

# Business Permitting Reforms in House 2420

## “An Act Building for the Future of the Commonwealth”

### Building Permits



House 2420 extends the vested rights protections (ability to build under existing regulations) of a building permit from 12 months to two years before construction must begin.

This better reflects today's construction schedules, affording business owners more breathing room so that details such as financing, scheduling, and obtaining other permits may be arranged prior to actual construction. Securing vested rights for a building permit occurs at application, significantly earlier than currently, which is at approval.

### Zoning Variances

The purpose of a zoning variance is to grant relief from an otherwise restrictive dimensional requirement for good cause and without adverse impacts on the neighborhood. Yet, the state's current eligibility criteria are so narrowly drawn that many cities and towns grant almost no zoning variances and many reasonable proposals are needlessly rejected. It's a broken statute that doesn't work for business owners. House 2420 rewrites the current variance statute in its entirety, expanding landowner eligibility to apply for a lawful variance; setting reasonable procedures and criteria; extending the effective duration of a variance from one to two years before lapse if not used; and increasing the permissible extension interval from six months to one year. A workable zoning variance statute provides the intended flexibility to municipalities and property owners.

### Site Plan Review

Site plan review (SPR) is widely used across the Commonwealth despite no mention in statute. SPR is often required prior to application for a building permit. Because there is no guidance, some local SPR processes have begun to resemble discretionary special permits. House 2420 introduces statewide standards for site plan review, including: a 120-day time frame (faster than many local SPR bylaws today); approval by no greater than a simple majority; a minimum 2-year duration after approval (longer than many local SPR bylaws today); limits on the ability to condition (must relate to defined standards/criteria listed in the by-law); limits on imposition on off-site mitigation; and a streamlined appeal process based upon the existing record (certiorari).

### Special Permits



A conditional use permit, or simply a zoning permit, elsewhere in the U.S. is called a “special” permit in Massachusetts. And they really are special here, requiring a super-majority vote to be approved and lasting three years or even less. It is not surprising developers dread them. House 2420 reduces the default vote majority to approve from 3/3, 4/5, or 5/7, depending on size of board, down to a simple majority regardless of size of board (2/3, 3/5, or 4/7). The bill provides that obtaining vested rights for a special permit occurs at application, significantly earlier than currently, which is at approval. It also extends vested rights to three years.

# House 2420: Other Permitting Benefitting Small Businesses

## Development Impact Fees

Massachusetts is one of the minority of states where assessing a formal impact fee to a developer is not common practice. Accordingly, cities and towns often push back against many projects when they can't reliably recoup some of the resulting capital improvements costs. Ad hoc mitigation conditions and monetary exactions are a poor substitute, often not well indexed to project impacts. The impact fee section fosters promptness and predictability. Instead of long negotiations over what exactions or mitigation is required in exchange for permit approval, impact fees are quickly calculated up front by formula – prompt. Applicable fees are known in advance and can be built into a project's pro forma – predictable. Unlike current practice, formal impact fees must have a "rational nexus" and be "proportionate" to project impacts, which will bring Massachusetts in line with recent Supreme Court cases on property rights.

## Serial Permits

House 2420 requires more expedited permitting by requiring consolidation of a site plan review within the timelines of the special permit process when both are required. Administration must be by a single local board. Separate, non-concurrent, time-consuming reviews by different boards are no longer permitted.

## Mixed Use Projects



Current Massachusetts law discourages mixed use development (often, retail combined with residential), which is recognized as a desirable feature of vibrant, walkable places. House 2420 eliminates the third paragraph of Section 9 of the Zoning Act, which now requires that any multi-family housing proposed for non-residential districts only be allowed through the difficult special permit process.

## Land Use Dispute Avoidance

House 2420 introduces a voluntary, "off-line" avenue for permit applicants and municipalities to work out difficulties in a prospective development project so that the later formal approval process may be successful.

## Permit Appeals

House 2420 streamlines the appeals process for site plan review and subdivisions by providing for a record-based decision (certiorari) that evaluates a local approving authority's actions rather than re-trying the entire procedure in court. It also clarifies the jurisdiction of the Land Court permit session to include residential, commercial, industrial, and mixed-use projects.

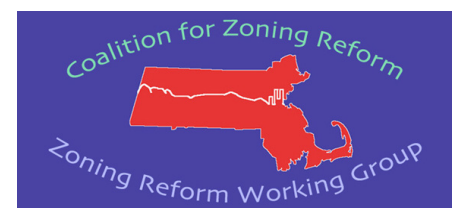


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