

**HOUSE . . . . . No. 01438**

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The Commonwealth of Massachusetts

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PRESENTED BY:

***Kevin G. Honan***

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*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.

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PETITION OF:

NAME:

*Kevin G. Honan*

DISTRICT/ADDRESS:

*17th Suffolk*

# HOUSE . . . . . No. 01438

By Mr. Kevin G. Honan of Boston, petition (accompanied by bill, House, No. 01438) of Kevin G. Honan relative to municipal review of proposed land use or structures not requiring a special permit or a variance.. Joint Committee on Municipalities and Regional Government.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE  
□ HOUSE  
□ , NO. 1981 OF 2009-2010.]

## The Commonwealth of Massachusetts

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**In the Year Two Thousand Eleven**  
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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  
2 subsection: 40A:7A. Site Plan Review

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

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  
11 and approval by a designated authority before a building permit is granted for the use of land or  
12 structures governed by a zoning ordinance or by-law. The approving authority may adopt, and  
13 from time to time amend, rules and regulations to implement the local site plan review ordinance  
14 or by-law, including provisions for the imposition of reasonable fees for the employment of  
15 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 section or  
17 under the municipality's home rule authority, shall comply with the provisions of this and all  
18 following subsections of Section 7A. The ordinance or by-law shall establish the submission,  
19 review, and approval process for applications, which may include the requirement of a public  
20 hearing held pursuant to the provisions in section eleven of this chapter. Approval of a site plan  
21 shall require a simple majority vote of the designated authority and shall be made within the time  
22 limits prescribed by ordinance or by-law, not to exceed 90 days from the date of filing of the  
23 application. If no decision is issued within the time limit prescribed, the site plan shall be deemed  
24 constructively approved as provided in section 9, paragraph 11 of this chapter. The submission  
25 and review process for a site plan submitted in connection with an application for a special  
26 permit or variance shall be conducted with the review of such application in a coordinated  
27 process.

28 (d) Site plan review may impose only those conditions that are necessary: (i) to ensure  
29 substantial compliance of the proposed use of land or structures with the requirements of the  
30 zoning ordinance or by-law; or (ii) to mitigate any extraordinary adverse impacts of the project  
31 on adjacent properties or public infrastructure. A site plan application may be denied only on the

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

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

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

55 establishing how the plaintiff is aggrieved by such decision. The approving authority's decision  
56 in such a case shall be affirmed unless the court concludes that the approving authority abused its  
57 discretion under subsection (d) in approving the project.

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