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Permit-Free Building Works for Appurtenant Structures and Municipal Zoning Limits

Legal classification of outdoor paving works and the procedural bar against ex officio disapplication of general municipal zoning plans in Council of State, Judgment of 3 November 2026, no. 7973

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Reading time 13 min

Current Legal Framework as of 13 November 2026: Administrative case law in 2026 refines the boundary between appurtenant interventions exempt from a building title and new constructions governed by local spatial planning, clarifying through Judgment no. 7973/2026 of the Council of State (*Consiglio di Stato*) the burden of proof regarding municipal technical implementation rules and the prohibition against disapplying them of the court's own motion in building distance disputes.

ABSTRACT

This article examines the substantive and procedural requirements governing **permit-free building works for appurtenant structures** in light of Council of State (*Consiglio di Stato*) Judgment no. 7973 of 3 November 2026. The analysis focuses on the interplay between Article 6, paragraph 1, letter e-ter), of Presidential Decree no. 380/2001 and the provincial urban planning legislation of Bolzano, assessing under what conditions an access ramp or a ground-level terrace may be classified as **new construction** by municipal technical implementation rules. The paper further investigates minor encroachments into agricultural zones and the exclusion of architectural projections from **minimum building distances** under Article 9 of Ministerial Decree no. 1444/1968, highlighting the procedural significance of the prohibition against ***ex officio* disapplication** of unchallenged general administrative acts as well as the substantive viability of such local regulatory derogations.

Key Takeaways

- **Outdoor paving and permit-free works:** An access ramp built over a pre-existing driveway and a ground-level terrace fall within Article 6, letter e-ter), of Presidential Decree no. 380/2001 unless a specific provision to the contrary is set forth in the municipal technical implementation rules.
- **Burden of pleading and proving municipal rules:** A public authority that classifies an appurtenant work as new construction must expressly cite and prove the specific municipal technical zoning rule mandating such reclassification.
- **Minor encroachment into agricultural land:** Modest-sized works located along the outer edge of a plot do not impair its agricultural designation where they cause no significant alteration of the soil or actual farming use.
- **Bar on *ex officio* disapplication:** Administrative courts cannot disapply of their own motion municipal technical clauses excluding projections of up to 1.5 metres from building distance calculations where the general planning act has not been challenged.

CASE DOSSIER

JURISDICTION
Italy (Civil Law)

SUBJECT AREA
Administrative Law & Construction & Urban Planning

LEADING DECISION
Council of State, Judgment of 3 November 2026, no. 7973 — Reverses the dismissal by the Regional Administrative Court of Justice

Legal Principle / Editorial Headnote

Outdoor paving works and minor appurtenant structures fall within the scope of permit-free building activity unless expressly classified as new construction under the technical implementation rules of the municipal zoning plan, which, as general administrative acts, cannot be disapplied ex officio by the administrative courts.

01. THE NATURNO CASE AND THE REFUSAL OF RETROSPECTIVE REGULARISATION IN AN AGRICULTURAL ZONE (COUNCIL OF STATE NO. 7973/2026)

1.1 — The Building Intervention Across Tourist and Agricultural Zones

A close reading of the reasoning delivered by the **Council of State (*Consiglio di Stato*), Judgment of 3 November 2026, no. 7973**[1] requires starting from the topographical layout of the site and the chronological sequence of building permits. The appellate court clarifies the boundaries of **permit-free building works for appurtenant structures** vis-à-vis the prescriptions of local urban planning instruments. The dispute arose in the **Municipality of Naturno** on a parcel of land subject to a mixed zoning designation. Specifically, the building plot hosts a campsite, zoned under the municipal plan as an area for tourist facilities, save for a northern strip classified as an **agricultural zone**.

It was precisely along this zoning boundary that the administrative sequence reviewed by the Chamber unfolded. In 2021, the owner company had obtained a **building permit** for the renovation and expansion of the hospitality facility. Subsequently, on 14 March 2024, the same company submitted an application for certain **variations during**

construction. Those works consisted in the creation of a ground-floor terrace, the enlargement of a first-floor balcony, limited earthworks, and an **access ramp to the underground garage**, all partially extending onto the agricultural strip.

A textual examination of the facts established in the judgment immediately reveals a decisive element for legal classification. The vehicular access served by the ramp had not been carved out of previously undeveloped ground. Photographic records and orthophotos produced in the proceedings demonstrated the prior existence of a **paved access road** with a gentle gradient, already referenced both in a 1994 building concession and in the 2021 building title. The contested ramp therefore amounted to the **regrading of a pre-existing entryway**, carried out with minimal morphological impact along the northern margin of the plot.

The actual physical condition of the strip zoned as agricultural green space also carries specific weight in the Court's reconstruction. The adjoining parcel, jointly owned by the appellant general partner and the company, accommodates a residential building and uses the strip in question as an **appurtenant residential garden**. This factual circumstance underpins the urban compatibility assessment, since it rules out any risk that a marginal encroachment could impair **actual agricultural cultivation**. The factual premise thus anticipates the interpretive method guiding the decision: verifying the concrete transformative impact of each individual structure before triggering inhibitory or enforcement measures.

1.2 — The Municipal Refusal and the Reversal of the First-Instance Judgment

The municipal refusal order issued on 13 June 2024, preceded by a prior notice of rejection dated 10 May 2024, rested on two distinct sets of grounds. First, the municipal administration classified the variation works as **incompatible with the agricultural designation** of the strip onto which they partially extended, invoking **Article 62 of Provincial Law of Bolzano no. 9/2018** concerning new construction. Second, with regard to the ground-floor terrace and the first-floor balcony, the Municipality alleged a breach of the **minimum 10-metre distance** from the building standing on the neighbouring parcel.

The **Regional Administrative Court of Justice (*TRGA*) of Bolzano** dismissed the action brought by the company and its general partner in its entirety, endorsing the local authority's restrictive stance. According to the court of first instance, the **2021 building title** did not authorise any crossing of the zoning boundary, and the exact dimensions of the balconies emerged solely from the layout drawings attached to the 2024 retrospective regularisation application. Furthermore, the first-instance court ruled out that the contested structures could qualify as **mere architectural projections**, classifying the ground-floor terrace in particular as a **new building body** subject to a full building permit.

On appeal, the Council of State (*Consiglio di Stato*) overturns this reading through a detailed examination of the two main grounds of appeal. The first ground is upheld by classifying the access ramp to the underground garage as a **permit-free building work**, given the absence of proof that the municipal technical implementation rules bring it within the notion of new construction. The second ground is likewise upheld under the dual aspect of the **immateriality of the encroachment** into the agricultural zone and the applicability of the local derogation governing projections of up to 1.5 metres. By contrast, the third ground of appeal, concerning the alleged need for an implementation plan, is declared absorbed.

The operative part of the judgment marks a clear-cut procedural outcome that directly engages the directive and binding effects of administrative *res judicata*. The appeal is upheld with full reversal of the first-instance judgment and consequent **annulment of the challenged administrative acts**. Pursuant to Article 34, paragraph 1, letter e), of the Code of Administrative Trial, the Chamber grants the Municipality of Naturno a time limit of **fifteen days from**

publication to re-examine the 2024 regularisation application, binding the renewed exercise of administrative power to the rulings set out in the reasoning.

02. PERMIT-FREE BUILDING WORKS FOR APPURTENANT STRUCTURES BETWEEN THE CONSOLIDATED BUILDING ACT AND MUNICIPAL TECHNICAL RULES

2.1 — Ramps, Ground-Level Terraces, and Outdoor Paving Under Article 6 of Presidential Decree no. 380/2001

The starting point of the statutory interpretation developed in the judgment lies in the textual scope of Article 6, paragraph 1, letter e-ter), of Presidential Decree no. 380/2001 (Consolidated Building Act). That provision places within the sphere of **permit-free building activity** all **outdoor paving and finishing works**, including parking spaces, provided they remain within the **permeability index** established by the municipal urban planning instrument. In the dispute examined by the Council of State (*Consiglio di Stato*)[1], both the **access ramp** leading to the basement level and the ground-level terrace are brought directly under that statutory category.

The legal classification of the ramp rests on a rigorous verification of the **prior physical state of the premises** predating the variation works. The Chamber relies on orthophotos and photographic surveys to establish that the access driveway was already surfaced and featured a slight incline. Consequently, the absence of a standalone **original building permit** specifically covering that driveway does not render it unlawful. On the contrary, its nature as a minor work justifies concluding that the original layout already fell within **permit-free building works for appurtenant structures** and outdoor site finishing, requiring no prior permit.

The very same substantive criterion governs the assessment of the **ground-floor terrace** and the **first-floor balcony**. The appellate court rejects the view taken by the first-instance court (*TRGA*), which had treated the flush platform as an autonomous new building structure. Instead, the ground-level terrace is equated to an outdoor paving and finishing work devoid of **volumetric autonomy**. For its part, the first-floor balcony remains an overhanging architectural element that entails no **physical transformation of the underlying ground** whatsoever.

A comparison with contemporaneous administrative case law clarifies the exact boundaries of this interpretive approach. Along converging lines, Council of State (*Consiglio di Stato*), Judgment no. 641/2026[2] classified the levelling of a topsoil yard, small anchoring slabs, and modest utility enclosures as permit-free building works, keeping them sharply distinct from the erection of a new volume-generating storage shed. Conversely, Council of State (*Consiglio di Stato*), Judgment no. 4117/2026[3] denied permit exemption for **asphalt paving** covering 64 square metres over permeable ground, a 195.80-square-metre yard, and a masonry barbecue inside a landscape-protected area. The diverging outcomes are far from arbitrary: Article 6 of the Consolidated Building Act applies only where the outdoor intervention retains modest proportions and alters neither the drainage capacity nor the landscape setting of the plot.

2.2 — Reference to Municipal Technical Implementation Rules and the Threshold of New Construction

The core pillar of the Court's reasoning concerns the coordination between the statutory rules on appurtenant works and municipal spatial planning powers. The refusal of regularisation issued by the Municipality of Naturno relied on Article 62, paragraph 1, letter e), of Provincial Law of Bolzano no. 9/2018, a provincial provision mirroring Article 3, paragraph 1, letter e.6), of Presidential Decree no. 380/2001. Both provisions classify as **new construction interventions** those appurtenant works whose volume exceeds the threshold of 20 per cent of the main building's volume, or which are

expressly classified as such by the **technical implementation rules of municipal zoning plans** having regard to zoning designations and environmental or landscape value.

From an interpretive standpoint, this statutory architecture establishes a **requirement of express — never presumed — classification**. It is not sufficient for a public authority merely to invoke the **general statutory clause** of Article 62 of Provincial Law no. 9/2018 in order to turn an appurtenance into new construction. Rather, the administration must pinpoint the exact **provision of the municipal technical implementation rules** that, for the specific zone concerned, subjects that category of work to the **building permit** regime. In the case at hand, neither the prior notice of rejection nor the final refusal decision identified which technical rule of the Municipal Urban Plan classified the access ramp as new construction.

Documentary scrutiny carried out by the Chamber on the technical implementation rules of the Municipal Urban Plan filed in court confirmed the complete absence of any restrictive rule governing **outdoor paving works**. Both the **burden of proof** and the duty to state reasons on this point rest entirely with the local authority asserting the planning restriction. This approach aligns with principles already examined regarding precarious structures in agricultural zones: a municipality cannot substitute an abstract assertion of incompatibility for a specific verification of the applicable technical zoning rule. Absent an express reference in the municipal technical rules and below the 20 per cent **volumetric threshold**, the appurtenant classification prevails.

> Classifying an appurtenant work as new construction cannot be presumed from the zoning designation of the land; it requires an express and proven provision in the municipal technical implementation rules.

The soundness of this principle finds further confirmation in Judgment no. 4117/2026, where the outcome unfavourable to the landowner stemmed precisely from the existence of specific local prescriptions. In that dispute, the Municipal Plan Document of Livigno permitted only gardens shown on approved site plans and barbecues measuring up to 4 square metres, whereas Article 6, paragraph 1, item 6/6, of the local **building regulations** required a certified notice of commencement of works (*SCIA*) even for appurtenances remaining within 20 per cent of the main building's volume. Where a municipal rule exists and is duly invoked, it narrows the scope of **permit-free building activity**; where no such rule exists, the favourable national or provincial classification retains full force.

03. DISTANCES BETWEEN BUILDINGS, AGRICULTURAL COMPATIBILITY, AND THE BAR AGAINST DISAPPLYING MUNICIPAL TECHNICAL RULES

3.1 — Encroachment into Agricultural Land and Measurement of Projections Under Municipal Rules

Turning to the second limb of the reasoning in Council of State (*Consiglio di Stato*), Judgment no. 7973/2026[1], the Chamber addresses in turn the issue of **encroachment into the agricultural zone** and compliance with statutory building distances. Under the first aspect, the appellate court rejects any automatic equation between a boundary overlap on paper and an absolute building prohibition. The strip affected by the ramp, the terrace, and the overhead projection of the balcony covers only a few dozen square metres, lies along the outer edge of the plot, and entails no significant loss of soil. Because the adjacent land already serves as the appurtenant garden of a residential house, agricultural use suffers no **concrete prejudice**.

With respect to **distances between buildings**, the Municipality had invoked the **mandatory minimum limit of 10 metres** established by Article 9 of Ministerial Decree no. 1444/1968 vis-à-vis the building standing on parcel no. 1476. A textual reading of Article 1 of the Technical Implementation Rules of the Naturno Municipal Urban Plan, however, reveals a different rule for **overhanging elements**. That provision expressly stipulates that balconies, cornices, eaves, and canopies with a **projection of up to 1.5 metres** are excluded from the measurement of building distances.

It is precisely around the legal effect of this local regulatory clause that the most significant procedural turning point of the judgment revolves. The Chamber candidly acknowledges that the compatibility of Article 1 of the municipal technical rules with the **national statutory benchmark** of Article 9 of Ministerial Decree no. 1444/1968 might well be open to debate. Yet the administrative court holds that it cannot **disapply *ex officio*** the local urban planning provision. Indeed, a general municipal zoning plan constitutes a **general administrative act**, which may only be annulled following a timely challenge brought by a party, and may never be incidentally disapplied by the court of its own motion in the absence of a specific claim.

Procedural Status of Municipal Technical Implementation Rules

Provisions contained in municipal technical implementation rules belong to the category of general administrative acts rather than primary or strictly normative regulations. Unless challenged within the statutory time limit, the administrative court is bound to apply them when reviewing an individual building measure, and is barred from disapplying them ex officio even where the municipal clause raises doubts as to its compatibility with mandatory national limits on building distances.

An immediate consequence follows both for the unlawfulness of the challenged refusal and for the mootness of the third ground of appeal. Because the appellant had legitimately relied on Article 1 of the municipal technical rules currently in force and effective, neither the terrace nor the balcony breached the minimum distance as calculated under the local zoning plan. Moreover, once any genuine incompatibility with the agricultural designation is ruled out, it becomes unnecessary to determine whether an **implementation plan** was required under Article 5, paragraph 2, of Decree of the Provincial President of Bolzano no. 55/2007.

3.2 — Enforcement Regimes and Holistic Assessment in Recent Case Law

The rule laid down in the Naturno case fits within a nuanced body of 2026 administrative case law that has delineated the boundaries separating **urban planning appurtenances**, permit-free works, and demolition orders. A first point of comparison is provided by Council of State (*Consiglio di Stato*), Judgment no. 5872/2026[4], concerning ancillary facilities serving an appurtenant swimming pool in an agricultural zone (a changing and restroom unit measuring roughly 8.15 square metres, a dry-assembled prefabricated kitchenette, and an iron gazebo open on all sides). In that ruling, the Chamber upheld the annulment of the **demolition order** issued under Article 31 of Presidential Decree no. 380/2001, classifying the structures as appurtenances subject solely to the pecuniary or restorative sanction under **Article 37 of Presidential Decree no. 380/2001** for lack of a certified notice of commencement of works (*SCIA*), inasmuch as they lacked **independent usability**.

Moving in the opposite direction is Council of State (*Consiglio di Stato*), Judgment of 2 November 2026, no. 7914[5], which sets two strict limits against the defensive fragmentation of unlawful building works. Where multiple works are carried out inside a **protected area** — specifically an underground room of roughly 54 square metres and 166 cubic

metres, an overlying 60-square-metre terrace with a 30-square-metre canopy, a 16-square-metre storage room, and a retaining wall — judicial assessment must be **holistic rather than piecemeal**. Furthermore, even **underground volumes** that create new volume or expand pre-existing volume require a **building permit** and cannot be equated to minor appurtenances.

The distinction between impermissible piecemeal fragmentation and legitimate functional differentiation also emerges from a comparison with Judgment no. 641/2026[2]. Where structures are autonomous and structurally distinct from one another, the court may sever permit-free works (dog kennels, a modest wooden utility enclosure, LPG inspection pits, yard levelling) from a newly built storage shed (10.58 square metres), upholding demolition solely for the latter. That same judgment further clarifies that filing an application for **retrospective conformity assessment under Article 36 of Presidential Decree no. 380/2001** does not extinguish a prior demolition order, but merely **suspends its effectiveness temporarily** pending either an express decision or the formation of **silent rejection** (*silenzio-rigetto*).

Judgment / Court	Classification	Core Holding
Council of State, Judgment of 3 November 2026, no. 7973	Permit-free works	Access ramp and ground-level terrace qualify as permit-free works absent express classification in municipal technical rules; ex officio disapplication of local rules on projections is barred.
Council of State, Judgment no. 641/2026	Partial exemption	Dog kennels, utility pits, and ground levelling qualify as permit-free works; a new storage shed requires a permit; an Article 36 regularisation application suspends rather than extinguishes demolition.
Council of State, Judgment no. 4117/2026	Exemption denied	Asphalt paving, recycled-aggregate yard, and concrete barbecue in a protected area breach municipal building regulations (requiring SCIA) and lack landscape authorisation.
Council of State, Judgment no. 5872/2026	SCIA appurtenance	Changing room, dry-assembled kitchenette, and open-sided gazebo serving a pool in an agricultural zone are appurtenances governed by Article 37 rather than Article 31 of Decree no. 380/2001.
Council of State, Judgment of 2 November 2026, no. 7914	New construction	Holistic evaluation of unlawful works; appurtenant status ruled out for a 54-sq-m underground room and a canopied terrace in a landscape-protected area.

04. CRITICAL ASSESSMENT AND PRACTICAL GUIDANCE FOR PRACTITIONERS AND LOCAL AUTHORITIES

4.1 — When Municipal Technical Rules Restrict Permit-Free Appurtenant Works and How to Challenge Them in Court

This simplification regime encounters an insurmountable limit whenever the technical implementation rules of the municipal zoning plan expressly classify an intervention as new construction or subject it to an administrative building title. In litigation, counsel must file the complete text of the municipal technical rules to prove the absence of any such restrictive clause and must challenge any unlawful local regulatory provisions within the statutory time limit.

From a critical perspective, the solution reached by the Council of State (*Consiglio di Stato*), Judgment of 3 November 2026, no. 7973[1] leaves open a significant systemic tension concerning the relationship between **local spatial planning** and **mandatory national limits on building distances**. The Chamber acknowledges that Article 1 of the Naturno technical implementation rules, by excluding projections of up to 1.5 metres from distance measurements, raises serious doubts of compatibility with Article 9 of Ministerial Decree no. 1444/1968. Yet that substantive tension is bypassed on purely procedural grounds via the **prohibition against *ex officio* disapplication** of an unchallenged general administrative act. While consistent with the structure of Italian administrative litigation, this approach yields an outcome shaped by the peculiar alignment of parties in the dispute, where the owner of the neighbouring building happened to be the appellant general partner himself and therefore had no interest whatsoever in challenging the local rule.

Outside that unusual coincidence of subjective interests, the approach adopted in the judgment exposes municipal authorities to future litigation brought by neighbouring third parties or to subsequent corrective planning amendments. Furthermore, careful **distinguishing** remains essential with respect to factual scenarios in which permit exemption cannot operate. The favourable rule articulated in the Naturno dispute does not apply where the land is subject to a **landscape protection constraint** under Legislative Decree no. 42/2004 and lacks the requisite landscape authorisation, as confirmed by Judgments no. 4117/2026[3] and no. 7914/2026[5]. Likewise, the simplified regime gives way whenever the works generate **new underground volumes** or independently usable floor space, or where **local building regulations** expressly require a certified notice of commencement of works (*SCIA*) even below the 20 per cent volumetric threshold.

From a litigation strategy standpoint, the judgment offers clear guidance on the **allocation of the burden of proof** and the framing of grounds for judicial review. A private party invoking **permit-free building works for appurtenant structures** must document the prior physical condition of the site through orthophotos, photographic surveys, and historical building permits, as well as file in court the **municipal technical implementation rules in force** so as to demonstrate the absence of provisions reclassifying the work as new construction. Conversely, where a municipality refuses retrospective regularisation or orders demolition by generically citing Article 3, paragraph 1, letter e.6), of Presidential Decree no. 380/2001 without identifying the specific municipal technical rule relied upon, the administrative decision is vulnerable to annulment for **defective fact-finding and failure to state adequate reasons**; analogous procedural safeguards apply in disputes over silent approval and administrative self-remedy in building permits. Ultimately, striking a proper balance between municipal planning autonomy and statutory building simplification hinges on the precision of local technical rules and strict adherence to procedural rules governing judicial challenges.

References & Authorities Cited

Statutory Provisions

- Article 3, paragraph 1, letter e.6), of Presidential Decree no. 380 of 6 June 2001 — classification of appurtenant interventions as new construction pursuant to municipal technical urban planning rules
- Article 6, paragraph 1, letter e-ter), of Presidential Decree no. 380 of 6 June 2001 — permit-free building activity for outdoor paving and finishing works
- Articles 31, 33, 36, and 37 of Presidential Decree no. 380 of 6 June 2001 — enforcement and sanctioning regime for unlawful building works and retrospective conformity assessment
- Article 9 of Ministerial Decree no. 1444 of 2 April 1968 — mandatory minimum distance limits between buildings
- Article 62, paragraph 1, letter e), of Provincial Law of Bolzano no. 9 of 10 July 2018 — provincial rules governing appurtenant interventions classified as new construction
- Article 34, paragraph 1, letter e), of Legislative Decree no. 104 of 2 July 2010 — appropriate judicial measures to ensure implementation of administrative *res judicata*

Case Law Cited

1. **Council of State, Judgment of 3 November 2026, no. 7973** — Reverses the dismissal by the Regional Administrative Court of Justice of Bolzano and annuls the refusal of retrospective regularisation: an access ramp over a pre-existing driveway and a ground-level terrace fall within permit-free building works absent a proven contrary provision in the municipal technical implementation rules, which cannot be disapplied ex officio with respect to projection measurements. Outcome: upheld. Para.: §§ 10.2-11.3.
2. **Council of State, Judgment no. 641/2026** — Distinguishes between permit-free building works (dog kennels, modest utility enclosure, anchoring slabs, LPG pits, yard levelling) and a new storage shed requiring a building title, clarifying that a regularisation application under Article 36 of Presidential Decree no. 380/2001 suspends rather than extinguishes a prior demolition order. Outcome: upheld. Para.: §§ 4-6.
3. **Council of State, Judgment no. 4117/2026** — Upholds a demolition order for a concrete barbecue, asphalt paving over permeable land, and a yard inside a protected area, ruling out permit-free status in light of municipal building regulations requiring a certified notice of commencement of works and the lack of landscape authorisation. Outcome: dismissed. Para.: §§ 23-24.

4. **Council of State, Judgment no. 5872/2026** — Confirms the appurtenant nature of a changing-restroom unit, dry-assembled prefabricated kitchenette, and open-sided gazebo serving a swimming pool in an agricultural zone, holding the sanction under Article 37 of Presidential Decree no. 380/2001 applicable instead of demolition under Article 31. Outcome: dismissed. Para.: §§ 3-4. ↑

5. **Council of State, Judgment of 2 November 2026, no. 7914** — Reaffirms the holistic rather than piecemeal evaluation of unlawful building works in protected areas, excluding appurtenant status for a 54-square-metre underground room and a terrace with an overhead canopy. Outcome: dismissed. Para.: §§ 12-13. ↑

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