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July 7, 2025

Elisabeth Legge, Town Clerk
Town of Cohasset
41 Highland Avenue
Cohasset, MA 02025

**Re: Cohasset Special Town Meeting of December 9, 2024 -- Case # 11687**
**Warrant Articles # 10, 11, 12, 13, 14, 15, 16, and 17 (Zoning)**
**Warrant Article # 8 (General)**[1]

Dear Ms. Legge:

**Article 15** - Under Article 15, the Town voted to amend several sections of its zoning by-laws to allow Accessory Dwelling Units ("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 Article 15 because it does not conflict with state law, including G.L. c. 40A, § 3 and 760 CMR 71.00. 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 15; 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

[1] In a decision issued on April 4, 2025, we approved Articles 8, 10, 11, 12, 13, 16, and 17 and by agreement with Town Counsel, pursuant to G.L. c. 40, § 32, we extended our deadline for a decision on Articles 14 and 15 for an additional 60-days until June 6, 2025. On June 6, 2025, we extended our deadline for Articles 14 and 15 for an additional 30-days until July 6, 2025. On July 1, 2025 we issued our decision on 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

of review, we approve the zoning by-law amendments adopted under Article 15. In addition, we offer comments for the Town's consideration regarding certain approved provisions adopted under Article 15.

## I. Summary of Article 15

Under Article 15, the Town amended several sections of its zoning by-laws to allow ADUs as of right in the Town. The Town amended Article 2, "Definitions," to change the definition for "Accessory Dwelling Unit ("ADU")" to read as follows:

> A self-contained dwelling 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 ½ the gross floor area of the principal dwelling or 900 square feet, whichever is smaller; and (iii) is subject to such additional restrictions as may be imposed by Cohasset, including, but not limited to, additional size restrictions and restrictions or prohibitions on short -term rental, as defined in section 1 of G.L. c. chapter 64G; provided however, that no municipality shall unreasonably restrict the creation or rental of an accessory dwelling unit that is not a short-term rental.

The Town also added a definition for a large ADU ("ADU-L") as follows:

> Accessory Dwelling Unit – Large (ADU-L): An Accessory Dwelling Unit as defined above, except the unit may be larger than 900 square feet but may not exceed 1,250 square feet.

Under Article 15, the Town also made specific changes to Section 4.3.B.1, "Accessory Use Regulations-Accessory Dwelling Unit," to allow one ADU as of right in a single-family residential district. In addition, as amended, Section 4.3.B.1, provides an exemption for ADUs located within 0.5-miles of a commuter rail station, subway station, bus station or ferry terminal from the one additional parking space requirement for ADUs. See Section 4.3.B.1 (g). As amended, Section 4.3.B.1 (i) prohibits ADUs from being used as short-term rentals as defined in G.L. c. 64G. Lastly, the town added a new Section 4.3.B.1.1, "Accessory Dwelling Unit- Large" that allows ADU-L by special permit and imposes design, dimensional and use requirements on ADU-L, including owner-occupancy requirements and requiring the principal single-family dwelling to be in existence for ten years.

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

Our review of Article 15 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.

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this definition."

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 15, 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:

[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 ).

> 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"[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

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[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.

"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 Protected Use 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 parameters regarding Protected Use ADUs, we review the zoning amendments adopted under Article 15.

## IV. The Approved ADU Requirements Must be Applied Consistent with G.L. c. 40A, § 3 and 760 CMR 71.00

We offer comments for the Town's consideration regarding the new Section 4.3.B.1.1 that allows ADU-L, which is defined as an ADU larger than 900 square feet but smaller than 1,250 square feet, by special permit and imposes design, dimensional, and use requirements on them. We approve the new Section 4.3.B.1.1 that allows an ADU greater than 900 square feet but less than 1,250 square feet by Special Permit. However, it is not clear whether the larger ADU authorized by special permit under Section 4.3.B.1.1 constitutes the Protected Use ADU as authorized under G.L. c. 40A, § 3 or relates to a second ADU (in addition to the as-of-right ADU allowed under G.L. c. 40A, § 3.)[9]

General Laws Chapter 40A, § 3A allows one ADU to be built as-of-right up to 900 square feet or ½ the gross floor area of the principal dwelling whichever is smaller. In circumstances where a Town chooses to allow by right the Protected Use ADU to be built larger (for example, "larger than 900 square feet but may not exceed 1,250 square feet"), it could be interpreted that the larger ADU constitutes the G.L. c. 40A, § 3 Protected Use ADU because Towns are authorized under 760 CMR 71.03 (7) to "adopt[ ] more permissive Zoning…than would be allowed under 760 CMR 71.03." However, in the circumstances present here, it is not clear whether the larger ADU allowed under Section 4.3.B.1.1 by special permit is a substitute for the as-of-right ADU allowed under G.L. c. 40A, § 3 and the Regulations or constitutes a second ADU in addition to the Protected Use ADU.

For this reason, we encourage the Town to consult with Town Counsel to ensure the proper application of Section 4.3.B.1.1. In addition, to the extent that a larger ADU constructed by special permit under Section 4.3.B.1.1 constitutes the Protected Use ADU authorized by G.L. c. 40A, § 3, the Town must ensure that it does not impose any "Prohibited Regulations" or "Unreasonable Regulations," as part of the special permit process. See 760 CMR 71.03. Finally, the decision to seek a larger ADU by special permit must be a voluntary decision by

[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."

[9] See 760 CMR 71.03 (5) ("if a Municipality chooses to allow additional ADUs on the same Lot as a Protected Use ADU in a Single-family Residential Zoning District, Zoning shall require a Special Permit for the use of land or structures for the additional ADUs.")

the applicant and the applicant must be free to withdraw from the special permit process at any time and construct a Protected Use ADU as-of-right as authorized by G.L. c. 40A, § 3 if they so choose. The Town should consult with Town Counsel and EOHLC with any questions on these issues.

## V. Comments on Existing Text in Section 4.3.B.1.1 That is Not Subject to Any Changes under Article 15

### A. Section 4.3.B.1 (c) and (e)'s Dimensional Requirement's for ADUs

The existing text of Sections 4.3.B.1 (c) and (e ) requires changes or additions to a lot or building for an ADU to comply with the dimensional requirements applicable to the district in which the parcel is located. Because Sections 4.3.B.1 (c) and (e)'s dimensional requirements are not subject to any changes under Article 15, they are not subject to review by this Office. However, the Town must apply the dimensional requirements consistent with the protections given to Protected Use ADUs under 760 CMR 71.03 (3)(b)(2), "Regulation of Protected Use ADUs in Single-family Residential Zoning Districts;" "Dimensional Standards." The Regulations provide as follows with regards to dimensional standards for Protected Use ADUs (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.

Section 300-5.3, the Town's Table of Dimensional Regulations imposes a minimum lot area requirement for lots based on the zoning district in which the lot is located. However, 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, the Town cannot impose Section 300-5.3's minimum lot area requirement on Protected Use ADUs.

With regards to the remaining dimensional requirements in Section 300-5.3, if these existing provisions were before us for review, we could not conclude that the requirements are unreasonable and therefore prohibited under 760 CMR 71.00. However, if these existing 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.

In applying Section 300-5.3's existing dimensional requirements on an ADU, the Town must also ensure that the application of the dimensional requirements 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). The Town should consult with Town Counsel to ensure the proper application of Section 300-5.3's existing dimensional requirements 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 dimensional requirements in Section 300-5.3, 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.

B. Sections 4.3.B.1 (c ) and (f)'s References to "Single-Family" Dwellings

Section 4.3.B.1 (c)'s existing text requires a lot or building for the ADU to conform to the dimensional requirements applicable to the "single-family" dwelling. Section 4.3.B.1 (f)'s existing text also requires adequate water and sewage for the ADU and the principle "single-family" dwelling.

Because Sections 4.3.B.1 (c) and (f)'s references to "single-family dwelling[s]" are not subject to any changes under Article 15, they are not subject to review by this Office. However, the Town may wish to delete the words "single family" from Section 4.3.B.1 (c ) and (f) because limiting ADUs to a single-family dwelling or 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, 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, the Town cannot limit

ADUs to "single family" dwellings or residences. The Town should discuss amending Sections 4.3.B.1 (c) and (f) with Town Counsel.

## VI. Conclusion

We approve Article 15 because it does not conflict with G.L. c. 40A, § 3 and the Regulations. However, the Town should consult closely with Town Counsel when applying the approved ADU provisions to ensure that they are applied consistent with G.L. c. 40A, § 3 and 760 CMR 71.00. If the provisions in Article 15 (or the Town's existing zoning by-laws) 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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