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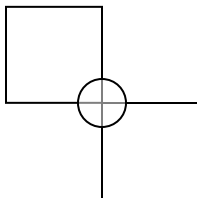
Vested Rights = Protected Nonconformity

- What protects it?
- To what extent can it be changed?

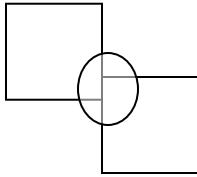
The purpose of zoning is to keep everyone playing by the same rules. When considering applications for exceptions to zoning laws, the Special Permit Granting Authority (SPGA) must examine to what extent variation should be allowed.

The Seven Protections of 40A §6

1. Preexisting Structure or Use
 - a. Protects any structure or use lawfully in existence or lawfully begun prior to the first advertisement for the zoning change that will make it nonconforming.
2. Building or Special Permit “In Hand”
 - a. Same as for #1 for any Building or Special Permit which has been issued and is thus literally in the hand of the applicant.
3. Single Lot: “50/5,000”
 - a. Protects a ***vacant lot*** for single and two-family residential use in existence when new zoning regulations become effective from increases in requirements for
 - i. Area
 - ii. Frontage
 - iii. Width
 - iv. Yard (Setback)
 - v. Depth
 - b. The lot must have at least 50 feet of frontage and 5,000 square feet of land area.
 - c. The lot must not adjoin any other property held by the same owner.
 - d. The protection is forever.
 - e. This does not provide protection from Septic or Wetlands laws.
4. Common Lot: “75/7,500”
 - a. Protects up to three adjoining and commonly held lots from zoning changes
 - b. For five years from the date the lots become nonconforming.
 - i. Must have been shown on a plan recorded before the effective date of the zoning change (the date of the vote).
 - ii. The protection stays with the lots if ownership changes, still dating from the date they became nonconforming.
 - iii. The lots become nonconforming when the five years is up.
 - c. The lots must have at least 75 feet of frontage and 7,500 square feet of land area.
 - d. The “Merger Theory” or “Merger Doctrine” provides that after five years adjoining and commonly held substandard building lots must be combined to form one lot that will meet or more closely approximate minimum lot area and frontage requirements.



Lots meeting at a point are not contiguous because there can be no movement from one to the other without traversing someone else's land.



Lots meeting with boundaries joining for a long enough space to afford movement from one to the other without traversing someone else's land are contiguous.

Mr. Smith	Mrs. Smith	Mr. Smith
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Smith, Inc.	Smith Trust	Smith LLC
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“Checkerboarding” is looked at very closely by the courts. The consensus of recent case law is that the validity of a landowner’s claim that adjoining lots are not hers and thus can avail themselves of single or common lot protections turns on the control the landowner had/has over the lots in question. The conclusion has routinely been single ownership protection will not be granted where one party exercises or could exercise control over the lots and their future, regardless of the individuals whose names are listed as the title owner.

5. Preliminary Subdivision Plan
 - a. Freezes zoning in place if
 - b. Filing occurs prior to the effective date of the zoning change and
 - c. The Preliminary Plan is followed within 7 months by a Definitive Plan.
6. Definitive Subdivision Plan
 - a. Protects the “land shown on the plan” for eight years from the date of endorsement by the Planning Board.
7. ANR
 - a. Protects against changes to use only
 - b. For a period limited to three years from the date of the endorsement of the plan.

Nonconforming Uses and Structures

A use or structure built pursuant to a *variance* is not protected under MGL c40A §6. The only way a change could be made in such a case is by amending the variance.

A use commenced by right, which *now* would require a special permit is nonconforming.

6 Year Statute of Limitations

Enforcement of an erroneously issued building permit must be done within six years.

The Certificate of Occupancy can be pulled during that time.

Occasionally, to ensure this will not happen, a builder or homeowner will ask the Building Inspector to revoke the building permit. When he refuses, an appeal is made to the ZBA. Once the ZBA rules that the permit was properly issued, the 6 year statute no longer applies and the C.O. can not be pulled.

This is called “res judica” or, “thing decided”.

The Building Inspector has no liability for errors in enforcement.

10 Year Statute of Limitations

Applies to structures only which are illegally built.

Improper *uses* have no protection.

Alterations to Nonconforming Structures

The “Section 6 Finding”

- Local Government can prohibit the expansion or change of preexisting nonconforming uses and structures.
- Section 6 requires that any expansion or change must comply with current zoning.
- The change can not create new nonconformities.

If bylaw allows for expansion or change, the expansion or change must not be more detrimental to the neighborhood.

Single and Two Family Exemptions (The Second “Except” Clause)

- “...a zoning ordinance or bylaw shall not apply ... to any ... alteration, reconstruction, extension, or structural change to a single or two family residential structure (which) does not increase the nonconforming nature of said structure.”

Other Notes of Interest

- “Permit Granting Authority” is always the Zoning Board of Appeals. “Special Permit Granting Authority” can be ZBA, Planning Board, or Selectmen as per designation in the town’s by-laws.
- The only appeals heard by the ZBA are appeals to decisions/actions by the Building Inspector. Appeals to decisions/actions by other boards/departments are made to the court.