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August 28, 2025

Cynthia J. Bush, Town Clerk
Office of the Town Clerk
Town of Plainville
190 South Street, P.O. Box 1717
Plainville, MA

Re: Plainville Annual Town Meeting of May 19, 2025 – Case # 11857
Warrant Articles # 31, 32, and 33 (Zoning)
Warrant Article # 24 (General)

Dear Ms. Bush:

Articles 24, 32, and 33 - We approve Articles 24, 32, and 33 from the Plainville May 19, 2025 Annual Town Meeting. Our comments on Article 32 are provided below.

Articles 31 - Under Article 31, the Town voted to amend its zoning by-laws to add a new Section 500-25.1, "Accessory Dwelling Unit," that allows 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").[1]

We partially approve Article 31 because the approved text does not conflict with state law. However, we disapprove the following provisions adopted under Article 31 because they 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)).

- Section 500-25.1 (D) (1)'s reference to "single-family" dwelling; and

- Section 500-25.1 (F) (5)'s requirement that an ADU comply with subsequent changes to the Section 500-25.1, G.L. c. 40A, and the Massachusetts State Building Code.

In this decision we summarize the by-law amendments adopted under Article 31; discuss

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

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;[2] and then explain why, based on our standard of review, we partially approve the zoning by-law amendments adopted under Article 31. In addition, we offer comments for the Town's consideration regarding certain approved provisions.

I. Summary of Article 31

Under Article 31, the Town voted to amend its zoning by-laws to add a new Section 500-25.1, "Accessory Dwelling Units." The new Section 500-25.1 allows ADUs as of right in the residential zoning districts subject to dimensional, parking, and other use standards and requirements.

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

Our review of Article 31 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 31, 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.

[2] 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."

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."[3] 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.

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"[4] 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."[5] Moreover, Section 71.03 (3)(a) provides that

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[3] 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).

[4] 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.

[5] For example, a design standard that is not applied to a Single-Family Residential Dwelling in the Single-

while a town may reasonably regulate and restrict Protected Use ADUs, certain restrictions or regulations "shall be unreasonable" in certain circumstances.[6] 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.[7] Against the backdrop of these statutory and regulatory parameters regarding Protected Use ADUs, we review the zoning amendments adopted under Article 31 and offer the following comment.

IV. Text Disapproved from Section 500-25.1 Because it Conflicts with G.L. c. 40A, § 3 and the Regulations

A. Section 500-25.1 (D) (1)'s Reference to Single-Family Dwellings

Section 500-25.1 (D) (1)'s allows ADUs as part of a principal single-family dwelling as follows:

> The Building Commissioner shall issue a Building Permit authorizing the installation and

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).

[6] 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.

[7] 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."

> use of a Protected Use ADU to a principal **single-family** dwelling in a single-family zoning district . . .

We disapprove and delete the text shown above in bold and underline that limits ADUs as being accessory to a "single-family" dwelling because it conflicts with G.L. c. 40A, § 3 and the Regulations that allow 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, 488 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 way 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, restricting ADUs to only a "single-family" dwelling or home conflicts with G.L. c. 40A, § 3 and the Regulations. For this reason, we disapprove the text shown above in bold and underline. The Town should consult with Town Counsel with any questions.

B. Section 500-25.1 (F) (5)'s Requirements that ADU's Conform to Subsequent Changes to Section 500-25.1 and State Law

Section 500-25.1 (F) (5) requires the construction and use of an ADU to comply with subsequent changes to Section 500-25.1 (F), G.L. c. 40A, and the State Building Code as follows:

> Construction or use according to the building permit shall conform to any subsequent amendments to these provisions, MGL 40A, and/or Massachusetts Building Code.

We disapprove Section 500-25.1 (F) (5) because it conflicts with the protections given to structures and uses in lawful existence or lawfully begun or to building permits that have been issued under G.L. c. 40A, § 6. General Laws Chapter 40A, Section 6 provides in pertinent part as follows:

> Except as hereinafter provided, a zoning . . . by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing on such ordinance or by-law required by section five, but shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure.

Under Section 6, structures and uses lawfully in existence or lawfully begun and building permits that have been issued enjoy protections from subsequent by-law changes. Because Section 500-25.1 (F) (5) requires ADUs constructed under an issued building permit to conform to subsequent changes, it conflicts with Section 6's protections. In addition, whether an ADU is subject to changes in state law, state statutes and the State Building Code, is a matter determined by state law and not by local law. For these reasons, we disapprove Section 500-25.1 (F) (5).

V. Comments Regarding Certain Approved Provisions

A. Section 500-25.1 (C) (2)'s Dimensional Requirements

Section 500-25.1 (C) (2) requires an ADU to comply with the dimensional standards in Section 500-17. Section 500-17 imposes dimensional requirements, including minimum lot area, frontage, setbacks, and building coverage requirements, based on the zoning district where the use is located. As an initial matter, Section 500-17, includes a minimum lot area requirement. However, the Regulations prohibit towns from imposing minimum lot area and 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, the Town cannot impose Section 500-17's minimum lot size requirement on an ADU and the Town should consider amending Section 500-25.1 (C) (2) to explicitly exempt ADUs from any existing minimum lot size requirement.

As to the remainder of Section 500-17's dimensional requirements, (other than lot area) the Town should be mindful that 760 CMR 71.03 (3)(b)(2) prohibits towns from imposing dimensional requirements, such as setbacks, lot coverage, open space, bulk and height, and number of stories that are more restrictive than required for the Principal Dwelling, or a Single-family Residential Dwelling (as defined in 760 CMR 71.02) or other accessory structure in the zoning district where the Protected Use ADU is located, whichever is most permissive. In addition, in applying the dimensional requirements to an ADU, because a Protected Use ADU is a Dover Amendment protected use, the Town can only impose "reasonable regulations" on a Protected Use ADU. Therefore, if a dimensional requirement is 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 Regulations. Moreover, the Town must ensure that this prohibition is analyzed on a case by case basis as it relates to a particular property because in some circumstances the provision could be unreasonable as applied

to a particular property. In addition, the Town must ensure that the application of this requirement serves, and is 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). If the Town cannot satisfy this standard, the regulation may be deemed to be unreasonable. The Town should consult with Town Counsel to ensure the proper application of any dimensional requirements to a Protected Use ADU.

To reiterate, we suggest that the Town discuss Section 500-25.1 (C) (2) with Town Counsel to determine whether it should be amended to specifically include text that Protected Use ADUs are not subject to lot area requirements and that Protected Use ADUs may only be subject to "reasonable regulations" (under the test set forth in Section 760 CMR 71.03 (3) of the Regulations) because they are a Dover Amendment protected use under G.L. c. 40A and because the Regulations prohibit towns from unreasonably regulating Protected Use ADUs.

B. Section 500-25.1 (C) (3)'s Common Ownership Requirement

Section 500-25.1 (C) (3) requires the ADU and the principal dwelling to remain in common ownership and prohibits the lot from being divided into two separate lots. Although the Regulations prohibit a municipality from imposing "owner-occupancy" requirements on either the ADU or the principal dwelling, the Regulations are silent on the issue of whether the ADU and the principal dwelling must remain in single ownership. In addition, both the statute and 760 CMR 71.02's definition of ADU authorize a municipality to impose "additional restrictions" on an ADU. Based upon our standard of review, we cannot conclude that Section 500-25.1 (C) (3) is in conflict with state law.

In reviewing this provision, we have considered the question whether the by-law's requirement that the ADU and the principal dwelling remain in common ownership and prohibits the lot from being divided amounts to an unlawful exercise of the Town's zoning power because it is based on ownership and not use. "A fundamental principle of zoning [is that] it deals basically with the use, without regard to the ownership, of the property involved or who may be the operator of the use." CHR Gen., Inc. v. City of Newton, 387 Mass. 351, 356, (1982) (internal quotations and citations omitted). In some instances, therefore, municipal condominium bans have been deemed unlawful. Id. at 356-58 (ordinance regulating conversion of residential units to condominiums was invalid regulation based on ownership because "a building composed [of] condominium units does not 'use' the land it sits upon any differently than an identical building containing rental units."); see also Bannerman v. City of Fall River, 391 Mass. 328 (1984) (city not authorized to adopt condominium ban pursuant to municipal powers to operate water/sewer, regulate traffic, or supervise public health).

It appears that Section 500-25.1 (C) (3)'s ownership requirements are not intended to restrict *who* can own the ADU but is instead targeted at ensuring that the ADU remains an accessory use to the principal dwelling. Use, but not ownership, may be regulated through zoning. Goldman v. Town of Dennis, 375 Mass. 197, 199 (1978); Gamsey v. Bldg. Inspector of Chatham, 28 Mass. App. Ct. 614 (1990). Thus, "[a]lthough the limitation is phrased in terms of the type of ownership," we cannot conclude that this provision conflicts with the Town's zoning power. Goldman, 375 Mass. at 199.

For these reasons, and based upon our standard of review, we cannot determine that Section 500-25.1 (C) (3)'s ownership provisions are in conflict with the Regulations or are an unreasonable regulation under 760 CMR 71.03 (3). However, the Town should be prepared to satisfy the requirements of 760 CMR 71.03 (3) if this provision, as applied to a particular person, is challenged in the Court as unreasonable. The Town should consult closer with Town Counsel on this issue.

C. Section 500-25.1 (C) (4)'s Requirement for ADUs on Pre-Existing Non-Conforming Lots

Section 500-25.1 (C) (4) provides as follows:

> The Zoning Board of Appeals shall make a finding, when applicable, on the placement or addition of an ADU on a pre-existing non-conforming lot in accordance with MGL Chapter 40A, §6.

Section 500-25.1 (C) (4) requires ADUs on pre-existing non-conforming lots to get a finding from the Zoning Board of Appeals under G.L. c. 40A, § 6 ("Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority . . . or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.")

Because Section 500-25.1 (C) (4) requires a "finding" we approve it. However, because ADUs are a Dover Amendment protected use, only in limited circumstances, may it be appropriate for the Town to require even a Section 6 *finding* for an ADU associated with a nonconforming structure or lot. See Petrucci v. Bd. of Appeals of Westwood, 45 Mass. App. Ct. 818 (1998) (no Section 6 "finding" required where applicant successfully demonstrated the unreasonableness of the application of the dimensional requirements to the structure…"). In circumstances where the regulations creating the increased nonconformity can lawfully be applied to the ADU, the Town may require that the applicant demonstrate that the altered structure use will not be substantially more detrimental to the neighborhood than the existing structure so long as the town applies objective, nondiscretionary criteria and no special permit is required. However, changes to a nonconforming lot for an ADU use, a statutorily protected use, cannot trigger scrutiny of the impact on a neighborhood because the ADU is a Dover Amendment protected use and cannot be denied.

Moreover, a Protected Use ADU is not "nonconforming" to any zoning rule that cannot lawfully be applied to it under the ADU statute and regulations. See Watros v. Greater Lynn Mental Health and Retardation Ass'n, Inc., 421 Mass. 106, 115 (1995); see also Ellsworth vs. Mansfield, Case No. 08 MISC 382311, 2011 WL 3198174, at *4 (Mass. Land Ct. July 25, 2011) (no Section 6 finding required for Dover protected educational use because "effectively, G.L. c. 40A, § 3 removes the non-conformity (the lack of frontage) because it would not be a 'reasonable regulation' of the proposed school in these circumstances"). As a result, construction or alteration of a lot for an ADU will not increase a nonconformity unless the nonconformity is created by

regulations that can reasonably be applied to the ADU. We strongly suggest that the Town discuss the application of G.L. c. 40A, § 6 and 500-25.1 (C) (4) with Town Counsel.

D. Section 500-25.1 (D) (1) (h)'s Prohibition on a Separate Driveway Opening for an ADU

Section 500-25.1 (D) (1) (h) prohibits a separate driveway opening for an ADU. Based on our standard of review, we cannot conclude that this prohibition is unreasonable and therefore prohibited under 760 CMR 71.03, and for that reason we approve it. However, in applying Section 500-25.1 (D) (1) (h), we reiterate to the Town that because a Protected Use ADU is a Dover Amendment protected use, the Town can only impose "reasonable regulations" on a Protected Use ADU. Therefore, 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 Regulations. In addition, the Town must ensure that this prohibition serves, and is 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). If the Town cannot satisfy this standard, then the regulation may be deemed to be unreasonable. The Town should consult with Town Counsel to ensure the proper application of this prohibition to a Protected Use ADU.

VI. Conclusion

We partially approve Article 31, except for: (1) Section 500-25.1 (D) (1)'s reference to "single-family" dwelling and (2) Section 500-25.1 (F) (5)'s requirement that an ADU comply with subsequent changes to the Section 500-25.1, G.L. c. 40A, and the Massachusetts State Building Code, that we disapprove and delete as discussed in Section IV above.

The Town should consult closely with Town Counsel when applying the remaining approved ADU provisions to ensure that they are applied consistent with G.L. c. 40A, § 3 and 760 CMR 71.00. If the approved provisions in Article 31 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 32 - Under Article 32, the Town amended its zoning by-laws by making specific deletions and additions to Section 500-40(B), "Floodplain," 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 amendments to the Town's zoning by-laws appear to follow the "Massachusetts 2020 Model Floodplain Bylaw" provided by the Massachusetts Department of Conservation and Recreation ("DCR") Flood Hazard Management Program.[8] 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 32. The Town should consult with Town Counsel and the DCR Flood Hazard Management Program with any questions regarding the application of Section 500-40(B), as amended under Article 32.

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.

Very truly yours,

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