HOUSE . . . . . No. 4939

By Mr. Garballey of Arlington, petition (accompanied by bill, House, No. 4939) of Sean Garballey (by vote of the town) that the town of Arlington be authorized to establish Arlington Redevelopment Board. Municipalities and Regional Government. [Local Approval Received.]

The Commonwealth of Massachusetts

PETITION OF:

Sean Garballey

In the Year Two Thousand and Eight.

AN ACT ESTABLISHING THE ARLINGTON REDEVELOPMENT BOARD AS THE BOARD OF SURVEY

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1.

SECTION 1: PREAMBLE

Notwithstanding any general or special law to the contrary, including, without limitation, any provision of Chapter 41 of the General Laws, including Sections 81K through Section 81GG of the subdivision control law, the provisions of Chapter 247 of the Acts of 1897 establishing a Board of Survey in the Town of Arlington, Chapter 738 of the Acts of 1971 establishing the Arlington Redevelopment Board for the Town of Arlington and Chapter 503 of the Acts of 1952 establishing a Town Manager Form of Government for the Town of Arlington as each has been from time to time amended, there is hereby established a Board of Survey for the Town of Arlington. The Arlington Redevelopment Board shall constitute the Board of Survey. The responsibility of such Board shall be to protect the safety, convenience and welfare of the inhabitants of the Town, in regard to the laying out and

construction of private ways. The process of the Board's review will be initiated by the filing of a plan of the proposed development.

SECTION 2: DEFINITIONS

The following words shall have the following meaning, unless a contrary intention clearly appears:-

"Applicant" shall include an owner or his agent or representative, or his assigns. "Board" shall mean the Arlington Redevelopment Board, acting in its capacity as the Board of Survey under this law.

"Commission" shall mean the Historic District Commission having jurisdiction over a district in which a way is proposed.

"Day" shall mean a calendar day.

"Development" shall mean the division of a tract of land into two or more lots, where such division shall require the construction of one or more ways to ensure the development's compliance with the access and/or frontage requirements of the town's zoning by-law, and provided that a deed evidencing such division has not been recorded at the registry of deeds prior to the effective date of the law.

"Lot" shall mean an area of land in one ownership, with definite boundaries, used, or available for use, as the site of one or more buildings.

"Notice" shall mean, for the purposes of the law, publication in a newspaper of general circulation in the Town of Arlington once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing, and posting such notice in a conspicuous place in the town hall for a period of not less than fourteen days before the day of the hearing.

"Plan" shall mean a plan of the private way or ways and the development that such ways will serve, including all utilities, drainage systems, and other site improvements, together with such elements of an application as the board may require, and submitted to the board for its approval in accordance with the provisions of the law and the board's rules and regulations.

"Registered mail" shall mean registered or certified mail.

"Registry of deeds" shall mean the Middlesex County (Southern District) Registry of Deeds, or, for registered land, the Middlesex County (Southern District) Registry District of the Land Court.

"Utility" shall mean public or private utilities serving a development, including water, sewerage, gas, and electricity.

"Way" shall mean a private way that provides access to one or more lots, the construction of which is required to ensure the compliance of a development with the access and frontage requirements of the town's

zoning by-law.

SECTION 3: PURPOSES OF LAW

The law has been enacted for the purpose of protecting the safety, convenience and welfare of the inhabitants of the town by regulating the laying out and construction of ways in developments, and to further other public purposes including the provision of adequate utility services and the protection of environmental resources. The Board shall require, inter alia, that such plan for the laying out of ways, utilities, drainage, and other site improvements shall be drawn with due consideration of the following factors:

a. To mitigate congestion in such ways and adjacent private or public ways.
b. To secure the public safety in the case of fire, flood, or other public emergencies and to ensure adequate emergency vehicle access for police, fire, and other municipal services.
c. To ensure compliance with the zoning bylaw.
d. To secure adequate provision for access to the town's water supply.
e. To secure adequate provision of sanitary sewer service, utility services and street lighting.
f. To provide for adequate curbs, sidewalks and side slopes as appropriate.
g. To apply design standards for the grade, width, direction and location of such roadways.
h. To ensure adequate protection of environmental resources, including open spaces, vegetation, and wildlife habitat, along with provisions for storm water management and drainage to prevent flooding and protect water quality.
i. To advance the goals of the town's comprehensive plan, its open space plan, and any special or district plan or policy.

SECTION 4: RULES AND REGULATIONS

The board is authorized and directed to adopt and from time to time thereafter to amend, after notice and a public hearing, rules and regulations in furtherance of the purposes stated in Section 3 herein. Such rules and regulations may prescribe the size, form, contents, style and number of copies of plans and the standards and procedures for the submission and approval thereof. The rules and regulations may permit the board to impose a fee in an amount calculated to pay the cost of any engineering, inspection or other services directly related to the proposed development.

A true copy of the rules and regulations, with their most recent amendments, shall be kept on file available for inspection in the office of the board, and in the office of the town clerk. Once a plan has been submitted to the board, and written notice has been given to the town clerk and until final

action has been taken thereon by the board or the time for such action has elapsed, the rules and regulations governing such plan shall be those in effect at the time of the submission of such plan.

SECTION 5: SUBMISSION AND REVIEW OF PLANS

No person shall construct any way on a development unless he has first submitted to the board for its approval a plan of such ways and development and the board has approved such plan in the manner hereinafter provided. After the approval of a plan the location and configuration of ways, utilities, drainage systems, and other site improvements shown thereon shall not be changed unless the plan is amended accordingly as provided herein.

A plan shall be submitted under this section when delivered by hand to the board, with a copy to the town clerk. The clerk shall, if requested, give a written receipt therefore to the person who delivered the plan. Before approval, modification and approval, or disapproval of the plan is given, notice shall be given and a public hearing shall be held by the board. In addition to the notice requirements of Section 2, the applicant shall mail, at its own expense, notice to all owners of land abutting the parcel of land being developed and to abutters to the abutters within 300 feet of the property line of the parcel, as such owners appear on the most recent tax list, and to such other persons as the board shall identify in its sole discretion.

After the hearing, the board shall approve by a vote of the majority of the board's members, or, if such plan does not comply with the law or the rules and regulations of the board, shall modify and approve or shall disapprove such plan. In the event of disapproval, the board shall state in detail wherein the plan does not conform to the rules and regulations of the board. Within less than 15 days of a disapproval, the applicant may resubmit an amended plan, and the board shall revoke its disapproval without prejudice and approve within 60 days of such resubmission a plan which, as amended, conforms to such rules and regulations or recommendations. The board shall file a certified copy of its action with the town clerk within 15 days of its decision, and it shall send notice of such action by registered mail, postage prepaid, to the applicant at his address stated on the application. The failure of the board either to take final action regarding a complete plan submitted by an applicant within 60 days after such submission, or such further time extension as may be agreed upon at the written request of the applicant, or to file with the town clerk a certified copy of such action within a further 15 days, shall be deemed to be an approval thereof. Notice of such extension of time shall be filed forthwith by the board with the town clerk.

The board's approval of a plan, or any modification, amendment, or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the town clerk that 20 days have elapsed after the decision has

been filed in the office of the town clerk and that no appeal has been filed, or if it is a plan which has been approved by reason of the failure of the board to act thereon within the time prescribed, a copy of the application accompanied by the certification of the town clerk stating the fact that the board failed to act within the time prescribed, and that no appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

SECTION 6: WAIVERS

The board may in any particular case, where such action is in the public interest and not inconsistent with the intent and purpose of the law, waive strict compliance with its rules and regulations, upon such conditions as it may reasonably impose.

SECTION 7: MODIFICATIONS OF PLANS

The board may on its own motion, or on the petition of any person interested, have the power to modify, amend or rescind its approval of any plan or to require a change in a plan as a condition of its retaining the status of an approved plan, in accordance with the standards and procedures set forth in Section 5 and subject to all other provisions of the law. No such modification, amendment or rescission of the approval of a plan or change in such plans shall affect lots in such development which have been sold or mortgaged for valuable consideration without the approval of the owner of such lots and the mortgagee in question. The board may identify, in its rules and regulations or as a condition of a plan approval, categories of minor modifications that may be reviewed and approved administratively, without the requirements for notice and public hearing set forth in Section 5. A minor modification shall not affect the vested rights of a plan accruing under Section 11.

SECTION 8: CONSOLIDATED REVIEW

If a development is otherwise subject to review by the board under the special permit or other provisions of the zoning by-law, then the review of the development for the purposes of this law shall be consolidated with such zoning review into a single hearing, and the time periods and other procedures of such zoning review shall govern. However, the board's decision in such zoning review shall incorporate all of its powers of review set forth in this law and the board's rules and regulations.

If the development is located in whole or in part within a local historic district, the applicant shall submit a copy of the plan to the commission, along with such other materials as the commission may require for an application pursuant to its own by-law. If the commission determines within 14 days, in accordance with Section 11 of M.G.L. ch. 40C, that the development involves any features which are subject to its approval, then the review of the development for the purposes of this law shall be consolidated with such historic district review into a single hearing, and the time periods and other procedures of such historic district review shall govern. The commission and the board shall alternate the chair from one hearing to the next. Notwithstanding the consolidated review procedure, nothing in this section shall expand or limit the powers of the board and the commission each to render a decision pursuant to its own rules or bylaw respectively, provided that no decision of approval by the board shall be deemed final until and unless a Certificate of Appropriateness has been issued by the commission, nor shall anything in this section limit the power of the commission to subsequently review any building or structure, the design of which had not yet been determined as of the time of the consolidated review.

SECTION 9: SECURITY

As a condition of its approval of a plan, the board may require such security as it deems necessary to guarantee the completion of proposed ways and other site improvements and the time within which such improvements shall be completed, which shall not exceed three years from the date of filing approval of the plan with the town clerk or from the date of final judgment in any legal appeal in which the approval is upheld. Such security may include one or all of the following methods: (1) a proper bond; (2) a deposit of money, letter of credit, or negotiable securities; (3) a covenant, executed and duly recorded by the owner of record, running with the land; or (4) an agreement executed after the recording of a first mortgage covering the premises shown on the plan or a portion thereof, which agreement shall be executed by the applicant and the lender and shall provide for the retention by the lender of funds sufficient in the opinion of the board and otherwise due the applicant, to secure the completion of proposed improvements. All work shall be subject to the approval of the Town Engineer. Such security shall from time to time be reduced or increased by the board so that the amount bonded, deposited or retained continues to reflect the actual expected cost of work remaining to be completed.

Upon the completion of the improvements in accordance with the rules and regulations of the board and the conditions of the board's approval of the plan, and subject to the approval of the Town Engineer, the board shall,

upon written request by the applicant, agree to release the security. If the Town Engineer determines that said improvements have not been completed, the board shall so specify in a notice sent by registered mail to the applicant and to the town clerk.Upon failure to issue such agreement or notice within 45 days after the receipt by the board of the applicant's request, all obligations under the bond shall cease and terminate by operation of law, any deposit shall be returned, and any such covenant or agreement shall become void, and the town clerk shall issue a certificate to such effect, duly acknowledged. Any such security may be applied by the board for the benefit of the town, upon failure, following reasonable notice and opportunity to cure, of the performance for which any such bond or deposit was given to the extent of the reasonable cost to the town of completing such construction and installation.

SECTION 10: ENFORCEMENT

The town's inspector of buildings shall not issue any permit for the erection of a building until first satisfied that the lot on which the building is to be erected is not within a development, or that a way furnishing the access to such lot as required by the law is shown on a duly approved plan, and that any condition of a plan approval limiting the right to erect or maintain buildings on such lot have been satisfied, or waived by the board.

The Middlesex County superior court and the land court shall have jurisdiction in equity on petition of the board, or of ten taxable inhabitants of the town, to review any action of any municipal board or officer in disregard of the provisions of this section and to annul and enjoin such action, to enjoin the erection of a building in violation of this section, and otherwise to enforce the provisions of the law and any rules or regulations lawfully adopted and conditions on the approval of a plan lawfully imposed thereunder, and may restrain by injunction violations thereof or make such decrees as justice and equity may require. No proceeding under this paragraph shall be instituted more than one year after the act or failure to act upon which such petition is based.

SECTION 11: VESTED RIGHTS

When a plan has been submitted to the board and is subsequently approved under Section 5, any zoning amendment for which the first notice of public hearing was published after the date of the plan's submission shall not apply to the development shown on such plan for a period of three years from the date of filing approval of the plan
with the town clerk or from the date of final judgment in any legal appeal
in which the approval is upheld.

SECTION 12: APPEALS

Any person, whether or not previously a party to the proceedings, or any municipal officer or board, aggrieved by any decision of the board concerning a plan, or by the failure of the board to take final action concerning a plan within the required time, may appeal to the Middlesex County superior court or to the land court; provided, that such appeal is entered within 20 days after such decision has been recorded in the office of the town clerk or within 20 days after the expiration of the required time as aforesaid, as the case may be, and notice of such appeal is given to such town clerk so as to be received within such 20 days. The court shall hear all pertinent evidence and shall annul such decision if found to be unsupported by the evidence or to exceed the authority of the board, or remand the case for further action by the board, or make such other decree as justice and equity may require. The foregoing remedy shall be exclusive, but the parties shall have all rights of appeal and exceptions as in other equity cases.

Costs shall not be allowed against the board unless it shall appear that the board acted with gross negligence or in bad faith. The court may require nonmunicipal appellants to post a surety or cash bond in a snm of not less than two thousand nor more than fifteen thousand dollars to secure the payment of any costs incurred by the appellee as a result of the appeal of a decision approving a plan, if it appears to the court that said appellant or appellants acted in bad faith or with malice in making the appeal to the court. All issues in any proceeding under this section may be advanced for speedy trial over other civil actions and proceedings.

SECTION 13: APPLICATION OF LAW: DAMAGES: OTHER POWERS OF BOARD: EFFECTIVE DATE: SEVERABILITY

The law shall not abridge the powers of the selectmen, or any other municipal officer, in regard to public ways in any manner except as herein provided, and shall not authorize the taking of land nor authorize the town to layout or construct any way which may be indicated on any plan until such way has been laid out as a public way in the manner prescribed by law; nor shall action under such law render the town liable for damages. The modification, amendment or rescission of the approval of a plan shall not entitle any person to damages, unless and to the extent that he shall have changed his position or made expenditures in reliance upon such approval. No damages shall be awarded for the modification, amendment or rescission of the approval of a plan obtained as a result of material misrepresentation of facts, whether willful or otherwise, by the persons submitting the plan.

The board and its officers and agents may, as far as they deem it necessary in carrying out the law, enter upon any lands and there make

examinations and surveys and place and maintain monuments and marks.

The law shall take effect upon passage. If a court of competent jurisdiction should determine that any provision of this law is invalid, then such decision of invalidity shall not render invalid any other provision.