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October 15, 2025

Melissa L. Pelletier, Town Clerk
Town of Maynard
195 Main Street
Maynard, MA 01754

Re: Maynard Annual Town Meeting of May 19, 2025 – Case # 11992
Warrant Articles # 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38 (Zoning)
Warrant Articles # 15, 22, 23, and 24 (General)

Dear Ms. Pelletier:

Articles 22, 23, 24, 30, 31, 32, 33, 34, 35, 36, 37, and 38 - We approve Articles 22, 23, 24, 30, 31, 32, 33, 34, 35, 36, 37, and 38 from the May 19, 2025 Maynard Annual Town Meeting.

Article 15 - By agreement with Town Counsel pursuant to G.L. c. 40, § 32, we have extended our deadline for a decision on Article 15 for and additional 60 days. Our decision on Article 15 will now be due on **December 14, 2025**. The signed extension agreement is attached.

Article 29 - Under Article 29 the Town amended three sections of its zoning by-laws, regarding Accessory Dwelling Units ("ADUs") to make specific identified changes with new text shown in underline and deleted text shown in strikethrough, 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").[1]

We partially approve amendments adopted under Article 29 because the approved text does not conflict with G.L. c. 40A, § 3 and the Regulations. However, we disapprove the references to "single-family" in the new definition of "Accessory Dwelling Unit," because this text conflicts with G.L. c. 40A, § 3 and the Regulations, as explained below. 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).

In this decision we summarize the by-law amendments adopted under Article 29; discuss the Attorney General's standard of review of town by-laws and the recent statutory and regulatory

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

changes that allow Protected Use ADUs as of right;[2] and then explain why, based on our standard of review, we partially approve the specific zoning by-law amendments adopted under Article 29. In addition, we offer comments for the Town's consideration regarding existing provisions, not amended under Article 29 (and therefore not now before the Attorney General for review and approval under G.L. c. 40, § 32), that may conflict with G.L. c. 40A, § 3 and the Regulations. We encourage the Town to discuss these existing provisions with Town Counsel to determine whether they should be amended at a future Town Meeting and whether they should not be enforced or applied in the interim.

I. Summary of Article 29

Under Article 29, the Town amended its zoning by-laws to make specific changes related to ADUs. The first change amends Section 3.1.2, "Use Regulations, Table A, Other Uses," to allow ADUs in the CB and I districts by special permit. As amended, the Table now allows ADUs by right in the Single Residence 1 ("S-1"), Single Residence 2 ("S-2"), General Residence ("GR"), and Business ("B") districts; allows ADUs by special permit in the Central Business ("CB") and Industrial ("I") districts, and prohibits ADUs in the Healthcare/Industrial ("HCI"), Garden Apartment ("GA"), and Open Space ("OS") districts.[3] The next change amends Section 8.1, "Accessory Family Dwelling Unit," to make specific changes regarding ADUs, with new text shown in underline and deleted text shown in strikethrough.[4] The last change amends Section 11.10, "Definitions," to delete the existing definition for the term "Accessory Dwelling Unit" and insert a new definition.

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

Our review of Article 29 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

[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."

[3] General Laws Chapter 40A, Section 3 allows a Protected Use ADU "in a single-family residential zoning district," defined in the Regulations as "[a]ny Zoning District where Single-family Residential Dwellings are permitted or an allowable use, including any Zoning District where Single-family Residential Dwellings are allowed as-of-right or by Special Permit." According to the Town's existing Table, single-family dwellings are also prohibited in the CB, HCI, I, GA and OS districts. For this reason, we approve the amendment to Section 3.1.2, adopted under Article 29, requiring a special permit for an ADU in the CB and I districts. However, the Town must ensure that Protected Use ADUs are allowed in any Single-family Residential Zoning District in the Town, and we encourage the Town to consult with Town Counsel with any questions on this issue.

[4] Section 8.1 imposes requirements upon ADUs however Section 8.1 is entitled "Accessory Family Dwelling Unit." The Town did not amend the title of Section 8.1 under Article 29. The Town should consult with Town Counsel to determine whether the title of Section 8.1 should be amended at a future Town Meeting in light of the amendments to Section 8.1 regarding ADUs.

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 29, 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."[5] The Regulations define key terms and prohibit certain "Use and Occupancy Restrictions" defined in Section 71.02 as follows:

[5] 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).

> 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"[6] 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."[7] 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.[8] 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).

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[6] 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.

[7] 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).

[8] 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.

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.[9] Against the backdrop of these statutory and regulatory parameters regarding Protected Use ADUs, we review the zoning amendments adopted under Article 29, as well as the Town's existing ADUs provisions that were not amended under Article 29.

IV. Text Disapproved from Article 29 Because it Conflicts with G.L. c. 40A, § 3 and the Regulations

Under Article 29 the Town amended Section 11.10, "Definitions," to delete the existing definition of "Accessory Dwelling Unit" and insert a new definition that provides as follows, with emphasis added:

> Accessory Dwelling Unit: a self-contained housing unit, inclusive of sleeping, coking, and sanitary facilities, on the same lot as a principal dwelling, that maintains a separate entrance, either directly from the outside or through an entry hall or corridor shared with the principal building, sufficient to meet the requirements of the State Building Code for safe egress. An Accessory Dwelling Unit is subordinate in size and accessory to a **detached single-family** dwelling, which may be located within or attached to a **single-family** dwelling or in a detached accessory structure thereto, and meets the requirements set forth in Section 8.1.

We disapprove Section 11.10's references to an ADU only in the context of a "detached single-family" dwelling and a "single-family" dwelling," shown above in bold and underline, because these provisions conflict 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 one-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):

[9] 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."

> 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, defining an ADU as accessory to only a "detached single-family" dwelling or located within or attached to a "single-family" dwelling 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.

In addition, we note that the Town's existing text, not amended under Article 29 and therefor not now before the Attorney General for review and approval, also refers to ADUs in the context of "single-family" dwellings. See Section 8.1.1 ("...and subordinate to a larger, primary single-family dwelling..." and "...on properties with single-family homes..."). See also Section 8.1.2 ("...within an existing or new single-family dwelling, or in an existing or new structure accessory to a single-family dwelling..."). As explained in detail above, the Regulations' definition of "Principal Dwelling" contemplates Protected Use ADUs on lots that include more than a single-family dwelling unit. For example, Protected Use ADUs are allowed on lots containing a two-family dwelling or a multi-family dwelling. The Town cannot apply these existing provisions to prohibit an ADU in a principal dwelling. The Town should consult with Town Counsel to ensure the proper application of these existing provisions as well as whether they should be amended at a future Town Meeting.

V. Additional Comments Regarding Existing Text Not Amended Under Article 29

Under Article 29, the Town made only specific identified changes with new text shown in underline and deleted text shown in strikethrough. As a result, much of the existing provisions in Section 8.1 were not amended under Article 29 and are not now before the Attorney General for review and approval. However, we highlight some of these existing provisions for the Town's consideration to ensure that they are applied consistent with G.L. c. 40A, § 3 and the Regulations.

A. Section 8.1.3 (3) – Rental Period of an ADU

The existing text in Section 8.1.3 (3), not amended under Article 29, provides as follows, with emphasis added: "Neither the principal dwelling nor Accessory Dwelling Unit, in whole or in part, shall be used for short-term rentals. *For each tenant, the initial rental period shall be a minimum of 90 days.*"

The Town cannot apply the existing provision in Section 8.1.3 (3) to impose a minimum rental period on an ADU. General Laws Chapter 40A, Section 3, and the Regulations provide only limited authorization to towns to prohibit ADUs from being used as a "Short-term Rental *as defined* in section 1 of chapter 64G" (emphasis added). Here, the existing text in Section 8.1.3 (3) requires an ADU to have an initial rental period of a minimum of 90 days. This existing provision therefore exceeds the occupancy limits for STRs in G.L. c. 64G, § 1, that defines the "Occupancy"

of a STR as follows (with emphasis added):

> the use or possession or the right to the use or possession of a room in a short-term rental normally used for sleeping and living purposes for a period of not more than 31 consecutive calendar days, regardless of whether such use and possession is as a lessee, tenant, guest or licensee.

By referring to G.L. c. 64G, the Room Occupancy Excise statute, G.L. c. 40A, §§ 1A and 3 and the Regulations define a STR as the rental of an ADU with stays of not more than 31 consecutive calendar days. See G.L c. 64G, § 1's definition of "Occupancy" as quoted in pertinent part above. In addition, G.L. c. 40A, § 3 and the Regulations authorize a Town to prohibit ADUs from being rented as STRs, but Section 3 and the Regulations explicitly prohibit towns from prohibiting or unreasonably regulating the rental of ADUs. Therefore, any prohibition on the rental period of ADUs other than as allowed under G.L. c. 64G, would be an unreasonable regulation in violation of Section 3 and the Regulations, unless the Town could satisfy the requirements of Section 71.03 (3). Because the existing text in Section 8.1.3 (3) requires an initial rental period of an ADU of a minimum of 90 days, this existing text would conflict with G.L. c. 40A, § 3 and the Regulations that allows towns to prohibit ADUs as STRs only for a period of 31 days or less. For this reason, the Town cannot apply this existing provision to a Protected Use ADU. The Town should consult with Town Counsel regarding an amendment at a future Town Meeting to delete this provision and whether it should be enforced in the interim.

B. Section 8.1.3 (4) – Dimensional Requirements

The existing text in Sectio 8.1.3 (4), not amended under Article 29, imposes dimensional requirements on ADUs and provides in relevant part that the ADU "must abide by the principal home's requirements for minimum yard requirements (setbacks), maximum lot coverage and maximum building height..." The Town must ensure that this existing provision is applied consistent with G.L. c. 40A, § 3 and the Regulations, that require any dimensional requirements imposed upon an ADU be the most permissive requirements between the principal dwelling, a single-family dwelling or an accessory structure, as explained below.

The Regulations, 760 CMR 71.03 (3)(b)(2), "Regulation of Protected Use ADUs in Single-family Residential Zoning Districts;" "Dimensional Standards," that requires the Town to apply the most permissive dimensional standard, in relevant part as follows, with emphasis added:

> (b) Municipality shall apply the analysis articulated in 760 CMR 71.03 (3)(a) to establish and apply reasonable Zoning or general…by-laws, or Municipal regulations for Protected Use ADUs, but in no case shall a restriction or regulation be found reasonable where it exceeds the limitations, or is inconsistent with provisions, described below, as applicable:…(2) Dimensional Standards. Any requirement concerning dimensional standards, such as dimensional setbacks, lot coverage, open space, bulk and height, and number of stories, that are 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, provided that a Municipality may not require a minimum Lot size for a Protected Use ADU.

The existing text in Section 8.1.3 (4) imposes on an ADU the same dimensional requirements as imposed on the "principal home" instead of imposing the most permissive

dimensional standards as those imposed on the principal dwelling, single-family residential dwelling, or accessory structure in the same zoning district. This existing provision therefore conflicts with the Regulations. For this reason, the Town cannot apply this existing provision to a Protected Use ADU. The Town should consult with Town Counsel regarding an amendment at a future Town Meeting to address this issue.

V. Conclusion

Except for the text "detached single-family" and "single-family" in Section 11.10's definition of "Accessory Dwelling Unit," that we disapprove, we approve the remainder of the specific identified changes adopted under Article 29. However, the Town should consult closely with Town Counsel when applying these provisions as well as the existing text not amended under Article 29 to ensure that it is applied consistent with G.L. c. 40A, § 3 and 760 CMR 71.00. If the provisions adopted under Article 29, and the existing text in Section 8.1, 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.

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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cc: Town Counsel Lisa L. Mead