

SENATE No. 794

The Commonwealth of Massachusetts

PRESENTED BY:

Diana DiZoglio

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: | DISTRICT/ADDRESS: | |
|--------------------------|---------------------------------------|------------------|
| <i>Diana DiZoglio</i> | <i>First Essex</i> | |
| <i>Rebecca L. Rausch</i> | <i>Norfolk, Bristol and Middlesex</i> | <i>1/30/2019</i> |

SENATE No. 794

By Ms. DiZoglio, a petition (accompanied by bill, Senate, No. 794) of Diana DiZoglio and Rebecca L. Rausch for legislation to facilitate site plan review. Housing.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 734 OF 2017-2018.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

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

3 Section 7A

4 (a) As used in this section, "site plan review" shall mean review and approval under a
5 municipality’s zoning ordinance or by-law, by an authority other than the zoning administrator,
6 of a proposed use of land or structures to determine whether a proposed use of land or structures
7 is in compliance with sound site utilization principles relative to traffic circulation and safety,
8 pedestrian safety and access, off-street parking and loading, emergency vehicle access, storm
9 water drainage, screening, signage and exterior lighting, visual impact of parking, storage or
10 other outdoor service areas, and consistency with character and scale of surrounding buildings.

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

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

30 (d) Site plan review for a use allowed by right may impose only those conditions that are
31 necessary to ensure substantial compliance of the proposed use of land or structures with the
32 other requirements of the zoning ordinance or by-law provided, however, that any off-site
33 conditions shall address solely any extraordinary direct adverse impacts of the project on

34 adjacent properties or adjacent roadways. A site plan application for a use allowed by right may
35 be denied only on the grounds that: (i) the proposed use of land or structures project does not
36 meet the requirements set forth in the zoning ordinance or by-law; (ii) the applicant failed to
37 submit the information and fees required by the zoning ordinance or by-law necessary for an
38 adequate and timely review of the design of the proposed land or structures; or (iii) it is not
39 feasible to adequately mitigate any extraordinary direct adverse project impacts on adjacent
40 properties or adjacent roadways by means of suitable site design conditions.

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

49 (f) Except where site plan review is required in connection with the issuance of a
50 special permit or variance, decisions made under site plan review, whether made pursuant to
51 statutory or home rule authority, may be appealed by a civil action in the nature of certiorari
52 pursuant to section 4 of chapter 249, and not otherwise. Such civil action may be brought by a
53 person aggrieved by the decision in the superior court for the county where the land is located or
54 in the land court within twenty days after the filing of the decision of the site plan review
55 approving authority with the city or town clerk. The issuance or denial of a building permit shall
56 not be a prerequisite to the filing of such civil action under this section. All issues in any

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

73 (g) In municipalities that adopted a zoning ordinance or by-law requiring some form
74 of site plan review prior to the effective date of this act, the provisions of this section shall not be
75 effective with respect to such zoning ordinance or by-law until the date one year after the
76 effective date of this act.