

By Mrs. Gray of Framingham, petition of Barbara E. Gray and John A. Businger relative to recodifying and clarifying the zoning laws. Local Affairs.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Six.

AN ACT RECODIFYING AND CLARIFYING THE ZONING ACT.

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. Chapter 40A of the General Laws, as most
2 recently amended by chapter 117 of the acts of 1979, is further
3 amended in section eleven by deleting the fourth paragraph.

1 SECTION 2. Chapter 40A of the General Laws, as most
2 recently amended by chapter 117 of the acts of 1979, is further
3 amended by deleting section fifteen and inserting in place thereof
4 the following two paragraphs: —

5 The permit granting authority or special permit granting
6 authority shall cause to be made a detailed record of its proceed-
7 ings, indicating the vote of each member upon each question, or if
8 absent or failing to vote, indicating such fact, and setting forth
9 clearly the reason or reasons for its decision and of its official
10 actions, copies of all of which shall be filed within fourteen days in
11 the office of the city or town clerk and shall be a public record; and
12 notice of the decision shall be mailed forthwith to the petitioner,
13 applicant or appellant, to the parties in interest designated in
14 section eleven, and to every person present at the hearing who
15 requested that notice be sent to him and stated the address to
16 which the notice was to be sent. Each notice shall specify that
17 appeals, if any, shall be made pursuant to section seventeen and

18 shall be filed within twenty days after the date of filing of such
19 notice in the office of the city or town clerk.

20 Upon granting of a variance or special permit, or any extension,
21 modification or renewal thereof, the permit granting authority or
22 special permit granting authority shall issue to the owner and to
23 the applicant if other than the owner a copy of its decision,
24 certified by the permit granting authority or special permit
25 granting authority, containing the name and address of the owner,
26 identifying the land affected, setting forth compliance with the
27 statutory requirements for the issuance of such variance or permit
28 and certifying that copies of the decision and all plans referred to in
29 the decision have been filed with the planning board and city or
30 town clerk. No variance or special permit, or any extension,
31 modification or renewal thereof, shall take effect until a copy of
32 the decision bearing the certification of the town or city clerk that
33 twenty days have elapsed after the decision has been filed in the
34 office of the city or town clerk and no appeal has been filed or that
35 if such appeal has been filed, that it has been dismissed or denied, is
36 recorded in the registry of deeds for the county and district in
37 which the land is located and indexed in the grantor index under
38 the name of the owner of record or is recorded and noted on the
39 owner's certificate of title. The fee for recording or registering shall
40 be paid by the owner or applicant.

1 SECTION 3. Chapter 40A of the General Laws, as most
2 recently amended by chapter 117 of the acts of 1979, is further
3 amended in section eight by adding at the end of section eight in
4 the following three paragraphs: —

5 Any appeal under this section to a permit granting authority
6 shall be taken within thirty days from the date of the order or
7 decision which is being appealed, by filing a notice of appeal,
8 specifying the grounds thereof, with the city or town clerk, who
9 shall forthwith transmit copies thereof to such officer or board
10 whose order or decision is being appealed, and to the permit
11 granting authority. Such officer or board shall forthwith transmit
12 to the board of appeals or zoning administrator all documents and
13 papers constituting the record of the case in which the appeal is
14 taken.

15 Any appeal to a board of appeals from the order or decision of a
16 zoning administrator, if any, appointed in accordance with section
17 thirteen shall be taken within thirty days of the date of such order
18 or decision or within thirty days from the date on which the appeal,
19 application or petition in question shall have been deemed denied
20 in accordance with said section thirteen, as the case may be, by
21 filing a notice of appeal, specifying the grounds thereof with the
22 city or town clerk who shall forthwith transmit copies thereof to
23 the zoning administrator and, in the case of an appeal under this
24 section, to the officer whose decision was the subject of the initial
25 appeal to said zoning administrator. The zoning administrator
26 shall forthwith transmit to the board of appeals all documents and
27 papers constituting the record of the case in which the appeal is
28 taken.

29 The decision of the board shall be made within seventy-five days
30 after the date of the filing of an appeal, and after a public hearing,
31 held within sixty-five days after the filing of an appeal. Failure by
32 the board to act within said seventy-five days shall be deemed to be
33 the grant of the relief sought, subject to an applicable judicial
34 appeal as provided for in this chapter.

1 SECTION 4. Chapter 40A of the General Laws, as most
2 recently amended by chapter 117 of the acts of 1979, is further
3 amended in section nine by deleting paragraph seven and inserting
4 in place thereof the following paragraph: —

5 Zoning ordinances or by-laws shall provide that special permits
6 shall only be issued following public hearings held within sixty-five
7 days after the filing of an application with the special permit
8 granting authority, a copy of which shall forthwith be given to the
9 city or town clerk by the applicant. Special permit granting
10 authorities shall act within ninety days following a public hearing
11 for which notice has been given by publication or posting as
12 provided in section eleven, and by mailing to all parties in interest,
13 provided, however, a city council having more than five members
14 designated to act upon such a permit may appoint a committee of
15 such council to hold the public hearing. Failure by a special permit
16 granting authority to take final action upon an application for a

17 special permit within said ninety days following the date of public
18 hearing shall be deemed to be a grant of the permit applied for.

1 SECTION 5. Chapter 40A of the General Laws, as most
2 recently amended by chapter 117 of the acts of 1979, is further
3 amended in section nine by adding at the end of section nine the
4 following paragraph: —

5 Zoning ordinances or by-laws may provide that petitions for
6 special permits shall be submitted to and reviewed by one or more
7 of the following and may further provide that such reviews may be
8 held jointly: — the board of health, the planning board or
9 department, the city or town engineer, the conservation commis-
10 sion or any other town agency or board. Any such board or agency
11 to which petitions are referred for review shall make such
12 recommendations as they deem appropriate and shall send copies
13 thereof to the special permit granting authority and to the
14 applicant; provided, however, that failure of any such board or
15 agency to make recommendations within thirty-five days of
16 receipt by such board or agency of the petition shall be deemed
17 lack of opposition thereto.

1 SECTION 6. Chapter 40A of the General Laws, as most
2 recently amended by chapter 117 of the acts of 1979, is further
3 amended in section ten by adding between paragraphs two and
4 three the following paragraph: —

5 All petitions for variance over which the board of appeals or the
6 zoning administrator as the case may be, exercise original
7 jurisdiction shall be filed by the petitioner with the city or town
8 clerk who shall forthwith transmit a copy thereof to the board of
9 appeals or to said zoning administrator. The decision of the board
10 shall be made with seventy-five days after the date of the filing of a
11 petition, and after a public hearing, held within sixty-five days
12 after the filing of a petition. Failure by the board to act within said
13 seventy-five days shall be deemed to be the grant of the relief, or
14 petition sought, subject to an applicable judicial appeal as
15 provided for in this chapter.

1 SECTION 7. Chapter 40A of the General Laws, as most

2 recently amended by chapter 117 of the acts of 1979, is further
3 amended in section eleven by deleting the third paragraph and
4 inserting in place thereof the following paragraph: —

5 All hearings shall be open to the public.

1 SECTION 8. Chapter 40A of the General Laws, as most
2 recently amended by chapter 117 of the acts of 1979, is further
3 amended in section fourteen by deleting section fourteen and
4 inserting in place thereof the following: —

5 A zoning ordinance or by-law shall provide for a special permit
6 granting authority to issue permits for uses specifically permitted
7 by special permit in the ordinance or by-law. Such special permit
8 granting authority shall be designated as provided in section one
9 A.

10 Zoning ordinances or by-laws may provide that certain classes
11 of special permits shall be issued by one special permit granting
12 authority and others by another special permit granting authority
13 as provided in the ordinance or by-law. Such special permit
14 granting authority shall adopt and from time to time amend rules
15 relative to the issuance of such permits, and shall file a copy of said
16 rules in the office of the city or town clerk. Such rules shall
17 prescribe a size, form, contents, style and number of copies of
18 plans and specifications and the procedure for a submission and
19 approval of such permits.

20 Special permits issued by special permit granting authority shall
21 require a two-thirds vote of boards with more than five members, a
22 vote of at least four members of a five member board and a
23 unanimous vote of a three member board.

1 SECTION 9. Chapter 40A of the General Laws, as most
2 recently amended by chapter 117 of the acts of 1979, is further
3 amended in section twelve by adding at the end of section twelve
4 the following four paragraphs: —

5 A board of appeals shall have the following powers: —

6 (1) To hear and decide appeals in accordance with section eight.

7 (2) To hear and decide applications for special permits upon
8 which the board is empowered to act as the special permit granting
9 authority under said ordinance or by-law.

10 (3) To hear and decide petitions for variances as set forth in
11 section ten.

12 (4) To hear and decide appeals from decisions of a zoning
13 administrator, if any, in accordance with section thirteen, section
14 eight and this section.

15 In exercising the powers granted by this section, a board of
16 appeals may, in conformity with the provisions of this chapter,
17 make orders or decisions, reverse or affirm in whole or in part, or
18 modify any order or decision, and to that end shall have all the
19 powers of the officer from whom the appeal is taken and may issue
20 or direct the issuance of a permit.

21 Meetings of the board shall be held at the call of the chairman or
22 when called in such manner as the board shall determine in its
23 rules. The chairman, or in his absence, the acting chairman, may
24 administer oaths, summon witnesses, and call for the production
25 of papers.

26 The concurring vote of all the members of the board of appeals
27 consisting of three members, and a vote of four members of a
28 board consisting of five members, shall be necessary to reverse any
29 order or decision of any administrative official under this chapter
30 or to effect any variance in the application of any ordinance or
31 by-law.

1 SECTION 10. Chapter 40A of the General Laws, as most
2 recently amended by chapter 117 of the acts of 1979, is further
3 amended in section thirteen by deleting the word "fourteen" from
4 the third sentence of section thirteen and inserting in place thereof
5 the word "eight"; and by further amending section thirteen by
6 inserting at the end of section thirteen the following paragraph: —

7 Before making any decision, the zoning administrator shall hold
8 a public hearing and give notice as provided in section eleven.
9 When a zoning administrator is acting as a special permit granting
10 authority or permit granting authority the procedures of section
11 fifteen shall be allowed after making a decision.

