

House and Senate Pass BBA Bill Promoting Development

For 20 years, the BBA has supported a bill designed to clarify the original intent of a portion of [G.L. c. 40A, § 7](#) which effects the status of structures and uses that do not comply with a zoning ordinance or by-law. Last week, legislation to achieve this goal passed both the House and Senate.

Over the past two decades, a variety of real-estate practitioners have advocated for this change on behalf of the BBA. During this legislative session, BBA Council member Michael Fee, of Pierce & Mandell, P.C.—a former co-chair of our Real Estate Law



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section—[testified](#) on the bill before the Judiciary Committee and helped explain it to legislators and staff. Current section co-chairs [Hannah Kilson](#), of Nolan Sheehan Patten LLP, and [Matthew Lawlor](#), of Robinson+Cole, also provided invaluable expertise. Current law prohibits municipalities from taking any action to compel zoning compliance by owners and operators of non-compliant structures or uses, after six years have elapsed since inception of the alleged violation for permitted structures and uses, and ten-years for non-permitted structures. The original legislative intent was to give local authorities a reasonable time period within which to pursue enforcement of local zoning ordinances and by-laws, while offering some certainty that after that time elapsed, these non-compliant structures could be rebuilt if damaged or destroyed, and for such properties to be conveyed.

However, the language of Section 7 leaves structures or uses that survive the applicable limitations period in a kind of limbo—barring enforcement action but not granting them formal, legal status as pre-existing non-conforming structures or uses subject to protection under G.L. c. 40A, § 6. The result is that, in case of loss, buildings may need to be rebuilt in accordance with new zoning requirements, which may prove too costly. Redevelopment can be forestalled by this oversight, and the uncertainty it produces. The statute's ambiguity is glaring in this context, leading several Appeals Court panels to interpret Section 7 in divergent ways.

As passed by the House last June, [H. 3611](#) would correct this problem by giving the non-conforming structures described above special legal status subject to the provisions of [G.L. c. 40A §6](#) as well as local ordinances or by-laws. This would, as the statute contemplates but does not now explicitly spell out, provide clear legal status in these instances, thus offering protection to property owners and their lenders.

Last Thursday, the Senate passed a slightly-different version of the bill ([S. 2259](#)), but one that nevertheless would accomplish the same result we seek. These two versions will now need to be reconciled before the legislation can advance to the Governor for signature. We will continue to work with the Legislature to try to (finally) provide the needed certainty in this area of the law.