



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

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*Your Home
Is Our
Business*

March 16, 2018

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 5487, AAC the Continuance of a Nonconforming Use,
Building or Structure**

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.

Last session, the legislature adopted an important clarification of the rights of property owners regarding nonconforming uses, buildings or structures. See PA 17-39. **We support HB 5487 because it is a common sense further clarification of the rights of a property owner in continuing a nonconforming use, building or structure.**

A brief explanation of nonconforming uses, buildings or structures follows.

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." Thus, a nonconformity is defined as a 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 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

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

must be proven that the owner voluntarily discontinued the nonconforming use and such voluntary discontinuance was accompanied by an intent not to reestablish that use. PA 17-39 essentially codified this by stating that the demolition or destruction of a nonconformity is not, by itself, evidence of an owner's intent to abandon it.

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 its zoning regulations allow.

One case, which is odd in our opinion, permitted a municipality to require a special permit from the zoning commission provided the process was not used to terminate the nonconformity.¹ This is an odd result. What happens if you don't request a special permit to continue the use, building or structure? Or, if you do apply, you 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 5487, 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 protects the rights of property owners with a nonconforming use, building or structure. Note that, with or without the enactment of HB 5487, municipalities may require a special permit to expand a nonconforming use, building or structure, if such expansion is allowed in the municipal zoning regulations.

Please support HB 5487. Thank you for the opportunity to comment on this legislation.

¹ Taylor v Zoning Board of Appeals of Town of Wallingford, 65 Conn. App. 687, 696-698 (2001).