

40A § 5

Note 38

ZONING

Mass.App.Ct. 540. Zoning And Planning ⇌ 602

If the validity of a zoning action is fairly debatable, local judgment on the subject should be sustained on appeal. *McLean Hosp. Corp. v. Town of Belmont* (2002) 778 N.E.2d 1016, 56 Mass.App.Ct. 540. Zoning And Planning ⇌ 614.1

Ordinarily in the enactment and amendment of ordinances and bylaws, fairly strict compliance by local legislative bodies with prescribed statutory procedures is treated as mandatory, but the principle is not inflexible and a court, in appraising the legal effect of insubstantial non-compliance with procedural details, must consider whether strict compliance is mandatory or only directory and whether an asserted minor noncompliance is in fact significantly inconsistent with, or prejudicial to, apparent legislative objectives of the prescribed procedures. *Hallenborg v. Town Clerk of Billerica* (1971) 275 N.E.2d 525, 360 Mass. 513. Municipal Corporations ⇌ 106(1); Municipal Corporations ⇌ 114

In proceeding to determine validity and extent of town zoning bylaw, it could not be assumed that voters, in following recommendations of planning board by adopting by-law were activated by unsound reasons mentioned by board, where such reasons dealt with merely one phase of subject under discussion at town meeting at which bylaw was adopted. *Simon v.*

Town of Needham (1942) 42 N.E.2d 516, 311 Mass. 560. Zoning And Planning ⇌ 672

39. Record

Record sustained finding that there was no failure to comply with notice requirements, that there was insufficient proof that proposed change in town zoning bylaw constituted spot zoning, and that imperfect reference in warrant to locus as being agricultural district whereas it was mainly in agricultural district but in part in residential district was not fatal to validity of vote adopting amendment. *Guidi v. Town of Agawam* (1970) 265 N.E.2d 914, 358 Mass. 812. Zoning And Planning ⇌ 652.1; Zoning And Planning ⇌ 654

Record of town clerk showing that at town meeting it was voted to amend existing bylaws by adding a zoning ordinance which was contained in pamphlet distributed at town meeting in connection with existing bylaws held sufficient to identify the zoning bylaws as the bylaws adopted at the meeting. *Mayo v. Inhabitants of Town of West Springfield* (1927) 157 N.E. 700, 260 Mass. 594.

Record of vote at town meeting adopting zoning bylaws or existence and identification of bylaws adopted could not be contradicted or varied by showing that map used at town meeting at time of vote was not placed with the bylaws in the files of the town. *Mayo v. Inhabitants of Town of West Springfield* (1927) 157 N.E. 700, 260 Mass. 594.

§ 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 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 to the neighborhood. 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 or special 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 six months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

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

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.

Added by St.1975, c. 808, § 3. Amended by St.1977, c. 829, § 3D; St.1979, c. 106; St.1982, c. 185; St.1985, c. 494; St.1986, c. 557, § 54; St.1994, c. 60, § 67; St.1996, c. 345, § 1; St.2000, c. 29; St.2000, c. 232.

Historical and Statutory Notes

St.1977, c. 829, § 3D, an emergency act, approved Dec. 20, 1977, in the second paragraph, substituted "more" for "less".

St.1979, c. 106, in the fourth paragraph, inserted the second sentence.

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