

Recent Amendment to Massachusetts State Zoning Law Clarifies Status of Nonconforming Structures

November 8, 2016

On August 4, 2016, Governor Baker signed into law H3611, "An Act relative to nonconforming structures." The new law, which became effective on November 4, 2016 and is retroactive, amends the Section 7 of the State Zoning Act (Chapter 40A). The amendment clarifies the legal status of structures which were built in violation of zoning but which have survived the 10-year limitations period of M.G.L. c. 40A, § 6 for zoning enforcement actions.

Under prior law, it was unclear whether, and under what terms, such a structure could be re-built or repaired if it were to be damaged or destroyed. In layman's terms, the unanswered question was, "is such a structure entitled to grandfathered status?" That is, once past the reach of a zoning enforcement action, did a structure that was in fact commenced illegally or under a building permit that was issued in error, have the status of a pre-existing nonconforming structure which could be altered, repaired or extended pursuant to a so-called Section 6 Finding as opposed to a variance? The amendment resolves the question, and gives noncompliant structures that are past the 10-year enforcement period grandfathered status.

The amendment provides clarity as to the legal status of such structures and thus gives property owners, buyers, developers and lenders protection in dealing with non-complying buildings.

To learn more about this recent amendment, please contact the author of this advisory:

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