

SENATE No. 734

The Commonwealth of Massachusetts

PRESENTED BY:

Kathleen O'Connor Ives

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 facilitating site plan review.

PETITION OF:

NAME:

Kathleen O'Connor Ives

DISTRICT/ADDRESS:

First Essex

SENATE No. 734

By Ms. O'Connor Ives, a petition (accompanied by bill, Senate, No. 734) of Kathleen O'Connor Ives for legislation to facilitate site plan review. Housing.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act facilitating 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 Be it enacted by the Senate and House of Representatives in General Court assembled
2 and by the authority of the same as follows:

3 SECTION 1. Chapter 40A of the General Laws, as appearing in the 2014 Official
4 Edition, is hereby amended by adding the following section:—

5 Section 7A

6

7 (a) As used in this section, "site plan review" shall mean review and approval under a
8 municipality’s zoning ordinance or by-law, by an authority other than the zoning administrator,
9 of a proposed use of land or structures to determine whether a proposed use of land or structures
10 is in compliance with sound site utilization principles relative to traffic circulation and safety,
11 pedestrian safety and access, off-street parking and loading, emergency vehicle access, storm

12 water drainage, screening, signage and exterior lighting, visual impact of parking, storage or
13 other outdoor service areas, and consistency with character and scale of surrounding buildings.

14 (b) In addition to the home rule authority of cities and towns to require site plan
15 review, a municipality may adopt a local ordinance or by-law under this section requiring site
16 plan review and approval by a designated authority before a building permit is granted for the
17 use of land or structures governed by a zoning ordinance or by-law. The approving authority may
18 adopt, and from time to time amend, rules and regulations to implement the local site plan review
19 ordinance or by-law, including provisions for the imposition of reasonable fees for the
20 employment of outside consultants in the same manner as set forth in section 53G of chapter 44.

21 (c) An ordinance or by-law requiring site plan review, whether adopted under this
22 section or under the municipality's home rule authority, shall comply with the provisions of this
23 and all following subsections of section 7A. The ordinance or by-law shall establish the
24 submission, review, and approval process for applications. Approval of a site plan for a use
25 allowed by right shall require a simple majority vote of the designated authority and shall be
26 made within the time limits prescribed by ordinance or by-law, not to exceed 90 days from the
27 date of filing of the application. If no decision is issued within the time limit prescribed, the site
28 plan shall be deemed constructively approved as provided in section 9, paragraph 11 of this
29 chapter. The submission and review process for a site plan required in connection with the
30 issuance of a special permit or variance shall be conducted with the review of the application for
31 the special permit or variance in a coordinated process and shall require the same quantum of
32 vote required for approval of a special permit or a variance.

33 (d) Site plan review for a use allowed by right may impose only those conditions that are
34 necessary to ensure substantial compliance of the proposed use of land or structures with the
35 other requirements of the zoning ordinance or by-law provided, however, that any off-site
36 conditions shall address solely any extraordinary direct adverse impacts of the project on
37 adjacent properties or adjacent roadways. A site plan application for a use allowed by right may
38 be denied only on the grounds that: (i) the proposed use of land or structures project does not
39 meet the requirements set forth in the zoning ordinance or by-law; (ii) the applicant failed to
40 submit the information and fees required by the zoning ordinance or by-law necessary for an
41 adequate and timely review of the design of the proposed land or structures; or (iii) it is not
42 feasible to adequately mitigate any extraordinary direct adverse project impacts on adjacent
43 properties or adjacent roadways by means of suitable site design conditions.

44 (e) Zoning ordinances or by-laws shall provide that a site plan approval granted under
45 this section shall lapse within a specified period of time, not less than three years from the date
46 of the filing of such approval with the city or town clerk, if substantial use or construction has
47 not yet begun, except as extended for good cause by the approving authority. Such specified
48 period shall not include time required to pursue or await the determination of an appeal under
49 subsection (f) or section 17 or to pursue or await the appeal of any other permit, license,
50 determination or approval. The aforesaid minimum period of three years may, by ordinance or
51 by-law, be increased to a longer period.

52 (f) Except where site plan review is required in connection with the issuance of a
53 special permit or variance, decisions made under site plan review, whether made pursuant to
54 statutory or home rule authority, may be appealed by a civil action in the nature of certiorari
55 pursuant to section 4 of chapter 249, and not otherwise. Such civil action may be brought by a

56 person aggrieved by the decision in the superior court for the county where the land is located or
57 in the land court within twenty days after the filing of the decision of the site plan review
58 approving authority with the city or town clerk. The issuance or denial of a building permit shall
59 not be a prerequisite to the filing of such civil action under this section. All issues in any
60 proceeding under this section shall have precedence over all other civil actions and proceedings.
61 A complaint by a plaintiff challenging a site plan approval under this section shall allege the
62 specific reasons why the project fails to satisfy the requirements of this section, the zoning
63 ordinance or by-law, or other applicable law and shall allege specific facts establishing how the
64 plaintiff is aggrieved by such decision. The approving authority's decision in such a case shall be
65 affirmed unless the court concludes that the approving authority abused its discretion under
66 subsection (d) in approving the project. Appeals commenced hereunder by any party other than
67 the applicant and/or property owner seeking site plan approval shall require the posting of a bond
68 in an amount to be set by the court that is sufficient to cover twice the estimated: (i) annual
69 carrying costs of the property owner, or a person or entity carrying such costs on behalf of the
70 owner for the property, as may be established by affidavit; plus (ii) an amount sufficient to cover
71 the defendant's attorney's fees, all of which shall be computed over the estimated period of time
72 during which the appeal is expected to delay the start of construction. The bond shall be forfeited
73 to the property owner in an amount sufficient to cover the property owner's carrying costs and
74 legal fees less any net income received by the plaintiff from the property during the pendency of
75 the court case in the event a plaintiff does not substantially prevail on its appeal.

76 (g) In municipalities that adopted a zoning ordinance or by-law requiring some form
77 of site plan review prior to the effective date of this act, the provisions of this section shall not be

- 78 effective with respect to such zoning ordinance or by-law until the date one year after the
- 79 effective date of this act.