

Massachusetts House of Representatives Bill Summary

Bill #: H.2280

Title: An Act to establish a commonsense permitting reforms for businesses and landowners

Sponsor: Rep. Kevin Honan

Committee: Municipalities and Regional Government

Hearing Date: July 22, 2025

Prior History: Refile of H.2064 (OTP)

Current Law: Chapter 40A Section 7 of MGL concerns enforcement of zoning regulations; violations; penalties; jurisdiction of superior court.

Chapter 40A Section 9 of MGL deals with special zoning permits. This section outlines what zoning ordinances shall provide.

Chapter 40A Section 10 of MGL regulates variances. Currently, the permit granting authority shall have the power after public hearing to grant a variance from the terms of the applicable zoning ordinance or by-law to the petitioner. In addition, no variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located. The permit granting authority may impose conditions, safeguards, and limitations.

Chapter 41 Section 81G of MGL concerns the adoption of rules and regulations of planning boards.

Chapter 131 Section 40 of MGL regulates the removal, fill, dredging, or altering of land bordering waters.

Chapter 358 of the Acts of 2020 included a series of revisions to Chapter 40A of MGL, which applies to all cities and towns across the state except Boston.

Section 20 of Chapter 358 amends Section 9 of Chapter 40A by inserting after the word "interests" in line 34, language that holds that nothing shall prohibit a zoning ordinance or by-law from allowing transfer of development rights to be permitted as of right, without the need for a special permit or other discretionary zoning approval.

Section 21 of Chapter 358 further amends Section 9 of Chapter 40A by striking out and replacing the word “cluster” each time it appears and replacing it with “open space residential” in lines 39-43.

Section 22 amends Section 9 of Chapter 40A by inserting after the word “control” in line 47, language that holds that nothing shall prohibit a zoning ordinance or by-law from allowing open space residential developments to be permitted as of right, without the need for a special permit or other discretionary zoning approval.

Section 23 further amends Section 9 of Chapter 40A by striking out the seventh paragraph and inserting new language that holds that zoning ordinances or by-laws may also provide that special permits may be granted for reduced parking space to residential unit ratio requirements if it is found that the public good would be served and that there would not be a substantial adverse effect from the decrease in the number of parking spaces.

Section 24 adds an additional paragraph to Section 9 of Chapter 40A following the twelfth paragraph that lists the types of development that requires a simple majority vote for a special permit. These include:

- Multifamily housing located within ½ mile of a commuter rail station, subway station, ferry terminal or bus station; provided that at least 10% of the housing is affordable and occupied by households with an income less than 80% of the area wide median income and has an affordable housing restriction for at least 30 years
- Mixed-used development in centers of commercial activity within a municipality provided that at least 10% of the housing is affordable and occupied by households with an income less than 80% of the area wide median income and has an affordable housing restriction for at least 30 years.
- A reduced parking space to residential unit ratio requirement, provided that a reduction in the parking requirement will result in the production of additional housing units

Summary:

Section 1 amends Chapter 40A Section 9 of MGL and inserts new language that states that zoning ordinances or by-laws that have specific types of uses shall only be permitted in specified districts upon the issuance of a special permit. The permits shall run with the land, rather than the applicant or owner of the property.

Section 2 amends Chapter 40A Section 10 of MGL and states that the permit granting authority would have the power to grant a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds that a literal enforcement of the provisions of the ordinance or by-law would result in a practical difficulty.

The permit granting authority must consider the following while making its determination:

1. Whether the undesirable change will be produced in the character of the neighborhoods or a significant detriment to nearby properties will be created in the granting of the dimensional variance
2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a dimensional variance
3. Whether the request dimensional variance is substantial
4. Whether the proposed variance will have a significant adverse impact on the physical conditions in the neighborhood
5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the permit granting authority, but shall not necessarily preclude the granting of the dimensional variance

No variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located. No variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located unless the permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structure but not affecting generally the zoning district in which it is located.

Section 3 defines the concept of site plan review as a separate review under a municipality's zoning ordinance or by-law, by the planning board, of a plan showing the proposed on-site arrangement of parking, pedestrian and vehicle circulation, utilities, grading and other site features and improvements existing or to be placed on a parcel of land, in connection with the proposed use of land or structures.

Under site plan review, an applicant proposing the development or redevelopment of land for a use that is authorized by right under the local zoning ordinance or by-law presents a plan and other information relevant to the site design of the proposed development to the planning board, which may take input from municipal departments and other parties interested.

Cities and towns may require such site plan review under a local ordinance or by-law adopted prior to the effective date of this section.

The site plan review may be required before a building permit is granted for the construction, reconstruction, or expansion of structures for a use not requiring a special permit of variance, as well as before the commencement of site development not requiring a building or special permit. The planning board may adopt and amend rules and regulations to implement the local site plan review ordinance or by-law.

An ordinance or by-law requiring site plan review shall comply with the provisions of this and all following subsections of Section 7A. The ordinance or by-law shall establish the submission, review, and approval process for applications, which may include the requirement of a public hearing. Approval of a site plan shall require a simple majority vote of the planning board and the planning board's written decision shall be filed with the city or town clerk, no more than 90 days from the date of the filing of the application.

The decision of the planning board may require only those conditions that the applicant has agreed to make or that otherwise are within the planning board's power under the applicable ordinance or by-law and is determined by the planning board. A site plan application may be denied only on the following grounds:

- The proposed site plan cannot be conditioned to meet the requirements set forth in the zoning ordinance or by-law
- The applicant failed to submit the information and fees required by the zoning ordinance or by-law necessary for an adequate and timely review of the design of the proposed land or structures
- There is no feasible site design change or condition that would adequately mitigate any extraordinary direct adverse impacts of the proposed improvement on adjacent properties

Zoning ordinances or by-laws shall provide that a site plan approval granted under this section shall lapse within a specified time, not less than 2 years from the date the planning board files its decision with the city or town clerk if substantial use or construction has not yet begun. This length of time may be extended, by ordinance or by-law. Site plan review decisions may be appealed in the same manner as a special permit. A complaint by a plaintiff challenging a site plan approval shall name the specific facts establishing how the plaintiff is aggrieved by such decision. The planning board's decision in such a case shall be affirmed unless the court concludes otherwise.

The submission and review process for a site plan submitted in connection with an application for a use that requires a special permit or variance shall be in conjunction with the submission and review of such special permit or variance application in a coordinated process and shall not be subject to a separate site plan review hearing or process under this section or any local ordinance or by-law. In municipalities that adopted a zoning ordinance or by-law requiring some form of site plan review prior to the effective date of this act shall not be effective with respect to such zoning ordinance or by-law until 1 years after the effective date of this act.

Section 4 amends Chapter 40A by inserting a new section, Section 18, which concerns exactions. This section prohibits decisions under Chapter 40A from being based upon the exaction of monetary payment or property

from the applicant or landowner unless the decision contains an explicit finding of fact and conclusions demonstrating that the exaction so required or requested satisfies federal constitutional requirements.

Section 5 amends Section 81Q of Chapter 41 with similar language prohibiting decisions concerning subdivision plans from being based upon the exaction of monetary payment or property from the applicant or landowner unless the decision of the planning board contains explicit findings of fact and conclusions demonstrating that the exaction so required or requested satisfies federal constitutional requirements.

Section 6 amends Section 40 of Chapter 131 by stating that if the conservation commission determines, during a hearing, that the area on which the proposed work is to be done is significant to public or private water supply, to the groundwater supply, to flood control, to storm damage prevention, to prevention of pollution, to protection of land containing shellfish, to the protection of wildlife habitat or to the protection of fisheries or to the protection of the riverfront area, the conservation commission, board of selectmen or mayor shall by written order within 21 days of the hearing impose such conditions as will contribute to the protection of the aforementioned interests. If they should determine that the proposed activity does not require the imposition of such conditions, the applicant shall be notified of such determination within 21 days after the hearing.