

In a municipality with land use regulations, does a property owner have the right, under state law, to demolish and reconstruct a nonconforming structure within the same envelope because the building is “grandfathered?”

No. There is no statewide grandfathering of pre-existing nonconforming structures, uses, or lots. Definitions for non-conforming structures, uses, or lots, which can be found in 24 V.S.A. §§ 4303(13)-(15), are generally those that are no longer in conformance with the local bylaw, but were at one time, including development “improperly authorized by the administrative officer.” State law enables municipalities to “regulate or prohibit expansion or perpetuation of nonconformities,” and provides guidelines for what must be addressed. 24 V.S.A. § 4412 (7). Whether the property can reconstruct or resume a nonconformity after demolition, discontinuance, or destruction depends on how a municipality addresses nonconformities in its local zoning bylaws.

A municipality that adopts land use bylaws, as enabled in Chapter 117, must include provisions addressing specific issues outlined in 24 V.S.A. § 4412, and then only to the extent as authorized by law (or a charter.) “A municipality has zoning authority only in accordance with, and subject to, the terms and conditions imposed by the state in making the power grant.” *Flanders Lumber & Building Supply Co. v. Town of Milton*, 128 Vt. 38, at 45 (1969). Of these “required provisions and prohibited effects” in Section 4412 (which include existing small lots, protection of home occupations, and heights of renewable energy resources), a municipality must outline how it will address nonconformities. “*All bylaws shall define how nonconformities will be addressed, including standards for nonconforming uses, nonconforming structures, and nonconforming lots.*” 24 V.S.A. § 4412(7). This enabling legislation gives discretion to municipalities for how they will address nonconformities, whether they will allow grandfathering of building envelopes, or allow an expansion of a nonconforming use, and what standards may be considered in granting approval.

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VLCT News, June 2010