

## Home Builders & Remodelers Association of Connecticut, Inc.

### Please SUPPORT SB 944, Clarifying the Continuation of Nonconforming Uses, Buildings and Structures (Passed P&D 18-4)

**SB 944 simply clarifies the law that nonconforming uses, buildings and structures shall not be deemed abandoned when a nonconforming building or structure needs to be repaired by first conducting demolition or deconstruction, provided the reconstruction is done within 5 years.**

- **Property owners faced with the problem below will no longer have to go to court to protect their rights** – they can just point to the new sentence in the statute (CGS, Sec. 8-2).
- **CAZEO (zoning enforcement officers) and the HBRA agree on the substitute language passed by P&D.**

**Nonconforming uses, buildings and structures explained:** A zoning nonconformity is a former legal use of property or building or structure that was made illegal by the adoption of a new zoning regulation. 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.” CT case law is clear that these zoning nonconformities are vested property rights entitled to Constitutional protection. But, if a property owners abandons or discontinues a nonconformity, the right is extinguished. To establish abandonment, the courts have said it must be proven the owner voluntarily discontinued the nonconformity and such discontinuance was accompanied by an intent to not reestablish it.

**The problem addressed by SB 944:** A nonconforming building or structure<sup>1</sup> may be in such a state of disrepair that in order to repair it properly you need to first demolish or deconstruct it. The problem is when the demolition or deconstruction occurs, some local officials deem this to be an intention by the owner to abandon the nonconformity and do not allow you to proceed with reconstruction. This violates the abandonment intent principles noted above and forces property owners into a Hobson’s choice, i.e., either live with a nonconformity in disrepair, maybe even a dangerous one, or abandon it entirely. Hiring an attorney to pursue relief in court is not a realistic option for most homeowners.

**The following one sentence is added by SB 944 to sec. 8-2, the zoning enabling act, to fix this dilemma:** “Such regulations shall not terminate or deem abandoned a nonconforming use, building or structure if the building or structure, or any part thereof, is demolished or deconstructed for the purpose of repairing, reconstructing or improving the nonconforming building or structure not later than five years from the latest date of such demolition or deconstruction.”

**Please Support SB 944 to clarify the property rights enjoyed by an owner in a zoning nonconformity when they undertake its repair that first requires demolition. Current law already prevents an owner from expanding it, so the reconstruction simply puts the nonconformity back in good repair.**

**NOTE: An amendment to address concerns about the 5 year window to complete construction and other scenarios that could harm property owner’s rights to a nonconformity is being drafted.**

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<sup>1</sup> A structure is anything that is not a building, e.g., fence, retaining wall, patio, pool, playground equipment.