peter Wittenborg, executive director of REBA, called one of us and said that REBA should be doing its part to help address the commonwealth's housing crisis.

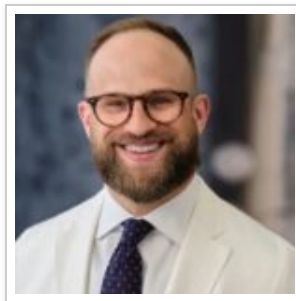


Douglas Troyer

We put together a small committee, chaired by Dan, to draft proposed legislation with the directive that our changes should be procedural, should respect Home Rule, and should not include any mandates similar to the MBTA Communities law (which we all supported, but which has fostered significant local pushback). We were told to think of small ideas that could have a big impact.

Bill-Making 101

With guidance from REBA lobbyist Ben Fiero, and major drafting and strategic help from Mike McDermott and Sarah McHale of the law firm of Dain Torpy, we came up with a series of proposals that aimed to make zoning litigation less expensive, make it easier to expand otherwise zoning-compliant structures on undersized lots, limit the reach of what is known as the “merger doctrine,” provide more uniform time standards for zoning decisions, and reform the variance standard so that it could become a viable tool in the process of entitling new housing.



Nicholas Shapiro

We then all got a lesson in bill-making 101 as our language was passed around from one committee to another, bounced in and out of different housing bills, got sent to purgatory (also known legislatively as being sent to “study”), was revived, and after numerous hearings and meetings, emerged, in slimmed-down version, as part of the budget bill signed into law this summer.

We thank the governor, Lt. Gov. Kim Driscoll and various state legislators, including notably Rep. Brian Murray, Sen. Julian Cyr, Sen. Barry Finegold and their staffs, for keeping our reforms alive.

As the drafting committee for REBA of these proposed zoning reforms, we still believe in those parts of our initial proposal that did not make it into the final budget bill, including reform of the appeals process and the merger doctrine, but those can wait until the next legislative session.

We would also love to see these reforms applied consistently to all municipalities, including Boston. But for now, we can celebrate the reforms that were adopted.

What's Changed About Zoning?

Here are the highlights of the zoning changes adopted.

First, municipalities are now authorized to grant use variances for housing, which provides another avenue, but not an inflexible mandate, to permit housing.

And gone is the old variance standard of the applicant needing to prove a “substantial hardship” from the literal enforcement of zoning due to soil conditions, lot shape or topography.

It's been replaced by a new standard that allows municipalities the flexibility to weigh the benefits of a proposed project, including the community's need for more housing. Also, variances will have a longer duration, providing project proponents a more realistic time period to commence a project.

Third, under the so-called Bransford/Bjorklund rule, a property owner of an otherwise zoning-compliant structure on a lawfully-nonconforming lot (usually undersized) required a special finding by the local zoning board of appeals in order to expand the existing structure even in a way that otherwise complies with applicable dimensional requirements like floor area ratio, height, and setback.

Now, such an expansion can proceed as of right, saving property owners considerable time and expense.

Lastly, projects that have received a zoning entitlement enjoy greater protection from municipal changes to zoning requirements before the project can get underway.

Although not part of the budget bill, our proposal for clearer rules for constructive approvals remains alive in the current economic development bill.

Nicholas Shapiro is president of the Real Estate Bar Association, while Daniel Dain and Douglas Troyer are the co-chairs, respectively, of the bar association's Litigation and Legislation sections.

The Warren Group | 300 Andover St. #382 | Peabody, MA 01960 | 617-428-5100 |

www.thewarrengroup.com

Copyright © The Warren Group | All Rights Reserved | [Privacy Policy](#)