HOUSE DOCKET, NO. 4192 FILED ON: 3/2/2023

HOUSE . . . . . No. 3551

The Commonwealth of Massachusetts

PRESENTED BY:

Kristin E. Kassner

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:	DATE ADDED:
Kristin E. Kassner	*2nd Essex*	*3/2/2023*
Michelle L. Ciccolo	*15th Middlesex*	*7/26/2023*

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HOUSE . . . . . No. 3551

By Representative Kassner of Hamilton, a petition (subject to Joint Rule 12) of Kristin E. Kassner relative to site plan zoning review. Housing.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *1411* OF 2021-2022.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

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:

SECTION 1. Chapter 40A of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by adding the following section:–

Section 7A

(a) As used in this section, "site plan review" shall mean review and approval under a municipality's zoning ordinance or by-law, by an authority other than the zoning administrator, of a proposed use of land or structures to determine whether a proposed use of land or structures is in compliance with sound site utilization principles relative to traffic circulation and safety, pedestrian safety and access, off-street parking and loading, emergency vehicle access, storm water drainage, screening, signage and exterior lighting, visual impact of parking, storage or 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 review, a
12 municipality may adopt a local ordinance or by-law under this section requiring site plan review
13 and approval by a designated authority before a building permit is granted for the use of land or
14 structures governed by a zoning ordinance or by-law. The approving authority may adopt, and
15 from time to time amend, rules and regulations to implement the local site plan review ordinance
16 or by-law, including provisions for the imposition of reasonable fees for the employment of
17 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 section
19 or under the municipality's home rule authority, shall comply with the provisions of this and all
20 following subsections of section 7A. The ordinance or by-law shall establish the submission,
21 review, and approval process for applications. Approval of a site plan for a use allowed by right
22 shall require a simple majority vote of the designated authority and shall be made within the time
23 limits prescribed by ordinance or by-law, not to exceed 90 days from the date of filing of the
24 application. If no decision is issued within the time limit prescribed, the site plan shall be deemed
25 constructively approved as provided in section 9, paragraph 11 of this chapter. The submission
26 and review process for a site plan required in connection with the issuance of a special permit or
27 variance shall be conducted with the review of the application for the special permit or variance
28 in a coordinated process and shall require the same quantum of vote required for approval of a
29 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 special
50 permit or variance, decisions made under site plan review, whether made pursuant to statutory or
51 home rule authority, may be appealed by a civil action in the nature of certiorari pursuant to
52 section 4 of chapter 249, and not otherwise. Such civil action may be brought by a person
53 aggrieved by the decision in the superior court for the county where the land is located or in the
54 land court within twenty days after the filing of the decision of the site plan review approving
55 authority with the city or town clerk. The issuance or denial of a building permit shall not be a
56 prerequisite to the filing of such civil action under this section. All issues in any proceeding

57 under this section shall have precedence over all other civil actions and proceedings. A
58 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 of
74 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.