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January 5, 2026

Robin Phelan, Town Clerk
Town of Boxford
7A Spofford Road
Boxford, MA 01921

Re: Boxford Annual Town Meeting of May 13, 2025 -- Case # 11398
Warrant Articles # 21, 22, and 23 (Zoning)
Warrant Articles # 18, 19, and 20 (General)

Dear Ms. Phelan:

Articles 18, 19, and 21 – We approve Articles 18, 19, and 21 from the May 13, 2025 Boxford Annual Town Meeting. Our comments regarding Articles 18 and 21 are provided below.[1]

Article 20 – Under Article 20, the Town made changes to Chapter 23, "Personnel." We return Article 20 with no action because it amends the Town's personnel by-law adopted under G.L. c. 41, §§ 108A and 108C, and is therefore not subject to Attorney General review and approval under G.L. c. 40, § 32.

Chapter 23-1 expressly states that Chapter 23 is adopted under the authority of G.L. c. 41, §§ 108A and 108C. Under G.L. c. 41, § 108A, the Legislature authorized towns to adopt by-laws to establish employment classification plans but exempted such by-laws from the Attorney General's review and approval mandated by G.L. c. 40, § 32: "Any by-law adopted under the provisions of this section shall not be subject to section thirty-two of chapter forty." Similarly, in G.L. c. 41, § 108C the Legislature authorized towns to adopt consolidated personnel by-laws, ("A town may consolidate, in a single chapter or article, all provisions of its by-laws pertaining to the administration of its personnel") but exempted such by-laws from Attorney General review and approval: "[S]uch consolidated by-law shall not be subject to the approval of the attorney general as provided in section thirty-two of chapter forty."

The Legislature has determined that personnel by-laws, including employment provisions, similar to those provided in Chapter 23, are not the type of by-laws that are subject to Attorney General review and approval. Therefore, we take no action on the amendments to Chapter 23

[1] On October 6, 2025, we placed the Articles adopted at the May 2025 Annual Town Meeting on HOLD pending receipt of information we needed to conclude our review. You submitted the requested information on October 6, 2025 and we therefore gave your submission a new 90-day deadline of Sunday, January 4, 2025. We will issue our decision on Article 23 under separate cover.

adopted under Article 20. The Town should consult with Town Counsel with any questions.

Article 22 - Under Article 22, the Town amended Section 196-13, regarding uses allowed in the Town's Residential-Agricultural District, ("R-A") to add a new Subsection G, " Protected Uses Accessory Dwelling Units," ("PUADUs") to allow PUADUs 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] the following provisions 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)):

- Subsection (G)'s reference to PUADUs in the context of "single-family" dwellings;
- Subsection (G) (6) (c)'s requirement that PUADUs comply with the Town's lot area requirements;
- Subsection (G) (6) (d)'s requirement that PUADUs shall be no more than two stories; and
- Subsection (G) (9)'s special permit requirement for PUADUs in pre-existing non-conforming single-family dwellings.

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;[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 Section 196-13, regarding uses allowed in the Town's Residential-Agricultural District, ("R-A") to add a new Subsection G, " Protected Uses Accessory

[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.

[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."

Dwelling Units," ("PUADUs") to allow PUADUs as of right in the Town's R-A District where single family dwellings are an allowed use. In addition, Subsection G imposes requirements on PUADUs including use, dimensional, design and parking requirements.

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 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:

> 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

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[4] See the following resources for additional guidance on regulating ADUs: (1) EOHLC's ADU FAQ section (https://www.mass.gov/info-details/accessory-dwelling-unit-adu-faqs\) (2) Massachusetts Department of Environmental Protection's Guidance on Title 5 requirements for ADUs (https://www.mass.gov/doc/guidance-on-title-5-310-cmr-15000-compliance-for-accessory-dwelling-units/download); and https://www.mass.gov/doc/frequently-asked-questions-faq-related-to-guidance-on-title-5-310-cmr-15000-compliance-for-accessory-dwelling-units/download; and (3) MassGIS Addressing Guidance regarding address assignments for ADUs (https://www.mass.gov/info-details/massgis-addressing-guidance-for-accessory-dwelling-units-adus).

[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.

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.[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

A. Subsection (G) (1)'s Reference to "Single-Family" Dwelling Units

Subsection (G) (1) defines "Protected Use Accessory Dwelling Unit" as follows:

> A Protected Uses Accessory Dwelling Unit ("ADU") is an attached or detached Dwelling Unit that is: accessory to a principal **single-family** Dwelling Unit and is otherwise defined by the provisions of G.L. c. 40A, §1A, as may be amended.

We disapprove the text "single-family," as shown above in bold and underline, that defines an PUADU as an attached or detached dwelling unit accessory to a single-family dwelling unit because this text conflicts with G.L. c. 40A, § 3 and the Regulations that allow ADUs as of right on the same lot as any type of "Principal Dwelling," as explained below. See West Street Associates, LLC v. Planning Board of Mansfield, 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 PUADUs 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):

[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."

> 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 PUADUs on lots that include more than one dwelling unit. For example, PUADUs are allowed on lots containing a two-family dwelling or a multi-family dwelling. Therefore, requiring a PUADU to be accessory to a single-family dwelling conflict with G.L. c. 40A, § 3 and the Regulations. For this reason, we disapprove the text shown above in bold and underline.

B. Subsection (G) (6) (c)'s Dimensional Requirements

Subsection (G) (6) (c) imposes dimensional requirements on PUADUs as follows:

> ADUs shall comply with any and all **lot area**, frontage, setback, height, lot width and lot coverage requirements, as may be applicable **to single-family homes** in the R-A Districts as contained in Section 196-24 of this Zoning Bylaw.

We disapprove the portions of Subsection (G) (6) (c) that imposes a lot area requirement on PUADUs and that requires PUADUs to comply with the same dimensional requirements applicable to single-family homes because these provisions conflict with the Regulations that require the most permissive dimensional requirements between the single-family dwelling, principal dwelling, or an accessory structure, within the same zoning district and that prohibit towns from imposing lot area requirements on PUADUs, as further explained below.

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. Specifically, 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, and prohibit towns from imposing lot size requirements on PUADUs, 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.

First, the Regulations specifically prohibit the Town from imposing lot area requirements on PUADUs. Therefore, we disapprove the words "lot area" from Subsection (G) (6) (c). Next, requiring PUADUs to comply with the dimensional requirements applicable to a "single-family" dwelling" conflicts with the Regulations that require the most permissive dimensional requirements.

Moreover, this requirement imposes dimensional requirements that are more restrictive than allowed under the Regulations. For example, under Section 196-24, structures cannot extend within twenty-five feet of the side or rear lot line. However, under Section 196-25, accessory buildings and structures shall not be any closer to any side or rear lot line than the height of such accessory building above the ground or 20 feet, whichever is greater. By requiring PUADUs to comply with the dimensional requirements applicable to single-family homes, the Town is not requiring the most permissive dimensional requirements. For this reason, we disapprove the words "to single-family homes" as show above in bold and underline above.

As to the approved dimensional requirements in Subsection (G) (6) (c), we offer additional comments for the Town's consideration to ensure the approved portions of the by-law are applied consistent with the Regulations.

In imposing a dimensional standard on a PUADU, because a PUADU is a Dover Amendment protected use, the Town can only impose "reasonable regulations" on a Protected Use ADU. Therefore, if a dimensional requirement is used in a manner to prohibit or unreasonably restrict a PUADU, such application would run afoul to the Dover amendment protections given to a PUADU under G.L. c. 40A § 3 and the Regulations. Moreover, the Town must ensure that any 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 any dimensional requirement 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 PUADU. 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 PUADU.

C. Subsection (G) (6) (e)'s Height Requirement

Subsection (G) (6) (e) imposes a height requirement on PUADUs as follows:

Protected Use ADUs shall be no more than two stories.

We disapprove Subsection (G) (6) (e) because it imposes a height requirement that is not the most permissive than those 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. See 760 CMR 71.03 (3)(b)(2). Section 196-23, "Height regulations" of the Town's existing zoning by-laws states that "[t]he height of any structure in all districts shall not exceed 35 feet or three stories." Therefore, Subsection (G) (6) (e) imposes a height restriction more restrictive than the most permissive height requirement, and for this reason, we disapprove Subsection (G) (6) (e).

D. Subsection (G) (9)'s Relationship to Non-Conformities

Subsection (G) (9), "Relationship to non-conformities," provides as follows:

If a Protected Use ADU is proposed for a pre-existing, non-conforming single-family primary residence, the requirements of Section 196-6 B and 196-6 C of this Zoning Bylaw shall apply provided that no special permit may consider the ADU use or impose

conditions on such use.

We disapprove Subsection (G) (9) (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)[9] 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.

Section 196-6 (B) of the Town's existing by-law requires a special permit from the Board of Appeals for certain non-conforming structures and uses:

> Other nonconforming structures or uses may be extended, altered or changed in use on special permit from the Board of Appeals in accordance with the provisions of Article X if the Board of Appeals finds that such extension, alteration or change will not be substantially more detrimental to the neighborhood than the existing nonconforming use.

Section 196-6 (C) prohibits a "[o]nce changed [] conforming use" to be reverted back to a nonconformity. Section 196-6 reflects 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

[9] The Regulations include only two instances when the Town may require a special permit for an ADU. First, notwithstanding 760 CMR 71.03 (1)'s prohibition on special permits for ADUs, 760 CMR 71.03 (5) requires a municipality that "chooses to allow additional ADUs on the same [l]ot as a Protected use ADU in a Single-family Residential Zoning District," to allow the additional ADUs by special permit. Second, 760 CMR 71.03 (6) allows a Town to require a special permit "for development of a Protected Use ADU in a floodplain or aquifer protection overlay if required for the Principal Dwelling, provided that the Special Permit is based on clear, objective, and non-discretionary criteria." Neither of these exceptions authorize Section V-G (A)(8)'s special permit requirement.

alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.") Although the proposed new text in Subsection (G) (9) states that the special permit required under Section 196-6 (B) "may [not] consider the ADU use or impose conditions on such use," the text imposes 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 Subsection (G) (9) as shown above in bold and underline.[10]

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. Subsection (G) (5)'s Prohibition on PUADUs as Short-Term Rentals

Subsection (G) (5) prohibits PUADUs from being used as short-term rentals ("STRs") or "otherwise rented for a period shorter than thirty-one (31) days." Although we approve the prohibition on PUADUs as STRs, it is unclear what the Town means when it prohibits PUADUs from "otherwise [being] rented for a period shorter than thirty-one (31) days." General Laws Chapter 40A, Section 3 and the Regulations provide a limited authorization on the Town's ability to regulate the rental of ADUs. If Subsection (G) (5) is applied to prohibit the rental of ADUs other than as STR, then it would conflict with G.L. 40A, §3 and the Regulations. See Section 71.03 (2) (c)'s prohibition on use and occupancy regulations and Section 71.03 (3)'s prohibition on unreasonable regulations. Therefore, any prohibition on the rental period of PUADUs other than as allowed under

[10] We acknowledge that Subsection (G) (9)'s requirement for a special permit comes from its reference to Section 196-6 of the Town's existing zoning by-law, which appear to relate to G.L. c. 40A, § 6 regarding pre-existing non-conforming structures or uses. Although Section196-6 imposes a special permit requirement in certain circumstances for a change to a nonconforming structure, G.L. c. 40A, § 6 does not *require* a special permit process and instead authorizes the Town to make a "finding." In limited circumstances, it may be appropriate for the Town to require a Section 6 finding for an ADU associated with a nonconforming structure or lot. See Petrucci v. Bd. of Appeals of Westwood, 45 Mass. App. Ct. 818 (1998) (no Section 6 "finding" required where applicant successfully demonstrated the unreasonableness of the application of the dimensional requirements to the structure . . ."). In circumstances where the regulations creating the increased nonconformity can lawfully be applied to the ADU, the Town may require that the applicant demonstrate that the altered structure use will not be substantially more detrimental to the neighborhood than the existing structure so long as the town applies objective, nondiscretionary criteria and no special permit is required. However, changing the use of a nonconforming structure to an ADU use, a statutorily protected use, cannot trigger scrutiny of the impact on a neighborhood because the ADU is a protected use and cannot be denied. Moreover, a Protected Use ADU is not "nonconforming" to any zoning rule that cannot lawfully be applied to it under the ADU statute and regulations. See Watros v. Greater Lynn Mental Health and Retardation Ass'n, Inc., 421 Mass. 106, 115 (1995); see also Ellsworth vs. Mansfield, Case No. 08 MISC 382311, 2011 WL 3198174, at *4 (Mass. Land Ct. July 25, 2011) (no Section 6 finding required for Dover-protected educational use because "effectively, G.L. c. 40A, § 3 removes the non-conformity (the lack of frontage) because it would not be a 'reasonable regulation' of the proposed school in these circumstances"). As a result, construction or alteration of a structure for an ADU will not increase a nonconformity unless the nonconformity is created by regulations that can reasonably be applied to the ADU. We strongly suggest that the Town discuss this issue with Town Counsel.

G.L. c. 64G, would violate of Section 3 and the Regulations. We suggest that the Town discuss this issue in more detail with Town Counsel.

B. Subsection (G) (6) (g)'s Common Ownership Requirement

Subsection (G) (6) (g) prohibits the PUADU from being separated or conveyed from the 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. Based upon our standard of review, we cannot conclude that Subsection (G) (6) (g) 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 "remain under the same 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 Subsection (G) (6) (g)'s provisions are 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, but not ownership, may be regulated through zoning. 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 Subsection (G) (6) (g)'s ownership provisions are in 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 Town should consult closer with Town Counsel on this issue.

C. Subsection (G) (7)'s Parking Requirements

Subsection (G) (7) requires at least one parking space for all PUADUs. We approve this provision because it is consistent with G.L. c. 40A, § 3 and the Regulations that allows the Town to require one parking space for an ADU unless the ADU is located within a 0.5 mile radius of a transit station. See G.L. c. 40A, § 3 ("…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.); see also 760 CMR 71.03 (2) (b) (the Town cannot impose a requirement for more than one additional parking space or any additional parking space requirement for a Protected Use ADU if any portion of its Lot is located within a 0.5-mile radius of a Transit Station.)[11] While the Town is part of Merrimac Valley Transit, it appears that there are no transit stations (bus stops) located in the Town. For this reason, we approve Subsection (G) (7)'s parking requirements. However, the Town must ensure that Subsection (G) (7) is applied consistent with G.L. c. 40A, § 3 and the Regulations regarding parking spaces, as discussed in detail above. In addition, we encourage the Town to consult with Town Counsel to determine if Subsection (G) (7)'s parking requirements should be amended at a future Town Meeting to specifically include a parking exemption for ADUs located within a 0.5-mile radius of a transit station. The Town should consult with Town Counsel with any questions on this issue.

D. Subsection (G) (8)'s Prohibition on Trailers and Other Moveable Structures

Subsection (G) (8) prohibits trailers and other moveable structures from being used as dwellings, except as provided in G.L. c. 40A, § 3. Neither Subsection G nor the Town's existing zoning by-law's define "trailer" or "other moveable structures," and therefore it is unclear what purpose the exclusion of trailers is intended to serve. The Regulations also do not define "trailer" or "moveable structure;" however, the Regulations do define and refer to a "Modular Dwelling Unit," defined in 760 CMR 71.02 as follows:

> A pre-designed Dwelling Unit assembled and equipped with internal plumbing, electrical or similar systems prior to movement to the site where such Dwelling Unit is affixed to a foundation and connected to external utilities; or any portable structure with walls, a floor, and a room, designed or used as a Dwelling Unit, transportable in one or more sections and affixed to a foundation an connected to external utilities.

The Regulations further define "Dwelling Unit," as follows:

> A single housing unit providing complete, independent living facilities for one or more person, including permanent provisions for living sleeping eating, cooking and sanitation.

And with regards to a "Modular Dwelling Unit," the Regulations 760 CMR 71.03 (3)(b)(7) provide that "[a]ny requirement that prohibits, regulates or restricts a Modular Dwelling Unit from being used as a Protected Use ADU that is more restrictive than the Building Code" is an unreasonable regulation. As defined under the Regulations, Modular Dwelling Units may be transported in one or more sections, must be affixed to a foundation that meets the building code and connected to external utilities at the site. Therefore, a Modular Dwelling Unit could include a manufactured home. Here, the Town does not define "trailers or other moveable structures" but based on the reference to "moveable structures" it appears that Subsection (G) (8) may intend to prohibit structures on wheels and not structures affixed to a foundation. However, based on the Regulations' definition of "Dwelling Unit" and "Modular Dwelling Unit," many structures, including modular homes, manufactured homes, mobile homes, trailers, and other prefabricated homes meet the Regulations'

[11] The Regulations, 760 CMR 71.02, define "Transit Station" as: "[a] Subway Station, Commuter Rail Station, Ferry Terminal, or Bus Station." The regulations further define each of these terms, including the term "Bus Station," defined as: "[a] location serving as a point of embarkation for any bus operated by a Transit Authority."

definition of "Modular Dwelling Unit."[12] Therefore, to the extent a "trailer" or "other moveable structures" constitutes a Modular Dwelling Unit, the Town cannot apply Subsection (G) (8) (f)'s prohibition to a Modular Dwelling Unit used as a PUADU. The Town should consult with Town Counsel to ensure the proper application of this provision. In addition the Town should consult with Town Counsel regarding a future amendment to Subsection (G)(8) to define these terms. [13]

VI. Conclusion

We partially approve Article 22, except for the following provisions: (1) Subsection (G)'s reference to PUADUs in the context of "single-family" dwellings; (2) Subsection (G) (6) (c)'s requirement that PUADUs comply with the Town's lot area requirements; (3) Subsection (G) (6) (d)'s requirement that PUADUs shall be no more than two stories; and (4) Subsection (G) (9)'s special permit requirement for PUADUs in pre-existing non-conforming single-family dwellings, 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.

Article 18 - Under Article 18, the Town amended its general by-laws to add a new Section 179-4, "Obedience to traffic signs and signals," to Chapter 179, Vehicles and Traffic," that authorizes the Town to impose a "civil infraction" with a maximum sixty-dollar fine for violations of the Town's traffic control signs, signals, and markings as follows:

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[12] As to manufactured homes, the EOHLC's draft regulations defined Modular Dwelling Unit to specifically exclude manufactured homes defined under G.L. c. 140, § 32Q; however, that exemption was not included in EOHLC's Final Regulations. The redline version of the draft regulations compared to the final regulations is available on the EOHLC website here: https://www.mass.gov/doc/adu-final-regulations-redlines/download.

[13] See also EOHLC's Frequently Asked Questions discussing whether an ADU be a modular home, manufactured housing, or other prefabricated home. https://www.mass.gov/info-details/accessory-dwelling-unit-adu-faqs

> No driver of any vehicle shall disobey the instructions of any official traffic control sign, signal, marking, or legend unless otherwise directed by a police officer. Violation of this section is a civil infraction with a maximum fine of $60.

We approve Article 18. However, it is unclear what "official traffic control signs, signals, markings, and legends" the Town intends the new Section 179-4 to apply. The Town must apply Section 179-4 consistent with G.L. c. 90C, the procedure for citing an automobile law violation. Under G.L. c. 90C, § 1, "automobile law violation" is defined as follows:

> any violation of any statute, ordinance, by-law or regulation relating to the operation or control of motor vehicles other than a violation (1) of any rule, regulation, order, ordinance or by-law regulating the parking of motor vehicles established by any city or town or by any commission or body empowered by law to make such rules and regulations therein, or (2) of any provision of chapter one hundred and fifty-nine B. A recreation vehicle and a snow vehicle, both as defined in section 20 of chapter 90B, a motorized bicycle and motorized scooter, both as defined in section 1 of chapter 90, shall be considered a motor vehicle for the purposes of this chapter. A motorboat, as defined in section one of chapter ninety B, shall not be considered a motor vehicle for purposes of this chapter.

General Laws Chapter 90C establishes the sole and exclusive procedure for citing an automobile law violation. General Laws Chapter 90C, Section 2 provides that a police officer may issue a citation for an "automobile law violation" and establishes the following procedure:

> Notwithstanding the provisions of any general or special law, other than a provision of this chapter, to the contrary, any police officer assigned to traffic enforcement duty shall, whether or not the offense occurs within his presence, record the occurrence of automobile law violations upon a citation, filling out the citation and each copy thereof as soon as possible and as completely as possible and indicating thereon for each such violation whether the citation shall constitute a written warning and, if not, whether the violation is a criminal offense for which an application for a complaint as provided by subsection B of section three shall be made, whether the violation is a civil motor vehicle infraction which may be disposed of in accordance with subsection (A) of said section three, or whether the violator has been arrested in accordance with section twenty-one of chapter ninety. Said police officer shall inform the violator of the violation and shall give a copy of the citation to the violator. Such citation shall be signed, manually or electronically, by the police officer, and whenever a citation is given to the violator in person that fact shall be so certified by the police officer. If a written warning is indicated, no further action need be taken by the violator. No other form of notice, except as provided in this section, need be given to the violator.

If a person receives a citation in accordance with Section 2, including for a civil motor vehicle infraction[14], they are entitled to the process set forth in G.L. c. 90C, § 3 that includes the right to a hearing and appeal, and provides in relevant part as follows:

[14] General Laws Chapter 90C, Section 1 defines a "civil motor vehicle infraction" as: "an automobile law violation for which the maximum penalty does not provide for imprisonment, excepting: (a) operation of a motor vehicle in violation of the first paragraph of section 10 of chapter 90; (b) a violation of sections 23, 25, or 34J of chapter 90; and (c) any automobile law violation committed by a juvenile who does not hold a valid operator's license."

> (A) (1) If a police officer observes or has brought to the officer's attention the occurrence of a civil motor vehicle infraction, the officer may issue a written warning or may cite the violator for a civil motor vehicle infraction in accordance with this subsection. If the officer issues a citation solely for one or more civil motor vehicle infractions without any associated criminal violations, the officer shall indicate on the citation the scheduled assessment for each civil motor vehicle infraction alleged.
>
> (2) The citation shall notify the violator that within twenty days of the date of the citation the violator must, for each civil motor vehicle infraction alleged, either pay the scheduled assessment or contest responsibility for the infraction by requesting a noncriminal hearing before a magistrate of the district court.
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> * * *
>
> (5) Questions of law arising in the disposition of a civil motor vehicle infraction in a noncriminal hearing before a justice may be appealed to the appellate division. Such appeals shall be governed by a simplified method of appeal established by rules promulgated by the chief justice of the district court department, subject to the approval of the supreme judicial court. Claims of appeal shall be accompanied by an entry fee in an amount established by the chief justice of the trial court. Proceedings under this chapter shall not be reviewable by a civil action in the nature of certiorari.

The Town cannot apply the new Section 179-4 to circumvent the procedures set forth in G.L. c. 90C that establish the process for an automobile law violation, including a hearing and appeal. In addition, G.L. c. 90C, § 3 (A)(6)(a)(i) and (ii), authorizes the Registry of Motor Vehicles to suspend a person's license to operate a motor vehicle or decline to renew a license after the expiration date in the event of a non-payment of a citation.

In addition, the new Section 179-4 must be applied consistent with the insurance surcharge regulations and the Safe Driver Insurance Plan (SDIP) of the Commonwealth. General Laws Chapter 90C, Section 3 (A)(3) provides in pertinent part as follows with emphasis added:

> Payment of the indicated assessment shall operate as a final disposition of the matter. The violator shall not be required to report to any probation officer, and no record of the matter shall be entered in any criminal or probation records of any court. The payment of the indicated assessment shall not be admissible as an admission of guilt, responsibility or negligence in any criminal or civil proceeding, <u>except that such payment shall be an admission of responsibility and shall operate as a conviction for purposes of any action by the registrar pursuant to chapter ninety and for purposes of the safe driver insurance plan established by section one hundred and thirteen B of chapter one hundred and seventy-five.</u>

General Laws Chapter 175, Section 113B creates the SDIP that establishes the assessment of a driver's risk for purpose of issuing insurance coverage. In determining an individual's insurance premiums, at fault accidents, convictions for moving violations and assignments to alcohol education programs are factored into the assessment. An operator who pays a civil assessment under a citation or is found responsible for the violation after a court hearing incurs a surcharge able event that is factored into the violator's insurance premiums. If a traffic violation is enforced as a by-law fine, instead of through the citation process established by G.L. c. 90C, it could potentially impact the reporting of a violation that may constitute a surcharge able offense, or it would cause the violation not to be added to the violator's driving history. We suggest that the Town discuss the application of Sectio 179-4 with Town Counsel.

Article 21 - Under Article 21, the Town deleted its existing Section 196-22.1, "Floodplain District", and inserted a new Section 196-22.1, "Floodplain District," as shown in Appendix C of the Town Meeting Warrant. We approve Article 21 because the new Section 196-22.1 was adopted as part of a federal requirement for communities that choose to participate in the National Flood Insurance Program (NFIP). The text in the Floodplain District by-law appears to follow the "Massachusetts 2020 Model Floodplain Bylaw" provided by the Massachusetts Department of Conservation and Recreation Flood Hazard Management Program. (DCR Flood Hazard Management Program). See https://www.mass.gov/guides/floodplain-management#-2020-massachusetts-mo. The DCR Flood Hazard Management Program is the state coordinating office for the NFIP and, according to their website, they have provided the Model Floodplain Bylaw to Massachusetts communities "to assure that their local bylaws…contain the necessary and proper language for compliance with the" NFIP. For this reason, we approve Article 21. The Town should consult with Town Counsel and the DCR Flood Hazard Management Program with any questions regarding the application of Section 196-22.1.

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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