

HOUSE No. 1841

The Commonwealth of Massachusetts

PRESENTED BY:

Kevin G. Honan

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 to clarify site plan review.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>	<i>1/15/2015</i>

HOUSE No. 1841

By Mr. Honan of Boston, a petition (accompanied by bill, House, No. 1841) of Kevin G. Honan relative to municipal review of proposed land use or structures not requiring a special permit or a variance. Municipalities and Regional Government.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1847 OF 2013-2014.]

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act to clarify site plan review.

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, as appearing in the 2010 Official
2 Edition, is hereby amended by inserting after Section 7 the following section: 40A:7A. Site
3 Plan Review

4 (a) As used in this section, "site plan review" shall mean review and approval under a
5 municipality's zoning ordinance or by-law, by an authority other than the zoning administrator,
6 of a proposed use of land or structures that does not require a special permit or a variance,
7 whether to determine if a proposed use of land or structures is in compliance with the ordinance
8 or by-law, to evaluate the proposed use of land or structures, or to consider site design
9 alternatives or otherwise.

10 (b) In addition to the home rule authority of cities and towns to require site plan
11 review, a municipality may adopt a local ordinance or by-law under this section requiring site
12 plan review and approval by a designated authority before a building permit is granted for the
13 use of land or structures governed by a zoning ordinance or by-law. The approving authority may
14 adopt, and from time to time amend, rules and regulations to implement the local site plan review
15 ordinance or by-law, including provisions for the imposition of reasonable fees for the
16 employment of outside consultants in the same manner as set forth in section 53G of chapter 44.

17 (c) An ordinance or by-law requiring site plan review, whether adopted under this
18 section or under the municipality's home rule authority, shall comply with the provisions of this
19 and all following subsections of Section 7A. The ordinance or by-law shall establish the
20 submission, review, and approval process for applications, which may include the requirement of
21 a public hearing held pursuant to the provisions of section 11 of this chapter. Approval of a site
22 plan shall require a simple majority vote of the designated authority and shall be made within the
23 time limits prescribed by ordinance or by-law, not to exceed 90 days from the date of filing of
24 the application. If no decision is issued within the time limit prescribed, the site plan shall be
25 deemed constructively approved as provided in section 9, paragraph 13 of this chapter. The
26 submission and review process for a site plan submitted in connection with an application for a
27 special permit or variance shall be conducted with the review of such application in a
28 coordinated process and the time limits for the consideration of the special permit or variance
29 shall be followed.

30 (d) Site plan review may impose only those conditions that are necessary: (i) to ensure
31 substantial compliance of the proposed use of land or structures with the requirements of the
32 zoning ordinance or by-law; or (ii) to mitigate any extraordinary adverse impacts of the project

33 on adjacent properties or public infrastructure. A site plan application may be denied only on the
34 grounds that: (i) the proposed use of land or structures project does not meet the requirements set
35 forth in the zoning ordinance or by-law; (ii) the applicant failed to submit the information and
36 fees required by the zoning ordinance or by-law necessary for an adequate and timely review of
37 the design of the proposed land or structures; or (iii) it is not feasible adequately to mitigate any
38 extraordinary adverse project impacts on adjacent properties or public infrastructure by means of
39 suitable site design conditions.

40 (e) Zoning ordinances or by-laws shall provide that a site plan approval granted under
41 this section shall lapse within a specified period of time, not less than two years from the date of
42 the filing of such approval with the city or town clerk, if substantial use or construction has not
43 yet begun, except as extended for good cause by the approving authority. Such extension shall
44 not include time required to pursue or await the determination of an appeal under subsection (f)
45 or Section 17. The aforesaid minimum period of two years may, by ordinance or by-law, be
46 increased to a longer period.

47 (f) Except where site plan review is required in connection with the issuance of a
48 special permit or variance, decisions made under site plan review, whether made pursuant to
49 statutory or home rule authority, may be appealed by a civil action in the nature of certiorari
50 pursuant to Chapter 249, Section 4 of the General Laws, as appearing, and not otherwise. Such
51 civil action may be brought in the superior court or in the land court and shall be commenced
52 within twenty days after the filing of the decision of the site plan review approving authority
53 with the city or town clerk. All issues in any proceeding under this section shall have precedence
54 over all other civil actions and proceedings. A complaint by a plaintiff challenging a site plan
55 approval under this section shall allege the specific reasons why the project fails to satisfy the

56 requirements of this section, the zoning ordinance or by-law, or other applicable law and shall
57 allege specific facts establishing how the plaintiff is aggrieved by such decision. The approving
58 authority's decision in such a case shall be affirmed unless the court concludes that the
59 approving authority abused its discretion under subsection (d) in approving the project.

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