



**HOME BUILDERS & REMODELERS ASSOCIATION
OF CONNECTICUT, INC.**

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February 22, 2017

To: Senators Logan and Cassano, and Representative Lamar, Co-Chairs
Representative Zawistowski, Ranking Member
Members of the Planning & Development Committee

From: Bill Ethier, CAE, Chief Executive Officer

Re: **Support HB 6475, AA Prohibiting Zoning Commissions From
Requiring Special Permits or Special Exceptions in Certain
Circumstances**
**Oppose HB 6928, AA Permitting Municipal Zoning Commissions to
Limit the Continuation of Certain Nonconforming Uses**

The HBRA of Connecticut is a professional trade association with about eight hundred (800) member firms statewide employing tens of thousands of CT's citizens. Our members, all small businesses, are residential and commercial builders, land developers, remodelers, general contractors, subcontractors, suppliers and those businesses and professionals that provide services to our diverse industry and to consumers. We build between 70% to 80% of all new homes and apartments in the state each year and engage in countless home remodeling projects.

Both HB 6475 and HB 6928, as well as a bill you raised on February 15 regarding the repair of nonconformities all deal with nonconforming uses, buildings or structures in our zoning statute. Therefore, a brief explanation of nonconforming uses, buildings or structures and how they are treated in CT is warranted.

The CT zoning enabling act, CGS sec. 8-2, states that zoning "regulations shall not prohibit the continuance of any nonconforming use, building or structure existing at the time of the adoption of such regulations." A nonconformity is a formerly legal use of property or a legal building or structure that is made illegal by the adoption of a zoning regulation. Examples are many throughout CT, such as a commercial use that finds itself in a newly adopted residential zone, or a house that is 20' from the side property line that finds itself in a newly adopted 25' sideline setback.

Connecticut law has long stated that these nonconforming uses, buildings or structures are vested property rights entitled to Constitutional protection. These rights run with the land. That is, a purchaser of a property does not forfeit the property right in the nonconforming use or building when the purchase is made with knowledge of the nonconformity.

However, while protected, nonconforming uses, buildings and structures are generally not favored in land use planning because they may detract from a municipality's overall comprehensive land use plan. Thus, if a nonconformity is abandoned by the property owner, the right is extinguished. The courts have stated to establish abandonment, it must be proven that the owner voluntarily discontinued the nonconforming use and such

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Mission: "Using Effective Advocacy and New Knowledge to Solve Our Member's Problems"

voluntary discontinuance was accompanied by an intent not to reestablish that use. The bill you raised on February 15 goes to that issue for a specific circumstance and we look forward to testifying on that when it is drafted and heard.

Also, generally a nonconforming use cannot be extended or increased, although in some cases it can be intensified. A nonconforming building or structure cannot be enlarged, at least as it relates to intruding on the regulation that caused the nonconformity or other parts of the zoning regulations. There are many cases from the courts that are highly fact specific that attempt to explain these principles (not always with success).

Some states, but not CT, allow nonconformities to amortize, i.e., be extinguished after a period of years. We believe this is an affront to the vested rights of property owners and we would oppose any attempt to so extinguish such rights. CT's approach avoids litigation and possible inverse condemnation (Takings) claims. Also, CT allows zoning regulations to provide more protection, but not less, to nonconformities.

The courts allow municipalities to regulate nonconformities provided they do not unreasonably interfere with the right to continue them. Thus, a municipality can require the owner to register with the municipality a nonconforming use, building or structure – presumably to help keep track of actual uses and buildings despite what zoning regulations allow.

Strangely, in our opinion, one case permitted a municipality to require a special permit from the zoning commission provided the process was not used to terminate the nonconformity. This is an odd result. What happens if you don't request or are not granted the special permit? The court said the town cannot terminate the nonconformity, so why have such a requirement in the first place? **This oddity is addressed by HB 6475, which simply proposes that zoning commissions be prohibited from requiring a special permit or special exception to continue a nonconformity. This is a rational and reasonable clarification of the law that serves to explain current law and protects the rights of property owners with a nonconforming use, building or structure.**

On the other hand, HB 6928 turns CT law on nonconformities on its head. It says zoning commissions can limit, i.e., end, the continuance of nonconformities, in direct opposition to current statute and decades of case law. **We urge you to not give this new power to zoning commissions.** It will generate years of litigation between municipalities and property owners.

Please support HB 6475 and oppose HB 6928. Thank you for the opportunity to comment on this legislation.