

HOUSE No.

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 passage of the accompanying bill:

An Act to clarify site plan review.

PETITION OF:

NAME:

Kevin G. Honan

DISTRICT/ADDRESS:

17th Suffolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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.** Section 7 of Chapter 40A is hereby amended by adding the following subsection:

2 40A:7A. Site Plan Review

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

8

9 (b) In addition to the home rule authority of cities and towns to require site plan review, a
10 municipality may adopt a local ordinance or by-law under this section requiring site plan review and
11 approval by a designated authority before a building permit is granted for the use of land or structures
12 governed by a zoning ordinance or by-law. The approving authority may adopt, and from time to time
13 amend, rules and regulations to implement the local site plan review ordinance or by-law, including

14 provisions for the imposition of reasonable fees for the employment of outside consultants in the same
15 manner as set forth in section 53G of chapter 44.

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

28

29 (d) Site plan review may impose only those conditions that are necessary: (i) to ensure substantial
30 compliance of the proposed use of land or structures with the requirements of the zoning ordinance or
31 by-law; or (ii) to mitigate any extraordinary adverse impacts of the project on adjacent properties or
32 public infrastructure. A site plan application may be denied only on the grounds that: (i) the proposed
33 use of land or structures project does not meet the requirements set forth in the zoning ordinance or
34 by-law; (ii) the applicant failed to submit the information and fees required by the zoning ordinance or
35 by-law necessary for an adequate and timely review of the design of the proposed land or structures; or
36 (iii) it is not possible adequately to mitigate any extraordinary adverse project impacts on adjacent

37 properties or public infrastructure by means of suitable site design conditions.

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

45

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

58

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

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