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December 23, 2025

Sandra Kalmus, Town Clerk
Town of Windsor
1890 Route 9, Suite 2
Windsor, MA 012670

Re: Windsor Annual Town Meeting of May 5, 2025 – Case # 11804
Warrant Article # 25 (Zoning) [1]

Dear Ms. Kalmus:

Article 25 - Under Article 25, the Town voted to amend its zoning by-laws related to Accessory Dwelling Units ("ADUs") 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 25 because the approved text does not conflict with state law. However, we disapprove and delete[3] the following provisions adopted under Article 25 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):

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[1] In a notice issued on August 18, 2025, we placed Article 25 on Chapter 299 "hold" due to a procedural defect in its adoption. On September 22, 2025, the Town Clerk certified that the Town had followed all notice and publishing requirements of G.L. c. 40, § 32 and no claims were received for Article 25. The Attorney General is therefore authorized to, and does, waive the procedural defect for Article 25. On October 1, 2025, by agreement with Town Counsel as authorized by G.L. c. 40, § 32, we extended the deadline for our review of Article 25 for 45-days until November 15, 2025. On November 8, 2205, again by agreement with Town Counsel, we extended the deadline for our review of Article 25 for an additional and final 45-days until December 30, 2025.

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

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

- references to single-family dwellings;

- a portion of Section 24.04 (4)'s provisions regarding calculation of the ADU's size;

- Section 24.04 (5) that requires a 300 square feet minimum ADU size; and

- a portion of Section 24.05 that imposes setback requirements on the principal structure instead of the most permissive setback requirements.

In this decision we summarize the by-law amendments adopted under Article 25; discuss the Attorney General's standard of review of town by-laws and the recent statutory and regulatory changes that allow Protected Use ADUs as of right;[4] and then explain why, based on our standard of review, we partially approve the zoning by-law amendments adopted under Article 25. In addition, we offer comments for the Town's consideration regarding certain approved provisions amended under Article 25.

I. Summary of Article 25

Under Article 25, the Town amended its zoning by-laws to add a new Section 24, "Accessory Dwelling Units," to allow ADUs as of right subject to site plan approval. Section 24 also imposes requirements on ADUs, including size and parking requirements.

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

Our review of Article 25 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 25, 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

[4] 760 CMR 71.02 defines the term "Protected Use ADU" as follows: "An attached or detached ADU that is located, or is proposed to be located, on a Lot in a Single-family Residential Zoning District and is protected by M.G.L. c. 40A, § 3, provided that only one ADU on a lot may qualify as a Protected Use ADU. An ADU that is nonconforming to Zoning shall still qualify as a Protected Use ADU if it otherwise meets this definition."

zoning enactment is whether it violates State law or constitutional provisions, is arbitrary or unreasonable, or is substantially unrelated to the public health, safety or general welfare." Durand v. IDC Bellingham, LLC, 440 Mass. 45, 57 (2003). "If the reasonableness of a zoning bylaw is even 'fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.'" Id. at 51 (quoting Crall v. City of Leominster, 362 Mass. 95, 101 (1972)). However, a municipality has no power to adopt a zoning by-law that is "inconsistent with the constitution or laws enacted by the [Legislature]." Home Rule Amendment, Mass. Const. amend. art. 2, § 6.

III. Summary of Recent Legislative Changes Regarding ADUs

On August 6, 2024, Governor Healey signed into law the "Affordable Homes Act," Chapter 150 of the Acts of 2024 (the "Act"). The Act includes amendments to the State's Zoning Act, G.L. c. 40A, to establish ADUs as a protected use subject to limited local regulation including amending G.L. c. 40A, § 1A to add a new definition for the term "Accessory dwelling unit" and amending G.L. c. 40A, § 3 (regarding subjects that enjoy protections from local zoning requirements, referred to as the "Dover Amendment"), to add a new paragraph that restricts a zoning by-law from prohibiting, unreasonably regulating or requiring a special permit or other discretionary zoning approval for the use of land or structures for a single ADU. The amendment to G.L. c. 40A, § 3, to include ADUs means that ADUs are now entitled to statutory protections from local zoning requirements.

On January 31, 2025, the EOHLC promulgated regulations for the implementation of the legislative changes regarding ADUs. See 760 CMR 71.00, "Protected Use Accessory Dwelling Units."[5] The Regulations define key terms and prohibit certain "Use and Occupancy Restrictions" defined in Section 71.02 as follows:

> Use and Occupancy Restrictions. A Zoning restriction, Municipal regulation, covenant, agreement, or a condition in a deed, zoning approval or other requirement imposed by the Municipality that limits the current, or future, use or occupancy of a Protected Use ADU to individuals or households based upon the characteristics of, or relations between, the occupant, such as but not limited to, income, age, familial relationship, enrollment in an educational institution, or that limits the number of occupants beyond what is required by applicable state code.

While a municipality may reasonably regulate a Protected Use ADU in the manner authorized by 760 CMR 71.00, such regulation cannot prohibit, require a special permit or other discretionary zoning approval for, or impose a "Prohibited Regulation"[6] or an "Unreasonable

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

[6] 760 CMR 71.03 prohibits a municipality from subjecting the use of land or structures on a lot for a

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

We incorporate by reference our more extensive comments regarding these recent statutory and regulatory changes related to ADUs in our decision to the Town of East Bridgewater, issued on April 14, 2025 in Case # 11579.[9] Against the backdrop of these statutory and regulatory parameters regarding Protected Use ADUs, we review the zoning amendments adopted under Article 25.

Protected Use ADU to any of the following: (1) owner-occupancy requirements; (2) minimum parking requirements as provided in Section 71.03; (3) use and occupancy restrictions; (4) unit caps and density limitations; or (5) a requirement that the Protected Use ADU be attached or detached to the Principal Dwelling.

[7] For example, a design standard that is not applied to a Single-Family Residential Dwelling in the Single-Family Residential Zoning District in which the Protected Use ADU is located or is so "restrictive, excessively, burdensome, or arbitrary that it prohibits, renders infeasible, or unreasonably increases the costs of the use or construction of a Protected Use ADU" would be deemed an unreasonable regulation. See 760 CMR 71.03 (3)(b).

[8] Section 71.03 (3)(a) provides that while a town may reasonably regulate and restrict Protected Use ADUs, a restriction or regulation imposed "shall be unreasonable" if the regulation or restriction, when applicable to a Protected Use ADU: (1) does not serve a legitimate Municipal interest sought to be achieved by local Zoning; (2) serves a legitimate Municipal interest sought to be achieved by local Zoning but its application to a Protected Use ADU does not rationally relate to the legitimate Municipal interest; or (3) serves a legitimate Municipal interest sought to be achieved by local Zoning and its application to a Protected Use ADU rationally relates to the interest, but compliance with the regulation or restriction will: (a) result in complete nullification of the use or development of a Protected Use ADU; (b) impose excessive costs on the use or development of a Protected Use ADU without significantly advancing the Municipality's legitimate interest; or (c) substantially diminish or interfere with the use or development of a Protected Use ADU without appreciably advancing the Municipality's legitimate interest.

[9] This decision, as well as other recent ADU decisions, can be found on the Municipal Law Unit's website at www.mass.gov/ago/munilaw (decision look up link) and then search by the topic pull down menu for the topic "ADUS."

IV. Text Disapproved from Article 25 Because it Conflicts with G.L. c. 40A, § 3 and the Regulations

A. References to "Single Family" Dwellings

Two sections of the by-law reference ADUs in the context of single-family dwellings instead of principal dwellings, as follows (with emphasis added):

> Section 24.04 (1)
> An ADU may be located either within, attached to, or detached from the principal structure. Not more than one ADU can be created that is incorporated within, attached to, or detached from, one **single family** dwelling built on one Building Lot.
>
> Section 24.04 (4)
> The gross floor area...cannot exceed 50 percent of the gross floor area of the **Single Family** Dwelling...

We disapprove and delete the text "single family" (as shown above in bold and underline) that references an ADU in the context of a single family dwelling because these provisions conflict with G.L. c. 40A, § 3 and the Regulations that allow ADUs as of right on the same lot as any type of "Principal Dwelling," as explained below. See West Street Associates, LLC v. Planning Board of Mansfield, 488 Mass. 319, 324 (2021) (citing with approval trial judge's ruling that "By limiting medical marijuana facilities to nonprofit entities, the bylaw[,] while not prohibit[ing] those facilities, does restrict them in a way that the [S]tate explicitly determined they should not be limited" and "[a]ccordingly, the town's bylaw is preempted by State law to the extent it requires all medical marijuana dispensaries to be nonprofit organizations.").

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

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

The Regulations' definition of "Principal Dwelling" contemplates Protected Use ADUs on lots that include more than a one-family dwelling unit. For example, Protected Use ADUs are allowed on lots containing a two-family dwelling or a multi-family dwelling. Therefore, allowing an ADU only within the context of a "single family" dwelling unit conflicts with G.L. c. 40A, § 3 and the Regulations. For this reason, we disapprove and delete the text shown above in bold and underline. The Town should consult with Town Counsel with any questions.

B. Section 24.04 (4) – Maximum ADU Size

Section 24.04 (4), "Maximum Unit Size," limits the size of an ADU by excluding basements from the gross floor area calculation, as follows (with emphasis added):

> The gross floor area, calculated from finished wall to finished wall, of an existing structure, an addition, or new detached structure, converted to, or constructed for the purpose of creating an ADU cannot exceed 50 percent of the gross floor area of the [ ] Dwelling, not including **basement**, attic or garage, and/or attached accessory buildings or 900 square feet, whichever is less.

We disapprove the portion of Section 24.04 (4), shown above in bold and underline, that excludes basements from the gross floor area calculation and therefore restricts the gross floor area of an ADU in a manner that conflicts with G.L. c. 40A, § 3 and the Regulations, as explained below.

General Laws Chapter 40A, Section § 3 allows an ADU as of right, defined in G.L. c. 40A, § 1A as "is not larger in gross floor area than 1/2 the gross floor area of the principal dwelling or 900 square feet, whichever is smaller." Under the Regulations, 760 CMR 71.02, "Definitions," "Gross Floor Area" is defined as follows (with emphasis added):

> The sum of the areas of all stories of the building of compliant ceiling height pursuant to the Building Code, including basements, lofts, and intermediate floored tiers, measured from the interior faces of exterior walls or from the centerline of walls separating buildings or dwelling units but excluding crawl spaces, garage parking areas, attics, enclosed porches and similar spaces. Where there are multiple Principal Dwellings on the Lot, the GFA of the largest Principal Dwelling shall be used for determining the maximum size of a Protected Use ADU.

General Laws Chapter 40A, Section 3 and the Regulations require municipalities to allow ADUs as of right up to half the gross floor area of the principal dwelling or 900 square feet, whichever is smaller. See 760 CMR § 71.02's definitions of "Accessory Dwelling Unit (ADU)" (defining the size of an ADU as no "larger in gross floor area than one-half the gross floor area of the principal dwelling or 900 square feet, whichever is smaller.") 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.").

In conflict with the Regulations, Section 24.04 (4) limits the size of an ADU by excluding basements from the gross floor area calculation. This provision conflicts with the Regulations' definition of "Gross Floor Area" that includes basements in calculating the ADUs size of 50% of the gross floor area or 900 square feet, whichever is smaller. Thus, Section 24.04 (4)'s size limitation conflicts with the as-of-right protections given to all ADUs that fall within the statutory size limits under G.L. c. 40A, § 3 and the Regulations, and we therefore disapprove the portion of Section 24.04, (4) shown above in bold and underline. The Town should consult with Town Counsel with any questions regarding the allowed size of a Protected Use ADU.

While we approve the remaining portions of Section 24.04 (4), the Town's calculation of gross floor area refers to "finished wall to finished wall," whereas the Regulations refer to "the

interior faces of exterior walls." The Town must ensure that its application of "finished wall to finished wall" is consistent with the Regulations use of the term "interior faces of exterior walls." We encourage the Town to discuss with Town Counsel both the proper application of this provision as well as whether this portion of Section 24.04 (4) should be amended at a future Town Meeting to reference the Regulations text instead of "interior faces or exterior walls" to avoid any confusion as to the proper calculation of gross floor area.

C. Section 24.04 (5) – Minimum ADU Size

Section 24.04 (5), "Minimum Unit Size requires an ADU to be at least 300 square feet as follows (with emphasis added):

The gross floor area of an ADU must not be less than 300 square feet.

We disapprove Section 24.04 (5) that imposes a 300 square feet minimum on the gross floor area of an ADU because it conflicts with the G.L. c. 40A, § 3 Regulations, as explained below.

General Laws Chapter 40A, Section 3, and the Regulations require municipalities to allow Protected Use ADUs as of right up to half the gross floor area of the principal dwelling or 900 square feet, whichever is smaller. See 760 CMR § 71.02's definitions of "Accessory Dwelling Unit (ADU)" (defining the size of an ADU as no "larger in gross floor area than one-half the gross floor area of the principal dwelling or 900 square feet, whichever is smaller.") 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."). Limiting a Protected Use ADUs to no smaller than 300 square feet conflicts with the as-of-right protections given to Protected Use ADUs that fall within the statutory size limits under G.L. c. 40A, § 3 and the Regulations. For this reason, we disapprove Section 24.04 (5)'s minimum size requirements.

In addition, Section 24.04 (5)'s minimum size requirement on a Protected Use ADU, constitutes an unreasonable regulation in conflict with the Regulations. See, 760 CMR 71.03 (3) (a restriction or regulation "shall be unreasonable" if, when applied to a Protected Use ADU it "[d]oes not serve a legitimate Municipal interest sought to be achieved by local Zoning" or "[s]ubstantially diminish[es] or interfere[s] with the use or development of a Protected Use ADU without appreciably advancing the Municipality's legitimate interest."). State law, including the State Sanitary and Building Codes, establishes minimum dwelling and room sizes necessary for habitability. Size restrictions beyond the minimum requirements set by state law function as an impermissible Use and Occupancy Restriction in violation of the Regulations. See 760 CMR 1.03 (2) (c) (prohibiting regulations that impose use and occupancy restrictions on ADUs) and 760 CMR 71.02's "Use and Occupancy Restriction" definition (defining a Use and Occupancy restriction as a zoning restriction that limits the type or number of occupants beyond what is required by applicable state codes). For this additional reason, we disapprove Section 24.04 (5). The Town should consult with Town Counsel with any questions.

D. Section 24.05 – Conversion of an Accessory Structure

Section 24.05, "Conversion of an Accessory Structure," limits the conversion of an

accessory structure for use as an ADU unless it meets the dimensional requirements required for the principal structure, as follows (with emphasis added):

> An accessory garage structure or other outbuilding may be converted to accommodate an ADU provided that the structure complies with the established setback standards **for a principal structure, not accessory structure,** in the underlying applicable building codes and all other applicable standards, unless otherwise exempt. Conversion of such accessory structure must not result in the elimination of the requirement for one legal onsite parking space to serve the Single-Family Residence.

We disapprove the portion of Section 24.05, shown above in bold and underline, that allows conversion of an accessory structure to an ADU only if the accessory structure complies with the setback standards for the "principal structure, not accessory structure," because this provision conflicts with the Regulations, that requires the ADU be subjected to only the most permissive dimensional requirements, as 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, 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 Section 24.05 authorizes the use of an accessory structure for an ADU only if it complies with the "established setback standards for a principal structure, not accessory structure," this requirement imposes different dimensional requirement than that authorized in the Regulations, and we therefore disapprove the text shown above in bold and underline. The Town should consult with Town Counsel with any questions regarding this issue.

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

A. Sections 24.02 and 24.03 – Site Plan Approval

Section 24.02, "General," allows an ADU in a "legally pre-existing nonconforming structure" subject to site plan review and authorizes that the "alteration or expansion of a pre-existing non-conforming structure or Lot, can receive an approval or an approval with conditions."

In addition, Section 24.03, "Site Plan Approval," requires "[a]ny new ADU is subject to an as of right site plan review and approval..."

The Town must ensure that these site plan provisions are applied consistent with the Regulations and state law. Specifically, for uses allowed as of right, such as a Protected Use ADU, site plan review is limited to the regulation of the use rather than its prohibition. Y.D. Dugout, Inc. v. Bd. of Appeals of Canton, 357 Mass. 25, 31 (1970). The scope of site plan approval for as of right uses is therefore limited to imposing reasonable terms and conditions on the use. Id. citing SCIT, Inc. v. Planning Bd. of Braintree, 19 Mass. App. Ct. 101, 107-110 (1984). "[W]here the proposed use is one permitted by right the planning board may only apply substantive criteria consistent with Prudential Ins. Co. v. Board of Appeals of Westwood, 23 Mass. App. Ct. 278 (1986) (i.e., it may impose reasonable terms and conditions on the proposed use, but it does not have discretionary power to deny the use)." Osberg v. Planning Bd. of Sturbridge, 44 Mass. App. Ct. 56, 59 (1997). "[I]f the specific area and use criteria stated in the by-law [are] satisfied, the board [does] not have discretionary power to deny...[approval], but instead [is] limited to imposing reasonable terms and conditions on the proposed use." Prudential, 23 Mass. App. Ct. at 281-282 (internal quotations and citations omitted).

The Town should consult closely with Town Counsel when applying a site plan requirement to a Protected Use ADU to ensure it is not applied in a manner that conflicts with the Dover protections afforded to an ADU.

B. Section 24.06 (3) – Issuance of Permit

Section 24.06 (3) provides that a permit for an ADU cannot issue if it would violate the terms of a special permit or variance as follows:

> The Building Inspector will refuse to issue any permit, which would result in a violation of any provision of this bylaw or in a violation of the requirements or terms of any special permit or variance granted by the Zoning Board of Appeals.

Although we approve Section 24.06 (3), we suggest that the Town discuss with Town Counsel future clarifying amendments to this provision to make it clear that a Protected Use ADU does not require a special permit or a variance. Specifically, G.L. c. 40A, § 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 or variance requirement for the use of land or structures for a Protected Use ADU as follows:

> Municipalities shall not prohibit, impose a Prohibited Regulation, or Unreasonable Regulation, or except as provided under 760 CMR 71.03 (5) and 760 CMR 71.03 (c),

require a special permit, wavier, variance or other zoning relief or discretionary zoning approval for the use of land or structures for a Protected use ADU, including the rental thereof, in a Single-family Residential Zoning District; provided that Municipalities may reasonably regulate a Protected Use ADU, subject to the limitations under 760 CMR 71.00.

The Town should consult with Town Counsel with any questions on this issue.

C. Section 24.04 (7) – Parking Requirements

Section 24.04 (7) imposes parking requirements on an ADU as follows: "An off-street parking space must be provided for use by the occupants of the ADU."

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.)[10]

While the Town is part of Berkshire Regional Transit Authority (BRTA),[11] it appears that there are no transit stations (bus stops) located in the Town. For this reason, we approve Section 24.04 (7)'s parking requirements. However, the Town must ensure that Section 24.04 (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 Section 24.04 (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.

VI. Conclusion

We partially approve Article 25, except for: (1) references to single-family dwellings; (2) a portion of Section 24.04 (4)'s provisions regarding calculation of the ADU's size; (3) Section 24.04 (5) that requires a 300 square feet minimum ADU size; and (4) a portion of Section 24.05 that imposes setback requirements on the principal structure instead of the most permissive setback requirements, that we disapprove and delete as shown in Section IV in bold and underline.

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

[10] 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."

[11] See https://www.mass.gov/info-details/public-transportation-in-massachusetts.

CMR 71.00. If the approved provisions in Article 25 are used to deny a Protected Use ADU, or otherwise applied in ways that constitute an unreasonable regulation in conflict with 760 CMR 71.03 (3), such application would violate G.L. c. 40A, § 3 and the Regulations. The Town should consult with Town Counsel and EOHLC to ensure that the approved by-law provisions are applied consistent with G.L. c. 40A, § 3 and the Regulations, as discussed herein.

Finally, we remind the Town of the requirements of 760 CMR 71.04, "Data Collection," that requires municipalities to maintain certain records, as follows:

> Municipalities shall keep a record of each ADU permit applied for, approved, denied, and issued a certificate of occupancy, with information about the address, square footage, type (attached, detached, or internal), estimated value of construction, and whether the unit required any variances or a Special Permit. Municipalities shall make this record available to EOHLC upon request.

The Town should consult with Town Counsel or EOHLC with any questions about complying with Section 71.04.

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

Very truly yours,

ANDREA JOY CAMPBELL
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cc: Town Counsel Donna MacNicol