



Making Great Communities Happen
**Connecticut Chapter of the
American Planning Association
Government Relations Committee**

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**POSITION STATEMENT
PLANNING AND DEVELOPMENT COMMITTEE – MARCH 1, 2013**

RAISED BILL 6481 AN ACT CONCERNING ENFORCEMENT PROTECTION FOR NONCONFORMING STRUCTURES

INTRODUCTION

CCAPA is the Connecticut Chapter of the American Planning Association, the national organization of professional planners and citizens involved in planning for our nation's communities. CCAPA has over 450 members who are governmental and consulting planners, land use attorneys, citizen planners, and other professionals engaged in planning and managing land use, economic development, housing, transportation, and conservation for local, regional, and State governments and for private businesses and other entities. The Chapter has long been committed to assisting the Legislature and State agencies with developing and furthering responsible growth management principles.

Many CCAPA members are responsible for or supervise zoning enforcement activities by municipalities.

OVERVIEW

Raised Bill 6481 proposes amendments to Section 8-13a of the General Statutes pertaining to the enforcement of zoning violations. This clause currently provides that buildings illegally situated on a lot for more than three years without any action to enforce applicable zoning regulations become a legally non-conforming building. The bill attempts to expand the class of physical entities that are eligible for conversion to legally non-conforming by adding the term "structure". In zoning regulations "buildings" are defined as structures, but "structures" are not necessarily buildings.

ANALYSIS

The apparent intent of this proposal is to avoid confusion over what illegal physical entities may be retroactively deemed legal under zoning regulations after a period of non-enforcement by a municipality. An existing flaw in this concept, and one that zoning enforcement personnel deal with regularly, is the difficulty of establishing a definitive time frame for such a period of non-conformance. Towns do not have the luxury, or even the legal ability, to send staff looking for every illegal structure that may be created, much less establish a definitive date of installation of such structures. Often, such illegal structures are brought to the town's attention by accident or by affected neighbors.

This problem already exists with the term building, and adding "structures" (as defined by zoning regulations or building code) would add a significant number of complicated enforcement determinations. Many things defined by zoning regulations as "structures" may not require building or zoning permits, such as fences, accessory facilities, and even lawn art, so establishing the date of existence would be difficult if not impossible. However, even if permits are not required, size and other dimensional standards often apply to such structures. Interpretation and administration of this provision under the proposed definitions could result in even more litigation over zoning enforcement, at significant expense to towns.

Towns may also find it necessary, if this provision is defined to apply to any "structure", to require zoning permits for "anything constructed or erected on the ground the use of which requires essentially permanent location on the ground or attachment to something having location on the ground" (a typical zoning definition of "Structure"). This would increase costs to the town as well as private property owners.

CCAPA POSITION ON RAISED BILL 6481

The existing provision for converting an illegal non-conforming building to a legal non-conforming building has been in place since 1967, but in our experience it can still create enforcement difficulties. The provision appears to place the burden of proof on the municipality, which creates an unnecessary and expensive burden and can often result in litigation. Expanding the definition of physical entities eligible for such conversion only increases the potential for confusion, uncertainty, legal challenges, and increased enforcement costs.

CCAPA believes that a more appropriate improvement to this statute would be to establish clearly defined procedures for conversion of illegal non-conforming buildings to legal non-conforming that place the burden of proof on the property owner and provide clear definitions of eligible structures and acceptable documentation. Additionally, reform of this provision should include indemnity for the municipality and its staff for any violation subject to this provision, since towns do not have the resources or legal access necessary to identify every such situation.

For these reasons, CCAPA opposes this Bill as currently proposed.

CCAPA will be pleased to assist the Planning and Development Committee in further consideration of this issue.