HOUSE DOCKET, NO. 1035 FILED ON: 1/19/2011

HOUSE . . . . . No. 1439

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:
Kevin G. Honan	*17th Suffolk*
Thomas P. Kennedy	

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HOUSE . . . . . No. 1439

By Mr. Honan of Boston, a petition (accompanied by bill, House, No. 1439) of Kevin G. Honan and Thomas P. Kennedy 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. *1981* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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:

SECTION 1. Section 7 of Chapter 40A is hereby amended by adding the following subsection: 40A:7A. Site Plan Review

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

(b) In addition to the home rule authority of cities and towns to require site plan review, a municipality may adopt a local ordinance or by-law under this section requiring site

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

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

29 (d) Site plan review may impose only those conditions that are necessary: (i) to ensure
30 substantial compliance of the proposed use of land or structures with the requirements of the
31 zoning ordinance or by-law; or (ii) to mitigate any extraordinary adverse impacts of the project
32 on adjacent properties or public infrastructure. A site plan application may be denied only on the
33 grounds that: (i) the proposed use of land or structures project does not meet the requirements set

34 forth in the zoning ordinance or by-law; (ii) the applicant failed to submit the information and
35 fees required by the zoning ordinance or by-law necessary for an adequate and timely review of
36 the design of the proposed land or structures; or (iii) it is not feasible adequately to mitigate any
37 extraordinary adverse project impacts on adjacent properties or public infrastructure by means of
38 suitable site design conditions.

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

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

57 decision in such a case shall be affirmed unless the court concludes that the approving authority
58 abused its discretion under subsection (d) in approving the project.

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