



Testimony of the Boston Bar Association
Before the Joint Committee on the Judiciary
In Support of House Bill 1284,
An Act Legitimizing Structures After Six or Ten Years of Continuous Use
Presented by Michael Fee, Co-Chair, BBA Real Estate Law Section
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Senate Chairman Brownsberger, House Chairman Fernandes, and members of the Joint Committee on the Judiciary, my name is Michael Fee and I am Co-Chair of the Boston Bar Association's Real Estate Law Section. I am pleased to have the opportunity to submit this written testimony on a bill that the Boston Bar Association drafted to address the problem of older structures destroyed by acts of nature, which may not be rebuilt due to current zoning requirements. The Boston Bar Association hopes that you will give a favorable report to House Bill 1284, An Act to Legitimize Structures After Six or Ten Years of Continuous Use.

This bill would amend Section 7 of Chapter 40A, having to do with enforcement of local zoning regulations. In particular, Section 7 spells out the circumstances under which violations of Chapter 40A, or a zoning by-law or ordinance, or a variance or permit, can lead to a "non-complying" building being ordered to be removed, altered, or relocated. Currently, the law prohibits a municipality from taking such enforcement action more than ten years from the date after the commencement of the alleged violation.

However, Section 7 does not permit such a building to become a valid non-conforming structure. As a result, if a structure that does not comply with current zoning laws is destroyed after ten years, it is not grandfathered under the zoning laws in effect when it was built, and it must be rebuilt under new zoning requirements, which may be more restrictive or even impossible to comply with.

House Bill 1284 would amend Section 7 to address a specific circumstance in which:

- the real property in question has been improved by erecting one or more structures that have been in place for at least ten years *and*
- there has been no notice of any action as to an alleged zoning violation as to such structures within ten years from the date they were erected.

In that limited instance, such structures erected thereon shall, for zoning purposes, either be deemed in compliance with Chapter 40A, and any ordinance or by-law adopted in accordance with Chapter 40A, as they existed on the date such structures were erected, or deemed to be valid, legally nonconforming structures.

The proposed legislation would give these older structures a recognized status under zoning. Qualifying structures will no longer be violations that are merely immune from being contested; they'll be deemed to be in actual compliance. The bill would give more protection to consumers and other owners of improved real estate, who will be less likely to incur financial losses from minor zoning violations that are often unintended or unknown. At the same time, it

would have no adverse impact on municipalities, since they have no power to enforce their ordinances in this regard after ten years.

For the reasons stated, the Boston Bar Association respectfully urges you to give a favorable report to House Bill 1284. Thank you very much for your attention.