

Massachusetts Zoning Reform: Key Changes to Special Permit and Zoning Variance Standards

By Ryan Clemens on August 4, 2026



The Massachusetts Legislature and the Healey Administration significantly overhauled the Commonwealth's special permit and zoning variance standards in the 2027 Appropriations Act. [1] The amendments to the Massachusetts Zoning Act, General Laws Chapter 40A, speed the development of housing and otherwise streamline the permit process for new construction and renovations. These updates provide longer timeframes for starting construction under approvals, expanded by-right permitting, and guaranteed variances for residential development. Together, the amendments contribute to greater opportunity, flexibility, and viability for building housing in Massachusetts. Whether certain changes apply to already-issued approvals remains uncertain, though.

Variances

Most notably, the amendments update the standard for variances for the first time since the Zoning Act was adopted. Variances provide exemptions from local zoning requirements for development projects. [2] Previously, variance applications needed to demonstrate a hardship (more than just financial) based on soil, shape, and topography of land. A common critique was that no such thing as a "legal" variance existed given this high bar.

The amendments completely replace the standard for variances. [3] Now, a variance requires a finding "that a strict enforcement of the ordinance or by-law would result in a practical difficulty." Section 10 further prescribes two categories of factors in order to evaluate that practical difficulty. The first category is mandatory, requiring the variance authority to weigh the variance's benefits to the applicant's interest and the public's (including production of housing) against any detriment to health, safety, or welfare of the neighborhood. The second category is optional and allows the variance authority to 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. This lower standard helps make variances, and thereby housing development, a reality in Massachusetts.

Further, Section 10 now allows variances for residential use in any zoning district. The Amendments keep the ban on variances for other uses that the zoning district does not allow, unless the zoning ordinance or bylaw expressly allows otherwise. This update greatly expands the opportunity to develop residential housing, especially in connection with the lower variance standard.

The Amendments double variances' lapse period from one to two years, unless not

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exercised, still not counting the time for an appeal under Section 17 of the Zoning Act. Those two years now exclude the time to pursue other approvals necessary to build the project. For example, if a project receives a variance but also requires an order of conditions and the building permit, the variance stays effective from its issuance to two years after the project receives the order of conditions and the building permit. This updated timeline removes some of the pressure to line up and receive every permission at the same time. Finally, the Amendments quadruple the amount of time for which variances can be extended from six months to two years.

Special Permits

The amendments also revamp the protections for preexisting nonconforming uses and structures from changes to zoning and the process of changing those preexisting nonconforming uses and structures through special permits. [4] The amendments first extend protections for preexisting nonconforming uses and structures to those that started under any form of zoning relief, such as a variance. [5] Previously, special permits were necessary to change or substantially extend preexisting nonconforming uses and alter or extend preexisting nonconforming structures. Structures or residential uses that are preexisting nonconforming for lot size or shape, frontage, lot coverage, or floor area ratio can now be extended or altered by right, meaning without a special permit. [6] The change still needs to comply with the current zoning for height, stories, and setback to qualify as by-right. This update creates the opportunity for many existing homes to easily expand, modernize, and simply improve by removing their need for a special permit. Further, non-residential structures receive the same opportunity if their use still conforms to zoning.

If you still need a special permit, the new standard is that the proposed changes now cannot be more detrimental to the existing neighborhood than the existing use and structure. [7] This update extends the special permit standard to consider qualities of the structure itself, which may include architectural style, siting, scale, and massing. Although this update creates more nuanced criteria for special permit findings, the protections afforded to a successful special permit are now stronger. Before, special permit and site plan projects froze zoning (i.e., changes to zoning do not apply to projects) for one year after their approval. Now, the zoning freeze lasts for two years and starts after the last approval that the project needs, such as an order of conditions or building permit. [8] This change minimizes complications for projects that may need extra time before establishing their permitted use or structure.

The amendments also double the time in which preexisting nonconforming uses and structures are deemed “abandoned” from two to four years. [9] This change extends the protection against zoning changes if the use or structure is not used, preserving preexisting nonconforming uses for longer and potentially preventing the need for zoning relief to continue the use after a gap.

Finally, the amendments remove a limit “for single and two-family residential use” from zoning freezes. [10] Before, changes to area, frontage, width, yard, or depth requirements did not apply to single or two-family residential lots which were split off from larger lots. The purpose was to prevent separately owned but adjoining lots from merging to satisfy the new zoning. And if adjacent lots were held in common (owned by the same person), the zoning freeze lasted for five years. Now, that protection extends to all lots regardless of use, residential or otherwise. This change preserves split-off lots as buildable for all uses if owned separately, and creates a window of opportunity for commonly owned lots to stay buildable for five years following a zoning change.

Notice

The amendments update notice requirements for special permit and variance applications to now include electronic notice. [11] If a project still requires a special permit or variance after the Amendments, these updates will make both applications faster and save on publishing costs to send notice of their hearings.

Retroactivity

Several of the preceding Amendments extend timeframes for special permits, nonconforming uses and structures, and variances; special permits are effective for two years and are shielded from zoning changes if use or construction is commenced within three years of issuance, nonconforming uses or structures are protected from abandonment for four years, and variances can be exercised and extended for two years. A looming question is whether these extended timeframes apply retroactively to approvals already in existence. The answer to that question is not clear yet, and so anyone considering an extended timeline for their approval should be cautious and assume that the Amendments do not apply, avoiding the risk of losing your right to build.

Statutory amendments apply retroactively if they state so, expressly or impliedly. [12] For example, a 1965 amendment to the Zoning Act expressly stated that it “shall apply to plans submitted to planning boards prior to its effective date. [13] Otherwise, amendments only apply prospectively, as in to approvals issued after the effective date. [14] Here, the amendments do not specifically state what approvals they apply to beyond the overall effective date of July 1, 2026, so they do not expressly apply retroactively. For impliedly, the Amendments do keep exceptions in Sections 6 and 10 of the Zoning Act for approvals before a certain date; as though the Sections’ rules apply to all approvals after that date. [15]

Beyond express retroactivity, amendments only apply retroactively if they regulate practice, procedure, and evidence but not if they impair a party’s previously acquired substantive rights, adversely affecting that party. [16] Further, the Land Court decided that a procedural amendment did not retroactively apply to a procedure that already ended. [17] Here, the amendments are likely procedural since they affect the time in which an approved party may exercise their substantive right to build, not the right itself. But the amendments and their extended timelines may only apply to existing approvals that have not yet lapsed, since that procedure is not over yet. The amendments would not likely revive a lapsed approval even if it would still be within the new timelines. Given the ambiguity here, approval holders should be cautious and assume the old timelines apply until a court provides a clearer answer.

RIW’s attorneys will continue to monitor and report on this critical development in Massachusetts zoning.

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[1] 2026 Mass. Acts 137.

[2] G.L. c. 40A, § 10.

[3] 2026 Mass. Acts 137, § 47.

[4] G.L. c. 40A, § 6.

[5] 2026 Mass. Acts 137, § 42.

[6] *Id.* § 43.

[7] 2026 Mass. Acts 137, § 44.

[8] *Id.* § 45.

[9] 2026 Mass. Acts 137, § 45.

[10] 2026 Mass. Acts 137, § 46.

[11] 2026 Mass. Acts 137, §§ 40-41, 48-49; G.L. c. 40A, §§ 5, 11.

[12] *Sliney v. Previte*, 473 Mass. 283, 288 (2015); *Waltham v. Vinviullo*, 364 Mass. 624, 626 (1974) (quoting *Hanscom v. Malden & Melrose Gas Light Co.*, 220 Mass. 1, 3 (1914)).

[13] 1965 Mass. Acts 366, § 2.

[14] *Sliney*, 473 Mass. at 288.

[15] 2026 Mass. Acts 137, § 135.

[16] *Id.*; *Smith v. MBTA*, 462 Mass. 370, 374 (2012).

[17] *J.D. Raymond Transp., Inc. v. Farm Ave. Two Lots, LLC*, 32 LCR 500, 505 (2025)

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