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November 17, 2025

Jennifer W. Marquis, Town Clerk
Town of Bolton
Office of the Town Clerk
663 Main Street
Bolton, MA 01740

Re: Bolton Annual Town Meeting of May 5, 2025 – Case # 11795
Warrant Articles # 13, 14, 15, 16, 17, 18, and 19 (Zoning)
Warrant Articles # 9, 12 and 21 (General)

Dear Ms. Marquis:

Articles 9, 12, 13, 14, 15, 16, 17, 18, 19, and 21 – We approve Articles 9, 12, 13, 14, 15, 16, 17, 18, 19, and 21 adopted at the Bolton May 5, 2025 Annual Town Meeting.[1] Our comments on Articles 9, 14, and 16 are provided below.

Article 9 – Under Article 9, the Town amended Chapter 110, "Animals," Sections 110-5 and 110-8 regarding increases to the fee amounts for failing to license a dog by May 1st of each year and the fine amounts for dogs and livestock found roaming at large or posing a danger or nuisance to the public, respectively.

As amended, Section 110-5's increases the additional fee amount for failing to license a dog by May 1st of each year to fifty dollars. We approve Section 110-5 as amended, because a municipality may impose fees for dog licenses and penalties for violating the dog licensing by-law requirements. See G.L. c. 40, § 32 (towns may impose fines for by-law violations) and G.L. c. 140, § 139 (towns may impose fees for dog licenses). However, a town does not have the "independent power of taxation." Silva v. City of Attleboro, 454 Mass. 165, 169 (2009). In distinguishing valid fees from impermissible taxes, the Supreme Judicial Court has noted that fees tend to share the following common traits: (1) fees, unlike taxes, are charged in exchange for a particular governmental service which benefits the party paying the fee in a manner not shared by other members of society; (2) user fees (although not necessarily regulatory fees) are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby

[1] On August 15, 2025, we placed Articles 9, 12, 13, 14, 15, 16, 17, 18, 19, and 21 on "Hold" pending receipt of the information requested in our Hold letter. On August 19, 2025, the Town Clerk submitted the requested required information and assigned this submission a new 90-day deadline of November 17, 2025.

avoiding the charge; and (3) fees are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses. See Silva, 454 Mass. at 168 (citing Emerson College v. City of Boston, 391 Mass. 415, 424-25 (1984)). The Town should consult with Town Counsel to ensure that the late fee for failure to license a dog by May 1st of each year constitutes a valid fee rather than an impermissible tax.

As amended, Section 110-8, increases the fine amounts for dogs and livestock roaming at large or a danger or nuisance to the public to "not more than" fifty dollars, one hundred dollars, and "not more than maximum allowed by law for subsequent offenses." The existing text of Section 110-8 allows the fines to be enforced by G.L. c. 40, § 21D's non-criminal disposition. General Laws Chapter 40, Section 21D, has several specific requirements that a town must follow in order to uses its ticketing method for enforcing by-law violations, including the requirement that the violation be subject to a specific penalty. The stated fines of "not more than" fifty dollars, one hundred dollars and three hundred dollars are not specific penalties. In order for the Town to utilize the non-criminal disposition method of G.L. c. 40, § 21D to enforce violations of Section 110-8, it will have to amend its by-laws to establish a specific penalty, in a sum certain, for violations of the Section 110-8 (for example a fifty dollar, a one hundred dollars and a three hundred dollar fine).

Article 14 - Under Article 14, the Town amended its zoning by-laws to allow ADUs as of right in compliance with G.L. c. 40A, § 3 and the implementing Regulations promulgated by the Executive Office of Housing and Livable Communities ("EOHLC"), 760 CMR 71.00, "Protected Use Accessory Dwelling Units" ("Regulations").[2]

We approve the amendments adopted under Article 14 because the approved text does not conflict with G.L. c. 40A, § 3 and the Regulations. See Amherst v. Attorney General, 398 Mass. 793, 795-96 (1986) (requiring inconsistency with state law or the Constitution for the Attorney General to disapprove a by-law). However, we offer comments for the Town's consideration regarding certain existing provisions.

In this decision we summarize the by-law amendments adopted under Article 14; discuss the Attorney General's standard of review of town by-laws and the recent statutory and regulatory changes that allow Protected Use ADUs as of right;[3] and then explain why, based on our standard of review, we approve the zoning by-law amendments adopted under Article 14.

[2] The Regulations can be found here: https://www.mass.gov/doc/760-cmr-7100-protected-use-adus-final-version/download

[3] 760 CMR 71.02 defines the term "Protected Use ADU" as follows: "An attached or detached ADU that is located, or is proposed to be located, on a Lot in a Single-family Residential Zoning District and is protected by M.G.L. c. 40A, § 3, provided that only one ADU on a lot may qualify as a Protected Use ADU. An ADU that is nonconforming to Zoning shall still qualify as a Protected Use ADU if it otherwise meets this definition."

I. Summary of Article 14

Under Article 14, the Town deleted Section 250-21.D, "Accessory Apartment," and inserted a new Section 250-21.D, "Secondary Units," to allow Secondary Units as of right in the Town's residential zoning districts. Under Section 250-21.D, Secondary Units include "Accessory Dwelling Units," "Large Accessory Dwelling Units," and "Large Detached Accessory Dwelling Units." Secondary Units are allowed by site plan review and are subject to the requirements of Sections 250-21.D (1) through (10), which impose design, dimensional, use, and parking requirements on Secondary Units. In addition, under Article 14, the Town amended Section 250-28, "Definitions," to add definitions for "Accessory Dwelling Unit (ADU)," "Large Accessory Dwelling Unit (LADU)," and Large Detached Accessory Dwelling Unit (LDADU)" as follows:

> Accessory Dwelling Unit (ADU), a self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities on the same lot as a principal dwelling, subject to otherwise applicable dimensional and parking requirements, that: (i) maintains a separate entrance, either directly from the outside or through an entry hall or corridor shared with the principal dwelling sufficient to meet the requirements of the state building code for safe egress; (ii) is not larger in gross floor area than 1/2 the gross floor area of the principal dwelling or 900 square feet, whichever is smaller; and (iii) is prohibited from short-term rental, as defined in section 1 of chapter 64G of the Massachusetts General Laws.
>
> Large Accessory Dwelling Unit (LADU), An attached accessory dwelling unit exceeding the size permissible under the definition of an Accessory Dwelling Unit but not exceeding ⅓ of the gross floor area of the single-family dwelling unit.
>
> Large Detached Accessory Dwelling Unit (LDADU), A detached accessory dwelling unit exceeding the size permissible under the definition of an Accessory Dwelling Unit but not exceeding 1,200 square feet of gross floor area of the single-family dwelling unit. Delete §250-21.D. Accessory Apartment in its entirety and replace with the following:

Finally, the Town amended the Town's Use Table to allow ADUs, LADUs, and LDADUs as of right in the Town Residential District where single-family dwellings are allowed as of right.

II. Attorney General's Standard of Review of Zoning By-laws

Our review of Article 14 is governed by G.L. c. 40, § 32. Under G.L. c. 40, § 32, the Attorney General has a "limited power of disapproval," and "[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws." Amherst, 398 Mass. at 795-96. The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 ("Neither we nor the Attorney General may comment on the wisdom of the town's by-law.") "As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid." Bloom v. Worcester, 363 Mass. 136, 154 (1973).

Article 14, as an amendment to the Town's zoning by-laws, must be given deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002) ("With respect to the exercise of their powers under the Zoning Act, we accord municipalities deference as to their

legislative choices and their exercise of discretion regarding zoning orders."). When reviewing zoning by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General's standard of review is equivalent to that of a court. "[T]he proper focus of review of a zoning enactment is whether it violates State law or constitutional provisions, is arbitrary or unreasonable, or is substantially unrelated to the public health, safety or general welfare." Durand v. IDC Bellingham, LLC, 440 Mass. 45, 57 (2003). "If the reasonableness of a zoning bylaw is even 'fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.'" Id. at 51 (quoting Crall v. City of Leominster, 362 Mass. 95, 101 (1972)). However, a municipality has no power to adopt a zoning by-law that is "inconsistent with the constitution or laws enacted by the [Legislature]." Home Rule Amendment, Mass. Const. amend. art. 2, § 6.

III. Summary of Recent Legislative Changes Regarding ADUs

On August 6, 2024, Governor Healey signed into law the "Affordable Homes Act," Chapter 150 of the Acts of 2024 (the "Act"). The Act includes amendments to the State's Zoning Act, G.L. c. 40A, to establish ADUs as a protected use subject to limited local regulation including amending G.L. c. 40A, § 1A to add a new definition for the term "Accessory dwelling unit" and amending G.L. c. 40A, § 3 (regarding subjects that enjoy protections from local zoning requirements, referred to as the "Dover Amendment"), to add a new paragraph that restricts a zoning by-law from prohibiting, unreasonably regulating or requiring a special permit or other discretionary zoning approval for the use of land or structures for a single ADU. The amendment to G.L. c. 40A, § 3, to include ADUs means that ADUs are now entitled to statutory protections from local zoning requirements.

On January 31, 2025, the EOHLC promulgated regulations for the implementation of the legislative changes regarding ADUs. See 760 CMR 71.00, "Protected Use Accessory Dwelling Units."[4] The Regulations define key terms and prohibit certain "Use and Occupancy Restrictions" defined in Section 71.02 as follows:

> Use and Occupancy Restrictions. A Zoning restriction, Municipal regulation, covenant, agreement, or a condition in a deed, zoning approval or other requirement imposed by the Municipality that limits the current, or future, use or occupancy of a Protected Use ADU to individuals or households based upon the characteristics of, or relations between, the occupant, such as but not limited to, income, age, familial relationship, enrollment in an educational institution, or that limits the number of occupants beyond what is required by applicable state code.

[4] See the following resources for additional guidance on regulating ADUs: (1) EOHLC's ADU FAQ section (https://www.mass.gov/info-details/accessory-dwelling-unit-adu-faqs\) (2) Massachusetts Department of Environmental Protection's Guidance on Title 5 requirements for ADUs (https://www.mass.gov/doc/guidance-on-title-5-310-cmr-15000-compliance-for-accessory-dwelling-units/download); and https://www.mass.gov/doc/frequently-asked-questions-faq-related-to-guidance-on-title-5-310-cmr-15000-compliance-for-accessory-dwelling-units/download; and (3) MassGIS Addressing Guidance regarding address assignments for ADUs (https://www.mass.gov/info-details/massgis-addressing-guidance-for-accessory-dwelling-units-adus).

While a municipality may reasonably regulate a Protected Use ADU in the manner authorized by 760 CMR 71.00, such regulation cannot prohibit, require a special permit or other discretionary zoning approval for, or impose a "Prohibited Regulation"[5] or an "Unreasonable Regulation" on, a Protected Use ADU. See 760 CMR 71.03, "Regulation of Protected Use ADUs in Single-Family Residential Zoning Districts."[6] Moreover, Section 71.03 (3)(a) provides that while a town may reasonably regulate and restrict Protected Use ADUs, certain restrictions or regulations "shall be unreasonable" in certain circumstances.[7] In addition, while municipalities may impose dimensional requirements related to setbacks, lot coverage, open space, bulk and height and number of stories (but not minimum lot size), such requirements may not be "more restrictive than is required for the Principal Dwelling, or a Single-Family Residential Dwelling or accessory structure in the Zoning District in which the Protected Use ADU is located, whichever results in more permissive regulation…" 760 CMR 71.03 (3)(b)(2). Towns may also impose site plan review of a Protected Use ADU, but the Regulations requires the site plan review to be clear and objective and prohibits the site plan review authority from imposing terms or conditions that "are unreasonable or inconsistent with an as-of-right process as defined in M.G.L. c. 40A, § 1A." 760 CMR 71.03 (3)(b)(5).

We incorporate by reference our more extensive comments regarding these recent statutory and regulatory changes related to ADUs in our decision to the Town of East Bridgewater, issued on April 14, 2025 in Case # 11579.[8] Against the backdrop of these statutory and regulatory

[5] 760 CMR 71.03 prohibits a municipality from subjecting the use of land or structures on a lot for a Protected Use ADU to any of the following: (1) owner-occupancy requirements; (2) minimum parking requirements as provided in Section 71.03; (3) use and occupancy restrictions; (4) unit caps and density limitations; or (5) a requirement that the Protected Use ADU be attached or detached to the Principal Dwelling.

[6] For example, a design standard that is not applied to a Single-Family Residential Dwelling in the Single-Family Residential Zoning District in which the Protected Use ADU is located or is so "restrictive, excessively, burdensome, or arbitrary that it prohibits, renders infeasible, or unreasonably increases the costs of the use or construction of a Protected Use ADU" would be deemed an unreasonable regulation. See 760 CMR 71.03 (3)(b).

[7] Section 71.03 (3)(a) provides that while a town may reasonably regulate and restrict Protected Use ADUs, a restriction or regulation imposed "shall be unreasonable" if the regulation or restriction, when applicable to a Protected Use ADU: (1) does not serve a legitimate Municipal interest sought to be achieved by local Zoning; (2) serves a legitimate Municipal interest sought to be achieved by local Zoning but its application to a Protected Use ADU does not rationally relate to the legitimate Municipal interest; or (3) serves a legitimate Municipal interest sought to be achieved by local Zoning and its application to a Protected Use ADU rationally relates to the interest, but compliance with the regulation or restriction will: (a) result in complete nullification of the use or development of a Protected Use ADU; (b) impose excessive costs on the use or development of a Protected Use ADU without significantly advancing the Municipality's legitimate interest; or (c) substantially diminish or interfere with the use or development of a Protected Use ADU without appreciably advancing the Municipality's legitimate interest.

[8] This decision, as well as other recent ADU decisions, can be found on the Municipal Law Unit's website at www.mass.gov/ago/munilaw (decision look up link) and then search by the topic pull down menu for the topic "ADUS."

parameters regarding Protected Use ADUs, we review the zoning amendments adopted under Article 14.

IV. Comments on the new Section 250-21.D

Because the new Section 250-21.D applies to Protected Use ADUs (those that enjoy zoning protection under G.L. c. 40A, § 3) and other ADUs including large accessory dwelling units that do not enjoy protections under Section 3, we approve it. However, as explained below. Section 250-21.D must be applied consistent with the protections given to Protected Use ADUs under Section 3 and the Regulations, as discussed in more detail below.

A. Section 250-21.D (3)'s Dimensional Requirements

Section 250-21.D (3) requires Secondary Units to comply with Section 250-13, the Town's Dimensional Regulations. Section 250-13 imposes dimensional requirements based on the zoning district where the lot or structure is located. In the Town's Residential District, Section 250-13 imposes minimum lot area, minimum lot frontage, front, side, and rear setbacks, and minimum lot width requirements. Section 250-13's dimensional requirements must be applied consistent with the protections given to Protected Use ADUs under Section 3 and the Regulations.

As an initial matter, the Regulations prohibit the Town from imposing minimum lot size requirements on a Protected Use ADU (see 760 CMR 71.03 (3)(b)(2) ("…a Municipality may not require a minimum Lot size for a Protected Use ADU"). Therefore, Section 250-13's minimum lot area requirements cannot be imposed on a Protected Use ADU.

With regards to the remaining dimensional requirements in Section 250-13, we cannot conclude that these requirements are unreasonable and therefore prohibited under 760 CMR 71.00. However, if these requirements are used in a manner to prohibit or unreasonably restrict a Protected Use ADU, such application would run afoul to the Dover amendment protections given to a Protected Use ADU under G.L. c. 40A § 3 and the implementing Regulations.

The Town must also ensure that the dimensional requirements serve, and are rationally related to, a legitimate municipal interest and will not, as applied, result in a nullification, impose an excessive cost or substantially diminish or interfere with the use or development of a Protected Use ADU. See 760 CMR 71.03 (3)(a). The Town should consult with Town Counsel to ensure the proper application of Section 250-21.D (3) to a Protected Use ADU. In addition, an important additional requirement, because a Protected Use ADU is a Dover Amendment protected use, the Town can only impose "reasonable regulations" on a Protected Use ADU. If the by-law provisions, including the existing requirements in the Tables, are used in a manner to prohibit or unreasonably restrict a Protected Use ADU, such application would run afoul of the Dover amendment protections given to a Protected Use ADU under G.L. c. 40A § 3.

Finally, the Town should discuss with Town Counsel whether Section 250-21D should be amended at a future Town Meeting to include the applicable dimensional requirements for a Protected Use ADU (rather than referencing the existing dimensional requirements in Section 250-13) to ensure that those utilizing the ADU by-law have clear information regarding any required

frontage, setback, height and lot coverage requirements as well as to make it clear that minimum lot size requirements do not apply to a Protected Use ADU.

B. Section 250-21.D (6)'s Prohibition on Secondary Units Being Used for Online Home Rental Services

Section 250-21.D (6) prohibits Secondary Units from being used for online home rental services for transient occupancy. Based on our standard of review, we cannot conclude that such prohibition violates the protections given Protected Use ADUs under G.L. c. 40A, § 3 and the Regulations. However, we suggest that the Town discuss Section 250-21.D (6)'s prohibition as applied to Protected Use ADUS with Town Counsel because Section 3 and the Regulations provide a limited authorization on the Town's ability to regulate the rental of ADUs. If Section 250-21.D (6) is applied to prohibit the rental of ADUs other than as Short-Term Rentals ("STR"), then it would conflict with G.L. 40A, §3 and the Regulations. See Section 71.03 (2) (c)'s prohibition on use and occupancy regulations and Section 71.03 (3)'s prohibition on unreasonable regulations. Therefore, the Town cannot apply Section 250-21.D (6) to prohibit the rental of Protected Use ADUs other than as allowed under G.L. c. 64G, because such application would violate Section 3 and the Regulations. We suggest that the Town discuss this issue in more detail with Town Counsel.

C. Section 250-21.D (7)'s Reference to "Single-Family" Residence

Section 250-21.D (7) requires the outside appearance of a Secondary Dwelling Unit to remain that of a "single-family" residence.

Requiring a Protected Use ADU to "remain that of a single-family residence" would conflict with G.L. c. 40A, § 3 and the Regulations that allow Protected Use ADUs as of right on the same lot as any type of "Principal Dwelling," as explained below. See West Street Associates, LLC v. Planning Board of Mansfield, 448 Mass 319, 324 (2021) (citing with approval trial judge's ruling that "By limiting medical marijuana facilities to nonprofit entities, the bylaw[,] while not prohibit[ing] those facilities, does restrict them in a ways that the [S]tate explicitly determined they should not be limited" and "[a]ccordingly, the town's bylaw is preempted by State law to the extent it requires all medical marijuana dispensaries to be nonprofit organizations.")

General Laws Chapter 40A, Section 3 and the Regulations allow Protected Use ADUs as-of-right on the same lot as any type of "Principal Dwelling," not just a single-family dwelling. See 760 CMR § 71.02's definitions of "Accessory Dwelling Unit (ADU)" (defining an ADU as "[a] self-contained housing unit, inclusive of sleeping, cooking, and sanitary facilities on the same Lot as a Principal Dwelling . . .") and "Protected Use ADU" (defining a "Protected Use ADU" as "[a]n attached or detached ADU that is located, or is proposed to be located, on a Lot in a Single-Family Residential Zoning District."). The Regulations define "Principal Dwelling" as a structure that contains at least one dwelling unit as follows (with emphasis added):

> A structure, regardless of whether it, or the Lot it is situated on, conforms to Zoning, including use requirements and dimensional requirements, such as setbacks, bulk, and height, *that contains at least one Dwelling Unit* and is, or will be, located on the same Lot as a Protected Use ADU.

The Regulations' definition of "Principal Dwelling" contemplates Protected Use ADUs on lots that include more than one dwelling unit. For example, Protected Use ADUs are allowed on lots containing a two-family dwelling or a multi-family dwelling. Therefore, applying Section 250-21.D (6)'s requirement that the Secondary Dwelling remain that of "single family" residence to a Protected Use ADU would conflict with G.L. c. 40A, § 3 and the Regulations. We suggest that the Town discuss this issue in more detail with Town Counsel.

D. Section 250-21.D (10)'s Minimum Parking Space Requirement

Section 250-21.D (10) requires Secondary Units to have a minimum of one parking space. Section 250-21.D (10) must be applied consistent with the parking requirements for Protected Use ADUs under G.L. c. 40A, § 3 and the Regulations.

General Laws Chapter 40A, Section 3 prohibits a municipality from requiring a parking space for *any* Protected Use ADU located within 0.5-miles of a transit station, as follows:

> The use of land or structures for an accessory dwelling unit under this paragraph shall not require owner occupancy of either the accessory dwelling unit or the principal dwelling; provided, that not more than 1 additional parking space shall be required for an accessory dwelling unit; and provided further, that no additional parking space shall be required for an accessory dwelling located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station.

In addition, the Regulations, 760 CMR 71.03 (2) prohibit a Town from imposing any prohibited Regulations on a Protected Use ADU, including the following:

> (b) Minimum Parking Requirements. A requirement of, as applicable:
>
> 1. More than one additional on-street or off-street parking space for a Protected Use ADU if all portions of its Lot are located outside a 0.5-mile radius of a Transit Station; or
>
> 2. Any additional on-street or off-street parking space for a Protected Use ADU if any portion of its Lot is located within a 0.5-mile radius of a Transit Station.

The Regulations, 760 CMR 71.02, define "Transit Station" as: "[a] Subway Station, Commuter Rail Station, Ferry Terminal, or Bus Station." The regulations further define each of these terms, including the term "Bus Station," defined as: "[a] location serving as a point of embarkation for any bus operated by a Transit Authority." Here the Town is part of the Montachusett Regional Transit Authority. See https://www.mass.gov/info-details/public-transportation-in-massachusetts.

The Town is authorized by statute and the Regulations to require one additional parking space for a Protected Use ADU that is not located within a 0.5-mile radius of a Transit Station. However, the Town cannot require Protected Use ADUs located within a 0.5-mile radius of a transit station to provide a parking space, nor can it require Protected Use ADUs to provide more

than one parking space. We suggest that the Town discuss this issue in more detail with Town Counsel.

E. Definition of "Gross Floor Area

As amended under Article 14, Section 250-28 added a new definition of "Gross Floor Area," as follows:

> Gross Floor Area, The sum of the areas of all stories of the building of compliant ceiling height pursuant to the Building Code, including basements, lots and intermediate floored tiers, measured from the interior faces of exterior walls or from the centerline of walls separating buildings, but excluding: (i) crawl spaces, garage parking areas, attics, enclosed porches and similar spaces; (ii) pipe trenches, exterior terraces or steps, chimneys, roof overhangs and similar features. Where there are multiple principal dwellings on the lot, the gross floor area of the largest principal dwelling shall be used for determining the maximum size of an accessory dwelling unit.

General Laws Chapter 40A, Section 3 and the Regulations require municipalities to allow ADUs as of right up to half the gross floor area of the principal dwelling or 900 square feet, whichever is smaller. See 760 CMR § 71.02's definitions of "Accessory Dwelling Unit (ADU)" (defining the size of an ADU as no "larger in gross floor area than one-half the gross floor area of the principal dwelling or 900 square feet, whichever is smaller.") and "Protected Use ADU" (defining a "Protected Use ADU" as "[a]n attached or detached ADU that is located, or is proposed to be located, on a Lot in a Single-Family Residential Zoning District."). The Regulations define "Gross Floor Area" as follows:

> The sum of the areas of all stories of the building of compliant ceiling height pursuant to the Building Code, including basements, lofts, and intermediate floored tiers, measured from the interior faces of exterior walls or from the centerline of walls separating buildings or dwelling units but excluding crawl spaces, garage parking areas, attics, enclosed porches and similar spaces. Where there are multiple Principal Dwellings on the Lot, the GFA of the largest Principal Dwelling shall be used for determining the maximum size of a Protected Use ADU.

The by-law's definition of "Gross Floor Area" does not match the definition provided in the current Regulations.[9] By defining "Gross Floor Area" differently than the Regulations, the by-law would limit the size of a Protected Use ADU than otherwise allowed as of right under G.L. c. 40A, §§ 1A and 3. The Town must apply the definition of Gross Floor Area" in the Regulations to Protected Use ADUs. We suggest that the Town discuss this issue in more detail with Town Counsel.

[9] The definition of "Gross Floor Area" appears to match the definition provided in the draft version of the Regulations.

V. Conclusion

We approve Article 14 regulating all types of "Secondary Units," including Protected Use ADUs, because it does not conflict with state law. However, the Town should consult closely with Town Counsel when applying these provisions to Protected Use ADUs to ensure they are applied consistent with G.L. c. 40A, § 3 and 760 CMR 71.00. If the provisions adopted under Article 14 are used to deny a Protected Use ADU or otherwise applied in ways that constitute an unreasonable regulation in conflict with 760 CMR 71.03 (3), such application would violate G.L. c. 40A, § 3 and the Regulations. The Town should consult with Town Counsel and EOHLC to ensure that the approved by-law provisions are applied consistent with G.L. c. 40A, § 3 and the Regulations, as discussed herein.

Finally, we remind the Town of the requirements of 760 CMR 71.04, "Data Collection," that requires municipalities to maintain certain records, as follows:

> Municipalities shall keep a record of each ADU permit applied for, approved, denied, and issued a certificate of occupancy, with information about the address, square footage, type (attached, detached, or internal), estimated value of construction, and whether the unit required any variances or a Special Permit. Municipalities shall make this record available to EOHLC upon request.

The Town should consult with Town Counsel or EOHLC with any questions about complying with Section 71.04.

Article 16 – Under Article 16, the Town deleted its existing Section 250-22, "Floodplain District" and inserted a new Section 250-22, "Floodplain Overlay District." The zoning amendments are adopted to comply with the latest Federal Emergency Management Agency (FEMA) requirements for communities that choose to participate in the National Flood Insurance Program (NFIP).

The text in the new Floodplain Overlay District by-law appears to follow the "Massachusetts 2020 Model Floodplain Bylaw" provided by the Massachusetts Department of Conservation and Recreation ("DCR") Flood Hazard Management Program.[10] The DCR Flood Hazard Management Program is the state coordinating office for the NFIP. According to DCR's website, they provided the Model Floodplain Bylaw to Massachusetts communities "to assure that their local bylaws…contain the necessary and proper language for compliance with the NFIP". For this reason, we approve Article 16. The Town should consult with Town Counsel and the DCR Flood Hazard Management Program regarding the application of the zoning by-laws amended by Article 16.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute.

[10] See https://www.mass.gov/guides/floodplain-management#-2020-massachusetts-mo.

Very truly yours,
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