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December 9, 2025

Jayne Boissonneault, Town Clerk
Town of Dracut
62 Arlington Street
Dracut, MA 01826

Re: Dracut Annual Town Meeting of June 2, 2025 – Case # 11912
Warrant Articles # 21, 22, 29, and 30 (Zoning)
Warrant Articles # 15, 19, and 24 (General) [1]

Dear Ms. Boissonneault:

Article 22 - Under Article 22, the Town amended several sections of its zoning by-laws regarding Accessory Dwelling Units ("ADUs") to allow Protected Use 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").

We partially approve the amendments adopted under Article 22 because the approved text does not conflict with state law. However, we disapprove and delete[2] a portion of footnote # 8 in Section 3.3, "Table of Permitted Uses," that allows an ADU only in conjunction with an "existing" dwelling, because this provision 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 22; discuss the Attorney General's standard of review of town by-laws and the recent statutory and regulatory

[1] In a decision issued September 9, 2025, we approved Articles 15, 19, 24, 29, and 30 and placed Articles 21 and 22 on HOLD pending a complete by-law submission packet. On September 10, 2025 we received from the Town Clerk all documents needed to complete our review of Articles 21 and 22 and took these articles off hold and assigned them a new 90-day deadline (December 9, 2025). On September 23, 2025, we issued our decision approving Article 21.

[2] 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.

changes that allow Protected Use ADUs as of right;[3] and then explain why, based on our standard of review, we partially approve the amendments adopted under Article 22. In addition, we offer comments for the Town's consideration regarding certain approved provisions to ensure that they are applied consistent with state law.

I. Summary of Article 22

Under Article 22, the Town amended three sections of its zoning by-laws regarding ADUs. First, the Town deleted the existing Section 7.4 and inserted a new Section 7.4, "Accessory Dwelling Units," that regulates ADUs including imposing dimensional requirements. The next change amends Section 3.3, "Table of Permitted Uses," ("Table") by amending footnotes # 8 and 12 and by deleting the row under the heading "Other Uses, Accessory Dwelling Units # 8," and inserting in its place the following:

Principal Uses	Residential			Business				Industrial	
	R-1	R-2	R-3	B-1	B-3	B-4	B-5	I-2	I-2
Other Uses									
First Accessory Dwelling Unit	P (#8)	P (#8)	P (#8)	P (#8)	P (#8)	P (#8)	P (#8)	P (#8)	P (#8)
Additional Accessory Dwelling Unit (#12)	PB (#8)	PB (#8)	PB (#8)	PB (#8)	PB (#8)	PB (#8)	PB (#8)	PB (#8)	PB (#8)

Also under Article 22 the Town amended Section 3.3's Table by replacing the existing footnote # 8 with a new footnote # 8 and adding a new footnote # 12 as follows (with emphasis added):

> #8 – Accessory Dwelling Units shall only be allowed in conjunction with an **existing** dwelling.
>
> # 12 – See Section 7.4.2.D

The last change amends Section 9, "Definitions," to add new definitions for the terms "Accessory Dwelling Unit (ADU)" and "Accessory Dwelling Unit, Attached."

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

[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."

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 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

> 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

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Guidance regarding address assignments for ADUs (https://www.mass.gov/info-details/massgis-addressing-guidance-for-accessory-dwelling-units-adus).

[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.

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.[8] Against the backdrop of these statutory and regulatory parameters regarding Protected Use ADUs, we review the zoning amendments adopted under Article 22.

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

Under Article 22, the Town amended Section 3.3's Table to add a new use of "First Accessory Dwelling Unit," and allow this use in all zoning districts by right as follows: "P (#8). In addition, under Article 22 the Town amended footnote # 8 to delete the existing footnote and add a new footnote # 8 that provides as follows (with emphasis added):

> # 8 – Accessory Dwelling Units shall be allowed in conjunction with an **existing** dwelling.

Although Section 3.3's Table allows an ADU by right in all the Town's zoning districts, it subjects this allowance to the provisions of footnote # 8 that allow an ADU only in an "existing" dwelling. We disapprove the word "existing" from footnote # 8 because it conflicts with G.L. c. 40A, § 3 and the Regulations to allow an ADU only in an existing dwelling, as explained below.

General Laws Chapter 40A, Section 3 provides in relevant part that:

> 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…

General Laws Chapter 40A, Section 3 protects ADUs by providing that zoning by-laws shall not prohibit, unreasonably regulate or require the special permit or other discretionary zoning approval for the use of land or structures for a single ADU in a single-family residential zoning district but authorizes municipalities to impose reasonable regulations on the creation and use of ADUs, if it so chooses. The Regulations, 760 CMR 71.02 defines a "Protected Use ADU" in relevant part (with emphasis added) as: "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…."

[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."

Neither G.L. c. 40A, § 3 or the Regulations limit an ADU to only an existing principal dwelling, but instead allow an ADU "on the same lot as a Principal Dwelling." Therefore, an ADU could be constructed at the same time as a new principal dwelling is constructed. Therefore, limiting an ADU to only an "existing" dwelling, as opposed to a principal dwelling, conflicts with the statute and Regulations. For this reason, we disapprove the text shown above in bold and underline. The Town should consult with Town Counsel with any questions on the proper application of Section 3.3 including the approved portion of footnote # 8.

V. The Remaining Approved Provisions Adopted Under Article 22 Must be Applied Consistent with G.L. c. 40A, § 3 and 760 CMR 71.00

A. Section 7.4.2 (7) – Dimensional Requirements

Section 7.4.2, "Use and Dimensional Regulations," Subsection (A)(7) imposes dimensional requirements on ADUs as follows: "Any new construction of an Accessory Dwelling Unit shall be in accordance with current height, setback and lot coverage requirements for the zoning district where it is located."

In applying Section 7.3.2 (A)(7), the Town must ensure it is applied consistent with 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.

In addition, when applying Section 7.4.2 (A)(7), because a Protected Use ADU is a Dover Amendment protected use, the Town can only impose "reasonable regulations" on a Protected Use ADU. Therefore, if a height, setback, or other dimensional requirement is used in a manner to prohibit or unreasonably restrict a Protected Use ADU, such application would run afoul to the Dover amendment protections given to a Protected Use ADU under G.L. c. 40A § 3 and the Regulations. Moreover, the Town must ensure that these existing dimensional requirements are analyzed on a case by case basis as it relates to a particular property because in some circumstances the provision could be unreasonable as applied to a particular property. In addition, the Town must

ensure that the application of these 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). If the Town cannot satisfy this standard, the regulation may be deemed to be unreasonable. The Town should consult with Town Counsel to ensure the proper application of any dimensional requirements to a Protected Use ADU.

B. Pre-Existing In-Law Suites

Section 7.4.3, "Administration and Enforcement," Subsection A, provides as follows regarding pre-existing in-law suites: "[e]xisting in-law suites subject to Special Permit shall be unaffected by this section of the Bylaw. However, upon issuance of a Building Permit in accordance with this section and the relevant portions of 780 CMR MA State Building Code, existing in-law suites, permitted or otherwise, may be converted to Accessory Dwelling Units."

We approve Section 7.4.3 (A). However, the Town must ensure that a previously approved in-law suite 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. We strongly encourage the Town to consult with Town Counsel regarding an amendment to Section 7.4.3 (A) that makes it explicitly clear that any prohibited or unreasonable regulations that were imposed on a previously approved in-law suite that is now being converted to an ADU 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 7.4.3 (A).

VI. Conclusion

We partially approve Article 22, except for a portion of the text in Section 3.3's footnote # 8 that restricts an ADU to only an "existing" dwelling, that we disapprove and delete as shown in Section IV above in bold and underline. As to the remaining approved provisions, the Town should consult closely with Town Counsel when applying these provisions to ensure they are applied consistent with G.L. c. 40A, § 3 and 760 CMR 71.00. If the provisions adopted under 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,

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