

MONETARY REGULARIZATION OF BUILDING VIOLATIONS AND THE ASSESSMENT OF CHANGES TO A BUILDING'S FOOTPRINT. CLARIFICATIONS FROM THE COUNCIL OF STATE: THE BUILDING FOOTPRINT MUST BE ASSESSED WITH REFERENCE TO THE BUILDING AS A WHOLE

The judgment of the Italian Council of State (Section VII, 25 June 2026, No. 5110) addresses an issue of particular importance in Italian planning and building law, providing significant clarification on the criteria governing the assessment of whether a change to a building's shape constitutes an essential variation for the purposes of applying the so-called monetary regularization (*fiscalizzazione*) mechanism under Article 34 of Presidential Decree No. 380/2001.

The Case

The dispute arose from the decision of the Municipality of Tarquinia to reject an application for monetary regularization concerning certain building irregularities identified in an apartment forming part of a residential building constructed in the early 1970s. The municipal authority concluded that the works constituted an essential variation of the building's shape exceeding the limit established under the applicable regional legislation. In reaching that conclusion, however, it assessed the variation solely by reference to the individual apartment affected by the unauthorized works.

In overturning the judgment of the Regional Administrative Court of Lazio, the Council of State identified this interpretative approach as the principal flaw in the municipality's reasoning.

Although the Municipality confirmed that a building permit had been issued in 1924, it stated that neither the permit nor its accompanying drawings could be retrieved in its archives. It nevertheless maintained that the cadastral plans of May 1951 revealed that the property had been enlarged beyond its original configuration. Based on those findings, the Municipality adopted the contested demolition order.

The Court's Ruling

The Council observed that the building shape is "*the planimetric and volumetric configuration of a building and, by its very nature, concerns the external bulk and outline of the structure*". Accordingly, the shape constitutes an intrinsic characteristic of the building considered as a single architectural entity and cannot be assessed by reference to the individual units into which the building is divided.

Consequently, "*Where a building consists of several real estate units and has been authorized under a single building permit, the assessment of any variation in the*

building's footprint cannot be carried out separately for the individual apartment concerned but must instead be conducted with reference to the building as a whole."

Having upheld the first ground of appeal, the Council of State also examined the additional reasons on which the municipality refusal was founded, finding them inadequate both in terms of the investigation and the reasoning.

The evidence gathered during the proceedings established that the irregularities had been carried out contemporaneously with the original construction of the building and therefore prior to the landscape protection designation imposed in 1977. This circumstance was confirmed both by the technical assessment conducted at first instance and by an earlier landscape compatibility procedure, which had concluded favourably.

In light of these findings, the Court held that the municipality could not lawfully rely on the subsequently imposed landscape protection constraint as an automatic ground for excluding access to monetary regularization. Nor could it infer, solely from a later cadastral amendment, that the unauthorized works had been carried out after the landscape designation, in the absence of adequate evidentiary support capable of establishing that fact.

Conclusions

With this judgment, the Council of State provides a systematic interpretation of the rules governing essential variations and the monetary regularization of unauthorized building works. The Court reaffirms that correctly identifying the appropriate benchmark for assessing changes to a building's shape is an indispensable prerequisite both for the lawfulness of administrative action and for the proper application of the sanctions regime established under the Consolidated Building Act. The decision therefore forms part of a consistent line of case law aimed at ensuring a coherent and rigorous application of the legal framework governing planning and building enforcement, while upholding the principles of proportionality, reasonableness, and the adequacy of administrative investigations.

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2

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