MCLE — ZONING PRACTICE PROGRAM

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Massachusetts cases since November 1, 2017 that directly discuss M.G.L. c.40A, §6.
Acknowledgement to Phil Lapatin, Esq. of Holland and Knight for several of these case abstracts that he prepared for an earlier REBA program.

O'Connor v. Zoning Board of Appeals of Dennis, 92 Mass. App. Ct. 1112 (2017)
Provisions of M.G.L. c. 40A, §6 (fourth paragraph) allowing dwelling to be built on dimensionally nonconforming lot does not apply to lot held in common ownership with adjacent parcel when town adopted zoning code amendment creating nonconformity. Under §6, the relevant "time of recording or endorsement" is the most recent instrument of record prior to the effective date of the zoning change from which the exemption is sought. Relevant deed brought parcels into common ownership, thereby failing to satisfy an express condition for exemption to apply.

RCA Development, Inc. v. Galligan, No. 16 MISC 000744 (RBF), 2017 WL 5078913 (Mass. Land Ct. Nov. 2, 2017)
Lot was validly created pursuant to subdivision not requiring planning board approval notwithstanding failure to record approval-not-required plan. Further, pursuant to provisions of local zoning code offering more grandfather protection than M.G.L. c. 40A, §6 for certain nonconforming lots, house may be constructed on undersized lot with insufficient frontage held in common ownership with adjoining parcel.

Hurley v. Keohane, No. 16 MISC 000146 (RBF), 2018 WL 771387 (Mass. Land Ct. Feb. 8, 2018)
Court overturned decision improperly allowing construction of house on undersized lot held in common ownership with adjoining parcels where presence of tennis court on January 1, 1981 precluded application of local zoning code exemption in favor of lots which were "vacant" as of such date.

Cronin v. Town of Lunenburg, 92 Mass. App. Ct. 1130 (2018)
Where undersized lot lost protection as nonconforming use when portion of land conveyed, reconveyance could not revive lot's preexisting nonconforming status under doctrine of infectious invalidity.

Barth v. City of Peabody, No. 15-13794-MBB (D. Mass. Mar. 30, 2018)
Application for variance, or alternative finding that no variance was required under M.G.L. c. 40A, §6 exemption allowing reconstruction that "does not increase the nonconforming nature of said structure," denied by local zoning board of appeals. Appellant's argument that city's failure to grant application for variance constituted a taking without compensation under the Fifth Amendment and the Massachusetts eminent domain statutes failed because city neither condemned the property nor physically appropriated it, nor did it deny all economically beneficial or productive uses of the land.

Ruble v. McGee, No. 15 MISC 000229 (RBF), 2018 WL 2246206 (Mass. Land Ct. May 16, 2018)
Under Powers test, nonconforming use of property for vehicle repair was not improperly expanded by servicing of trucks as well as cars or temporary storage of vehicles. Further, town could not retroactively apply conditions from expired special permits to operator's prior lawful nonconforming use.

O'Brien Homes, Inc. v. Town of Lunenburg, No. 13 MISC 477878 (KCL), 2018 WL 2340796 (Mass. Land Ct. May 23, 2018)
Where preliminary subdivision plan application was followed within seven months by definitive subdivision plan application under subdivision control law, subsequent appeal to Land Court less than one month after local planning board's decision denying that plan was timely. Further, submission of amended plan to board less than one year after Appeals Court dismissal of applicant's appeal from Land Court decision, addressing the reasoning for board's initial disapproval, was made within a reasonable time. Accordingly, M.G.L. c. 40A, §6 freeze applied.

Fink v. LeDuc, No. 16 MISC 000377 (KCL), 2018 WL 3340766 (Mass. Land Ct. Jul. 6, 2018)
Operation of commercial kennel and pet store in violation of local zoning rules failed to qualify for preexisting nonconforming protection under each factor of Powers test where original owners of land merely boarded and bred dogs in a small operation focused on vacation dog boarding, and new use was substantially different in scale and scope. Further, unlike original owners' former operation, commercial kennel and pet store was continuous, noisy, and disruptive to neighborhood.

Giannelli Management and Development Corp. v. City of Malden, 17 MISC 000553 (MDV), 2018 WL 3369807 (Mass. Land Ct. July 10, 2018)
Where adjoining parcels in common ownership properly classified as single lot under local zoning code, neither may be separately developed pursuant to M.G.L. c. 40A, §6.

Kneer v. Zoning Board of Appeals of Norfolk, 93 Mass. App. Ct. 548 (2018)
Trial judge must determine whether, pursuant to merger doctrine, house may be constructed on dimensionally nonconforming lot controlled by trustee who also owns adjoining parcel but must discharge fiduciary duties to her mother as trust's beneficiary.

Styller v. Aylward, 16 MISC 000757 (KCL), 2018 WL 4502015 (Mass. Land Ct. Sep. 19, 2018)
AirBnB-type rentals are not “uses” that can be grandfathered for purposes of M.G.L. c. 40A, §6. Assuming that AirBnB type rentals could qualify for grandfather protection, such a use was not accessory to single family residence under local bylaw.

Graf v. Board of Appeals of Mattapoisett, 16 MISC 000203 (MDV), 2018 WL 6738179 (Mass. Land Ct. Dec. 20, 2018)
Annulled decision of Zoning Board of Appeals authorizing use of new garage’s second floor as office/studio space. While a special permit/Finding is the correct form of relief to intensify an existing nonconformity, a new nonconformity requires a variance, citing Deadrick.