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July 28, 2025

Trudy L. Reid, Town Clerk
Town of Wayland
41 Cochituate Road
Wayland, MA 01778

Re: Wayland Annual Town Meeting of April 7, 2025 -- Case # 11746
Warrant Articles # 19, 20, and 21 (Zoning)
Warrant Articles # 12, 17, 29, 31, 32, and 33 (General) [1]

Dear Ms. Reid:

Article 19 - Under Article 19, the Town voted to amend its zoning by-laws regarding Accessory Dwelling Units ("ADUs") 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 partially approve Article 19 because the approved text does not conflict with state law. However, we disapprove the following provisions adopted under Article 19 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 901.1.3.2 requiring a "minimum of" one parking space; and
- a portion of §198 Attachment 3 - "Town of Wayland Table of Permitted Uses by Districts" and §198 Attachment 5 - "Town of Wayland Table of Permitted Accessory Uses by District" that prohibit ADUs in the Roadside Business District.

In this decision we summarize the by-law amendments adopted under Article 19; discuss the Attorney General's standard of review of town by-laws and the recent statutory and regulatory

[1] On July 16, 2025, we issued our first decision approving Articles 12, 17, 20, 21, 29, 31, 32 and 33.

[2] 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;[3] and then explain why, based on our standard of review, we partially approve the zoning by-law amendments adopted under Article 19. In addition, we offer comments for the Town's consideration regarding certain approved provisions adopted under Article 19.

I. Summary of Article 19

Under Article 19 the Town voted to amend its zoning by-laws - "Accessory Dwelling Units by Right" - by amending §198-104.2 - "Definitions," revising §198-805.1.1.10 - "Classification of accessory uses," replacing §198-901.1.3 - "Permitted Uses" - with new text, amending §198 Attachment 3 – "Town of Wayland Table of Permitted Uses by Districts" and amending §198 Attachment 5 – "Town of Wayland Table of Permitted Accessory Uses by District." The by-law imposes requirements on ADUs, including allowing ADUs as of right in Single Residence Zoning Districts and prohibiting ADUs in all other zoning districts, including the Roadside Business zoning district.[4] The by-law imposes additional restrictions on ADUs including allowing only one ADU by right and prohibiting an ADU from being used as a short-term rental in Sections 901.1.3.1 and 901.1.3.3, respectively.

In addition, the by-law imposes parking requirements (Section 901.1.3.2) and allows a second ADU called an "Affordable Accessory Dwelling Unit" ("AADU") by special permit. (Sections 198-104.2, 198-805.1.1.2, 198-901.1.4, 198-901.1.4.1, 198-901.1.4.2, 198-901.1.4.3 and 198-901.1.4.4). Finally, under Article 19 the Town voted to amend §198 Attachment 3, "Table of Permitted Uses by Districts" to prohibit ADUs as a principal use in the Roadside Business District; to amend §198 Attachment 5, "Table of Permitted Accessory Uses by District" to allow ADUs as of right and AADUs by special permit in the Single Residence District; and to prohibit ADUs and AADUs in the Roadside Business District.

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

Our review of Article 19 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

[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."

[4] The other zoning districts are the Business A, Business B, Light Manufacturing, and Limited Commercial zoning districts. 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 Schedule, single-family dwellings are allowed in the Roadside Business District. For this reason, we disapprove the prohibition on ADUs in the Roadside Business District as explained in more detail in Section IV.

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 19, 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-

> 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 require other discretionary zoning approval 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

addressing-guidance-for-accessory-dwelling-units-adus).

[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.

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.[9] Against the backdrop of these statutory and regulatory parameters regarding Protected Use ADUs, we review the zoning amendments adopted under Article 19.

IV. Text Disapproved from Article 19 Because it Conflicts with G.L. c. 40A, § 3 and the Regulations

A. Section 901.1.3.2 (related to parking requirements)

Section 901.1.3.2 imposes parking requirements on ADUs in relevant part as follows (with emphasis added):

> In addition to the minimum parking required for the Principal Dwelling, **a minimum of** one (1) dedicated parking space, not less than 10 feet by 20 feet, shall be provided for the occupant(s) of the ADU; provided, however, that for an ADU located 0.5 miles or less from a transit or bus station, no dedicated parking space shall be required.

We disapprove and delete the portion of Section 901.1.3.2 (shown above in bold and underline), because as written, this text requires "a minimum of" one dedicated parking space in conflict with the G.L. c. 40A, § 3 and the Regulations. General Laws Chapter 40A, Section 3 prohibits a municipality from requiring more than one parking space 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.

Because Section 901.1.3.2 requires "a minimum of" one parking space this provision conflicts with G.L. c. 40A, § 3 and 760 CMR 71.03 (2) (b) and we therefore disapprove it (as shown above in bold and underline). 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

[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."

radius of a Transit Station. However, the Town cannot, as it has done here, require "a minimum of" one parking space because as written, that requirement conflicts with the statute and Regulations. 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.").

B. §198 Attachment 3, "Table of Permitted Principal Uses by District" and §198 Attachment 5, "Table of Permitted Accessory Uses by District"

Under Motion 1 and 2 the Town amended Attachment 3, "Table of Permitted Principal Uses by District" ("Table Principal") and Attachment 5, "Table of Permitted Accessory Uses by District" (Table Accessory") to make specific changes with new text shown in bold and underline, deleted text shown in strikethrough and text disapproved by the Attorney General shown in yellow highlight, in relevant part as follows:

Attachment 3 – Table Principal

Uses	Single Residence	Roadside Business	Business A	Business B	Light Manufacturing	Limited Commercial	Site Plan Approval
53. Accessory ~~d~~**D**welling Unit **or Affordable Accessory Dwelling Unit**	TAU	**No** ~~TAU~~	No	No	No	No	NR
55. Dwelling, Single family	Yes	Yes	No	No	No	No	NR

Attachment 5 – Table Accessory

Uses	Single Residence	Roadside Business	Business A	Business B	Light Manufacturing	Limited Commercial	Site Plan Approval
58. Accessory Dwelling Unit (§ 198-901.1.3)	**Yes** ~~SP~~	**No** ~~SP~~	No	NA	NA	NA	NR
59. **Affordable** Accessory Dwelling Unit ~~WHA~~ (§198-901.1.4)	**SP** [1]	**No**	No	No	No	No	NR

As amended under Article 19, Attachment 3 - Table Principal, would prohibit both ADUs and AADUs in the Roadside Business District; and Attachment 5 - Table Accessory, would: (1) allow ADUs in the Single Residence District; (2) prohibit ADUs in the Roadside Business District; (3) allow AADUs in the Single Residence district by special permit and (4) prohibit AADUs in the Roadside Business District. We disapprove the prohibition of Protected Use ADUs in the Roadside Business District ("No") from Attachment 3 - Table Principal and Attachment 5 - Table Accessory, as shown above in yellow highlight, because this prohibition conflicts with G.L. c. 40A, § 3, as explained below.

The amendments to the Table Principal and Table Accessory prohibit ADUs in the Roadside Business District even though single-family dwellings are allowed in that District. See Attachment 3, Table Principal, line 55.[10] General Laws Chapter 40A, Section 3 allows a Protected Use ADU as-of-right on any lot in a single-family residential zoning district, in relevant part as follows:

> No zoning ordinance or by-law shall prohibit, unreasonably restrict or require a special permit or other discretionary zoning approval for the use of land or structures for a single accessory dwelling unit, or the rental thereof, in a single-family residential zoning district; provided, that the use of land or structures for such accessory dwelling unit under this paragraph may be subject to reasonable regulations…

The Regulations define the term "Single-family Residential Zoning District" as follows:

> Any 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.

Because single-family dwellings are allowed in the Roadside Business District it is considered a "single-family residential zoning district" under G.L. c. 40A, § 3 and the Regulations. Therefore, a prohibition against ADUs in the Roadside Business District conflicts with the statute and the Regulations and we disapprove the text shown above in yellow highlight. The Town should consult with Town Counsel with any questions regarding the proper application of Section 40A, § 3 to a Protected Use ADU.

V. The Remaining 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 regarding Section 901.1.3.1 to ensure it is applied consistent with G.L. c. 40A, § 3 and the Regulations.

Section 901.1.3.1 requires that "Existing ADUs that cane into being prior to February 2, 2025, can be retroactively recognized as by-right if the ADU meets the definition of a Protected Use ADU under 760 CMR 71.00 et seq., and the property owner or applicant shall so notify the

[10] The remaining four (4) zoning districts, Business A, Business B, Light Manufacturing and Light Commercial do not allow single-family dwellings by right or by special permit in those districts.

Building Department." While we approve Section 901.1.3.1, the Town must ensure that a previously approved ADU that is now intended as a Protected Use ADU under G.L. c. 40A, § 3 no longer remains subject to any provision previously required for "an [ADU] lawfully in existence prior to February 2, 2025" such as owner-occupancy requirements as some of these prior provisions are in conflict with G.L. c. 40A, § 3 and 760 CMR 71.00.

We strongly encourage the Town to consult with Town Counsel regarding an amendment to Section 901.1.3.1 that makes it explicitly clear that any prohibited or unreasonable regulations that were imposed on a previously approved accessory apartment or ADU "lawfully in existence prior to February 2, 2025" are unenforceable to a Protected Use ADU. See 760 CMR 71.03 (4) ("A Municipality shall not enforce any Prohibited Regulation or Unreasonable Regulation that was imposed as a condition for the approval of the use of land or structures for a Protected Use ADU prior to the effective date of 760 CMR 71.00, regardless of whether such Protected Use ADU complies with the Municipality's Zoning, including, but not limited to, use requirements and dimensional requirements, such as setbacks, bulk, and height."). The Town should consult with Town Counsel with any questions regarding the proper application of Section 901.1.3.1.

VI. Conclusion

We partially approve Article 19, except for: (1) the words "a minimum of" from Section 901.1.3.2 (shown above in bold and underline); and (2) the portions of Attachment 3 - Table Principal and Attachment 5 - Table Accessory that prohibit ("No") ADUs in the Roadside Business Zoning District (shown above in yellow highlight), that we disapprove and delete as explained 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 19 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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