

Major Variance and Permitting Changes Approved in State Budget Bill

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This year's state budget bill enacted sweeping zoning reforms with significant changes for local land use permitting, in particular housing development. Signed by the Governor on July 9, 2026, the amendments to the state Zoning Act ([excerpts here](#)) (M.G.L. c. 40A) include:

- Replacing the “substantial hardship” standard for variances with a new “practical difficulty” standard (M.G.L. c. 40A, § 10);
- Allowing use variances for residential uses statewide, regardless of local zoning provisions (M.G.L. c. 40A, § 10);
- Extending the lapse period for a variance from one year to two years and allowing for variance extensions of up to two years (M.G.L. c. 40A, § 10);
- Expanding protections from zoning amendments for new permits and pending applications (M.G.L. c. 40A, § 6);
- Allowing administrative approvals for changes to certain preexisting nonconforming structures and residential uses (M.G.L. c. 40A, § 6);
- Extending the time to resume abandoned nonconforming uses and structures from two years to four years (M.G.L. c. 40A, § 6);
- Extending protections for pre-recorded lots to any residential use (not just single and two family homes) (M.G.L. c. 40A, § 6); and
- Allowing electronic notices to certain parties for zoning amendments and permit applications



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(M.G.L. c. 40A, §§ 5 and 11).

Variances – the new “Practical Difficulty” Standard:

The amendments to M.G.L. c. 40A, § 10, effectively abandon decades of case law on the “substantial hardship” standard, which was challenging to meet and made variances difficult to sustain on appeal. The new variance standard is as follows:

“The permit granting authority shall...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 if the permit granting authority specifically finds that **a strict enforcement of the ordinance or by-law would result in a 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) whether the practical difficulty relates to soil conditions, shape or topography of such land or structures; (ii) whether the strict enforcement would impose a financial hardship on the appellant or petitioner; (iii) 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.” (Emphasis added).

This new standard may generate an increase in applications for variances to local zoning boards, with applicants testing what qualifies as a “practical difficulty.”

Residential Use Variances:

In addition to benefiting from the new “practical difficulty” standard, use variances for residential uses are now available statewide. Prior to these amendments, use variances were only available when specifically authorized in a zoning bylaw or ordinance, which was optional. The statute now provides:

“Except where local ordinances or by-laws 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...” (Emphasis added).

Rather than seeking zoning amendments from a town meeting or a city

council, applicants might now consider residential use variances for commercial parcels where non-residential uses have become less marketable.

Zoning Amendment Protections:

The bill imposes additional hurdles for municipalities and project opponents looking to amend the zoning governing a pending project. Section 6 of M.G.L. c. 40A now protects:

“structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued **or other entitlement applied for** under [M.G.L. c. 40A] before the first publication of notice of the public hearing on such ordinance or by-law...” (Emphasis added).

This provision was previously limited to a “building or special permit **issued** before the first publication of notice...”

Land Use Permitting Changes:

The budget bill has an emergency preamble, which means these changes take effect immediately.

The amendments will require towns and cities to alter their approach to variance decisions and zoning amendments, among other changes. Applicants may need to reconsider the viability of variance applications for projects constrained by dimensional controls and residential use restrictions.

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