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October 16, 2025

Jessica Franceschini, Town Clerk
Town of Hanson
542 Liberty Street
Hanson, MA 02341

Re: Hanson Annual Town Meeting of May 5, 2025 -- Case # 11796
Warrant Article # 22 (Zoning)
Warrant Articles # 17, 18, 19 and 20 (General)

Dear Ms. Franceschini:

Articles 19 and 20 - We approve Articles 19 and 20 from the May 5, 2025 Hanson Annual Town Meeting.[1]

Article 22 - Under Article 22, the Town voted to amend it's zoning by-laws regarding Accessory Dwelling Units ("ADUs") by adding a new Section VI.B.1h, "Attached and Detached Accessory Dwelling Units," 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 22 because the approved text does not conflict with state law. However, we disapprove and delete[3] the following provisions adopted under Article 22 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)):

[1] In a decision issued on August 18, 2025, we approved Articles 17 and 18 and by agreement with Town Counsel as authorized by G.L. c. 40, § 32, we extended our deadline for a decision on Articles 19, 20 and 22 for an additional 60-days until October 16, 2025.

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

[3] The use of the term "disapprove" collectively means "disapprove and delete" such that any text disapproved by the Attorney General (shown in bold and underline) by virtue of such disapproval is also deleted from the Town's zoning by-law and does not take effect under G.L. c. 40 § 32.

- The words "one family" and "single-family" from Sections VI.B.1h (A) and (C);
- A portion of Section VI.B.1h (C) (6) and (8)'s dimensional requirements;
- Section VI.B.1h (C) (13)'s Special Permit requirement for ADUs proposed for a pre-existing non-conforming primary residence; and
- Section VI.B.1h (C) (15)'s restriction on ADUs use as "seasonal rentals."

In this decision we summarize the by-law amendments adopted under Article 22; 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;[4] and then explain why, based on our standard of review, we partially approve the zoning by-law amendments adopted under Article 22. In addition, we offer comments for the Town's consideration regarding certain approved provisions adopted under Article 22.

I. Summary of Article 22

Under Article 22 the Town voted to amend its zoning by-laws to add a new Section VI.B.1h, "Accessory Dwelling Units-Attached and Detached," that imposes requirements on ADUs, including allowing ADUs as-of-right in Single-family Residential Zoning Districts and prohibiting ADUs in all other zoning districts. Section VI.B.1h (B) includes definitions for "Accessory Dwelling Unit," "Gross Floor Area," "Principal Dwelling," and "Protected Use ADU." Section VI.B.1h (C) (2) allows only one ADU by right and Section VI.B.1h (C) (15) prohibits an ADU from being used as a short-term rental. The by-law also imposes parking requirements in Section VI.B.1h (5) and Site Plan Approval requirements in Section VI.B.1h (D).

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

Our review of Article 22 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 22, 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

[4] 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."

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:

> 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.

[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).

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).

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 22.

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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.

[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."

IV. Text Disapproved from Article 22 Because it Conflicts with G.L. c. 40A, § 3 and the Regulations

A. References to One-Family and Single-Family

Two sections of the by-law allow ADUs in the context of a "single family" or "one family" dwelling as opposed to a principal dwelling, as follows (with emphasis added):

> Section VI.B.1h (A): Protect...the **single-family** residential character of a neighborhood.
>
> Section VI.B.1h (C) (3): The ADU shall be designed so that the appearance of the building remains that of a **one-family** residence...

We disapprove and delete the text shown above in bold and underline that imposes requirements on ADUs in the context of single or one family dwellings 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 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, imposing requirements on ADUs as accessory to a "one-family" or "single family" dwelling rather than a principal 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.

B. Section VI.B.1h (C) (6) and (8)'s Dimensional Requirements

Section VI.B.1h (C) (6) imposes setback requirements on ADUs as applicable to "single family homes" and variance requirements as follows (with emphasis added):

> Detached ADUs must meet all zoning setback requirements as may be applicable to **single family** homes for the residential district in which the property is located. **Units that cannot meet the necessary requirements may seek a variance from the Zoning Board of Appeals.**

In addition, Section VI.B.1h (C) (8) sets a maximum height for ADUs in conformance with "single family" homes in the district as follows (with emphasis added):

> The maximum height for a Detached ADU shall be no higher than is permitted for **single family** homes in the district.

1. Dimensional Requirements Applicable to Single Family Homes

Section VI.B.1h (C) (6) imposes setback requirements on the ADU as applicable to "single family homes" in the residential district where the property is located and Section VI.B.1h (C) (8) imposes height restrictions on the ADU as applicable to "single family homes" in the district.

We disapprove the words "single family," shown above in bold and underline, because the Regulations require that 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.

Because Sections VI.B.1h (6) and (8) impose the same dimensional requirements on an ADU as those imposed on a "single family home" instead of the most permissive dimensional standards imposed on the principal dwelling, single-family residential dwelling, or accessory structure in the same zoning district, we disapprove the words "single family" shown above in bold and underline. The Town should consult with Town Counsel with any questions regarding the proper application of Sections VI.B.1h (6) and (8).

2. Variance Requirement

Section VI.B.1h (C) (6) prohibits an existing accessory building from being converted to an ADU unless existing dimensional standards can be met or a zoning variance can be approved, as follows (with emphasis added):

> **…Units that cannot meet the necessary requirements may seek a variance from the Zoning Board of Appeals.**

We disapprove the text shown above in bold and underline from Section VI.B.1h (C) (6), because this provision conflicts with G.L. c. 40A, § 3 and the Regulations, as explained below.

General Laws Chapter 40A, Section 3 prohibits a zoning by-law from requiring a special permit or other discretionary zoning approval, such as a variance, for a single ADU, in relevant part as follows:

> No zoning…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…

In addition, 760 CMR 71.03 (1) prohibits a variance for the use of land or structures for a Protected Use ADU as follows (with emphasis added):

> Municipalities shall not prohibit, impose a Prohibited Regulation, or Unreasonable Regulation, or except as provided under 760 CMR 71.03 (5) and 760 CMR 71.03 (c), require a special permit, wavier, variance or other zoning relief or discretionary zoning approval for the use of land or structures for a Protected use ADU, including the rental thereof, in a Single-family Residential Zoning District; provided that Municipalities may reasonably regulate a Protected Use ADU, subject to the limitations under 760 CMR 71.00.

Further, pursuant to 760 CMR 71.03 (9), "Pre-existing Nonconforming structures," a Town is not allowed to prohibit the development of an ADU in a nonconforming existing structure as follows: "A Municipality may not prohibit the development of a Protected Use ADU in an existing structure or Principal Dwelling, or Lot due to nonconformance, that could be used for, or converted into, a Protected Use ADU in conformance with the Building Code, 760 CMR 71.00, and state law."

Because the Regulations expressly prohibit towns from requiring a variance for the use of land or structures for an ADU, we disapprove the text shown above in bold and underline. We encourage the Town to consult with Town Counsel regarding any questions about this issue.

C. Section VI.B.1h (C) (13)'s Special Permit requirement for ADUs proposed for a pre-existing non-conforming primary residence

Section VI.B.1h (C) (13) requires a special permit for an ADU in a non-conforming principal dwelling unit as follows (with emphasis added):

> **If an ADU is proposed to be attached to a pre-existing, non-conforming Principal Dwelling, the requirements of G.L. c. 40A, §6 and Section IV of this Zoning Bylaw shall apply provided that no Special Permit may consider the ADU use of impose conditions on such use**.

We disapprove Section VI.B.1h (C) (13) shown above in bold and underline because it conflicts with G.L. c. 40A, § 3 and 760 CMR 71.00 that prohibits the imposition of a special permit requirement (except in limited situations not relevant here) for an ADU, as explained in more detail below.

General Laws Chapter 40A, Section 3 prohibits a zoning by-law from requiring a special permit or other discretionary zoning approval for a single ADU, in relevant part as follows:

> No zoning…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…

In addition, 760 CMR 71.03 (1) prohibits a special permit requirement for the use of land or structures for a Protected Use ADU as follows:

> Municipalities shall not prohibit, impose a Prohibited Regulation, or Unreasonable Regulation, or except as provided under 760 CMR 71.03 (5) and 760 CMR 71.03 (c), require a special permit, wavier, variance or other zoning relief or discretionary zoning approval for the use of land or structures for a Protected use ADU, including the rental thereof, in a Single-family Residential Zoning District; provided that Municipalities may reasonably regulate a Protected Use ADU, subject to the limitations under 760 CMR 71.00.

The Town's existing zoning by-laws, Section IV, "Nonconforming Uses," authorizes the Board of Appeals to grant a special permit to change, extend or alter a nonconforming use or structure in certain circumstances. These existing zoning provisions appear to reflect the requirements of 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.") Although the proposed new text in Section VI.B.1h (C) (13) states that "no Special Permit may consider the ADU use or impose conditions on such use" this text creates a discretionary special permit review process that is prohibited by G.L. c. 40A, § 3 and 760 CMR 71.03 (1). For this reason, we disapprove and delete Section VI.B.1h (C) (13) as shown above in bold and underline

D. Section VI.B.1h (C) (15)'s restriction on ADUs use as "seasonal rentals"

Section VI.B.1h (C) (15) prohibits ADUs from being rented as "seasonal rentals" as follows:

ADUs shall not be used for short term **or seasonal rentals**, (i.e. AirbnB or similar).

We disapprove the text above in bold and underline that prohibits a seasonal rental of an ADU because it conflicts with G.L. c. 40A, § 3 and the Regulations that 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 Town's rental prohibition of "seasonal rentals" violates the occupancy limits for STRs in G.L. c. 64G, § 1, that defines the "Occupancy" of a STR as follows:

> [T]he 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.

It is unclear what the Town means by "seasonal rental", as this term is not defined. However, regardless of the Town's intended meaning, Section VI.B.1h (C) (15) prohibits ADUs from being rented as "seasonal rentals" which conflicts with G.L. c. 40A, § 3 and the Regulations. G.L. c. 40A, § 3 and the Regulations allow towns to prohibit ADUs as STRs only for a period of 31 days or less. 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 explicitly forbids 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). For this reason, we disapprove the text shown above in bold and underline that prohibits rental of ADUs as "seasonal rentals."

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 certain approved provisions adopted under Article 22 to ensure that the Town applies these provisions consistent with G.L. c. 40A, § 3 and the Regulations.

A. Sections VI.B.1h (C) (3) and VI.B.1h (D) - Site Plan Review Requirements

Section VI.B.1h (C) (3) imposes design standards that may be determined during Site Plan Review and Section VI.B.1h (D) subjects all ADUs to Site Plan Review and allows the Board of Appeals to impose reasonable conditions as a component of Site Plan Review.

We approve the portion of Section VI.B.1h (C) (3) that allows Site Plan Review for design standards and the site plan requirement imposed by Section VI.B.1h (D), but the Town must ensure that it is applied consistent with state law. Specifically, for uses allowed as of right, such as a Protected Use ADU, site plan review is limited to the regulation of the use rather than its prohibition. Y.D. Dugout, Inc. v. Bd. of Appeals of Canton, 357 Mass. 25, 31 (1970). The scope of site plan approval for as of right uses is therefore limited to imposing reasonable terms and conditions on the use. Id. citing SCIT, Inc. v. Planning Bd. of Braintree, 19 Mass. App. Ct. 101, 107-110 (1984). "[W]here the proposed use is one permitted by right the planning board may only apply substantive criteria consistent with Prudential Ins. Co. v. Board of Appeals of Westwood, 23 Mass. App. Ct. 278 (1986) (i.e., it may impose reasonable terms and conditions on the proposed use, but it does not have discretionary power to deny the use)." Osberg v. Planning Bd. of Sturbridge, 44 Mass. App. Ct. 56, 59 (1997). "[I]f the specific area and use criteria stated in the by-law [are] satisfied, the board [does] not have discretionary power to deny…[approval], but instead [is] limited to imposing reasonable terms and conditions on the proposed use." Prudential, 23 Mass. App. Ct. at 281-282 (internal quotations and citations omitted). The Town should consult closely with Town Counsel when applying a site plan requirement to a Protected Use ADU to ensure it is not applied in a manner that conflicts with the Dover protections afforded to an ADU.

B. Sections VI.B.1h (C) (6) and VI.B.1h (C) (8) - Dimensional Requirements

Section VI.B.1h (C) (6) imposes setback requirements and Section VI.B.1h (C) (8) imposes height standards on ADUs. In applying these dimensional requirements the Town should be mindful that 760 CMR 71.03 (b)(2)(a) 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, Single-Family 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. The Town must ensure that the application of such dimensional requirements is no more restrictive than those required for a Principal Dwelling, Single Family Dwelling or other accessory structure (as defined in 760 CMR 71.02) in the zoning district where the Protected Use ADU is located, whichever is more permissive.

In addition, in applying the provisions of Sections VI.B.1h (C) (6) and VI.B.1h (C) (8) the Town must ensure that any imposed dimensional requirements are consistent with 760 CMR 71.03 (3)(a), as discussed above in more detail. If the Town cannot satisfy this standard, the dimensional regulations would be unreasonable as applied to a Protected Use ADU. The Town should consult with Town Counsel to ensure the proper application of these provisions to a Protected Use ADU.

Additionally, a Protected Use ADU is a Dover Amendment protected use, so the Town can only impose "reasonable regulations." If Sections VI.B.1h (C) (6) and VI.B.1h (C) (8) or the Town's existing dimensional requirements 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 under G.L. c. 40A § 3. The Town should consult with Town Counsel to ensure the proper application of these provisions.

VI. Conclusion

We partially approve Article 22, except for: (1) the words "one-family" or "single-family" (2) certain dimensional requirements in Sections VI.B.1h (C) (6) and (8); (3) Section VI.B.1h (C) (13)'s Special Permit requirement for ADUs proposed for a pre-existing non-conforming primary residence; and (4) Section VI.B.1h (C) (15)'s restriction on ADUs use as "seasonal rentals," that we disapprove and delete as shown in Section IV in bold and underline.

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 22 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,
ANDREA JOY CAMPBELL
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