

HOUSE No. 5781

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 22, 1986.

The committee on Local Affairs, to whom were referred the petition (accompanied by bill, House, No. 3025) of Henry R. Grenier, Marie-Louise Kehoe, Philip Travis, John P. Houston and Daniel J. Ranieri relative to the filing procedure and notifying parties of interest regarding special permits and variances under the zoning laws of the Commonwealth, and the petition (accompanied by bill, House, No. 4630) of Marie-Louise Kehoe for legislation to extend the time limit for certain variances granted by local planning boards, reports recommending that the accompanying bill (House, No. 5781) ought to pass.

For the committee,

HENRY R. GRENIER.

The Commonwealth of Massachusetts

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

AN ACT RELATIVE TO THE FILING PROCEDURE AND NOTIFYING PARTIES OF INTEREST REGARDING CERTAIN SPECIAL PERMITS AND VARIANCES.

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 of the General Laws,
2 as amended by Chapter 344 of the acts of 1982, is hereby further
3 amended by striking out the eighth paragraph and inserting in
4 place thereof the following paragraphs: —

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

15 All applications for special permits shall be filed by the
16 petitioner with the city or town clerk and a copy of said
17 applications including the date and time of filing certified by the
18 city or town clerk shall be filed forthwith by the petitioner with
19 the special permit granting authority. The special permit granting
20 authority shall hold a public hearing, for which notice has been
21 given as provided in section eleven, on any application for a special
22 permit within sixty-five days from the date of filing of such
23 application, provided, however, a city council having more than
24 five members designated to act upon such application may
25 appoint a committee of such council to hold the public hearing.
26 The decision of the special permit granting authority shall be made
27 within ninety days following the date of the public hearing. The

28 required time limits for a public hearing and said action, may be
29 extended by written agreement between the petitioner and the
30 special permit granting authority. A copy of such agreement shall
31 be filed in the office of the city or town clerk. Special permits
32 issued by a special permit granting authority shall require a two-
33 thirds vote of boards with more than five members, a vote of at
34 least four members of a five member board, and a unanimous vote
35 of a three member board.

36 Failure by the special permit granting authority to take final
37 action within said ninety-days or extended time agreed to, shall
38 be deemed to be the grant of the special permit. The petitioner
39 who seeks such approval by reason of the failure of the special
40 permit granting authority to act within the time prescribed, shall
41 notify, in writing within fourteen days from the expiration of said
42 ninety days or extended time period agreed to, the city or town
43 clerk of such approval and that notice has been sent by the
44 petitioner to parties in interest. The petitioner shall send such
45 notice to parties in interest by mail and each notice shall specify
46 that appeals, if any, shall be made pursuant to section seventeen
47 and shall be filed within twenty days from after the date the city
48 or town clerk received such written notice from the petitioner that
49 the special permit granting authority failed to act within the time
50 prescribed. After the expiration of twenty days without notice of
51 appeal to the Superior Court, or, if appeal has been taken, after
52 receipt of certified records of the Superior Court indicating that
53 such approval has become final, the city or town clerk shall issue
54 a certificate stating the date of approval, the fact that the special
55 permit granting authority failed to take final action and that the
56 approval resulting from such failure has become final, and such
57 certificate shall be forwarded to the petitioner. The special permit
58 granting authority shall cause to be made a detailed record of its
59 proceedings, indicating the vote of each member upon each
60 question, or if absent or failing to vote, indicating such fact, and
61 setting forth clearly the reason or reasons for its decision and of
62 its official actions, copies of all of which shall be filed within
63 fourteen days in the office of the city or town clerk and shall be
64 public record; and notice of the decision shall be mailed forthwith
65 to the petitioner, applicant or appellant, to the parties in interest

66 designated in section eleven, and to every person present at the
67 hearing who requested that notice be sent to him and stated the
68 address to which such notice was to be sent. Each notice shall
69 specify that appeals, if any, shall be made pursuant to section
70 seventeen and shall be filed within twenty days after the date of
71 filing of such notice in the office of city or town clerk.

1 SECTION 2. The fourth paragraph of Section 11 of said
2 Chapter 40A, as amended by chapter 117 of the acts of 1979, is
3 hereby further amended by striking out the second sentence and
4 inserting in place thereof, the following sentence: —

5 No variance or special permit, or any extension, modification
6 or renewal thereof, shall take effect until a copy of the decision
7 bearing the certification of the city or town clerk that twenty days
8 have elapsed after the decision has been filed in the office of the
9 city or town clerk and no appeal has been filed or that if such
10 appeal has been filed, that it has been dismissed or denied, and
11 if it is a variance or special permit which has been dismissed or
12 denied, and if it is a variance or special permit which has been
13 approved by reason of the failure of the permit granting authority
14 or special permit granting authority to act thereon within the time
15 prescribed, a copy of the application for the special permit or
16 petition for the variance accompanied by the certification of the
17 city or town clerk stating the fact that the permit granting
18 authority or special permit granting authority failed to act within
19 the time prescribed and no appeal has been filed and that the grant
20 of the application or petition resulting from such failure to act
21 has been final or that if an appeal has been filed, that it has been
22 dismissed or denied, is recorded in the registry of deeds for the
23 county and district in which the land is located and indexed in
24 the grantor index under the name of the owner of record or is
25 recorded and noted on the owner's certificate of title.

1 SECTION 3. Chapter 40A is hereby further amended by
2 striking out Section 15, as most recently amended by Section 3
3 of Chapter 808 of the acts of 1975, and inserting in place thereof
4 the following: —

5 Any appeal under section eight 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. The petitioner shall file a notice
8 of appeal specifying the grounds thereof, with the city or town
9 clerk, and a copy of said notice including the date and time of
10 filing certified by the town clerk shall be filed forthwith by the
11 petitioner with the officer or board whose order or decision is
12 being appealed, and to the permit granting authority, specifying
13 in the notice grounds for such an appeal. Such officer or board
14 shall forthwith transmit to the board of appeals or zoning
15 administrator all documents and papers constituting the record
16 of the case in which the appeal is taken.

17 Any appeal to a board of appeals from the order of decision
18 of a zoning administrator, if any, appointed in accordance with
19 section thirteen shall be taken within thirty days of the date of
20 such order or decision or within thirty days from the date on which
21 the appeal, application or petition in question shall have been
22 deemed denied in accordance with said section thirteen, as the case
23 may be, by having the petitioner filing a notice of appeal,
24 specifying the grounds thereof with the city or town clerk and a
25 copy of said notice including the date and time of filing certified
26 by the city or town clerk shall be filed forthwith to the zoning
27 administrator and in the case of an appeal under section eight to
28 the officer whose decision was the subject of the initial appeal to
29 said zoning administrator. The zoning administrator shall
30 forthwith transmit to the board of appeals all documents and
31 papers constituting the record of the case in which the appeal is
32 taken. All applications for special permits or petitions for variance
33 over which the board of appeals or the zoning administrator as
34 the case may be, exercise original jurisdiction shall be filed by the
35 petitioner with the city or town clerk, a copy of said appeal,
36 application or petition including the date and time of filing,
37 certified by the city or town clerk shall be filed forthwith to the
38 board of appeals or to said zoning administrator.

39 Meetings of the board shall be held at the call of the chairman
40 or when called in such other manner as the board shall determine
41 in its rules. The board of appeals shall hold a hearing on any
42 appeal, application or petition within sixty-five days from the
43 receipt of notice to the board of such appeal, application or
44 petition. The board shall cause notice of such hearing to be

45 published and sent to parties in interest as provided in section
46 eleven of this chapter. The chairman, or in his absence the acting
47 chairman, may administer oaths, summon witnesses, and call for
48 the production of papers.

49 The concurring vote of all members of the board of appeals
50 consisting of three members, and a concurring vote of four
51 members of a board consisting of five members, shall be necessary
52 to reverse any order or decision of any administrative official
53 under this chapter or to effect any variance in the application of
54 any ordinance or by-law.

55 All hearings of the board of appeals shall be open to the public.
56 The decision of the board shall be made within one hundred days
57 after the date of the filing of an appeal, application or petition,
58 except in regards to special permits as provided in section nine
59 of this chapter. The required time limits for a public hearing and
60 said action, may be extended by written agreement between the
61 applicant and the board of appeals. A copy of such agreement
62 shall be filed in the office of the city or town clerk. Failure by
63 the board to act within said one hundred days or extended time
64 agreed to, shall be deemed to be the grant of the appeal,
65 application or petition. The petitioner who seeks such approval
66 by reason of the failure of the board to act within the time
67 prescribed shall notify the city or town clerk, in writing, within
68 fourteen days from the expiration of said one hundred days or
69 extended time period agreed to, of such approval and that notice
70 has been sent by the petitioner to parties in interest. The petitioner
71 shall send such notice to parties in interest by mail and each notice
72 shall specify that appeals, if any, shall be made pursuant to section
73 seventeen and shall be filed within twenty days after the date the
74 city or town clerk received such written notice from the petitioner
75 that the board failed to act within the time prescribed. After the
76 expiration of twenty days without notice of appeal to the Superior
77 Court, or, if appeal has been taken, after receipt of certified
78 records of the Superior Court indicating that such approval has
79 become final, the city or town clerk shall issue a certificate stating
80 the date of approval, the fact that the board failed to take final
81 action and that the approval resulting from such failure has
82 become final, and such certificate shall be forwarded to the

83 petitioner. The board shall cause to be made a detailed record of
84 its proceedings, indicating the vote of each member upon each
85 question, or if absent or failing to vote, indicating such fact, and
86 setting fourth clearly the reason or reasons for its decision and
87 of its official actions, copies of all of which shall be filed within
88 fourteen days in the office of the city or town clerk and shall be
89 a public record; and notice of the decision shall be mailed
90 forthwith to the petitioner, applicant or appellant, to the parties
91 in interest designated in section eleven, and to every person present
92 at the hearing who requested that notice be sent to him and stated
93 the address to which such notice was to be sent. Each notice shall
94 specify that appeals, if any, shall be made pursuant to section
95 seventeen and shall be filed within twenty days after the date of
96 filing of such notice in the office or city or town clerk.

1 SECTION 4. Section 17 of Chapter 40A of the General Laws
2 is hereby amended in line 2, as appearing in the 1984 Official
3 Edition, by inserting after the word "authority", the following
4 words: —

5 or by the failure of the board of appeals to take final action
6 concerning any appeal, application or petition within the required
7 time, or by the failure of any special permit granting authority
8 to take final action concerning any application for a special permit
9 within the required time.

