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June 30, 2025

Ilene B. Twiss, Town Clerk
Town of Middleton
48 South Main Street
Middleton, MA 01949

Re: Middleton Special Town Meeting of December 12, 2024 -- Case # 11682
Warrant Article # 1 (Zoning) [1]

Dear Ms. Twiss:

Article 1 - Under Article 1, the Town voted to amend it's zoning by-laws regarding Accessory Dwelling Units ("ADUs") by adding a new Section 7.5, "Accessory Dwelling Units," to allow ADUs as of right in compliance with G.L. c. 40A, § 3 and the implementing Regulations promulgated by the Executive Office of Housing and Livable Communities ("EOHLC"), 760 CMR 71.00, "Protected Use Accessory Dwelling Units" ("Regulations").[2]

We partially approve Article 1 because the approved text does not conflict with state law. However, we disapprove the following provisions adopted under Article 1 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):

- The words "single-family" from the definition of "Accessory Dwelling Unit" and Section 7.5.4 (1);
- Section 7.5.3 (2)'s lot size requirement;
- Section 7.5.3 (3)'s maximum two story requirement;
- Section 7.5.4's parking space requirement for ADUs;
- Section 7.5.6's Special Permit requirement for ADUs proposed for a pre-existing non-conforming primary residence

[1] On March 24, 2025, by agreement with Town Counsel as authorized under G.L. c. 40A, § 32, we extended our deadline for review of Article 1 for 45 days until May 14, 2025. On May 14, 2025, we again extended our deadline with agreement from Town Counsel, for an additional and final 45-days.

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

In this decision we summarize the by-law amendments adopted under Article 1; 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 zoning by-law amendments adopted under Article 1.[4] In addition, we offer comments for the Town's consideration regarding certain approved provisions adopted under Article 1.

I. Summary of Article 1

Under Article 1 the Town voted to amend its zoning by-laws to add a new Section 7.5, "Accessory Dwelling Units" that imposes requirements on ADUs, including allowing ADUs as-of-right in the Residential R-1a ("R-1a"), Residential R-1b ("R-1b"), Residential-Agricultural ("RA"), and Village Residential ("R-2") zoning districts, subject to the requirements of Section 7.5, and prohibiting ADUs in all other zoning districts.[5] Section 7.5.2, "Use Schedule." The by-law imposes additional restrictions on ADUs including allowing only one ADU by right and prohibiting an ADU from being used as a short-term rental. Sections 7.5.2 (2) and (3). The by-law also imposes "Dimensional requirements," including size limitations [Section 7.5.3 (1)]; limiting an ADU to a maximum of two stories [Section 7.5.3 (3)], and requiring an ADU to be designed and constructed so that "no portion thereof shall be closer to the front lot line than the primary dwelling." [Section 7.5.3 (4)].

In addition, the by-law imposes parking requirements (Section 7.5.4); Site Plan Approval requirements (Section 7.5.5); and a special permit process related to ADUs and pre-existing nonconforming principal dwellings (Section 7.5.6). Finally, under Article 1 the Town voted to amend Attachment 2, "Table of Use Regulations" by adding a new row for ADUs under "Accessory Uses," noting that "the use is allowed (Y) in the R-1a, R-1b, RA & R-2 Districts but

[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] We acknowledge that the Town adopted Article 1 at its December 2024 Special Town Meeting, which was well before EOHLC finalized its Regulations and therefore the Town did not have the benefit of the Regulations' requirements when it adopted Article 1.

[5] The other zoning districts are the Business ("B"); Interstate Highway Business ("IH"); and Light Industrial ("M-1") Districts. General Laws Chapter 40A, Section 3 allows a Protected Use ADU "in a single-family residential zoning district," defined in the Regulations as "[a]ny Zoning District where Single-family Residential Dwellings are permitted or an allowable use, including any Zoning District where Single-family Residential Dwellings are allowed as-of-right or by Special Permit." According to the Town's existing Schedule, single-family dwellings are also prohibited in the B, IH, and M-1 Districts. For this reason, we approve Section 7.5.2 (1) and the amendments to Attachment 2- "Table of Use Regulations," prohibiting ADUs in these same 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.

also adding a footnote that states 'See Section 7.5 for additional requirements for Accessory Dwelling Units.'"

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

Our review of Article 1 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 1, 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."[6] 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"[7] 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."[8] 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.[9] In addition, while municipalities

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[6] 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).

[7] 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.

[8] 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).

[9] 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

may impose dimensional requirements related to setbacks, lot coverage, open space, bulk and height and number of stories (but not minimum lot size), such requirements may not be "more restrictive than is required for the Principal Dwelling, or a Single-Family Residential Dwelling or accessory structure in the Zoning District in which the Protected Use ADU is located, whichever results in more permissive regulation…" 760 CMR 71.03 (3)(b)(2). Towns may also impose site plan review of a Protected Use ADU, but the Regulations requires the site plan review to be clear and objective and prohibits the site plan review authority from imposing terms or conditions that "are unreasonable or inconsistent with an as-of-right process as defined in M.G.L. c. 40A, § 1A." 760 CMR 71.03 (3)(b)(5).

We incorporate by reference our more extensive comments regarding these recent statutory and regulatory changes related to ADUs in our decision to the Town of East Bridgewater, issued on April 14, 2025 in Case # 11579.[10] Against the backdrop of these statutory and regulatory parameters regarding Protected Use ADUs, we review the zoning amendments adopted under Article 1.

IV. Text Disapproved from Article 1 Because it Conflicts with G.L. c. 40A, § 3 and the Regulations

A. References to Single-Family Dwelling

Section 7.5.1, "Definition," defines an ADU as a "single-family" dwelling as follows (with emphasis added):

> an attached or detached Dwelling Unit that is accessory to the principal **single-family** Dwelling Unit and is otherwise defined in accordance with the provisions of G.L. c. 40A, § 1A, as may be amended.

Section 7.5.4 (1), "Parking," imposes parking requirements related to the single-family dwelling, in relevant part as follows (with emphasis added):

> Parking may be in a driveway or a garage but the parking space may not be a tandem space with a parking space for the primary **single-family** structure.

We disapprove and delete the text shown above in bold and underline that defines an ADU as being accessory to a principal "single-family" dwelling and imposes parking requirements relative to a single-family structure, because these provisions conflict with G.L. c. 40A, § 3 and the Regulations that allow ADUs as-of-right on the same lot as any type of "Principal Dwelling," as explained below. See West Street Associates, LLC v. Planning Board of Mansfield, 488 Mass. 319, 324 (2021) (citing with approval trial judge's ruling that ""By limiting medical marijuana facilities to nonprofit entities, the bylaw[,] while not prohibit[ing]

ADU without appreciably advancing the Municipality's legitimate interest.

[10] 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."

those facilities, does restrict them in a way that the [S]tate explicitly determined they should not be limited" and "[a]ccordingly, the town's bylaw is preempted by State law to the extent it requires all medical marijuana dispensaries to be nonprofit organizations.").

General Laws Chapter 40A, Section 3 and the Regulations allow Protected Use ADUs as-of-right on the same lot as any type of "Principal Dwelling," not just a single-family dwelling. See 760 CMR § 71.02's definitions of "Accessory Dwelling Unit (ADU)" (defining an ADU as "[a] self-contained housing unit, inclusive of sleeping, cooking, and sanitary facilities on the same Lot as a Principal Dwelling . . .") and "Protected Use ADU" (defining a "Protected Use ADU" as "[a]n attached or detached ADU that is located, or is proposed to be located, on a Lot in a Single-Family Residential Zoning District."). The Regulations define "Principal Dwelling" as a structure that contains at least one dwelling unit as follows (with emphasis added):

> A structure, regardless of whether it, or the Lot it is situated on, conforms to Zoning, including use requirements and dimensional requirements, such as setbacks, bulk, and height, *that contains at least one Dwelling Unit* and is, or will be, located on the same Lot as a Protected Use ADU.

The Regulations' definition of "Principal Dwelling" contemplates Protected Use ADUs on lots that include more than one dwelling unit. For example, Protected Use ADUs are allowed on lots containing a two-family dwelling or a multi-family dwelling. Therefore, defining the term "Accessory Dwelling Unit"[11] or imposing parking requirements in a manner that restricts the ADU to only as accessory to a principal "single-family" dwelling conflicts with G.L. c. 40A, § 3 and the Regulations. For this reason, we disapprove the text shown above in bold and underline. The Town should consult with Town Counsel with any questions.

B. Section 7.5.3 (2) – Dimensional Standards

Section 7.5.3 (2) imposes dimensional standards on ADUs including lot area requirements as applicable to "single-family homes," and further imposes dimensional requirements when a

[11] The Town's existing zoning by-laws, Section 10.0, "Definitions," (see https://ecode360.com/10440550) defines the term "Dwelling Unit" as "One or more rooms designed, occupied or intended for occupancy as separate living quarters with cooking, sleeping and sanitary facilities provided within the dwelling unit for the exclusive use of a single family." In addition, Section 10.0 defines three other terms related to dwellings as follows: (1) *single-family dwelling* defined as "A building containing one dwelling unit;" (2) *two-family dwelling* defined as "A structure on a single lot containing two dwelling units. This definition includes a duplex dwelling;" and (3) *multi-family dwelling* defined as "A building designed or intended or used as the home of three or more families, each in a separate dwelling unit, living independently of each other and who have a common right in halls and stairways. This definition is intended to include building types commonly known as "garden apartments," "mid-rise apartments" and "high-rise apartments." The Town should discuss these existing definitions of various types of "Dwellings" with Town Counsel to ensure they are not applied in a manner to exclude uses that qualify as a "Principal Dwelling" under the Regulations and that are allowed to have a Protected Use ADU as-of-right.

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non-residential accessory structure is converted to an ADU, in relevant part as follows (with emphasis added):

> 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**, as contained in Attachment 1 – Table of Dimensional Requirements of this Zoning Bylaw.

We disapprove the text shown above in bold and underline because these provisions conflict with the Regulations, as explained below.

1. Section 7.5.3 (2) – Any and All Lot Area

Section 7.5.3 (2) requires ADUs to comply with "any and all lot area" requirements. We disapprove this provision because the Regulations, 760 CMR 71.03 (3)(b)(2), "Regulation of Protected Use ADUs in Single-family Residential Zoning Districts;" "Dimensional Standards," prohibits a town from imposing a minimum lot size requirement, in relevant part as follows, with emphasis added:

> (b) Municipality shall apply the analysis articulated in 760 CMR 71.03 (3)(a) to establish and apply reasonable Zoning or general…by-laws, or Municipal regulations for Protected Use ADUs, but in no case shall a restriction or regulation be found reasonable where it exceeds the limitations, or is inconsistent with provisions, described below, as applicable:…(2) Dimensional Standards. Any requirement concerning dimensional standards, such as dimensional setbacks, lot coverage, open space, bulk and height, and number of stories, that are more restrictive than is required for the Principal Dwelling, or a Single-family Residential Dwelling or accessory structure in the Zoning District in which the Protected Use ADU is located, whichever results in more permissive regulation, provided that a Municipality may not require a minimum Lot size for a Protected Use ADU.

Because the Regulations, 760 CMR 71.03 (3)(b)(2), prohibit a Town from requiring a minimum lot size[12], including lot area, for a Protected Use ADU, this portion of Section 7.5.3 (2) conflicts with the Regulations and we therefore disapprove the text shown above in bold and underline.

2. Section 7.5.3 (2) – Dimensional Standard as Applicable to Single-Family Homes

As quoted above, 760 CMR 71.03 (3)(b)(2), prohibits a Town from imposing dimensional standards on Protected Use ADUs that are "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." We

[12] The Regulations, 760 CMR 71.02, define "Lot" as "[a]n area of land with definite boundaries that is used, or available for use, as the site of a structure, or structures, regardless of whether the site conforms to requirements of Zoning." However, the Town's zoning by-laws do not appear to define "lot area."

therefore disapprove and delete the reference in Section 7.5.3 (2) that imposes dimensional standards on an ADU "as may be applicable **to single family homes**" because the Regulations require the Town to apply the most permissive dimensional standards for principal dwellings, single-family dwellings or accessory structures in the zoning district in which the Protected Use ADU is located. For this reason, the limitation in Section 7.5.3 (2) to only the dimensional standards "as may be applicable **to single family homes**" conflicts with the Regulations. The Town should consult with Town Counsel with any questions.

C. Section 7.5.3 (3) – Maximum Stories

Section 7.5.3 (3) limits the height of ADUs as follows (with emphasis added):

ADUs are limited to a maximum of two stories.

As quoted above, the Regulations prohibit the Town from imposing dimensional standards related to the number of stories or height that are more restrictive 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). The Town's existing by-laws, Attachment 1, "Table of Dimensional Requirements,"[13] allows a "maximum building height (stories)" in all zoning districts (other than the IH district) of 3 stories. Therefore, Section 7.5.3 (3)'s limitation of ADUs to a maximum of two stories imposes dimensional requirements that are more restrictive than those allowed for any other construction, including a single-family residential dwelling, in all districts other than the IH district (not relevant here because both ADUs and single-family dwellings are prohibited in the IH). For this reason, the number of stories limitation in Section 7.5.3 (3) conflicts with 760 CMR 71.03 (3)(b)(2), and we therefore disapprove this provision as shown above in bold and underline.

D. Section 7.5.4 - Parking

Section 7.5.4, "Parking," imposes parking requirements on ADUs in relevant part as follows (with emphasis added):

> 1. **At least one (1) off-street parking space must be provided for all ADUs.** Parking may be in a driveway or a garage but the parking space may not be a tandem space with a parking space for the primary…structure.

We disapprove and delete the portion of Section 7.5.4 (1) (shown above in bold and underline), because as written, this text requires more than one parking space and requires *all* ADUs to provide "at least one" additional off-street parking space in conflict with the G.L. c. 40A, § 3 and the Regulations. General Laws Chapter 40A, Section 3 prohibits a municipality from requiring more than one parking space and from requiring a parking space for *any* ADU located within 0.5 miles of a transit station, as follows:

[13] See existing zoning bylaws at: https://ecode360.com/attachment/MI1639/MI1639-235a%20Table%20of%20Dimensional%20Requirements.pdf

> The use of land or structures for an accessory dwelling unit under this paragraph shall not require owner occupancy of either the accessory dwelling unit or the principal dwelling; provided, that not more than 1 additional parking space shall be required for an accessory dwelling unit; and provided further, that no additional parking space shall be required for an accessory dwelling located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station.

In addition, the Regulations, 760 CMR 71.03 (2) prohibit a Town from imposing any prohibited Regulations on a Protected Use ADU, including the following:

> (b) Minimum Parking Requirements. A requirement of, as applicable:
>
> 1. More than one additional on-street or off-street parking space for a Protected Use ADU if all portions of its Lot are located outside a 0.5 mile radius of a Transit Station; or
>
> 2. Any additional on-street or off-street parking space for a Protected Use ADU if any portion of its Lot is located within a 0.5 mile radius of a Transit Station.

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."

Because Section 7.5.4 (1) requires "at least one" parking space and requires all ADUs to provide "at least" one additional off-street parking space, including a Protected Use ADU that is located within a 0.5 mile radius of a transit station, this provision conflicts with G.L. c. 40A, § 3 and 760 CMR 71.03 (2) (b) and we therefore disapprove it (as shown above in bold and underline).[14] The Town is authorized by statute and the Regulations to require one additional parking space for a Protected Use ADU that is not located within a 0.5 mile radius of a Transit Station. However, the Town cannot, as it has done here, require "at least one" parking space and require *all* Protected Use ADUs to provide an additional parking space because as written, that requirement conflicts with the statute and Regulations. See West Street Associates, 488 Mass. at 324, *supra*.

Should the Town wish to amend Section 7.5.4 (1) at a future Town Meeting to impose a parking requirement on a Protected Use ADU, we encourage the Town to consult with Town Counsel to ensure that any such requirement explicitly exempts a Protected Use ADU located within a 0.5 mile radius of a Transit Station. We would be happy to work with the Town to review any new proposed parking provision to ensure it complies with G.L. c. 40A, § 3 and the Regulations. We offer additional comments regarding the approved portions of Section 7.5.4 (1)'s parking provisions below in Section V (C).

[14] The Town is served by a Regional Bus Service. See https://www.mass.gov/info-details/public-transportation-in-massachusetts.

E. Section 7.5.6 – Relationship to Non-Conformities

Section 7.5.6, "Relationship to non-conformities," provides as follows (with emphasis added):

> **If an ADU is proposed for a pre-existing, non-conforming single-family primary residence, the requirements of Sections 3.3.4 and 3.3.5 of this Zoning Bylaw shall apply provided that no special permit may consider the ADU use or impose conditions on such use.**

We disapprove Section 7.5.6 (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)[15] 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 3.3.4 of the Town's existing by-law requires a variance for certain non-conforming structures and Section 3.3.5 provides for three circumstances where a non-conforming single- and two-family structure can be changed without a variance or special permit.[16] Section 3.3.5 further

[15] 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.

[16] Section 3.3.4, "Nonconforming structures; variance required" provides: "Except as provided in Subsection 3.3.5, below, the reconstruction, extension or structural change of a nonconforming structure in

requires a special permit in certain circumstances as follows: "[i]In the event that the Building Inspector determines that the nonconforming nature of such structure would be increased by the proposed reconstruction, extension, alteration, or change, the Board of Appeals may, by special permit, allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood." This portion of Section 3.3.5 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 alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.") Although the proposed new text in Section 7.5.6 states that the special permit required under Section 3.3.5 "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 Section 7.5.6 as shown above in bold and underline.[17]

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such a manner as to increase an existing nonconformity, or create a new nonconformity shall require the issuance of a variance from the Board of Appeals; provided, however, the extension of an exterior wall at or along the same nonconforming distance within a required yard shall require the issuance of a special permit from the Board of Appeals."

Section 3.3.5 provides that: "nonconforming single- and two-family residential structures. may be reconstructed, extended, altered, or structurally changed upon a determination by the Building Inspector that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure" and details three circumstances that will not be deemed an increase in the nonconforming nature: (1) alteration to a structure located on a lot with insufficient area which complies with all current setback, yard, building coverage, and building height requirements, (2) alteration to a structure located on a lot with insufficient frontage which complies with all current setback, yard, building coverage, and building height requirements; and (3) alteration to a structure which encroaches upon one or more required yard or setback areas, where the alteration will comply with all current setback, yard, building coverage and building height requirements.

[17] We acknowledge that Section 7.5.6's requirement for a special permit comes from its reference to Section 3.3.5 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 Section 3.3.5 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

V. The Remaining Approved ADU Requirements Must be Applied Consistent with G.L. c. 40A, § 3 and 760 CMR 71.00

We offer comments for the Town's consideration regarding certain approved provisions adopted under Article 1 to ensure that the Town applies these provisions consistent with G.L. c. 40A, § 3 and the Regulations.

A. Section 7.5.2 (3) – Short Term Rentals

Section 7.5.2 (3) prohibits ADU as Short-Term Rentals ("STRs") as follows: "ADUs may not be used as Short-Term Rentals, as such term is defined in G.L. c. 64G, § 1 or otherwise rented for a period shorter than thirty-one (31) days." We approve Section 7.5.2 (3) because G.L. c. 40A, § 3 and the Regulations authorize towns to prohibit ADUs from being used as a "Short-term Rental *as defined* in section 1 of chapter 64G" (emphasis added). General Laws Chapter 64G, Section 1, defines the "Occupancy" of a STR as follows (with emphasis added):

> the use or possession or the right to the use or possession of a room in a short-term rental normally used for sleeping and living purposes for a period of not more than 31 consecutive calendar days, regardless of whether such use and possession is as a lessee, tenant, guest or licensee

While we approve Section 7.5.2 (3)'s prohibition on ADUs as STRs, it is unclear what the Town means when it prohibits ADUs 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 Section 7.5.2 (3) 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 ADUs other than as allowed under 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. Section 7.5.3 (2) – Dimensional Standards

As to the approved portions of Section 7.5.3 (2), that imposes dimensional standards, including as follows: (1) requires an ADU to be designed and constructed "so that no portion thereof shall be closer to the front lot line than the primary dwelling," (2) requires all ADUs to comply with "frontage, setback, height, lot width and lot coverage requirements…as contained in Attachment 1 – Table of Dimensional Requirements;" and (3) permits conversions of existing non-

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.

residential accessory structures to ADUs provided the existing accessory structure complies with dimensional requirements, we offer additional comments for the Town's consideration.

1. Section 7.5.3 (4) – Location of the ADU

Section 7.5.3 (4) requires an ADU to be designed and constructed "so that no portion thereof shall be closer to the front lot line than the primary dwelling." We interpret this provision to relate to the *location* of the ADU (i.e. not located in the front yard) as opposed to a setback requirement (see below for additional comments regarding the requirement that any setback requirements imposed must be the most permissive setback as applicable to the Principal Dwelling, Single-family dwelling or other accessory structure). Based on our standard of review, we cannot conclude that this requirement regarding the location of the ADU is unreasonable and therefore prohibited under 760 CMR 71.00, and for that reason we approve it.

However, in applying Section 7.5.3 (4), we reiterate to the Town that 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 this 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 this prohibition is 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 this 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 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 these provisions to a Protected Use ADU. We encourage the Town to consult with Town Counsel to determine if an amendment to Section 7.5.3 (4) is needed at a future Town Meeting to clarify that this provision does not impose an additional setback requirement on a Protected Use ADU.

2. Section 7.5.3 (2) – Dimensional Requirements

Section 7.5.3 (2) imposes dimensional requirements "as contained in Attachment 1 – Table of Dimensional Requirements of this Zoning Bylaw." We have reviewed the Town's existing zoning, Attachment 1 – Table of Dimensional Requirements, and note that Attachment 1 imposes several types of dimensional requirements including minimum area (square feet), frontage, width, setback, height, and lot coverage requirements. In applying these dimensional requirements (other than lot area or "minimum area (square feet)" requirements that we disapprove, see Section VI (B)(1) above) to a Protected Use ADU, the Town should be mindful that 760 CMR 71.03 (b)(2)(a) prohibits towns from imposing dimensional requirements, such as setbacks, lot coverage, open space, bulk and height, and number of stories that are more restrictive than required for the Principal Dwelling, Single-Family Dwelling (as defined in 760 CMR 71.02) or other accessory structure in the zoning district where the Protected Use ADU is located, whichever is most permissive. To the extent that Section 7.5.3 (2) incorporates the Town's existing dimensional requirements for a Protected Use ADU, the Town must ensure that the application of such dimensional requirements is no more restrictive than those required for a Principal Dwelling,

Single Family Dwelling or other accessory structure (as defined in 760 CMR 71.02) in the zoning district where the Protected Use ADU is located, whichever is more permissive.

In addition, in applying the provisions of Section 7.5.3 (2), the Town must ensure that any imposed dimensional requirements are consistent with 760 CMR 71.03 (3)(a), as discussed above in more detail. If the Town cannot satisfy this standard, the dimensional regulations in Section 7.5.3 (2) would be unreasonable as applied to a Protected Use ADU. The Town should consult with Town Counsel to ensure the proper application of these provisions to a Protected Use ADU. In addition, an important additional requirement, because a Protected Use ADU is a Dover Amendment protected use, the Town can only impose "reasonable regulations" on a Protected Use ADU. If Section 7.5.3 (2) or the Town's existing dimensional requirements are used in a manner to prohibit or unreasonably restrict a Protected Use ADU, such application would run afoul of the Dover amendment protections given to a Protected Use ADU under G.L. c. 40A § 3.

As to the requirement in Section 7.5.2 (2)(b) that allows the conversion of an existing non-residential accessory structure to an ADU provided it complies with the "above-described dimensional requirements," this requirement cannot be applied in a way that would prohibit the conversion of an existing non-residential accessory structure that is otherwise authorized by the Regulations to be converted to a Protected Use ADU. Section 71.03 (3)(b)(9), "Pre-existing Nonconforming Structures" allows the construction of an ADU in an existing structure despite a nonconformity if the Protected Use ADU otherwise conforms with the Building Code, the Regulations and state law, as follows:

> A Municipality may not prohibit the development of a Protected Use ADU in an existing structure or Principal Dwelling, or Lot due to nonconformance, that could be used for, or converted into, a Protected Use ADU in conformance with the Building Code, 760 CMR 71.00, and state law.

The Town should consult with Town Counsel to ensure the proper application of Section 7.5.3 (2)(b).

Finally, we strongly suggest that the Town discuss Section 7.5.3 (2) with Town Counsel to ensure that it is applied consistent with the protections given to ADUs under G.L. c. 40A, § 3 and the Regulations. In addition, the Town may wish to discuss with Town Counsel whether Section 7.5.3 (2) should be amended to specifically include text that Protected Use ADUs are not subject to lot area or "minimum area (square feet)" requirements (as required by the Regulations) and that Protected Use ADUs may only be subject to "reasonable regulations" (under the test set forth in Section 760 CMR 71.03 (3) of the Regulations) because they are a Dover Amendment protected use under G.L. c. 40A and because the Regulations prohibit towns from unreasonably regulating Protected Use ADUs.

In conclusion, we encourage the Town to discuss with Town Counsel whether the dimensional requirements for ADUs should be included in the Town's ADU by-law, rather than stating that ADUs "shall comply with any and all…requirements, as may be applicable…as contained in Attachment 1 – Table of Dimensional Requirements of this Zoning Bylaw" but not specifying what those requirements are to make it clear what dimensional requirements apply to

the ADU and to ensure that those utilizing the ADU by-law have clear information regarding any required dimensional standards.

C. Section 7.5.4 – Parking

1. Tandem Parking

The approved portion of Section 7.5.4, "Parking," Subsection 1, prohibits a tandem parking space for an ADU in relevant part as follows: "Parking may be in a driveway or a garage but the parking space may not be a tandem space with a parking space for the primary…structure." We have considered whether the prohibition on a "tandem space with a parking space for the primary" structure constitutes an unreasonable regulation. During the course of our review, we received comments from Town Counsel urging our approval and explaining the rationale of the provision.

Town Counsel informs us that the provision is intended to "avoid[ ]… conflicts in the use of the parking areas by and between the residents of the ADU and the residents of the principal dwelling" and its intention is to "ensur[e] safe and adequate access to parking…a legitimate parking objective."[18] See email from Town Counsel Jason Talerman to AAG Gunagan dated June 24, 2025. In addition, Town Counsel asserts that parking requirements are also an important component of the Town's site plan review process in Section 9.5.11 (2 & 3) that includes "[c]onvenience and safety of vehicular and pedestrian movement on the site and for the location of driveway openings in relation to street traffic;" and "[a]dequacy as to the arrangement and…number of parking and loading spaces in relation to the proposed uses of the premises." Id. For these reasons, Town Counsel urges our approval of Section 7.5.4 as a reasonable regulation under 760 CMR 71.03(a), noting further that the tandem parking prohibition "does not in any way diminish or nullify the viability of an ADU and does not, on its face, add any additional cost." Id. We appreciate this input as it as aided our review of Section 7.5.4 (1).

Among other contentions, Town Counsel asserts that the provision is needed to ensure safe and adequate access to parking. Based on our standard of review, we cannot conclude that Section 7.5.4 (1)'s prohibition against tandem parking fails to serve any legitimate municipal interest; or otherwise fails the test for determining an unreasonable regulation under 760 CMR 71.03 (a) and for that reason we approve it. However, in applying this provision, we reiterate to the Town that 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 this 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 this prohibition is analyzed on a case by case basis as it relates to a particular property because in some circumstances the provision could be

[18] In addition, Town Counsel asserts that the provisions in Section 7.5.4 (1) prohibiting tandem parking are consistent with the Section 1.2 of the Town's zoning by-law that include as a purpose protecting the safety of the Town's residents in relevant part as follows: ""These regulations are enacted to promote the general welfare of the Town of Middleton, to protect the health and safety of its inhabitants, to encourage the most appropriate use of land throughout the Town, and to increase the amenities of the Town, all as authorized by, but not limited by, the provisions of the Zoning Act, G.L. c. 40A, as amended, and Section 2A of 1975 Mass. Acts 808." See Email from Atty. Talerman to AAG Gunagan dated June 24, 2025.

unreasonable as applied to a particular property. Lastly, the Town must ensure that the application of this 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 Protected Use ADU. See 760 CMR 71.03 (3)(a). If the Town cannot satisfy this standard, then the regulation may be deemed to be unreasonable. The Town should consult with Town Counsel to ensure the proper application of Section 7.5.4 (1) to a Protected Use ADU.

2. Garage Special Permit

Section 7.5.4 (2), "Parking," imposes a special permit requirement for the construction of a garage to serve the ADU as follows: "The construction of a new garage to serve an ADU shall require a Special Permit from the Board of Appeals." We approve Section 7.5.4 (2)'s special permit requirement for garages that serve an ADU because under our standard of review, we cannot conclude that a special permit for a garage that serves an ADU conflicts with the Regulations.

Under the Town's existing zoning by-laws, garages are considered an accessory use and are allowed as-of-right in the R-1a, R-1b, and RA Districts and are prohibited in the R-2 District. There is nothing in the Regulations that expressly requires a town to allow accessory uses, including garages, as-of-right to ADUs (which are themselves also considered an "accessory" use to a principal dwelling.) However, if the special permit requirement for a garage that serves an ADU is used in a manner that prohibits or unreasonably restricts an ADU, such application would run afoul of the Dover amendment protections given to an ADU under G.L. c. 40A § 3 and the Regulations. In addition, the Town must ensure that the application of this 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 Protected Use ADU. See 760 CMR 71.03 (3)(a). If the Town cannot satisfy this standard as applied to a particular ADU application, the special permit requirement for a garage that serves the ADU may be deemed to be unreasonable. The Town should consult with Town Counsel to ensure the proper application of Section 7.5.4 (2).

D. Section 7.5.5 – Site Plan Approval

Section 7.5.5, "Site Plan Approval," requires all ADUs to obtain site plan approval from the Zoning Board of Appeals "pursuant to the procedures in Section 9.5 of this Zoning Bylaw," but limits the Site Plan review criteria to only the following:

> 1. The ADU should minimize tree, vegetation and soil removal and grade changes.
>
> 2. Architectural style should be compatible with the existing principal dwelling on the subject property.
>
> 3. The ADU shall be serviced with adequate water supply and sewer or septic service.
>
> 4. The Plan shall demonstrate adequate parking, as required hereunder and shall

> maximize convenience and safety for vehicular and pedestrian movement within the property and in relation to adjacent ways.
>
> The Board of Appeals may request reasonable plan modifications of the Site Plan for an ADU and may impose reasonable conditions that are not inconsistent with this bylaw or the provisions of G.L. c. 40A, § 3.

We have reviewed Section 9.5, "Site Plan Review," in the Town's existing zoning by-laws, which requires the applicant to submit site plan information and requires compliance with the detailed process for review of the site plan. As discussed in detail below, we encourage the Town to consult with Town Counsel regarding a future amendment to the new ADU by-law provisions to ensure the Town's site plan review process for ADUs complies with the statute and Regulations.

In applying Section 9.5's site plan review requirements, the Town must ensure that its site plan approval requirements are not unreasonable or inconsistent with the site plan review process for Dover Amendment protected uses. See The Bible Speaks v. Board of Appeals of Lenox, 8 Mass. App. Ct. 19, 33 (1979) (town cannot require applicant to submit site plan and "informational statement" with details about its landscaping plans, projections about the increased impact on municipal services, and other details outside the scope of what the town could lawfully regulate under the Dover Amendment). Although 760 CMR 71.03 (3)(5) allows site plan review for a Protected Use ADU, it requires that such site plan process be "clear and objective" and not impose terms or conditions that are "unreasonable or inconsistent" with an as-of-right process. Therefore, any site plan process that the Town imposes upon an ADU must be limited in its scope to only those requirements that are permissible under the Regulations as applied to a Dover Protected ADU.

In addition, with regards to Section 7.5.5 (2) that limits site plan review to only four specific criteria including whether the "[a]rchitectural style should be compatible with the existing principal dwelling on the subject property," the Town must ensure that this provision is applied consistent with the Regulations, 760 CMR 71.03 (3)(B)(5) that prohibits as an unreasonable regulation a site plan review requirement if "it is not clear and objective or imposes terms and conditions that are unreasonable or inconsistent with an as-of-right process as defined in M.G.L. c. 40A, § 1A." During the course of our review of Article 1, Town Counsel urged our approval of Section 7.5.5 (2) asserting that this Section is not in conflict with the Regulation's requirement that site plan review be "clear and objective" because "[w]hile such terms are, at best, ambiguous, there can be no dispute that site plan review commonly includes review of aesthetic issues" and "[t]hus, there is nothing infirm about…including…the "compatibility" clause under the abbreviated site plan criteria for ADUs." See Email from Town Counsel Jason Talerman to AAG Gunagan, dated June 24, 2025. Town Counsel further asserts that the "measuring test would be whether such criteria are clearly and objectively applied."

We appreciate this communication. Based on our standard of review, we cannot conclude that Section 7.5.5. (2)'s site plan review criteria related to architectural style compatibility presents a clear conflict with the Regulations and we therefore approve the provision. However, in applying this provision, we reiterate to the Town that because a Protected Use ADU is a Dover Amendment protected use, the Town can only impose "reasonable regulations" on a Protected Use ADU. We encourage the Town to consult with Town Counsel to determine whether an amendment to Section

7.5.5. (2) is needed to further clarify the criteria to be reviewed as part of site plan review. In addition, the Town must ensure that Section 7.5.5. (2) cannot be used in a manner to prohibit or unreasonably restrict a Protected Use ADU, because 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. Lastly, the Town must ensure that the application of this 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 Protected Use ADU. See 760 CMR 71.03 (3)(a). If the Town cannot satisfy this standard, then the regulation may be deemed to be unreasonable. The Town should consult with Town Counsel to ensure the proper application of Section 7.5.5 (2) to a Protected Use ADU.

The Town should consult with Town Counsel with any questions on these issues.

VIII. Conclusion

We partially approve Article 1, except for: (1) the words "single-family" from the definition of "Accessory Dwelling Unit" and Section 7.5.4 (1); (2) Section 7.5.3 (2)'s lot size requirement; (3) Section 7.5.3 (3)'s maximum two story requirement; (4) Section 7.5.4's parking space requirement for ADUs; and (5) Section 7.5.6's Special Permit requirement for ADUs proposed for a pre-existing non-conforming primary residence, that we disapprove and delete as shown in Section VI in bold and underline.

The Town should consult closely with Town Counsel when applying the remaining approved ADU provisions to ensure that they are applied consistent with G.L. c. 40A, § 3 and 760 CMR 71.00. If the approved provisions in Article 1 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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