

PA13-9

HB6481

House	1419-1424	6
Planning & Development	980-984, 1131-1135	10
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H - 1154

**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2013**

**VOL.56
PART 5
1361 - 1694**

SPEAKER SHARKEY:

Amazingly, the bill is passed unanimously.

Will the Clerk please call Calendar 163.

THE CLERK:

House Calendar 163, Favorable Report of the joint standing Committee on Planning and Development, Substitute Bill 6481, AN ACT CONCERNING ENFORCEMENT PROTECTION FOR NONCONFORMING STRUCTURES.

SPEAKER SHARKEY:

Representative Rojas, of the 9th District.

REP. ROJAS (9th):

Thank you, Mr. Speaker.

I move acceptance of the joint favor -- the joint committee's Favorable Report and passage of the bill.

SPEAKER SHARKEY:

Question is on acceptance of the joint committee's Favorable Report and passage of the bill. You have the floor, sir.

REP. ROJAS (9th):

Thank you, Mr. Speaker.

This bill seeks to offer the same protections to structures that are currently given to buildings. Under current law, buildings that have been sited on a smaller lot than are -- is allowed under local zoning

regulations or a building that has been built in violation of boundary restrictions, if no enforcement action has been taken in the last three years, those buildings are deemed to be given nonconform, valid nonconforming use.

Under this bill, the same protections would be afforded to unenclosed structures, like pools, patios, tennis courts, and decks, and I move adoption.

SPEAKER SHARKEY:

Question before the Chamber is adoption.

Will you remark?

Representative Aman, of the 14th District.

REP. AMAN (14th):

Thank you, very much, Mr. Speaker.

I believe it is a fair summary. The problem came in to what is a structure versus what is a building, and this bill clarifies it. During the course of the public hearing, there were two problems that came up from the municipalities. One was the definition of a structure, and the committee did correct that by adding that a structure would be what is defined in a local ordinance in their planning and zoning or if not, it defined it here in the bill. So it still gives the power to the community to decide what a

structure is.

The other complaint that was in there was the burden of proof as to when a structure was built. And the bill makes it very clear that the owner of the property has to show, demonstrate when the building or structure was put up not the town to show that it was not standing there. So I do urge my colleagues to pass the bill.

SPEAKER SHARKEY:

Thank you, sir.

Will you remark?

Representative Smith, of the 108th District.

REP. SMITH (108th):

Mr. Speaker, thank you for the opportunity to speak. Just a few questions, if I may, to the proponent of the bill.

SPEAKER SHARKEY:

Please prepare yourself, Representative Rojas.

Please proceed, sir.

REP. SMITH (108th):

Just for legislative intent purposes, the -- if a deck, a deck exists now on the property, more than three years ago when it was created, would the new passage of this bill, would that deck then become a --

a nonconforming, a legal nonconforming use?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Rojas.

REP. ROJAS (9th):

Through you, Mr. Speaker, yes.

SPEAKER SHARKEY:

Representative Smith.

REP. SMITH (108th):

And I thank the gentleman for his answer.

I think this is a very good bill. Some of the problems that I have experienced doing some zoning law over the years in going from town to town. Well, some towns apply structures to the nonconforming use statute; some towns just deal with buildings, and it was very confusing as to how the statute was actually going to be applied whether you're in one town or the next. So I think this is a very good bill to clarify the language and make sure that those structures, such as decks and pools, things that are permanent in nature are included in the bill, so I would urge support as well.

Thank you, Mr. Speaker.

SPEAKER SHARKEY:

Thank you, sir.

Will you remark? Will you remark further on the bill before us?

If not, staff and guests to the Well of the House. Members please take your seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll.

The House of Representatives is voting by roll. Will members please report to the Chamber, immediately.

SPEAKER SHARKEY:

Have all the members voted? If all the members voted, will members please check the board to make sure your vote is properly cast?

If all the members have voted, the machine will be locked, and the Clerk -- if all the members have voted, the machine will be locked, and the Clerk will take a tally.

Will the Clerk please announce the tally.

THE CLERK:

6481.

Total Number Voting	141
Necessary for Passage	71
Voting Yea	141

mhr/gbr
HOUSE OF REPRESENTATIVES

211
April 10, 2013

Those voting Nay	0
Absent, not voting	10

SPEAKER SHARKEY:

The bill passes.

Representative Candelaria.

REP. CANDELARIA (95th):

For purpose of an announcement, Mr. Speaker.

SPEAKER SHARKEY:

Please proceed, sir.

REP. CANDELARIA (95th):

Thank you, Mr. Speaker.

Mr. Speaker, the Black and Puerto Rican Caucus will meet at the end of session, in Room 105.

Thank you, Mr. Speaker.

SPEAKER SHARKEY:

Thank you, sir.

Do you have announcements or points of personal privilege?

Representative Piscopo, of the 76th District.

REP. PISCOPO (76th):

Thank you, Mr. Speaker, for a Journal notation.

SPEAKER SHARKEY:

Please proceed, sir.

REP. PISCOPO (76th):

**JOINT
STANDING
COMMITTEE
HEARINGS**

**PLANNING AND
DEVELOPMENT
PART 3
681 - 1019**

2013

mean, you give up on something, but you gain on something else. So it's -- it's a yin and yang or whatever type of thing. And lastly, this is an unfunded mandate.

And there was a bill, 5101, before this Committee about, you know, not funding -- unfunded or unfunded mandates onto the municipalities. So here you have 5101 not to do it, and here you have 5102 that you're going to shove it down the towns and municipalities' throats.

So I just think that all in all, this is bad legislation. The entire bill should be scrapped. And I was here and listened to Representative Berger earlier, and I didn't buy a word of it. You know, this lock box that everybody talks about. We all know what happens to that lock box. It gets robbed.

REPRESENTATIVE DIMINICO: Thank you.

REP. ROJAS: Any other questions.

Thank you for taking the time to come out today.

WAYNE THORPE: Thank you.

REP. ROJAS: Eric Bernheim followed by Marc Nelson.

ERIC BERNHEIM: Good afternoon. My name is Eric Bernheim. I'm an attorney at Halloran and Sage, and I'm a member of the Connecticut Bar

HB 6481

Association Planning and Zoning Section, and I'm here on behalf of the Planning and Zoning Section to support House Bill Number 6481.

What this bill does is it amends Connecticut General Statute 8-13a(a) to include the term structures. Presently 8-13a establishes essentially a statute of limitations for a municipality to implement an enforcement action arising out of a nonconforming building that violates the zoning regulations.

So what that means is if a building were too big for the lot or too close to a boundary line for the lot, if it had -- if it's in its present location for three years or more, and no municipality tried to enforce their zoning regulations by having it moved or razed, it could no longer be required to be moved by the town. It becomes a nonconforming -- a pre-existing, nonconformity.

We're proposing to add the term "structure" to that statute. The difference between a building and a structure is that most municipalities interpret the term building as an enclosed structure with four walls and a roof. We're trying to include structures -- unenclosed structures such as pools, swing sets, patios, and the such, because many of those structures are just as expensive to move as a building. Had they been there for three years, any neighbor that has an objection to that structure, or the municipality who may have an objection to a violation of their

zoning, or conservation regulations, would have had ample time to implement an enforcement action and try to make that structure be moved by the property owner and comply with the regulations.

A practical example of this is we recently had a client who had a pool that was constructed 25 years ago. It has been in that location for obviously the 25 years. Then they go into get a zoning permit for an unrelated project on the other side of their property. They had to submit a survey. The survey showed that that pool encroached on the setbacks. The town said you have to move the pool. Luckily in that scenario, we were able to go and get a variance, but we had to convince the Zoning Board of Appeals that there was a valid hardship in order to get that variance so that we could keep that pool where it was. Not every property is going to have a hardship that would permit that property owner to keep that structure within -- you know, that encroaches on the setback requirements, and obviously to move a pool, or to even get rid of a pool could cost hundreds of thousands of dollars.

So we believe the same rationale that was intended when Section 8-13a of the Connecticut Statutes was implemented applies to -- applies to structures.

So I'm happy to respond to any questions you may have.

REP. ROJAS: Thank you. Are there any questions for the witness?

Representative Fox.

REP. FOX: Good afternoon. Thank you for your testimony. Just -- in terms of just -- can you provide some other examples of the word "structure." You mentioned pool. Are there any others that -- that come to mind?

ERIC BERNHEIM: Mechanical equipment for pools, propane tanks, maybe, that people use for generators and potentially to heat their homes; air conditioner units; swing sets, I think I mentioned; patios. Really anything that is not an enclosed building.

Now most municipalities have, in their zoning regulations, a definition of what a structure is, and we think that we shouldn't define what a structure is in the statute. We should let the municipalities decide what a structure is. I do a lot of my work in Westport, and they define a structure as anything that's connected to the ground that's really not enclosed.

I lived in Milford. They define a structure as any -- anything that's permanently attached to the ground. So, you know, different municipalities can handle it in different ways. But it could be any number of objects that are attached to the ground.

REP. FOX: Thank you.

ERIC BERNHEIM: You're welcome.

REP. ROJAS: Are there any other questions? No?

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Seeing none, thank you for your testimony.

ERIC BERNHEIM: Thank you very much. Have a nice day.

REP. ROJAS: Marc Nelson.

MARC NELSON: Good afternoon, Mr. Co-Chairmen and Members of the Committee.

My name is Marc Nelson. I am the Hartford City Tax Collector. I've been in Hartford for almost five years, and over 30 years in the collection of debts, largely in New Jersey and New York, so I have a broad experience in municipal tax collection, and I'm here before you today to speak in favor of Raised Bill 965.

As my colleagues have spoke briefly to you earlier today, this is essentially a technical amendment bill. It's a -- it's a clean-up bill. It grew out of about 18 months of work. I sit on the legislative committee of the Connecticut Tax Collectors' Association which worked very hard on this, along with our colleagues at the Assessors' Association and various others throughout the State of Connecticut.

**JOINT
STANDING
COMMITTEE
HEARINGS**

**PLANNING AND
DEVELOPMENT
PART 4
1020 - 1336**

2013



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

Chair: Christopher S. Wood, AICP Phone: 203 558-0654 govrel@ccapa.org www ccapa.org

**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.



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

March 1, 2013
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)



PLANNING & DEVELOPMENT COMMITTEE

March 1, 2013

The Connecticut Conference of Municipalities (CCM) is Connecticut's statewide association of towns and cities and the voice of local government - your partners in governing Connecticut. Our members represent over 92% of Connecticut's population. We appreciate the opportunity to testify on bills of interest to towns and cities.

H.B. 6481, "An Act Concerning Enforcement Protection for Nonconforming Structures"

CCM opposes this bill, as written.

HB 6481 would expand the provisions for converting illegal nonconforming structures into legal nonconforming structures.

CCM is concerned that HB 6481 could complicate an already complex system, encourage litigation and bring on additional enforcement-related costs.

★ ★ ★ ★ ★

If you have any questions, please contact Ron Thomas at rthomas@ccm-ct.org or (203) 498-3000.

S - 656

**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2013**

**VOL. 56
PART 5
1213 - 1511**

mhr/gbr
SENATE

117
May 8, 2013

THE CHAIR:

If all members voted, all members voted, the machine will be closed.

Mr. Clerk, will you please call a tally?

THE CLERK:

Senate Bill Number 333.

Total Number Voting	36
Those voting Yea	34
Those voting Nay	2
Absent and not voting	0

THE CHAIR:

The bill passes.

Mr. -- Mr. Clerk. Oh; I'm sorry.

Senator Looney.

SENATOR LOONEY:

Yes; thank you, Madam President.

Madam President, if the Clerk would proceed to Calendar Page 16, Calendar 353, and then Calendar Page 17, Calendar 359; Calendar Page 17, Calendar 360; and then Calendar Page 18, Calendar 372.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Page 16, Calendar 353, Substitute for House Bill Number 6481, AN ACT CONCERNING ENFORCEMENT PROTECTION FOR NONCONFORMING STRUCTURES, Favorable Report of the Committee on Planning and Development.

THE CHAIR:

Senator Cassano.

mhr/gbr
SENATE

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May 8, 2013

SENATOR CASSANO:

Yes, Madam Chairman.

I move acceptance of the joint committee's Favorable Report and passage of the bill.

THE CHAIR:

Motion is on -- on passage. Will you remark, sir?

SENATOR CASSANO:

Yes. This is a bill concerning enforcement protection for nonconforming structures. The bill actually allows towns to define "structure" in their own zoning regulations, locally. If the, if they fail to do that, this bill will define structures as any combination of materials other than a building that is affixed to land, which could be signs, fences, walls, pools, patios, and tennis courts. So it's a bill that was passed 19 to nothing in P and D, and I would move support for the bill.

THE CHAIR:

Will you remark? Will you remark?

Seeing none --

SENATOR CASSANO:

Seeing none, I would ask for you to place it on the Consent Calendar.

THE CHAIR:

Is there any objection?

Seeing no objection, the bill will be placed on the Consent Calendar.

SENATOR CASSANO:

Thank you, Madam President.

ed/cd/gbr
SENATE

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May 8, 2013

So ordered, sir.

SENATOR LOONEY:

Thank you, Madam President.

Calendar page 48, Calendar 309, Senate Bill Number 899, Madam President, move to place this item on the foot of the Calendar.

THE CHAIR:

So ordered, sir.

SENATOR LOONEY:

Thank you, Madam President.

And Madam President, on Calendar page 50, Calendar 405, Senate Bill Number 848, Madam President, move to refer this item to the Committee on Finance, Revenue and Bonding.

THE CHAIR:

So ordered, sir.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, if the Clerk would now read the items on the first Consent Calendar and then if we might proceed to a vote on that first Consent Calendar.

THE CHAIR:

Mr. Clerk.

THE CLERK:

On page 1, Calendar 496, House Joint Resolution Number 98; Calendar 497, House Joint Resolution Number 99.

On page 2, Calendar 498, House Joint Resolution Number 100; Calendar 499, House Joint Resolution Number 101;

ed/cd/gbr
SENATE

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May 8, 2013

also on page 2, Calendar 500, House Joint Resolution
Number 102.

On page 4, Calendar 119, Senate Bill 564.

On page 5, Calendar 155, Senate Bill 231.

On page 6, Calendar 169, Senate Bill 881; and Calendar
188, Senate Bill 1029.

On page 7, Calendar 192, Senate Bill 835.

On page 12, Calendar 284, Senate Bill 964.

Page 16, Calendar 353, House Bill 6481.

On page 18, Calendar 376, Senate Bill 878; Calendar
372, Senate Bill 977.

On page 19, Calendar 387, Senate Bill 386; and
Calendar 392, Senate Bill 366.

On page 20, Calendar 396, Senate Bill 991; and
Calendar 413, Senate Bill 1049.

On page 21, Calendar for 424, House Bill 6212.

And on page 25, Calendar 463, House Bill 6405.

THE CHAIR:

Those are all the bills on the Calendar.

At this point, Mr. Clerk, will you call for a roll
call vote of the first Consent Calendar of the day and
the machine will be open.

THE CLERK:

~~Immediate roll call has been ordered in the Senate.~~
Voting the first Consent Calendar of the day.
Immediate roll call has been ordered in the Senate.
Senators please return to the chamber.

(Senator Coleman of the 2nd in the Chair.)

THE CHAIR:

ed/cd/gbr
SENATE

211
May 8, 2013

Would members please check the board to see that your vote has been properly recorded? If all members have voted and all votes have been properly recorded, the machine will be closed.

And would the Clerk please take and announce the tally.

THE CLERK:

On the first Consent Calendar of the day.

Total Number Voting	36
Those voting Yea	36
Those voting Nay	0
Those absent and not voting	0

THE CHAIR:

The Consent Calendar has passed.

Senator Looney.

SENATOR LOONEY:

Yes, thank you, Mr. President.

If we might stand at ease for -- for just a moment.
Thank you.

THE CHAIR:

The Chamber please stand at ease.

(Chamber at ease.)

SENATOR LOONEY:

Mr. President.

THE CHAIR:

Senator Looney.

SENATOR LOONEY: