

## Legislative History for Connecticut Act

### PA 17-39

SB944

House	4276-4288	13
Senate	1185-1196, 1209-1210	14
Planning & Dev.	715-722, 737-740	12

**39**

Transcripts from the Joint Standing Committee Public  
Hearing(s) and/or Senate and House of Representatives  
Proceedings

Connecticut State Library  
Compiled 2018

**S - 704**

**CONNECTICUT  
GENERAL ASSEMBLY  
SENATE**

**PROCEEDINGS  
2017**

**VOL .60  
PART 3  
799 – 1211**

jm  
Senate

236  
May 17, 2017

Thank you Madam President, if there's no other questions I ask this to move to consent calendar.

THE CHAIR:

Seeing no objections, Mr. Clerk. Senator Duff.

SENATOR DUFF (25TH):

Thank you Madam President, would the clerk please now call Calendar Page 14, Calendar 203, Senate Bill 944 and that will be taken out by the Republican co-chair --

THE CHAIR:

--Hold on one minute. Okay. The bill is moved to consent calendar. Senator Duff, I'm sorry. Please continue.

SENATOR DUFF (25TH):

Thank you Madam President, will the clerk now please call Calendar Page 14, Calendar 203, Senate Bill 944?

THE CHAIR:

Mr. Clerk.

CLERK:

On Page 14, Calendar 203, Substitute for Senate Bill 944, an ACT CLARIFYING THE CONTINUATION OF NONCONFORMING USES, BUILDINGS OR STRUCTURES. There's an amendment.

THE CHAIR:

jm  
Senate

237  
May 17, 2017

Senator Logan.

SENATOR LOGAN (17TH):

Good evening Madam President. I move acceptance of the committee's joint favorable report and passage of Senate Bill 944.

THE CHAIR:

Please continue.

SENATOR LOGAN (17TH):

Thank you Madam President. This bill allows for the continuance of nonconforming use for repairs, improvements and where reconstruction is required. Madam President, the clerk is in possession of LCO No. 7276. I ask the clerk to please call the amendment.

THE CHAIR:

Mr. Clerk.

CLERK:

LCO No. 7276, Senate A offered by Senators Cassano and Logan.

THE CHAIR:

Senator Logan.

SENATOR LOGAN (17TH):

Thank you Madam President, I move adoption of the amendment, waive the reading and seek leave to summarize.

THE CHAIR:

Please continue.

jm  
Senate

238  
May 17, 2017

SENATOR LOGAN (17TH):

Thank you Madam President. The amendment allows for the demolition or deconstruction of a nonconforming use building or structure and that by itself will not be evidence of such property owner's intent to not reestablish such use building or structure. There's no limit to when this work must be completed. The nonconforming use building or structure can be discontinued voluntarily by an intent to not reestablish such use. I urge adoption of the amendment and ask for a roll call vote.

THE CHAIR:

Thank you. Are there any comments on the amendment? Senator McLachlan.

SENATOR MCLACHLAN (24TH):

Thank you Madam Chair. I stand for the purpose of a question to the proponent of the amendment.

THE CHAIR:

Senator Logan, prepare yourself. Please continue Senator.

SENATOR MCLACHLAN (24TH):

Thank you Madam President. Thank you Senator Logan for your work on this topic. It certainly is a challenge to property owners across the state. I'd like to just share a scenario and if you could clarify what the outcome would be post-passage of this bill.

If a property owner's building is damaged either by fire or storm and is irreparable and has to be demolished. It's in a nonconforming lot meaning in many downtown communities for instance pre-dating

zoning they shoehorned buildings in that no longer would be acceptable with front edge and square footage of the lot, and so this nonconforming lot is home to a multi-family building. The multi-family building is going to be torn down but the property owner is not prepared to rebuild for several years, three, four or five years, it's unknown exactly when. What would happen to that property that would not be subject, would not be able to get a building permit under current zoning regulations. What would happen to that property once this bill is passed? Through you Madam President.

THE CHAIR:

Senator Logan.

SENATOR LOGAN (17TH):

Right, so in that scenario given that the building or structure was damaged. It was demolished because it was perhaps unsafe, it had to be raised, unless the property owner voluntarily decided to give up the, described as intent, not to re-build that facility or structure to non-conforming use would remain indefinitely.

THE CHAIR:

Senator McLachlan.

SENATOR MCLACHLAN (24TH):

Thank you. Thank you Madam President. So just for clarification, the property owner intends someday to rebuild. They're not abandoning. They don't want to abandon because it dramatically reduces the value of the property if they did abandon, the grandfathered use. So I'm correct in assuming then that they have an unlimited period of time to take

jm  
Senate

240  
May 17, 2017

advantage of the grandfather zone on that property?  
Through you Madam President.

THE CHAIR:

Senator Logan.

SENATOR LOGAN (17TH):

The way the amendment is written, that is correct.

THE CHAIR:

Senator McLachlan.

SENATOR MCLACHLAN (24TH):

Thank you Madam President, and I appreciate your answers Senator Logan, and I encourage support of the amendment.

THE CHAIR:

Are there any further comments or questions on the amendment? Senator Martin.

SENATOR MARTIN (31ST):

Thank you Madam President. A question to the proponent of the amendment.

THE CHAIR:

Senator Logan, prepare yourself. Please continue Senator Martin.

SENATOR MARTIN (31ST):

So with the scenario that a building is now nonconforming because of a zone change and the structure is taken down, the property sold, is the next owner allowed to build under the old

jm  
Senate

241  
May 17, 2017

regulations?

THE CHAIR:

Senator Logan.

SENATOR LOGAN (17TH):

Thank you Madam President. Yes, that is correct, as long as they plan on building the same or similar structure that existed prior to the raise.

THE CHAIR:

Senator Martin.

SENATOR MARTIN (31ST):

Okay, thank you.

THE CHAIR:

Senator Fonfara.

SENATOR FONFARA (1ST):

Thank you Madam President. Good evening, or good morning. Question to the proponent, Madam President?

THE CHAIR:

Senator Logan prepare yourself. Please continue Senator Fonfara.

SENATOR FONFARA (1ST):

Senator Logan, Connecticut has what I believe to be the strongest laws in the country regarding protecting nonconforming uses. Unlike many states a use is protected in its current form. As an example, a cottage along the shoreline as long as



jm  
Senate

242  
May 17, 2017

its continuing in its present form, it's protected. In many states if that property were to be destroyed by an act of God or something it could not be reconstructed, but Connecticut has an extraordinarily strong law protecting that provision in that it can be reconstructed. How does this bill differ than what Connecticut law currently provides for, or the amendment that is before us I should say? Through you Madam President--

THE CHAIR:

--Oops I'm sorry. Senator Logan.

SENATOR LOGAN (17TH):

Yes, I mean that's specifically the purpose of this amendment. It's to tighten that because there is some confusion. There is some wiggle room in terms of interpretation and this would tighten that and make it more clear, what the intent of current laws are.

THE CHAIR:

Senator Fonfara.

SENATOR FONFARA (1ST):

Through you Madam President, but what is unclear about our law currently?

SENATOR LOGAN (17TH):

That if the structure is raised or destroyed or it's left abandoned for a period of time, and particularly if the zoning regulations change in that area that they would not be able to build or rebuild that nonconforming use.

THE CHAIR:

jm  
Senate

243  
May 17, 2017

Senator Fonfara.

SENATOR FONFARA (1ST):

Through you Madam President, but current law does protect, that's why it's conforming because some aspect of zoning policy has changed that would bring that property or the use of that property into nonconformity. My question is what is it that this amendment is attempting to correct?

THE CHAIR:

Senator Logan.

SENATOR LOGAN (17TH):

So as a clarification if a building is raised and left abandoned for a certain period of time, the town may be able to assume that the property owner has abandoned the structure in terms of wanting to rebuild. This would just clarify, particularly in a situation where the property is sold to another entity.

THE CHAIR:

Senator Fonfara.

SENATOR FONFARA (1ST):

Thank you Madam President. Through you, so hypothetical but it could be one that becomes an actual condition if a property owner were to leave the property or the use unreconstructed for 50 years, is there a step that the property owner has to take? Is there an action that the property owner has to take or they have to notice the town or the municipality that they intend to -- or do they have to notice that they do not intend to maintain the use?

jm  
Senate

244  
May 17, 2017

THE CHAIR:

Senator Logan.

SENATOR LOGAN (17TH):

Thank you Madam President. They would have to notice that they intend not to continue the nonconforming use.

SENATOR FONFARA (1ST):

SO if they do not then it is, for legislative intent Madam President, that is to be construed to be continuing the use even if for many years that property were to remain unreconstructed or the use were not maintained?

THE CHAIR:

Senator Logan.

SENATOR LOGAN (17TH):

Thank you Madam President. Yes, this clarifies that it does not lapse due to time.

THE CHAIR:

Senator Fonfara.

SENATOR FONFARA (1ST):

Thank you Madam President.

THE CHAIR:

Senator Fasano.

SENATOR FASANO (34TH):

Thank you Madam President. I don't have any questions for Senator Logan today. Sit down. I had the pleasure of serving, I think my first year, in

jm  
Senate

245  
May 17, 2017

the General Assembly as Senator Fonfara as my chair of planning and development and so let's take a run at this. This is a pre-existing nonconforming right. It's a constitutionally protected right in the state of Connecticut, which is what Senator Fonfara was eluding to and clearly when you have a pre-existing nonconforming right that's a constitutionally-protected right, it is a property right to which the state cannot or any public entity, municipality or state, cannot take away from you without compensation. That's what that right is and Senator Fonfara is correct in that we held that very high esteem here in Connecticut and protect that.

Unfortunately I think the reason for this bill is the fact that there are certain zoning officers who require more. Their indicating that you have to show a clear intention that you reserve that constitutional right. So if you remove a deck because it is decaying and it is a pre-existing nonconforming encroachment, we'll say in the front yard, and then you try to get your funds together to rebuild that a year or two later, there are zoning officers who are taken opinion that that lapse of time is equivalent to your intent to not keep that pre-existing nonconformity right in place, and what I think this bill is trying to say which is what the case law has said is you have to have a clear intent to abandon that constitutional right. Zoning officers have argued your non-building on that house that gets torn down because of a storm, that deck that you take down. If you don't act quickly enough, that is enough to infer your intention to abandon, and what this clarifies law to say you cannot, there has to be a clear intention. So because of the aggressiveness of zoning officers to challenge, resulting in constituents having to spend

jm  
Senate

246  
May 17, 2017

money to go to court to attack that challenge, this bill takes the existing case law which is crystal clear and codifies it. And I think that's the reason why this amendment has been brought up. Thank you Madam President.

THE CHAIR:

Thank you very much. Are there are any further comments on the amendment? Seeing none. Mr. Clerk if you could a roll call vote?

CLERK:

Immediate roll call has been ordered in the Senate on Senate A. Immediate roll call has been ordered in the Senate.

THE CHAIR:

Have all members voted? Have all members voted? Mr. Clerk if you could call the tally.

CLERK:

Senate Amendment Schedule A	
Total number Voting	36
Necessary for Passage	19
Those voting Yea	36
Those voting Nay	0
Those absent and not Voting	0

THE CHAIR:

The amendment passes. [Gavel] Senator Logan. We are now talking about the bill as amended.

SENATOR LOGAN (17TH):

jm  
Senate

247  
May 17, 2017

Got it. Without objection, I move to consent.

THE CHAIR:

Is there any objection moving this to the consent calendar? Seeing none. Mr. Clerk, if you could move this to the consent calendar? So ordered.  
Senator Duff.

SENATOR DUFF (25TH):

Thank you Madam President. Madam President, would the clerk now please call Calendar Page 5, Calendar 108, Senate Bill 894, which will be taken out by the Republican co-chair of the Children's Committee.

THE CHAIR:

Mr. Clerk.

CLERK:

On Page 5, Calendar 108, Substitute for Senate Bill No. 894, an ACT ESTABLISHING THE STATE OVERSIGHT COUNCIL ON CHILDREN AND FAMILIES.

THE CHAIR:

Senator Suzio.

SENATOR SUZIO (13TH):

Thank you and good morning Madam President. I move acceptance of the Joint Committee's joint favorable report and passage of the bill.

THE CHAIR:

jm  
Senate

260  
May 17, 2017

Thank you Madam President. On Calendar Page 60, Calendar 271, Senate Bill 1001. I'd like to take that item off the foot of the calendar and mark that PR?

THE CHAIR:

Thank you.

SENATOR DUFF (25TH):

Thank you Madam President. If the clerk could now call the bills that are on the second consent calendar followed by a vote please?

THE CHAIR:

Mr. Clerk.

CLERK:

On Page 2, Calendar 76, Senate Bill 766. On Page 5, Calendar 108, Senate Bill 894. On Page 7, Calendar 126, Senate Bill 906. On Page 14, Calendar 205, Senate Bill 820. Also on Page 14, Calendar 203, Senate Bill 944. On Page 30, Calendar 340, Senate Bill 1020. And on Page 52, Calendar 128, Senate Bill 821.

THE CHAIR:

Thank you Mr. Clerk. If you could call for a roll call vote.

CLERK:

Immediate roll call has been ordered in the Senate on the second consent calendar for the day. Immediate roll call has been ordered in the Senate.

THE CHAIR:

jm  
Senate

261  
May 17, 2017

Senator Kissel. Have all members voted? Have all members voted? Please ensure your vote has been properly recorded. Mr. Clerk.

CLERK:

On the second consent calendar for the day

Total number Voting	36
Necessary for Passage	19
<u>Those voting Yea</u>	36
Those voting Nay	0
Those absent and not Voting	0

THE CHAIR:

Senator Duff.

SENATOR DUFF (25TH):

Thank you Madam President. Madam President, I think we've had a very successful and productive day today even though it is now tomorrow, but it is today actually. So I will yield to any points of personal privilege before we make our announcement for later today.

THE CHAIR:

Are there any points of personal privilege? Seeing none, Senator Duff.

SENATOR DUFF (25TH):

Thank you Madam President. Madam President, it is our intent to gavel in tomorrow at 10:30 sharp tomorrow morning and we will be taking up the bills that were marked PT earlier yesterday or today in



**CONNECTICUT  
GENERAL ASSEMBLY  
HOUSE**

**PROCEEDINGS  
2017**

**VOL.60  
PART 10  
3997 – 4474**

she  
HOUSE OF REPRESENTATIVES

86  
May 24, 2017

personal privilege? Seeing none, Representative Lemar, prepare yourself. Would the Clerk please call House Calendar 542?

CLERK:

On page 44, House Calendar 542, Substitute Senate Bill No. 944, AN ACT CLARIFYING THE CONTINUATION OF NONCONFORMING USES, BUILDINGS, OR STRUCTURES. Favorable report of the Joint Standing Committee on Planning and Development.

ASSISTANT DEPUTY SPEAKER ALTOBELLOW (82ND):

Representative Lemar from the Elm City, you have the floor.

REP. LEMAR (96TH):

Good afternoon, Mr. Speaker. Mr. Speaker, I move the Joint Committee's favorable report and passage of the bill in concurrence with the Senate.

ASSISTANT DEPUTY SPEAKER ALTOBELLOW (82ND):

Question before the Chamber is passage of the bill in concurrence with the Senate. Please proceed, Sir.

REP. LEMAR (96TH):

Thank you, Mr. Speaker. Mr. Speaker, the bill

she  
HOUSE OF REPRESENTATIVES

87  
May 24, 2017

before us protects the rights of property owners to change or remodel or repair a structure that is considered to be nonconforming. It brings clarity to the zoning process, and instead of having zoning boards having very vastly different regulations in how they apply a nonconforming use, this brings clarity to the statute.

Mr. Speaker, the Clerk is in possession of an amendment, LCO No. 7276. I ask that the Clerk please call the amendment, and I be given permission to summarize.

ASSISTANT DEPUTY SPEAKER ALTOBELLOW (82ND):

Would the clerk please call LCO 7276, previously designated Senate "A".

CLERK:

Senate Amendment Schedule "A", LCO No. 7276, offered by Senator Cassano, Senator Logan.

ASSISTANT DEPUTY SPEAKER ALTOBELLOW (82ND):

The good Representative from the New Haven has leave of the Chamber to summarize. Is there objection to summarization? Objection? Seeing none, proceed.

she  
HOUSE OF REPRESENTATIVES

88  
May 24, 2017

REP. LEMAR (96TH):

Thank you, Mr. Speaker. Mr. Speaker, the amendment eliminates the provision in the underlying bill that established a five-year deadline by which property owners must act to preserve a nonconforming use. It also adds the provisions clarifying the current laws' protections from nonconforming uses, structures, and buildings. I move for adoption.

ASSISTANT DEPUTY SPEAKER ALTOBELLOW (82ND):

Question before the Chamber is adoption of Senate "A". Will you remark further? Will you remark further? Representative Zawistowski, you have the floor, Madam.

REP. ZAWISTOWSKI (61ST):

Thank you, Mr. Speaker. You nailed it the first shot. Mr. Speaker, this amendment does provide additional property owner protections. It's a good amendment, and I do recommend its passage. I'll -- I will reserve any further comments until we talk about the underlying bill. Thank you.

ASSISTANT DEPUTY SPEAKER ALTOBELLOW (82ND):

Thank you, Representative. Further on Senate

she  
HOUSE OF REPRESENTATIVES

89  
May 24, 2017

"A"? Further on -- Representative Dubitsky of the 47th, you have the floor, Sir.

REP. DUBITSKY (47TH):

Thank you, Mr. Speaker. Mr. Speaker, this amendment actually corrects the problem that I had with the bill in Committee, so I encourage my colleagues to vote for it. Thank you.

ASSISTANT DEPUTY SPEAKER ALTOBELLOW (82ND):

Thank you, Representative. Nice to be listened to occasionally. Thanks for your help on the bill. Further on the amendment? Further on the amendment? If not, I'll try your minds. All those in favor, please signify by saying aye.

REPRESENTATIVES:

Aye.

ASSISTANT DEPUTY SPEAKER ALTOBELLOW (82ND):

Any opposed? Hearing none.

(Gavel)

Amendment is adopted.

Further on the bill as amended? Further on the bill as amended? If -- Representative Zawistowski.

REP. ZAWISTOWSKI (61ST):

she  
HOUSE OF REPRESENTATIVES

90  
May 24, 2017

Thank you, Mr. Speaker. I just wanted to clarify that the property owner has a prop -- an existing use and a municipality changes zoning regs to make that use no longer conforming, this will protect the property owner, and I think that's important for people to know. And municipalities will be able to adopt regulations terminating that nonconforming uses only under very restrictive situations and not just on redestruction [sic] of the property. It's a great bill. It does protect property owners, and I do recommend that my colleagues support it. Thank you.

ASSISTANT DEPUTY SPEAKER ALTOBELLOW (82ND):

Thank you, Representative. Further on the bill as amended? Representative Dunsby of the 135th.

REP. DUNSBY (135TH):

Thank you, Mr. Speaker.

ASSISTANT DEPUTY SPEAKER ALTOBELLOW (82ND):

You have the floor.

REP. DUNSBY (135TH):

Just a question for the proponent of the bill.

ASSISTANT DEPUTY SPEAKER ALTOBELLOW (82ND):

she  
HOUSE OF REPRESENTATIVES

91  
May 24, 2017

Please proceed, Sir.

REP. DUNSBY (135TH):

So, I'm just reading this. So, on the whole, this seems to make sense, but just so I can get some sense of clarification, through you Mr. Speaker, I mean, the language was relatively brief, discusses the structure or any part -- or any part thereof is demolished, deconstructed, etc., so that's the deconstruction part, and then on the rebuilding or repair part, it talks about restructuring or improving. So, is it the case that if someone, say -- I don't know -- tore down a kitchen or something like that and then rebuilt it, that would still have to -- while they would be guaranteed the right of use, they would still have to conform with setbacks and other zoning regulations which do not necessarily impinge the use, but might be less than the person doing the project would like?

Through you, Mr. Speaker.

ASSISTANT DEPUTY SPEAKER ALTOBELLOW (82ND):

Representative Lemar.

REP. LEMAR (96TH):

Thank you very much, Mr. Speaker. That could have a multitude of applications. The expansion of a nonconforming use is allowed as a general right. This does not impact the, you know -- if you're taking a kitchen down or repairing the kitchen, the expansion of that kitchen should not infringe -- should not be infringed upon because of its use as a kitchen. All right? So the use will run consistent with the land in perpetuity so long as that use is not voluntarily discontinued by the property owner. And I think that answers the question.

If the question is more in line with, you know, other zoning laws regulating setbacks and distance from adjoining property owners, then current -- the municipality's current zoning regulations still have the right to review that application as it comes in for any necessary changes and variances it may need.

Through you, Mr. Speaker.

ASSISTANT DEPUTY SPEAKER ALTOBELLOW (82ND):

Representative Dunsby.

REP. DUNSBY (135TH):

Thank you, Mr. Speaker.



she  
HOUSE OF REPRESENTATIVES

93  
May 24, 2017

ASSISTANT DEPUTY SPEAKER ALTOBELLOW (82ND):

Thank you very much, Sir. Representative Smith  
of the 100 --

REP. SMITH (108TH):

Thank you, Mr. Speaker.

ASSISTANT DEPUTY SPEAKER ALTOBELLOW (82ND):

You're welcome.

REP. SMITH (108TH):

Just a question, through you, to the proponent,  
please.

ASSISTANT DEPUTY SPEAKER ALTOBELLOW (82ND):

Please proceed.

REP. SMITH (108TH):

Thank you. So just looking at what really  
constitutes intent to abandon. So if you take the  
building down entirely, and you leave it there for a  
few years without doing a single thing to it, does  
that in and of itself constitute intent, or is there  
something more that's required?

Through you, Mr. Speaker.

ASSISTANT DEPUTY SPEAKER ALTOBELLOW (82ND):

Representative Lemar.

she  
HOUSE OF REPRESENTATIVES

94  
May 24, 2017

REP. LEMAR (96TH):

Thank you, Mr. Speaker. Through you, tearing down the building and not doing anything with it does not necessarily constitute intent to abandon. It could be that the building was taken down for health and safety reasons, but the use of that building and the intent to re-use that site for its -- the prior use remains with the property owner.

Through you.

ASSISTANT DEPUTY SPEAKER ALTOBELLOW (82ND):

Representative Smith.

REP. SMITH (108TH):

Thank you, and so what then does constitute the intent to abandon?

Through you, Mr. Speaker.

ASSISTANT DEPUTY SPEAKER ALTOBELLOW (82ND):

Representative Lemar.

REP. LEMAR (96TH):

Thank you very much, Mr. Speaker. Through you, I do have language. There is a specific criteria. If you'll hold with me for just a moment, I will find the specific criteria. Thank you, Mr. Speaker.

Mr. Speaker, through you, through court agreement through court cases, courts have found that to establish abandonment, it must be proven that the owner voluntarily discontinued the nonconforming use and that such voluntary discontinuance was accompanied by an intent to never reestablish that use. So it has to be clear that the owner never intended to reestablish that use. That is a discontinuance. It is not if you just tear down the building or if you don't use it for that intended use for a period of time.

This ensures that in case of many of our older industrial areas there may be factory buildings or light industrial uses that the building itself is no longer relevant to that use, but the property owner would like to reestablish that type of use in that building, the building needs to come down, they were afraid that they would be prohibited from reopening that type of use at that location. So, the building would stand in perpetuity at a high cost to both the host municipality and the property owner, what oftentimes prevented a productive re-use of a prior

she  
HOUSE OF REPRESENTATIVES

96  
May 24, 2017

use at that location.

Through you, Mr. Speaker.

ASSISTANT DEPUTY SPEAKER ALTOBELLOW (82ND):

Representative Smith.

REP. SMITH (108TH):

I thank the Chairman for that answer. So it sounds to me then that the intent that's required here is really subject to interpretation, probably something that ultimately would be decided either by Zoning Board of Appeals perhaps or if it got to a Superior Court or Appellate Court level because there's really nothing definitive as I can see in this statute or the proposed legislation that defines intent other than what the person intended at the time, and we won't really know that until we get into the specifics of his or her mind. Do I have that correct?

Through you, Mr. Speaker.

ASSISTANT DEPUTY SPEAKER ALTOBELLOW (82ND):

Representative Lemar.

REP. LEMAR (96TH):

Thank you, Mr. Speaker. Yes, through you, you

she  
HOUSE OF REPRESENTATIVES

97  
May 24, 2017

have that correct.

ASSISTANT DEPUTY SPEAKER ALTOBELLOW (82ND):

Representative Smith.

REP. SMITH (108TH):

It's good to be correct now and then, Mr. Speaker, and I thank the good gentleman for his answers.

ASSISTANT DEPUTY SPEAKER ALTOBELLOW (82ND):

Thank you, Sir. Thank you for your participation. Further on the bill as amended? Further on the bill as amended? If not, staff and guests, please retire to the well of the House. Members take your seats. Machine will be open.  
(Ringing)

CLERK:

The House of Representatives is voting by roll.  
Members to the Chamber. The House of Representatives is voting by roll. Members to the Chamber.

ASSISTANT DEPUTY SPEAKER ALTOBELLOW (82ND):

Have all members voted? Have all members voted? Please check the board to make sure your

she  
HOUSE OF REPRESENTATIVES

98  
May 24, 2017

vote is properly cast. If all members have voted, the machine will be locked. Would the Clerk please take a tally? And would the Clerk please announce the tally.

CLERK:

Senate Bill 944, as amended by Senate "A" in concurrence with the Senate:

Total Number Voting	146
Necessary for Passage	74
Those Voting Yea	144
Those Voting Nay	2
Absent and Not Voting	5

ASSISTANT DEPUTY SPEAKER ALTOBELLOW (82ND):

Bill as amended is passed.

(Gavel)

Are there any announcements or points of personal privilege? Any announcements? Birthdays? Anniversaries? Special events? Representative Betts, we can always count on you. Thank you for breaking the silence.

REP. BETTS (78TH):

Well, thank you, Mr. Speaker. That was such a

**JOINT  
STANDING  
COMMITTEE  
HEARINGS**

**PLANNING  
AND  
DEVELOPMENT  
PART 2  
536 - 1061**

**2017**

MIKE GLIDDEN: Good morning. Thank you for the opportunity. I'd like to introduce myself. I'm the Vice President of the Connecticut Association of Zoning Enforcement Officials and legislative liaison for the organization. You have our written testimony concerning Senate Bill 944. As proposed, our organization does not support this. We have a few issues that we'd like to discuss.

One is just the whole issue between a nonconforming use and a nonconforming building. A nonconforming use is a use that's established prior to the implementation of current zoning regulations versus a nonconforming structure; obviously, it's a building that's defined by the regulations that is built in violation of setback requirements for the zoning district. So because there's this clear separation between a use and a structure, one of the concerns was including a use and a structure in this legislation -- because how do you repair a use? You cannot repair a use. You repair a building. We're very concerned with that inclusion of the term "use."

The other is the fact that this legislation does not have a sunset provision. So an example could be as I -- say that I own a property. I have a nonconforming structure. I decide tomorrow I'm going to demolish the structure, and I wait ten to 20 years to rebuild this structure. Now, you get the -- you put the town in a position where, well, did that person want to abandon that nonconforming use, because the time has passed so long since that structure was there. We'd recommend that you look into maybe adding a sunset provision, a reasonable time period of when this -- when that nonconforming structure could be reconstructed.



The other suggestion would be in situations where you have a structure that has code compliance violations. From a National Flood Insurance Program perspective, the NFIP allows for the repair of a structure not to be included when a community official is determining that it's a substantial improvement, meaning if it's a structure that does not meet freeboard requirements, you'd have to elevate it, but if you have a code official that comes in and says, you know, you have some building violations that you need to make some corrections. They're not double -- you're not penalizing twice. So you're not telling them correct the code violations and elevate your structure. Maybe a language in these very specific situations could be included, too, to those structures saying -- say you have a nonconforming structure that has documented code violations. If these were so egregious where the homeowner said, well, I have to -- I have to demolish the structure. It would not be considered an abandonment, and they would be allowed to repair and rebuild in place in kind the same location.

And just the overall theme of how 8-2, our enabling statutes, kind of, it promotes the reduction of nonconformities and moving towards conformance with the current regulations since the local zoning authorities are given the ability to, in their best interests, rezone the community, and usually this is a result of either actions by the homeowner or property owner abandoning the nonconforming use or structure, or the community decides to change their regulations and accommodate some of these uses. So as I stated, there's a few issues we see with this. So as presented, we oppose this bill; however,

there's some added changes you could make that would be palatable. So -- and thank you for the time.

REP. LEMAR (96TH): Thank you, Mike, for your testimony. Senator Cassano.

SENATOR CASSANO (4TH): Yes, Mike, thank you; appreciate you coming forward. Obviously, there are good intentions behind the bill. Like every bill, there's room for improvement. Routinely in the past, we asked organizations like yourselves if you have those kinds of issues that you've described, if you're willing, to draft changes in the legislation that would make it a better bill and meet the needs both of the community and the homeowner. Could you guys do something like that?

MIKE GLIDDEN: We'd be honored. I will talk to the executive board, and I can go through -- who's --

SENATOR CASSANO (4TH): Get it to Wade and his staff.

MIKE GLIDDEN: Okay.

SENATOR CASSANO (4TH): That'd be helpful for us. Thank you.

MIKE GLIDDEN: Thank you.

REP. LEMAR (96TH): Thank you. Anymore questions? Seeing none, thank you, Mike.

MIKE GLIDDEN: Thank you.

REP. LEMAR (96TH): Bill Ethier followed by Dallas Dodge. Good morning, Bill.

SB 944

BILL ETHIER: Good morning, Chairman Lemar and Chairman Cassano and Chairman Logan, members of the Planning and Development Committee. My name is Bill

Ethier. I'm the Executive Director of the Homebuilders and Remodelers Association of Connecticut. We're a trade association with about 800 member firms across the state. We build between 70 percent and 80 percent of all the new housing in the state. We're here in support of 944, and I want to thank the Committee for raising the bill for us and hearing it today. I have submitted written testimony.

Basically, this issue -- this bill that's before you, we think -- just to clarify existing case law, the law is that -- and I've outlined it in the written testimony -- that government cannot force the abandonment or discontinuance of a nonconforming use. A nonconforming use building or structure is a vested property right. It runs with the land, meaning that if a purchaser purchases property with the nonconformity, they maintain that right, and this is a situation where sometimes a nonconforming building or structure is in disrepair. It could be a deck, could be rotting out. You have a right to repair that, but sometimes the repair requires demolition or deconstruction, basically the same thing, sometimes all the way down to the footings. But there has been at least one town that has taken a position that once you do that, you have abandoned it, and you lose the right to reconstruct.

We think that's a violation of the rights of the property owner, and oftentimes, it's just not worth a homeowner's time to hire an attorney to challenge the town. So they're really left with a Hobson's choice. They either live with a disrepaired porch or deck or structure, could be a fence, or they abandon it, and we don't think that's what the law says you should do.

Now, in my testimony, I did -- like I did the last two nonconforming bills you had before you a couple weeks ago, I think, I outlined some of the legal principles around nonconforming uses and buildings. While they are protected, they are vested rights. Under land use planning principles, they are not favored. So, for example, a nonconforming building or structure cannot be enlarged. There is some language in the bill about that that I will talk about in a moment. If a property owner abandons or discontinues a nonconformity, the right is extinguished, and that's where this bill comes into play. There's legal -- there's case law about the -- when a property owner abandons, there has to be evidence of intent of the owner to abandon a nonconformity without also intent not to reestablish it. So we think this bill just clarifies existing case law to confirm that you can continue a nonconforming structure or building while you're repairing it.

The last thing I would say about the bill itself, while we do, obviously, support the bill, we do urge you to delete the clause at lines 118 to 119 that says "except if such nonconforming use, building, or structure is expanded." One, because that's existing case law; you cannot expand a nonconforming structure or building, but if you leave that clause in and, for example, if you repair a deck and you either intentionally or unintentionally expand it, say you add another foot to it, with this clause in there, a town could say you've abandoned the entire use. That's not the proper remedy if you expand a **nonconformity**. The proper remedy is you have to cut off the one foot, you know, which is -- we have no problem with.

So the last thing I would say, in closing, is I do want to just respond quickly to -- you have written testimony from CCM, and you heard Mike from CAZEO, both of them say that the property owner -- let me get their testimony correct -- that a property owner cannot demolish or repair a use. That's now what the bill says. If you look at lines, I think it's 118 -- 116 to 118, we're talking about repairing -- it specifically says repairing a structure or building. So there is no repair of a use that the bill allows; however, if you -- we don't want towns to be able to have the authority to say you lose the use if you repair the structure; all right? And they also say that -- they both talked about a timeframe. We do not allow in Connecticut an amortization of nonconformities. So in a span of time, you don't lose your nonconforming right just because you don't use it over a span of time, and it does get back to case law that talks about intent. If there is a 10- to 20-year timeframe where you demolish something and, yeah, you're going to rebuild it in 10 or 20 years, I think that would be a rare case first of all, but you have to show evidence of intent when you did demolish it or abandon it that you wanted to repair it, and that would be permissible.

So there's proof involved in all these cases. So we do urge you to support the bill with that one language change that we suggest, and I'd be happy to answer any questions that the Committee may have.

REP. LEMAR (96TH): Thank you for your testimony this morning, and I do appreciate the land use law lessons that you always provide us. Are there any questions of Bill on this bill? Seeing none, thank you for -- oh, sorry, Senator Cassano.

SENATOR CASSANO (4TH): Yes, Bill, thank you very much. I'm concerned. Do you think there should be some time period? I mean, if you wait 20 years before you make the repairs, I think that's a little excessive. I mean, shouldn't there be, like, a five-year limit or something like that on it?

BILL ETHIER: Well, there could be, but I -- honestly, I think, Senator, the case law take care of that. There is a case. I can't remember the name or the site. I could look it up and provide it to you. It had to do with a use situation. There was a hotel use that became nonconforming because zoning was adopted that didn't allow hotels in that particular area, and the hotel was -- the hotel use was stopped, but there was evidence of intent by the owners that they wanted to start it back up, and there was letters put in evidence. I think it was, like, 10 or 20 years that went by, and they wanted to start it back up. The town said no. They went to court, and because of the evidence proving intent, the owner was allowed to do that, to continue the hotel use.

Now, we're talking about structures, but the same thing would apply. If there's intent by the owner when they demolish something -- okay, you could have a homeowner who is doing the work themselves. I know when I do my own home improvements, my wife says they take way too long; right? So could be years. I've got one half-bath that's a five-year project. It's just the way it is. Homeowners sometimes take a long time to do the work. So I would not want to see something too short a time period in the statute that destroys someone's right that they already have to continue a nonconformity here.

SENATOR CASSANO (4TH): But that's got to be -- should be -- that shouldn't be too short, but it could be something reasonably done. The reason I raise this, just as a former mayor, we had two major fires, and those fires were being reviewed, so those burned-out buildings lasted four or five years before they finally ended up with litigation, settled, and all that, before they could demolish them. The neighbors didn't need that eyesore. The people of Manchester didn't need that eyesore, and in this case the people don't need an eyesore for 20 years. So there should be some reasonable timeframe to do things. I would hope -- several times in the past, I know you have with us worked with groups like CAZEO or with others, maybe you could get together and come up with something and make this a stronger bill that probably is something you both could agree to. I think you're close enough that that could happen, and it would be beneficiary if we could to that.

BILL ETHIER: I'd be happy to work with Mike and see if we can do something on that.

SENATOR CASSANO (4TH): Thank you.

REP. LEMAR (96TH): Thank you very much for joining us today.

BILL ETHIER: Thank you.

REP. LEMAR (96TH): Dallas Dodge followed by Mike Harris. Good morning. Welcome to our friends and family P&D meeting today.

DALLAS DODGE: Good morning, Mr. Chairman and members of the Planning and Development Committee. My name is Dallas Dodge. I serve as counsel to the Insurance Association of Connecticut. I'm here to

SB 975

3

1082  
000737



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

3 Regency Drive, Suite 204, Bloomfield, CT 06002  
Tel: 860-216-5858 Fax: 860-206-8954 Web: [www.hbact.org](http://www.hbact.org)

*Your Home  
Is Our  
Business*

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 SB 944, AAC Clarifying the Continuation of Nonconforming  
Uses, Buildings and Structures**

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.

**We Support SB 944 and thank you for raising and hearing this bill.** The bill simply clarifies the law that nonconforming uses, buildings and structures shall not be deemed abandoned when such nonconformity needs to be repaired by first conducting demolition or deconstruction. For example, a porch or deck that was made nonconforming by the adoption of a new zoning regulation may be in such a state of disrepair that in order to repair it you need to first demolish or deconstruct it. The problem is when the demolition or deconstruction occurs, some towns deem this to be abandonment of the nonconformity and do not allow you to proceed with reconstruction. Hiring an attorney and pursuing relief in court is not a realistic option for most homeowners. **So, property owners are left with a Hobson's choice – either live with a structure in disrepair, potentially even a dangerous situation, or abandon it altogether. This violates the principle that a nonconformity is a vested property right that cannot be discontinued by government action.**

As we did with prior legislation this session on nonconforming uses and buildings, a brief explanation of nonconforming uses, buildings or structures in CT 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." A nonconformity is a former 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 zone with 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.

**Vision: "Building CT's Economy, Communities and Better Lives One Home at a Time"**  
**Mission: "Using Effective Advocacy and New Knowledge to Solve Our Member's Problems"**



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 not favored in land use planning because they may detract from a municipality's overall comprehensive land use plan. Thus, 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 further intrusion on the regulation that caused the nonconformity or violates 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.

Finally, and importantly for SB 944, if a property owner abandons or discontinues a nonconformity, the right is extinguished. Abandonment and discontinuance mean the same thing. **The courts have stated to establish abandonment, it must be proven that the owner voluntarily discontinued the nonconforming use and such voluntary discontinuance was accompanied by an intent to not reestablish that use. Therefore, SB 944 simply clarifies this already accepted principle in our law.** And, property owners faced with this situation will no longer have to go to court to protect their rights – they can just point to this new statute.

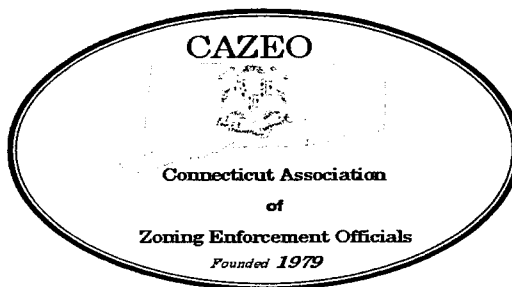
**While we support the bill, we urge you delete the new language at lines 118-119, “, except if such nonconforming use, building or structure is expanded”** because it implies if the repair or reconstruction does expand the nonconformity the entire nonconformity would be abandoned or terminated. This is not the normal recourse when a nonconformity is expanded. Generally, the property owner is required to remove the expansion, not discontinue or abandon the existing nonconformity. Also, given the current caselaw that prevents the expansion of a nonconformity, the clause at 118-119 is unnecessary.

**Please support SB 944 with the suggested language change.**

Thank you for the opportunity to comment on this legislation.

2

000739



March 07, 2017

Hon. Senator Cassano  
Hon. Senator Logan  
Hon. Representative Roland

**Re: Senate Bill No. 944; AN ACT CLARIFYING THE CONTINUATION OF NONCONFORMING USES, BUILDINGS OR STRUCTURES.**

Dear Chairs and members of Planning and Development Committee:

On behalf of the Connecticut Association of Zoning Enforcement Officials (CAZEO), we are writing to you to express our opposition of Senate Bill 944 as presented. The subject matter of non-conformities is one that requires the Commission's attention.

The Connecticut Association of Zoning Enforcement Officials (CAZEO) was founded in 1979 as the professional organization representing individuals employed as Zoning Enforcement Officers throughout the State of Connecticut. Currently, CAZEO has over 140 members which represent over a 110 communities in Connecticut.

In the world of land use, the subject of non-conformities is not a black and white reality for staff and commissions. Non-conformities come in 2 forms. One is structures which do not meet locational standards that are contained in the local zoning regulations. These structures could have been constructed prior to current regulations or are ones which enforcement actions were not taken in timely manner. Second is use. A non-conforming use is one which is established before the implementation of zoning regulations. Both non-conforming structures and uses are vested rights given to property owners.

The language as presented poses a few questions or concerns that CAZEO would like the Committee to consider:

The term use should not be included. It appears the language is intended to deal with the reconstruction and repair of structures. Our concern is how does someone repair or demolish a use? The term should be removed. The reconstruction and demolition should only apply to non-conforming structures. Uses are not like buildings.

A sunset provision should be considered. A property owner could purchase a structure which may be in a state of disrepair and elect to demolish it in order to avoid taxes on the structure. Then 10 to 20 years later, they could elect to re-build arguing that it was not their intent to abandon the non-conformity.

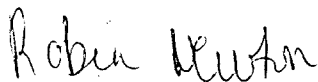
Where is the protection for the surrounding area? CAZEO suggests that a sunset provision be added. Providing a time for reconstruction of a non-conforming structure would help with concerns on whether the demolition could be considered an act of abandonment of the property owner.

An exception could be added which is specific to documented code violations. In cases of substantial improvements, the National Flood Insurance Program offers language which exempts improvements to a structure which are required to fix documented code violations. Perhaps adding an exemption for these situations is appropriate in dealing with non-conforming structures. Such a provision could prevent a property owner from being caught between making a building safe verse preserving non-conformities. A property owner then would not have fear correcting code violations in a non-conforming structure.

The conflict between the proposed legislation's language and the intent of CSG 8-2 with regards to non-conformities needs to be looked at. CSG 8-2, the enabling statute for zoning in Connecticut, calls for the reduction of non-conformities and the incorporation of appropriate uses. As stated earlier, the proposed language does not take a sunset provision into consideration. Therefore the legislation as written gives the impression that non-conformities are meant to be forever. While we agree that non-conformities are a vested right for property owners, we do not agree that they are meant to be forever. Eventually either by act of the town or property owner, a property is meant to be brought into conformance with local zoning regulations.

In closing, CAZEO asks that members of Planning and Development to oppose as written Senate Bill 944 and ask the Committee to consider the changes outlined by our testimony when discussing this legislation.

Thank you for your attention to this matter.



Robin Newton, CZEO  
President



Michael Glidden, CZEO CFM  
Vice President /Legislative Liaison