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October 21, 2026

Louise L. Miller, Town Clerk
Town of Needham
1471 Highland Avenue
Needham, MA 02492

Re: Needham Annual Town Meeting of May 4, 2026 – Case # 12390
Warrant Articles # 17, 18, 19, 38, 39, and 40 (Zoning) [1]

Dear Ms. Miller:

Articles 18, 19, 38, 39, and 40 - We approve Articles 18, 19, 38, 39, and 40, and the map amendments related to Articles 38 and 39, from the Needham May 4, 2026 Annual Town Meeting. We will return the approved maps to you by mail. Our comments regarding Article 18 are provided below.

Article 18 - Under Article 18, the Town amended its zoning by-laws to make a number of amendments related to Accessory Dwelling Units ("ADUs"), including adding a new Section 3.18, "Accessory Dwelling Units (ADUs), to allow ADUs as of right in the Town 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 the amendments adopted under Article 18, because they do not conflict with state law. 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 September 10, 2026, we approved Article 17 and by agreement with Town Counsel as authorized by G.L. c. 40, § 32, we extended the deadline for our decision on Articles 18, 19, 38, 39, and 40 for 45-days until October 25, 2026.

[2] The Regulations can be found here: 760 CMR 71.00. However, we note that EOHLC has just announced its intention to update the Regulations. The draft updated Regulations are available at www.mass.gov/adu. The Town should monitor future amendments to the Regulations and consult with Town Counsel on such amendments.

In this decision we summarize the by-law amendments adopted under Article 18; discuss the Attorney General's standard of review of town by-laws and the statutory and regulatory changes that allow Protected Use ADUs as of right;[3] and then explain why, based on our standard of review, we approve the amendments adopted under Article 18. We also offer comments for the Town's consideration regarding certain approved provisions.

I. Summary of Article 18

Under Article 18, the Town amended several sections of its zoning by-laws related to ADUs. The first change amends Section 1.3 to delete the existing definition of "Accessory Dwelling Unit (ADU)." The next change amends Section 3.2.1, "Uses in the Rural Residence-Conservation, Single Residence A, Single Residence B, General Residence, Apartment A-1, Apartment A-2, Apartment A-3, Institutional, Industrial and Industrial-1 Districts," to allow ADUs as of right ("Y") in in all these zoning districts. The next change amends Section 3.2.2, "Uses in the Business, Chestnut Street Business, Center Business, Avery Square Business and Hillside Avenue Business Districts," to allow ADUs as of right in the Business ("B"), Avery Square Business ("ASB") and Hillside Avenue Business ("HAB") districts and prohibit ADUs in the Chestnut Street Business ("CSB") and Center Business ("CB") districts.[4]

The fourth change amends Section 3.2.3.1, "Uses in the Neighborhood Business District; Permitted Uses," to add a new subsection (k) that allows a Protected Use ADU by right in the Neighborhood Business District ("NB"). The next change deletes Section 3.2.3.2 (c) that required a special permit for an ADU in the NB district. The next change amends Section 3.1.2.3 to add a new subsection (b) that allows Protected Use ADUs by right in the Elder Services Zoning District. The last change inserts a new Section 3.18, "Accessory Dwelling Units (ADUs"), that imposes regulations on ADUs, including dimensional requirements.

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

Our review of Article 18 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

[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] 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 a permitted or an allowable use, including any Zoning District where Single-family Residential Dwellings are allowed as-of-right or by Special Permit." As amended, Section 3.2.2 prohibits ADUs in the CSB and CB districts. For this reason, we approve this provision because single-family detached dwellings are also prohibited in the CSB and CB districts. However, the Town must ensure that Protected Use ADUs are allowed in any Single-family Residential Zoning District in the Town, and we encourage the Town to consult with Town Counsel with any questions on this issue.

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 18, 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 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

[5] See the following resources for additional guidance on regulating ADUs: (1) EOHLC's ADU FAQ section (2) Massachusetts Department of Environmental Protection's Guidance on Title 5 requirements for ADUs and FAQs and (3) MassGIS Addressing Guidance regarding address assignments for ADUs.

educational institution, or that limits the number of occupants beyond what is required by applicable state code.

While a municipality may reasonably regulate a Protected Use ADU in the manner authorized by 760 CMR 71.00, such regulation cannot prohibit, require a special permit or other discretionary zoning approval for, or impose a "Prohibited Regulation"[6] or an "Unreasonable Regulation" on, a Protected Use ADU. See 760 CMR 71.03, "Regulation of Protected Use ADUs in Single-Family Residential Zoning Districts."[7] Moreover, Section 71.03 (3)(a) provides that while a town may reasonably regulate and restrict Protected Use ADUs, certain restrictions or regulations "shall be unreasonable" in certain circumstances.[8] In addition, while municipalities may impose dimensional requirements related to setbacks, lot coverage, open space, bulk and height and number of stories (but not minimum lot size), such requirements may not be "more restrictive than is required for the Principal Dwelling, or a Single-Family Residential Dwelling or accessory structure in the Zoning District in which the Protected Use ADU is located, whichever results in more permissive regulation…" 760 CMR 71.03 (3)(b)(2). Towns may also impose site plan review of a Protected Use ADU, but the Regulations requires the site plan review to be clear and objective and prohibits the site plan review authority from imposing terms or conditions that "are unreasonable or inconsistent with an as-of-right process as defined in M.G.L. c. 40A, § 1A." 760 CMR 71.03 (3)(b)(5).

We incorporate by reference our more extensive comments regarding these 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 18.

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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

IV. The New Section 3.18 Must be Applied Consistent with G.L. c. 40A, § 3 and 760 CMR 71.00

We approve Section 3.18, "Accessory Dwelling Units (ADUs)," that allow ADUs as of right and imposes regulations on their use. We offer comments below for the Town's consideration on certain approved provisions to ensure the by-law is applied consistent with G.L. c. 40A, § 3 and the Regulations.

A. Section 3.18.6 – Common Ownership Requirement

Section 3.18.6 requires the ADU and principal dwelling to remain in common ownership as follows: "ADUs shall remain accessory to a Principal Dwelling, and therefore both must be sited on a single Lot and the ADU must remain in common ownership with the associated Principal Dwelling." Although the Regulations prohibit a municipality from imposing "owner-occupancy" requirements on either the ADU or the principal dwelling, the Regulations are silent on the issue of whether the ADU and the principal dwelling must remain in single ownership. In addition, both the statute and 760 CMR 71.02's definition of ADU authorize a municipality to impose "additional restrictions" on an ADU. Therefore, based upon our standard of review, we cannot conclude that Section 3.18.6 is in conflict with state law.

In reviewing this provision, we have considered the question whether the by-law's requirement that the ADU and principal dwelling "must remain in common ownership" amounts to an unlawful exercise of the Town's zoning power because it is based on ownership and not use. "A fundamental principle of zoning [is that] it deals basically with the use, without regard to the ownership, of the property involved or who may be the operator of the use." CHR Gen., Inc. v. City of Newton, 387 Mass. 351, 356, (1982) (internal quotations and citations omitted). In some instances, therefore, municipal condominium bans have been deemed unlawful. Id. at 356-58 (ordinance regulating conversion of residential units to condominiums was invalid regulation based on ownership because "a building composed [of] condominium units does not 'use' the land it sits upon any differently than an identical building containing rental units."); see also Bannerman v. City of Fall River, 391 Mass. 328 (1984) (city not authorized to adopt condominium ban pursuant to municipal powers to operate water/sewer, regulate traffic, or supervise public health).

It appears that Section 3.18.6's provision is not intended to restrict *who* can own the ADU but is instead targeted at ensuring that the ADU remains an accessory use to the principal dwelling. Use. See Goldman v. Town of Dennis, 375 Mass. 197, 199 (1978); Gamsey v. Bldg. Inspector of Chatham, 28 Mass. App. Ct. 614 (1990). Thus, "[a]lthough the limitation is phrased in terms of the type of ownership," we cannot conclude that this provision conflicts with the Town's zoning power. Goldman, 375 Mass. at 199.

For these reasons, and based upon our standard of review, we cannot determine that Section 3.18.6's provisions conflict with the Regulations or are an unreasonable regulation under 760 CMR 71.03 (3). However, the Town should be prepared to satisfy the requirements of 760 CMR 71.03 (3) if this provision, as applied to a particular person, is challenged in the Court as unreasonable. The

topic "ADUS."

Town should consult closer with Town Counsel on this issue.

B. Section 3.18.7 – Nonconformity

Section 3.18.7 requires a finding related to certain nonconformities, as follows:

> Nothwithstanding anything contained in Section 1.4 [Non-Conformance], construction of an ADU that involves a change, extension, or alteration of any preexisting nonconforming structure in a manner that increases its nonconformity relative to any setback requirement, maximum story requirement or maximum height requirement that may lawfully be applied to the ADU in accordance with M.G.L. c. 40A, § 3 and 760 CMR 71.00 shall require a finding from the Board of Appeals that such change, extension or alteration is not substantially more detrimental than the existing use to the neighborhood.

We approve Section 3.18.7 because it does not conflict with state law, including the recent amendments to G.L. c. 40A, § 6. See Amherst, 398 Mass. at 795-96. However, we highlight for the Town the recent amendments to G.L. c. 40A, § 6, regarding non-conforming uses and structures, to ensure that the Town applies Section 3.18.7 consistent with G.L. c. 40A, § 6.

On July 9, 2026, Governor Healey signed into law Chapter 137 of the Acts of 2026, "An Act Making Appropriations for the Fiscal Year 2027 for the Maintenance of the Departments, Boards, Commissions, Institutions, and Certain Activities of the Commonwealth, for Interest, Sinking Fund, and Serial Bond Requirements, and for Certain Permanent Improvements" ("the "Act").[10] Sections 42, 43, 44, 45, and 46 amend portions of G.L. c. 40A, § 6 related to non-conforming uses and structures. In particular, Section 43 of the Act provides as follows:

> SECTION 43. Said section 6 of said chapter 40A, as so appearing, is hereby further amended by inserting after the word "neighborhood", in line 21, the following words:- provided, however, that pre-existing nonconforming structures or residential uses that do not conform to zoning because of lot size or shape, frontage, lot coverage or floor area ratio requirements may be extended or altered as of right, without the need for a finding by the special permit granting authority under this paragraph, if such extension or alteration complies with the current dimensional regulations regarding height, stories and setback.

General Laws Chapter 40A, Section 6, as amended by Section 43 of the Act, now provides in relevant part as follows:

> 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 or structure[11] to the neighborhood provided, however, that pre-

[10] The Act can be found here: Chapter 137 of the Acts of 2026. Section 135 of the Act provides that "Except as otherwise provided, this act shall take effect on July 1, 2026."

[11] Section 44 of the Act adds the word "or structure" after the word "use" as follows: "Said section 6 of said chapter 40A, as so appearing, is hereby further amended by inserting after the word "use", in line 21, the following words:- or structure."

existing nonconforming structures or residential uses that do not conform to zoning because of lot size or shape, frontage, lot coverage or floor area ratio requirements may be extended or altered as of right, without the need for a finding by the special permit granting authority under this paragraph, if such extension or alteration complies with the current dimensional regulations regarding height, stories and setback.

The Town should consult closely with Town Counsel to ensure the proper application of Sections 8.13, 8.1.4, and 8.1.5. In addition, the Town may wish to discuss with Town Counsel whether these sections should be further amended at a future Town Meeting.

V. Conclusion

We approve the amendments adopted under Article 18 because they do not conflict with state law. See Amherst, at 795-96. 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 18, or any of the Town's existing zoning provisions, are used to deny a Protected Use ADU, or otherwise applied in ways that constitute an unreasonable regulation in conflict with 760 CMR 71.03 (3), such application would violate G.L. c. 40A, § 3 and the Regulations. The Town should consult with Town Counsel and EOHLC to ensure that the approved by-law provisions are applied consistent with G.L. c. 40A, § 3 and the Regulations, as discussed herein.

Finally, we remind the Town of the requirements of 760 CMR 71.04, "Data Collection," that requires municipalities to maintain certain records, as follows: "Municipalities shall keep a record of each ADU permit applied for, approved, denied, and issued a certificate of occupancy, with information about the address, square footage, type (attached, detached, or internal), estimated value of construction, and whether the unit required any variances or a Special Permit. Municipalities shall make this record available to EOHLC upon request." The Town should consult with Town Counsel or EOHLC with any questions about complying with Section 71.04.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute.

Very truly yours,

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cc: Town Counsel Christopher H. Heep