

HOUSE No. 1844

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 establish commonsense permitting reforms for businesses and landowners.

PETITION OF:

NAME:

Kevin G. Honan

DISTRICT/ADDRESS:

17th Suffolk

HOUSE No. 1844

By Mr. Honan of Boston, a petition (accompanied by bill, House, No. 1844) of Kevin G. Honan relative to zoning variances . Municipalities and Regional Government.

The Commonwealth of Massachusetts

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

An Act to establish commonsense permitting reforms for businesses and landowners.

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 9 of chapter 40A, as so appearing, is hereby amended by striking
2 out the first paragraph and inserting in place thereof the following paragraph:-

3 Zoning ordinances or by-laws shall provide for specific types of uses which shall only be
4 permitted in specified districts upon the issuance of a special permit. Special permits may be
5 issued only for uses which are in harmony with the general purpose and intent of the ordinance
6 or by-law, shall be subject to general or specific provisions set forth therein, and shall run with
7 the land and shall not be personal to the applicant or owner of the property. Such permits may
8 also impose conditions, safeguards and limitations on time or use.

9 SECTION 2. Section 10 of chapter 40A, as so appearing, is hereby amended by
10 striking out the first paragraph and inserting in place thereof the following paragraphs:-

11 The permit granting authority shall have the power, after public hearing for which notice
12 has been given by publication and posting as provided in section eleven and by mailing to all

13 parties in interest, to grant a variance from the terms of the applicable zoning ordinance or by-
14 law where such permit granting authority specifically finds that a literal enforcement of the
15 provisions of the ordinance or by-law would result in a practical difficulty. In making its
16 determination, the permit granting authority shall take into consideration the benefit to the
17 applicant if the variance is granted, as weighed against the detriment to the health, safety, and
18 welfare of the neighborhood by such grant. In making such determination, the permit granting
19 authority shall also consider: (1) whether an undesirable change will be produced in the character
20 of the neighborhood or a significant detriment to nearby properties will be created in the granting
21 of the dimensional variance; (2) whether the benefit sought by the applicant can be achieved by
22 some method, feasible for the applicant to pursue, other than a dimensional variance; (3) whether
23 the requested dimensional variance is substantial; (4) whether the proposed variance will have a
24 significant adverse impact on the physical conditions in the neighborhood; and (5) whether the
25 alleged difficulty was self-created, which consideration shall be relevant to the decision of the
26 permit granting authority, but shall not necessarily preclude the granting of the dimensional
27 variance.

28 Except where local ordinances or by-laws shall expressly permit variances for use, no
29 variance may authorize a use or activity not otherwise permitted in the district in which the land
30 or structure is located; provided, however, that such variances properly granted prior to January
31 first, nineteen hundred and seventy-six but limited in time, may be extended on the same terms
32 and conditions that were in effect for such variance upon said effective date. No variance may
33 authorize a use or activity not otherwise permitted in the district in which the land or structure is
34 located unless the permit granting authority specifically finds that owing to circumstances
35 relating to the soil conditions, shape, or topography of such land or structures and especially

36 affecting such land or structures but not affecting generally the zoning district in which it is
37 located, a literal enforcement of the provisions of the ordinance or by-law would involve
38 substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief
39 may be granted without substantial detriment to the public good and without nullifying or
40 substantially derogating from the intent or purpose of such ordinance or by-law.

41 SECTION 3. Chapter 40A is hereby amended by inserting after the Section 7 the
42 following section:-

43 Section 7A. Site Plan Review

44 (a) As used in this section, “site plan review” shall mean a separate review under a
45 municipality’s zoning ordinance or by-law, by the planning board, of a plan showing the
46 proposed on-site arrangement of, parking, pedestrian and vehicle circulation, utilities, grading
47 and other site features and improvements existing or to be placed on a parcel of land, in
48 connection with the proposed use of land or structures. Under site plan review, an applicant
49 proposing the development or redevelopment of land for a use that is authorized by right under
50 the local zoning ordinance or by-law presents a plan and other information relevant to the site
51 design of the proposed development to the planning board, which may take input from municipal
52 departments and parties in interest. Such review shall take place under this section only where
53 the proposed use does not require a special permit or variance under the local by-law or
54 ordinance.

55 (b) Cities and towns may require such site plan review under a local ordinance or by-law
56 adopted prior to the effective date of this section, or thereafter under this section. Site plan
57 review may be required before a building permit is granted for the construction, reconstruction,

58 or expansion of structures for a use not requiring a special permit or variance, as well as before
59 the commencement of site development not requiring a building or special permit. The planning
60 board may adopt, and from time to time amend, rules and regulations to implement the local site
61 plan review ordinance or by-law, including provisions for the imposition of reasonable fees for
62 the employment of outside consultants in the same manner as set forth in section 53G of chapter
63 44.

64 (c) An ordinance or by-law requiring site plan review, whether adopted under this
65 section or previously adopted under the municipality's home rule authority, shall comply with
66 the provisions of this and all following subsections of Section 7A. The ordinance or by-law shall
67 establish the submission, review, and approval process for applications, which may include the
68 requirement of a public hearing held pursuant to the provisions of section eleven of this chapter.
69 Approval of a site plan shall require a simple majority vote of the planning board and the
70 planning board's written decision shall be filed with the city or town clerk within the time limits
71 prescribed by the ordinance or by-law, not to exceed 90 days from the date of filing of the
72 application. If no decision is filed within the time limit prescribed, the site plan shall be deemed
73 constructively approved as provided in section 9, paragraph 11 of this chapter.

74 (d) The decision of the planning board may require only those conditions that the
75 applicant has agreed to make or that otherwise are within the planning board's power under the
76 applicable ordinance or by-law and is determined by the planning board to be necessary to
77 ensure substantial compliance of the proposed improvements with the requirements of the zoning
78 ordinance or by-law or to reasonably mitigate any extraordinary direct adverse impacts of the
79 proposed improvements on adjacent properties. A site plan application may be denied only on
80 the grounds that: (i) the proposed site plan cannot be conditioned to meet the requirements set

81 forth in the zoning ordinance or by-law; (ii) the applicant failed to submit the information and
82 fees required by the zoning ordinance or by-law necessary for an adequate and timely review of
83 the design of the proposed land or structures; or (iii) there is no feasible site design change or
84 condition that would adequately mitigate any extraordinary direct adverse impacts of the
85 proposed improvements on adjacent properties.

86 (e) Zoning ordinances or by-laws shall provide that a site plan approval granted under
87 this section shall lapse within a specified period of time, not less than two years from the date
88 the planning board files its decision with the city or town clerk, if substantial use or construction,
89 including substantial investment in site preparation or infrastructure construction, has not yet
90 begun. The aforesaid minimum period of two years may, by ordinance or by-law, be increased
91 to a longer period. If an appeal is filed, the commencement of the lapse period shall be measured
92 from the date of the dismissal of the appeal or entry of final judgment in favor of the applicant.
93 The period for lapse may be extended for good cause by a majority vote of the planning board.

94 (f) Site plan review decisions may be appealed under Section 17 in the same manner as a
95 special permit. A complaint by a plaintiff challenging a site plan approval under this section shall
96 allege the specific reasons why the planning board exceeded its authority in approving the site
97 plan and shall allege specific facts establishing how the plaintiff is aggrieved by such decision.
98 The planning board's decision in such a case shall be affirmed unless the court concludes that the
99 decision exceeded the planning board's authority under subsection (d).

100 (g) The submission and review process for a site plan submitted in connection with an
101 application for a use that requires a special permit or use variance shall be in conjunction with
102 the submission and review of such special permit or variance application in a coordinated

103 process and shall not be subject to a separate site plan review hearing or process under this
104 section or any local ordinance or by-law.

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

109 SECTION 4. Chapter 40A of the General Laws, as so appearing, is hereby
110 amended by inserting the following section:-

111 Section 18. Exactions. No decision under this chapter shall be based on the exaction of
112 monetary payment or property from the applicant or landowner unless the decision contains
113 explicit findings of fact and conclusions demonstrating that the exaction so required or requested
114 satisfies federal constitutional requirements.

115 SECTION 5. Section 81Q of chapter 41, as so appearing, is hereby amended by
116 inserting after the eleventh sentence the following sentence:-

117 No decision concerning a plan of a subdivision shall be based on the exaction of
118 monetary payment or property from the applicant or landowner unless the decision of the
119 planning board contains explicit findings of fact and conclusions demonstrating that the exaction
120 so required or requested satisfies federal constitutional requirements.

121 SECTION 6. Section 40 of chapter 131, as so appearing, is hereby amended by striking
122 out the eighteenth paragraph and inserting in place thereof the following paragraph:-

123 If after said hearing the conservation commission, selectmen or mayor, as the case may
124 be, determine that the area on which the proposed work is to be done is significant to public or
125 private water supply, to the groundwater supply, to flood control, to storm damage prevention, to
126 prevention of pollution, to protection of land containing shellfish, to the protection of wildlife
127 habitat or to the protection of fisheries or to the protection of the riverfront area consistent with
128 the following purposes: to protect the private or public water supply; to protect the ground water;
129 to provide flood control; to prevent storm damage; to prevent pollution; to protect land
130 containing shellfish; to protect wildlife habitat; and to protect the fisheries, such conservation
131 commission, board of selectmen or mayor shall by written order within twenty-one days of such
132 hearing impose such conditions as will contribute to the protection of the interests described
133 herein, and all work shall be done in accordance therewith. No order shall be based on the
134 exaction of monetary payment or property from the applicant or landowner unless the written
135 order contains explicit findings of fact and conclusions demonstrating that the exaction so
136 required or requested satisfies federal constitutional requirements. If the conservation
137 commission, selectmen or mayor, as the case may be, make a determination that the proposed
138 activity does not require the imposition of such conditions, the applicant shall be notified of such
139 determination within twenty-one days after said hearing. Such order or notification shall be
140 signed by the mayor or a majority of the conservation commission or board of selectmen, as the
141 case may be, and a copy thereof shall be sent forthwith to the applicant and to the department.