



30 Bank Street
PO Box 350
New Britain
CT 06050-0350
06051 for 30 Bank Street
P: (860) 223-4400
F: (860) 223-4488

Testimony of Eric Bernheim
Planning & Zoning Section
Connecticut Bar Association

IN SUPPORT

HB6481, AAC Enforcement Protection for Nonconforming Structures

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Planning & Development Committee

Sen. Cassano, Rep. Rojas, and Members of the Committee: thank you for the opportunity to testify in SUPPORT OF Proposed House Bill No. 6481, An Act Concerning Enforcement Protection for Nonconforming Structures. This proposed revision to Connecticut General Statutes § 8-13a (a) will provide the same protections to structures as are currently afforded by § 8-13a (a) to buildings.

Under the existing § 8-13a(a), if a building is on a lot smaller than that allowed by the local zoning regulations and no action has been taken to enforce the regulation for three years, then the building is deemed a valid nonconforming use. As such, it need not be removed or razed. The current law also allows buildings that are too close to a lot's boundary in violation of zoning to be deemed a valid nonconforming use after three years. Accordingly, a building need not be moved within the setback boundaries after this three year time period has tolled. Presently, these protections apply only to buildings, but we are now proposing they should also apply to structures.

Most municipalities interpret the term building as an enclosed structure with four walls and a roof. As a result, § 8-13a (a) does not afford unenclosed structures the same protections as buildings. Unenclosed structures can include, but are not limited to, pools, patios, tennis courts, decks, and mechanical equipment. The proposed changes are essential because the same rationale that applied to establishing a statute of limitations to initiate an enforcement action arising out of a nonconforming building should be applicable to a nonconforming structure.

An example as to why this revision is necessary is in the circumstance where a property owner had a pool constructed twenty five years ago. Unbeknownst to the property owner or the contractor who built the pool, it violated the setback requirements of the local municipality. When that property owner sought a new zoning permit for an unrelated project, it was discovered that the pool encroached on the setbacks and the Town, twenty five years after construction, required that the setback violation be corrected. Fortunately, those property owners, with the cooperation and support of their neighbors, were able to obtain a variance permitting that pool to remain in its existing location, but such a resolution should not be left up to the discretion of a zoning board of appeals or the neighboring property owners. Had the pool instead been a shed (an enclosed structure with four walls and a roof), the Town would have considered it to be a pre-existing nonconforming location and no enforcement action could have been instituted. Nothing further would need to be done.

Because an unenclosed structure is not presently protected by §8-13a (a), that property owner had to expend a great deal of money to obtain the variance to legalize the location of his pool, but had that variance been denied due to a lack of hardship¹, the property owners would have been required to move their pool that had not been objected to by any neighbors or the municipality for twenty five years.

In 1967, the legislature passed §8-13a because it felt that a three year statute of limitations on enforcement actions was sufficient time for any interested party to object and pursue enforcement by the municipality of its regulations. The same rationale should be applied to nonconforming structures, many of which – such as swimming pools – are as difficult to relocate as are buildings.

¹ Two conditions must be met for a zoning board of appeals to grant a variance: (1) the variance must be shown not to substantially affect the comprehensive zoning plan; and (2) adherence to the strict letter of the zoning ordinance must be shown to cause practical difficulty or unusual hardship unnecessary to the carrying out of the general purpose of the zoning plan. See Grillo v. Zoning Board of Appeals of Town of West Haven, 206 Conn. 362 (1988).