

## BBA Bill Clarifies Zoning Law and Promotes Real Estate Development



On August 5, the Governor signed into law [H3611](#), An Act relative to non-conforming structures. The BBA has supported this bill in various forms since 1995, behind the leadership of its Real Estate Law Section, as a means of improving the clarity of Massachusetts zoning laws and thereby promoting economic and real estate development. During the current legislative session we were pleased to receive help and support from Council member Michael Fee, who

[testified on the bill](#) at a legislative hearing in May 2015, and Section Co-Chairs [Hannah Kilson](#) and [Matthew Lawlor](#).

This bill amends [Section 7 of Chapter 40A](#), concerning the enforcement of local zoning regulations. In particular, Section 7 spells out the circumstances under which violations of Chapter 40A, or a zoning by-law or ordinance, or a variance or permit, can lead to a “non-complying” building being ordered to be removed, altered, or relocated. Prior to the passage of this bill, the law prohibited a municipality from taking such enforcement action more than ten years from the date after the commencement of the alleged violation.

However, Section 7 was incomplete, and did not explicitly provide that a building which had survived the statutory limitations period became a valid non-conforming structure. As a result, if a structure which did not comply with current zoning laws was destroyed after ten years, it was not grandfathered under the zoning laws in effect when it was built, and it had to be rebuilt under new zoning requirements, which could be more restrictive or prohibitively expensive.

H3611 corrects this problem by granting legal status, subject to the provisions of [G.L. c. 40A §6](#), as well as local ordinances or by-laws, to non-conforming structures that have survived the applicable statute of limitations. This will provide clarity and thus offer



protection to property owners and their lenders. In limited circumstances, those structures, as they existed on the date they were erected or altered, would be deemed compliant with Chapter 40A (and any ordinance or by-law adopted in accordance with Chapter 40A) and thus valid, legally non-conforming structures. By lifting the cloud of uncertainty created by the current law, H3611 will help real estate owners more freely convey or encumber property containing older non-complying buildings or building additions.

At the same time, the measure will have no adverse effect on municipalities, since it leaves unchanged their power to enforce their ordinances in this regard within ten years of the violation. In fact, Section 3 of the newly enacted bill includes language intended to give municipalities an additional six months to take action on non-conforming structures that have been in existence for between nine and ten years as of the new law's effective date in November.

We are proud of this latest development and commend the Section for its diligent work on this bill over the last two decades. We look forward to advocating for more bills backed by your Section in the next legislative session.

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