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ADVISORY

TO: TOWN MANAGERS, TOWN ADMINISTRATORS, MAYORS
AND PLANNERS

FROM: MEAD, TALERMAN & COSTA, LLC

SUBJECT: AN ACT MAKING APPROPRIATIONS FOR FY2027 (H. 5555)
ZONING ACT AMENDMENTS

DATE: JULY 10, 2026

Yesterday, Governor Maura Healey signed House Bill 5555, also known as an Act Making Appropriations for Fiscal Year 2027 (the “New Law”). In addition to effectuating the FY2027 state budget, the New Law makes a variety of meaningful and consequential changes¹ to the state Zoning Act, see G.L. c. 40A, specifically Sections 5, 6, 10 and 11 thereof, relative to vested rights; the extent of protection(s) afforded pre-existing, nonconforming uses and structures; the standard by which zoning variances may be granted; and the sending of certain notices via electronic means.

These Zoning Act amendments are now in-effect, per the New Law’s retroactive July 1, 2026 effective date and accompanying emergency preamble. They are summarized below; but, for convenience, the full text of Sections 5, 6, 10 and 11 of the Zoning Act is affixed hereto, with the revisions shown.

1. Vested Rights

A vested right is best defined as “the right to initiate or continue the establishment of a use or construction of a structure which, when completed, will be contrary to the restrictions or regulations of a zoning ordinance [or bylaw] or an amendment to it which has become effective in the meantime.”² Section 6 confers vested rights, commonly referred to as zoning freezes, upon owners and applicants whose property meets certain qualifications.

Before adoption of the New Law, under Paragraph 1 of Section 6 of the Zoning Act, a zoning ordinance or bylaw was said not to apply to “a building or special permit issued” before the first publication of notice of a public hearing on a new ordinance,

¹ In a legislative press release issued on June 30, 2026, these changes were characterized as follows: “Building on last session’s Affordable Homes Act, the budget agreement includes numerous provisions to streamline local permitting, support development on nonconforming properties, provide reasonable timelines for projects to move forward under existing zoning rules and modernize the variance standard – all aimed at meeting housing demand, boosting production and driving down costs.”

² Edward H. Zeigler, 4 Rathkopf’s Law of Zoning and Planning, § 70:2 (2001).

bylaw or amendment thereto. The New Law replaces the quoted phrase with “a building or special permit or other entitlement applied for under this chapter.”³ The result is two-fold. First, it is no longer only a building or special permit that vests rights under the cited clause in Paragraph 1; **“other entitlement[s]” will now qualify an owner or applicant for a zoning freeze.** What constitutes an entitlement is not specified in the amendment, or elsewhere in the Zoning Act, thus creating ambiguity; but the term might be interpreted to include administrative appeals (if ultimately successful), potentially site plan approvals⁴ or even requests for confirmation of zoning status or applicability of a zoning exemption. Second, a building permit, special permit or, now, other entitlement no longer must be “issued” before publication of notice of a public hearing on a zoning adoption or change. Under the New Law, **rights now vest upon “appli[cation]” for a building permit, special permit or other entitlement.**

Related to the above, prior to adoption of the New Law, and in order for an owner or applicant to successfully avoid compliance with later-enacted provision(s) or a zoning ordinance or bylaw, construction or operations under a building permit had to be commenced “within... 12 months after the issuance of the permit” and continued through to completion as continuously and expeditiously as is reasonable. The New Law not only **increases the period within which work must commence under a building permit to 24 months**, it also **calculates the deadline from the date of issuance “of the last permit necessary for construction.”** And it expressly states that “[t]he 24-month period shall be **tolled during any time the applicant is actively seeking or obtaining other necessary permits.**”⁵

Lastly, under Paragraph 4 of Section 6 of the Zoning Act, vacant lots are protected from “[a]ny increase in area, frontage, width, yard or depth requirements” of a zoning ordinance or bylaw if, as of the time of their recording or endorsement, whichever occurred first, they had qualifying area and frontage under the statute. Prior to adoption of the New Law, the protection only applied to lots “for single and two family residential use.” That is no longer. **Now, the protections that Paragraph 4 affords certain lots in separate ownership and certain other lots in common ownership extend to all lots, not just lots for single and two family residential use.**⁶ The zoning freeze for vacant lots now also applies to lots for non-residential use.

2. Expansion of Protection(s) for Certain Nonconformities

The New Law also expands protection(s) for pre-existing, nonconforming uses and structures, in two ways.

First, some types of changes to pre-existing, nonconforming structures or residential uses are now statutorily exempt from any requirement that they be authorized by finding (or by special permit). Before the New Law was enacted, Paragraph 1 of Section 6 of the Zoning Act, second sentence, stated only that “[p]re-existing nonconforming structures or uses may be

³ See H. 5555, § 42.

⁴ Although site plan review is not a process established “under this chapter,” meaning under the Zoning Act, multiple site plan review references now exist in the Zoning Act, including in Section 6 itself.

⁵ See H. 5555, § 45.

⁶ See H. 5555, § 46.

extended or altered, provided that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority... that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use [or structure]⁷ to the neighborhood.” Under the New Law, **“pre-existing nonconforming structures or residential uses that do not conform to zoning because of lot size or shape, frontage, lot coverage or floor area ratio requirements may be extended or altered as of right... if such extension or alteration complies with the current dimensional regulations regarding height, stories and setback.”**⁸

Placement of the new language, above, into the second sentence of Paragraph 1 of Section 6 of the Zoning Act suggests that it applies to all pre-existing, nonconforming structures, including single- and two-family residential structures, even though these latter structures may not have historically, and may not now, require resort to the second sentence at all (if, under the first sentence’s so-called “second except clause,” alteration, reconstruction, extension or structural change is deemed “not [to] increase the nonconforming nature of said structure”).

Among other examples, conforming structures on undersized or otherwise dimensionally noncompliant lots, which heretofore may have required zoning relief for extensions or alterations thereto, e.g. a finding or a special permit,⁹ will no longer be subject to discretionary approval but may be modified by-right so long as the proposal complies with the ordinance’s or bylaw’s height, story and setback requirements.

Note that the new language, above, does not apply to extension or alteration to or of non-residential use(s).

Even communities that prohibit the extension or alteration of all or some pre-existing, nonconforming uses or structures are probably subject to the exemption, above. While we recognize that “[w]hen [an] ordinance or bylaw does not expressly speak to such changes... the otherwise applicable regulations will govern and invariably lead to a prohibition of the change,” and that “[r]esort to the statute will not overcome local silence on the matter,”¹⁰ the New Law’s amendment to the second sentence, above, expressly allows extensions or alterations “as of right” if its conditions are satisfied.

⁷ While the New Law adds the phrase “or structure,” it is of no functional effect on interpretation or application of Section 6 inasmuch as the judiciary effectively did so decades ago. See Willard v. Board of Appeals of Orleans, 25 Mass. App. Ct. 15, 21 (1987).

⁸ See H. 5555, § 43.

⁹ See, e.g., Bjorklund v. Zoning Bd. of Appeals of Norwell, 450 Mass. 357 (2008). In Bjorklund, it was the second except clause that was at-issue, not the second sentence of Paragraph 1. Nevertheless, the question before the Supreme Judicial Court was whether-or-not the proposed reconstruction of a single-family residence on an undersized lot, quintupling its size, but otherwise in compliance with the Norwell Zoning Bylaw, “increase[d] the nonconforming nature of [the] structure.” See G.L. c. 40A, § 6, ¶ 1, first sentence. The Justices concluded that it did; and thus affirmed the Norwell Zoning Board of Appeals’ conclusion to that effect, and its ensuing finding that the proposal was “substantially more detrimental... to the neighborhood.” Were Bjorklund decided today, enactment of the New Law would render the latter finding unnecessary. Since the residence in Bjorklund was nonconforming “because of lot size,” and where the proposed reconstruction “comple[d] with... dimensional regulations regarding height, stories and setback,” it would now be permissible “as of right.”

¹⁰ Mark Bobrowski, Handbook of Massachusetts Land Use and Planning Law, § 6.03[A] (6th ed. 2024).

Second, whereas the Zoning Act previously authorized cities and towns, by ordinance or bylaw, to “define and regulate nonconforming uses and structures abandoned or not used for a period of two years or more,” **the New Law allows definition and regulation of nonconformities only where abandoned or not used for four years or more.**¹¹ Ordinances and bylaws should be updated accordingly.

3. New Variance Standard

Comprehensive revisions to Section 10 of the Zoning Act were effectuated by the New Law; and the standard that has long applied to the issuance or denial of variances is no more.

Starting in 1975, and until passage of the New Law, issuance of a variance was deemed appropriate if (i) due to circumstances relating to the soil conditions, shape or topography of land or structures, especially affecting the same, (ii) a literal enforcement of the ordinance or bylaw would cause financial hardship, financial or otherwise, (iii) so long as relief could be granted without substantial detriment to the public good and without nullifying or substantially derogating from the purpose or intent of the ordinance or bylaw.

The New Law replaces the foregoing with the single inquiry. **A variance shall be issued upon a specific finding “that a strict enforcement of the ordinance or by-law would result in practical difficulty.”**¹² “[P]ractical difficulty” is not defined.

The permit granting authority is instructed, i.e. via use of the word “shall,” to weigh the benefits to the variance proponent and to the public interest, expressly including “the interest in supporting the production of housing,” against the detriment to the public health, safety and welfare of the neighborhood.

The permit granting authority “may,” but is not necessarily required to,¹³ “also consider” the following: whether the practical difficulty relates to the soil conditions, shape or topography of the land or structures; whether strict enforcement of the ordinance or bylaw would impose a financial hardship on the proponent; whether the benefit sought by the proponent can be achieved by some other feasible method; and whether the practical difficulty was self-created.

Ordinances and bylaws that incorporate Section 10 by reference will not require amendment; but those that recite the old variance standard will need to be modified. Pending modification, the amended statute will preempt conflicting or contradictory language in an ordinance or bylaw.

Section 10’s prohibition of use variances unless “expressly permit[ted]” by a zoning ordinance or bylaw has been modified. The restriction that “no variance may authorize a use or activity” absent allowance by ordinance or bylaw has been amended by adding, thereafter, “other than

¹¹ See H. 5555, § 45.

¹² See H. 5555, § 47.

¹³ “The distinction in statutes between ‘shall,’ a word of command, and ‘may,’ a word of permission, is not one which courts pass over lightly unless context or other provisions require it.” Salem Hospital v. Rate Setting Commission, 26 Mass. App. Ct. 323, 325 (1988). “The word ‘may’ in a statute commonly imports discretion.” Turnpike Amusement Park, Inc. v. Licensing Commission of Cambridge, 343 Mass. 435, 437 (1962).

residential.”¹⁴ Thus, **municipalities are no longer free to prohibit variances for residential use.**

The New Law **eliminates the former statute’s express authorization for permit granting authorities to “impose conditions, safeguards and limitations both of time and use,”** “excluding any condition, safeguards or limitations based upon the continued ownership of the land or structures...”¹⁵ It is unknown whether the courts will interpret the omission from the statute as meaningful, e.g. as restricting the extent to which a variance may be conditioned.

Also under the New Law, **the one-year lapse period associated with issuance of a variance is now two years,** excluding any time “required to pursue other entitlements to construct the project... or await determination of an appeal” of the variance. Whereas the lapse period could previously be extended, at the permit granting authority’s discretion, for up to six months, **the lapse period may now be extended by up to two (additional) years.**¹⁶

4. Electronic Notice

Finally, the New Law amends multiple references to notices issued under Sections 5 and 11 of the Zoning Act. In each instance, where the Zoning Act formerly required notice be sent by mail, the amendment allows notices, alternatively, to be provided “electronically.”

Under Section 5, **notices of public hearings on zoning ordinance or bylaw adoptions or amendments may now be sent to the Executive Office of Housing and Livable Communities, to the regional planning agency (if any) and to the planning boards of abutting municipalities electronically.** The same can occur with notices sent to nonresident property owners who request them annually.¹⁷

Under Section 11, **notices of public hearings otherwise required by the Zoning Act, e.g. on applications for variances, special permits, administrative appeals, etc., to “individuals or specific boards or other agencies,” may likewise be sent electronically.**¹⁸ Practical application of the Section 11 amendments may be challenging, however. Where notice to so-called parties in interest is required, Section 11 identifies them by reference to “the most recent applicable tax list,” requiring municipal assessors to “certify to the permit granting authority or special permit granting authority the names and addresses of [these] parties in interest,” which “shall be conclusive for all purposes.” These certified lists of abutters, however, do not routinely include e-mail addresses.

We hope that the above advisory is helpful. We are happy to work with you to adapt to and implement these new changes to the Zoning Act, whether it be through ordinance or bylaw revision(s) or else in the day-to-day administration of these amendments. Please let us know if you have questions about the New Law or if you wish to further discuss its effect(s) in your community.

¹⁴ See H. 5555, § 47.

¹⁵ See H. 5555, § 47.

¹⁶ See H. 5555, § 47.

¹⁷ See H. 5555, §§ 40, 41.

¹⁸ See H. 5555, §§ 48, 49.

§ 5. Adoption or change of zoning ordinances or by-laws; procedure

Zoning ordinances or by-laws may be adopted and from time to time changed by amendment, addition or repeal, but only in the manner hereinafter provided. Adoption or change of zoning ordinances or by-laws may be initiated by the submission to the city council or board of selectmen of a proposed zoning ordinance or by-law by a city council, a board of selectmen, a board of appeals, by an individual owning land to be affected by change or adoption, by request of registered voters of a town pursuant to section ten of chapter thirty-nine, by ten registered voters in a city, by a planning board, by a regional planning agency or by other methods provided by municipal charter. The board of selectmen or city council shall within fourteen days of receipt of such zoning ordinance or by-law submit it to the planning board for review.

No zoning ordinance or by-law or amendment thereto shall be adopted until after the planning board in a city or town, and the city council or a committee designated or appointed for the purpose by said council has each held a public hearing thereon, together or separately, at which interested persons shall be given an opportunity to be heard. Said public hearing shall be held within sixty-five days after the proposed zoning ordinance or by-law is submitted to the planning board by the city council or selectmen or if there is none, within sixty-five days after the proposed zoning ordinance or by-law is submitted to the city council or selectmen. Notice of the time and place of such public hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing, and by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of said hearing. Notice of said hearing shall also be sent electronically or by mail, postage prepaid to the executive office of housing and livable communities, the regional planning agency, if any, and to the planning board of each abutting city and town. The executive office of housing and livable communities, the regional planning agency, the planning boards of all abutting cities and towns and nonresident property owners who may not have received notice electronically or by mail as specified in this section may grant a waiver of notice or submit an affidavit of actual notice to the city or town clerk prior to town meeting or city council action on a proposed zoning ordinance, by-law or change thereto. Zoning ordinances or by-laws may provide that a separate, conspicuous statement shall be included with property tax bills sent to nonresident property owners, stating that notice of such hearings under this chapter shall be sent electronically or by mail, postage prepaid, to any such owner who files an annual request for such notice with the city or town clerk no later than January first, and pays a reasonable fee established by such ordinance or by-law. In cases involving boundary, density or use changes within a district, notice shall be sent to any such nonresident property owner who has filed such a request with the city or town clerk and whose property lies in the district where the change is sought. No defect in the form of any notice under this chapter shall invalidate any zoning ordinances or by-laws unless such defect is found to be misleading.

Prior to the adoption of any zoning ordinance or by-law or amendment thereto which seeks to further regulate matters established by section forty of chapter one hundred and thirty-one or regulations authorized thereunder relative to agricultural and aquacultural practices, the city or town clerk shall, no later than seven days prior to the city council's or town meeting's public hearing relative to the adoption of said new or amended zoning ordinances or by-laws, give notice of the said proposed zoning ordinances or by-laws to the farmland advisory board established pursuant to section forty of chapter one hundred and thirty-one.

No vote to adopt any such proposed ordinance or by-law or amendment thereto shall be taken until a report with recommendations by a planning board has been submitted to the town meeting or city council, or twenty-one days after said hearing has elapsed without submission of such report. After such notice, hearing and report, or after twenty-one days shall have elapsed after such hearing without submission of such report, a city council or town meeting may adopt, reject, or amend and adopt any such proposed ordinance or by-law. If a city council fails to vote to adopt any proposed ordinance within ninety days after the city council hearing or if a town meeting fails to vote to adopt any proposed by-law within six months after the planning board hearing, no action shall be taken thereon until after a subsequent public hearing is held with notice and report as provided.

Except as provided herein, no zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are 2 branches, or by a two-thirds vote of a town meeting; provided, however, that the following shall be adopted by a vote of a simple majority of all members of the town council or of the city council where there is a commission form of government or a single branch or of each branch where there are 2 branches or by a vote of a simple majority of town meeting:

(1) an amendment to a zoning ordinance or by-law to allow any of the following as of right: (a) multifamily housing or mixed-use development in an eligible location; (b) accessory dwelling units, whether within the principal dwelling or a detached structure on the same lot; or (c) open-space residential development;

(2) an amendment to a zoning ordinance or by-law to allow by special permit: (a) multi-family housing or mixed-use development in an eligible location; (b) an increase in the permissible density of population or intensity of a particular use in a proposed multi-family or mixed use development pursuant to section 9; (c) accessory dwelling units in a detached structure on the same lot; or (d) a diminution in the amount of parking required for residential or mixed-use development pursuant to section 9;

(3) zoning ordinances or by-laws or amendments thereto that: (a) provide for TDR zoning or natural resource protection zoning in instances where the adoption of such zoning promotes concentration of development in areas that the municipality deems most appropriate for such development, but will not result in a diminution in the maximum number of housing units that could be developed within the municipality; or (b) modify regulations concerning the bulk and height of structures, yard sizes, lot area, setbacks, open space, parking and building coverage requirements to allow for additional housing units beyond what would otherwise be permitted under the existing zoning ordinance or by-law; and

(4) the adoption of a smart growth zoning district or starter home zoning district in accordance with section 3 of chapter 40R.

Any amendment that requires a simple majority vote shall not be combined with an amendment that requires a two-thirds majority vote.

If, in a city or town with a council of fewer than 25 members, there is filed with the clerk prior to final action by the council a written protest against a zoning change under this section, stating the reasons duly signed by owners of 50 per cent or more of the area of the land proposed to be included in such change or of the area of the land immediately adjacent extending 300 feet therefrom, no change of any such ordinance shall be adopted except by a two-thirds vote of all members.

No proposed zoning ordinance or by-law which has been unfavorably acted upon by a city council or town meeting shall be considered by the city council or town meeting within two years after the date of such unfavorable action unless the adoption of such proposed ordinance or by-law is recommended in the final report of the planning board.

When zoning by-laws or amendments thereto are submitted to the attorney general for approval as required by section thirty-two of chapter forty, he shall also be furnished with a statement which may be prepared by the planning board explaining the by-laws or amendments proposed, which statement may be accompanied by explanatory maps or plans.

The effective date of the adoption or amendment of any zoning ordinance or by-law shall be the date on which such adoption or amendment was voted upon by a city council or town meeting; if in towns, publication in a town bulletin or pamphlet and posting is subsequently made or publication in a newspaper pursuant to section thirty-two of chapter forty. If, in a town, said by-law is subsequently disapproved, in whole or in part, by the attorney general, the previous zoning by-law, to the extent that such previous zoning by-law was changed by the disapproved by-law or portion thereof, shall be deemed to have been in effect from the date of such vote. In a municipality which is not required to submit zoning ordinances to the attorney general for approval pursuant to section thirty-two of chapter forty, the effective date of such ordinance or amendment shall be the date passed by the city council and signed by the mayor or, as otherwise provided by ordinance or charter; provided, however, that such ordinance or amendment

shall subsequently be forwarded by the city clerk to the office of the attorney general.

A true copy of the zoning ordinance or by-law with any amendments thereto shall be kept on file available for inspection in the office of the clerk of such city or town.

No claim of invalidity of any zoning ordinance or by-law arising out of any possible defect in the procedure of adoption or amendment shall be made in any legal proceedings and no state, regional, county or municipal officer shall refuse, deny or revoke any permit, approval or certificate because of any such claim of invalidity unless legal action is commenced within the time period specified in sections thirty-two and thirty-two A of chapter forty and notice specifying the court, parties, invalidity claimed, and date of filing is filed together with a copy of the petition with the town or city clerk within seven days after commencement of the action.

§ 6. Existing structures, uses, or permits; certain subdivision plans; application of chapter

Except as hereinafter provided, a zoning ordinance or by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit ~~issued or other entitlement applied for under this chapter~~ before the first publication of notice of the public hearing on such ordinance or by-law required by section five, but shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure. Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use ~~or structure~~ to the neighborhood provided, however, notwithstanding the foregoing, pre-existing nonconforming structures or residential uses that do not conform to zoning because of lot size or shape, frontage, lot coverage or floor area ratio requirements may be extended or altered as of right, without the need for a finding by the special permit granting authority under this paragraph, if such extension or alteration complies with the current dimensional regulations regarding height, stories and setback. This section shall not apply to establishments which display live nudity for their patrons, as defined in section nine A, adult bookstores, adult motion picture theaters, adult paraphernalia shops, or adult video stores subject to the provisions of section nine A.

A zoning ordinance or by-law shall provide that construction or operations under a building permit shall conform to any subsequent amendment of the ordinance or by-law unless the use or construction is commenced ~~within a period of~~ not more than ~~12~~²⁴ months after the issuance of the ~~last~~ permit necessary for construction and, in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable. The 24-month period shall be tolled during any time the applicant is actively seeking or obtaining other necessary permits. Construction or operations under a special permit issued pursuant to section 9 or site plan approval pursuant to the local ordinance or by-law shall conform to any subsequent amendment of the zoning ordinance or by-law or of any other local land use regulations unless the use or construction is commenced within a period of 3 years after the issuance of the special permit or site plan approval and, in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable. For the purpose of the ~~prior~~^{preceding} sentence, construction involving the redevelopment of previously disturbed land shall be deemed to have commenced upon substantial investment in site preparation or infrastructure construction, and construction of developments intended to proceed in phases shall proceed expeditiously, but not continuously, among phases.

A zoning ordinance or by-law may define and regulate nonconforming uses and structures abandoned or not used for a period of ~~two~~⁴ years or more.

Any increase in area, frontage, width, yard, or depth requirements of a zoning ordinance or by-law shall not apply to a lot ~~for single and two family residential use~~ which at the time of recording or endorsement, whichever occurs sooner was not held in common ownership with any adjoining land, conformed to then existing requirements and had less than the proposed requirement but at least five thousand square feet of area and fifty feet of frontage. Any increase in area, frontage, width, yard or depth requirement of a zoning ordinance or by-law shall not apply for a period of five years from its effective date or for five years after January first, nineteen hundred and seventy-six, whichever is later, to a lot ~~for single and two family residential use~~, provided the plan for such lot was recorded or endorsed and such lot was held in common ownership with any adjoining land and conformed to the existing zoning requirements as of January first, nineteen hundred and seventy-six, and had less area, frontage, width, yard or depth requirements than the newly effective zoning requirements but contained at least seven thousand five hundred

square feet of area and seventy-five feet of frontage, and provided that said five year period does not commence prior to January first, nineteen hundred and seventy-six, and provided further that the provisions of this sentence shall not apply to more than three of such adjoining lots held in common ownership. The provisions of this paragraph shall not be construed to prohibit a lot being built upon, if at the time of the building, building upon such lot is not prohibited by the zoning ordinances or by-laws in effect in a city or town.

Adjacent lots under common ownership shall not be treated as a single lot for local zoning purposes if, at the time of recording or endorsement, the lots: (i) conformed to then existing requirements of area, frontage, width, yard or depth, where each such lot has not less than 10,000 square feet of area and 75 feet of frontage; and (ii) are located in a zoning district that allows for single-family residential use. Any single-family residential structure constructed on said lot shall not exceed 1,850 square feet of heated living area, shall contain not less than 3 bedrooms and shall not be used as a seasonal home or short-term rental.

If a definitive plan, or a preliminary plan followed within seven months by a definitive plan, is submitted to a planning board for approval under the subdivision control law, and written notice of such submission has been given to the city or town clerk before the effective date of ordinance or by-law, the land shown on such plan shall be governed by the applicable provisions of the zoning ordinance or by-law, if any, in effect at the time of the first such submission while such plan or plans are being processed under the subdivision control law, and, if such definitive plan or an amendment thereof is finally approved, for eight years from the date of the endorsement of such approval, except in the case where such plan was submitted or submitted and approved before January first, nineteen hundred and seventy-six, for seven years from the date of the endorsement of such approval. Whether such period is eight years or seven years, it shall be extended by a period equal to the time which a city or town imposes or has imposed upon it by a state, a federal agency or a court, a moratorium on construction, the issuance of permits or utility connections.

When a plan referred to in section eighty-one P of chapter forty-one has been submitted to a planning board and written notice of such submission has been given to the city or town clerk, the use of the land shown on such plan shall be governed by applicable provisions of the zoning ordinance or by-law in effect at the time of the submission of such plan while such plan is being processed under the subdivision control law including the time required to pursue or await the determination of an appeal referred to in said section, and for a period of three years from the date of endorsement by the planning board that approval under the subdivision control law is not required, or words of similar import.

Disapproval of a plan shall not serve to terminate any rights which shall have accrued under the provisions of this section, provided an appeal from the decision disapproving said plan is made under applicable provisions of law. Such appeal shall stay, pending either (1) the conclusion of voluntary mediation proceedings and the filing of a written agreement for judgment or stipulation of dismissal, or (2) the entry of an order or decree of a court of final jurisdiction, the applicability to land shown on said plan of the provisions of any zoning ordinance or by-law which became effective after the date of submission of the plan first submitted, together with time required to comply with any such agreement or with the terms of any order or decree of the court.

In the event that any lot shown on a plan endorsed by the planning board is the subject matter of any appeal or any litigation, the exemptive provisions of this section shall be extended for a period equal to that from the date of filing of said appeal or the commencement of litigation, whichever is earlier, to the date of final disposition thereof, provided final adjudication is in favor of the owner of said lot.

The record owner of the land shall have the right, at any time, by an instrument duly recorded in the registry of deeds for the district in which the land lies, to waive the provisions of this section, in which case the ordinance or by-law then or thereafter in effect shall apply. The submission of an amended plan or of a further subdivision of all or part of the land shall not constitute such a waiver, nor shall it have the effect of further extending the applicability of the ordinance or by-law that was extended by the original submission, but, if accompanied by the waiver described above, shall have the effect of extending, but only to extent aforesaid, the ordinance or by-law made then applicable by such waiver.

§ 10. Variances

The permit granting authority shall ~~have the power,~~ after public hearing for which notice has been given by publication and posting as provided in section ~~eleven~~¹¹ and by mailing to all parties in interest ~~to,~~ grant upon appeal or upon petition with respect to particular land or structures a variance from the terms of the applicable zoning ordinance or by-law ~~where such~~^{if the} permit granting authority specifically finds that a strict enforcement of the ordinance or by-law would result in practical difficulty. In making its determination, the permit granting authority shall weigh the benefits to the appellant or petitioner and to the public interest, including the interest in supporting the production of housing against the detriment to the public health, safety and welfare of the neighborhood, and may also consider: (i) owing to circumstances whether the practical difficulty relatingrelates to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located; (ii) a literal enforcement of the provisions of the ordinance or by-law whether the strict enforcement would involveimpose a substantialfinancial hardship, financial or otherwise, teon the appellant or petitioner or appellant; (iii) and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law whether the benefit sought by the appellant or petitioner can be achieved by some other method feasible for the appellant or petitioner to achieve; and (iv) whether the practical difficulty was self-created.

Except where local ordinances or by-laws ~~shall~~ expressly permit variances for use, no variance may authorize a use or activity other than residential, not otherwise permitted in the district in which the land or structure is located; provided, however, that such variances properly granted prior to January ~~first~~¹, ~~nineteen hundred and seventy-six~~¹⁹⁷⁶, but limited in time, may be extended on the same terms and conditions that were in effect for such variance ~~upon said effective date~~^{when it was originally granted.}

~~The permit granting authority may impose conditions, safeguards and limitations both of time and of use, including the continued existence of any particular structures but excluding any condition, safeguards or limitation based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner.~~

If the rights authorized by a variance are not exercised within ~~one~~² years ~~of the date of grant or after such~~^{the} variance ~~was granted, which shall not include the time required to pursue other entitlements necessary to construct the project authorized by the variance or await the determination of an appeal referred to in section 17,~~ such rights shall lapse; provided, however, that the permit granting authority, in its discretion and upon written application by the grantee of such rights, may extend the time for exercise of ~~such~~^{those} rights for a period not to exceed ~~six months~~^{2 years}; and provided, further, that the application for ~~such~~^{an} extension ~~is~~^{shall be} filed with ~~such~~^{the} permit granting authority prior to the expiration of ~~such~~^{the} ~~one~~²-year period. If the permit granting authority does not grant ~~such~~^{an} extension within ~~thirty~~³⁰ days of the date of application therefor, and, upon the expiration of the original ~~one~~²-year period, such rights ~~may~~^{shall only} be reestablished only after notice and a new hearing pursuant to ~~the provisions of~~ this section.

§ 11. Notice requirements for public hearings; parties in interest defined; review of special permit petitions; recording copies of special permit and variance decisions

In all cases where notice of a public hearing is required notice shall be given by publication in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing and by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of such hearing. In all cases where notice to individuals or specific boards or other agencies is required, notice shall be sent electronically or by mail, postage prepaid. "Parties in interest" as used in this chapter shall mean the petitioner, abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the petitioner as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town, the planning board of the city or town, and the planning board of every abutting city or town. The assessors maintaining any applicable tax list shall certify to the permit granting authority or special permit granting authority the names and addresses of parties in interest and such certification shall be conclusive for all purposes. The permit granting authority or special permit granting authority may accept a waiver of notice from, or an affidavit of actual notice to any party in interest or, in his stead, any successor owner of record who may not have received a notice electronically or by mail, and may order special notice to any such person, giving not less than five nor more than ten additional days to reply.

Publications and notices required by this section shall contain the name of the petitioner, a description of the area or premises, street address, if any, or other adequate identification of the location, of the area or premises which is the subject of the petition, the date, time and place of the public hearing, the subject matter of the hearing, and the nature of action or relief requested if any. No such hearing shall be held on any day on which a state or municipal election, caucus or primary is held in such city or town.

Zoning ordinances or by-laws may provide that petitions for special permits shall be submitted to and reviewed by one or more of the following and may further provide that such reviews may be held jointly:--the board of health, the planning board or department, the city or town engineer, the conservation commission or any other town agency or board. Any such board or agency to which petitions are referred for review shall make such recommendations as they deem appropriate and shall send copies thereof to the special permit granting authority and to the applicant; provided, however, that failure of any such board or agency to make recommendations within thirty-five days of receipt by such board or agency of the petition shall be deemed lack of opposition thereto.

When a planning board or department is also the special permit granting authority for a special permit applicable to a subdivision plan, the planning board or department may hold the special permit public hearing together with a public hearing required by sections 81K to 81GG inclusive of chapter 41 and allow for the publication of a single advertisement giving notice of the consolidated hearing.

Upon the granting of a variance or special permit, or any extension, modification or renewal thereof, the permit granting authority or special permit granting authority shall issue to the owner and to the applicant if other than the owner a copy of its decision, certified by the permit granting authority or special permit granting authority, containing the name and address of the owner, identifying the land affected, setting forth compliance with the statutory requirements for the issuance of such variance or permit and certifying that copies of the decision and all plans referred to in the decision have been filed with the planning board and city or town clerk.

No variance, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the city or town clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, or that if it is a variance which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the petition for the variance accompanied by the certification of the city or town clerk stating the fact that the permit granting authority failed to

act within the time prescribed, and no appeal has been filed, and that the grant of the petition resulting from such failure to act has become final, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant.