



**TOWN OF ARLINGTON**  
DEPARTMENT OF PLANNING and  
COMMUNITY DEVELOPMENT

TOWN HALL, 730 MASSACHUSETTS AVENUE  
ARLINGTON, MASSACHUSETTS 02476  
TELEPHONE 781-316-3090

**MEMORANDUM**

**To:** Greg Christiana, Town Moderator

**From:** Claire Ricker, Director, DPCD

**Date:** April 30, 2026

**RE:** Town Meeting Annotated Warrant attachment for Article 39

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Attached is a letter from the Attorney General's Office regarding Accessory Dwelling Units to be added to the Annotated Warrant for Article 39. It addresses a bylaw change required for Arlington to remain in compliance with state law, which Article 39 proposes to address.



THE COMMONWEALTH OF MASSACHUSETTS  
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December 16, 2025

Juliana H. Brazile, Town Clerk  
Town of Arlington  
730 Mass Avenue  
Arlington, MA 02476

**RE: Arlington Annual Town Meeting of April 28, 2025 - Case # 11958  
Warrant Articles # 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 39, and 43 (Zoning)  
Warrant Articles # 6, 7, 8, 9, 10, 11, and 12 (General)**

Dear Ms. Brazile:

**Article 25** – Under Article 25, the Town amended its existing definitions of “Accessory Dwelling Unit (ADU)” and “Gross Floor Area” (“GFA”) and its existing Section 5.10.2, “Accessory Dwelling Units,” by deleting existing text and inserting new text to allow Protected Use ADUs as of right in compliance with G.L. c. 40A, § 3 and the implementing Regulations promulgated by the Executive Office of Housing and Livable Communities (“EOHLC”), 760 CMR 71.00, “Protected Use Accessory Dwelling Units” (“Regulations”).<sup>1</sup>

We approve the changes to the definitions and to Section 5.10.2 because these amendments do not conflict with state law. See Amherst v. Attorney General, 398 Mass. 793, 795-96 (1986) (requiring inconsistency with state law or the Constitution for the Attorney General to disapprove a by-law). However, we offer comments for the Town’s consideration regarding existing text in Section 5.10.2 that was not amended under Article 25 and is therefore not subject to our review and approval to ensure this existing text is applied consistent with G.L. c. 40A, § 3 and the Regulations.

**I. Summary of Article 25**

Under Article 25, the Town made specific changes to the definitions of ADU and GFA shown in strikethrough for deleted text and underline for new text. In addition, the Town made

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<sup>1</sup> In a decision issued on September 23, 2025, we approved Articles 6, 7, 8, 9, 10, 11, and 12 and by agreement with Town Counsel pursuant G.L. c. 40, § 32 we extended our deadline for Articles 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 39, and 43 for thirty days until October 23, 2025. On October 2, 2025, we approved Articles 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 43. On October 23, 2025, we approved Article 39 and extended our deadline for Article 25 for an additional and final 60-days until December 22, 2025.

specific changes to Section 5.10.2, “Accessory Dwelling Units,” show in strikethrough for deleted text and underline for new text. As amended, Section 5.10.2 allows ADU accessory to a principal dwelling in residential districts and as an accessory to single-family, two-family, and duplexes in any business district. Section 5.10.2 allows a second ADU on a lot by special permit. Section 5.10.2 also imposes additional use and design requirements on ADUs.

## **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 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.”<sup>2</sup> 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”<sup>3</sup> 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.”<sup>4</sup> 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.<sup>5</sup> In addition, while municipalities

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<sup>2</sup> 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>).

<sup>3</sup> 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.

<sup>4</sup> 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).

<sup>5</sup> 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

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.<sup>6</sup> Against the backdrop of these statutory and regulatory parameters regarding Protected Use ADUs, we review the zoning amendments adopted under Article 25.

#### **IV. The Approved and Existing ADU Requirements Must be Applied Consistent with G.L. c. 40A, § 3 and 760 CMR 71.00**

##### **A. Section 2’s Definition of “Gross Floor Area”**

Section 2 defines “Gross Floor Area” as follows (deleted text in strikethrough and new text in underline):

Gross Floor Area The sum of the horizontal areas of all stories of a building or buildings on a lot, measured from the ~~exterior~~ interior face or exterior walls, or in the case of a common wall separating two buildings, from the centerline of such common wall as regulated under Section 5.3.22.

We approve the changes to the definition of GFA because as applied to the entire zoning by-law, the changes do not conflict with state law. However, to the extent that this definition of GFA is applicable to an ADU allowed as of right, the Town must ensure that the definition is applied in a manner consistent with G.L. c. 40A, § 3 and the Regulations, as explained below.

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”

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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.

<sup>6</sup> 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](http://www.mass.gov/ago/munilaw) (decision look up link) and then search by the topic pull down menu for the topic “ADUS.”

(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 “Gross Floor Area” as follows:

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.

The Town’s zoning by-law’s definition of GFA applies to all of its zoning by-laws and not just to ADU. However, as applied to an ADU, the definition of GFA does not match the definition provided in the Regulations. By defining “Gross Floor Area” differently than the Regulations, the by-law limits the size of an ADU than otherwise allowed as of right under G.L. c. 40A, §§ 1A and 3. We suggest that the Town discuss the definition of GFA with Town Counsel and apply it consistent with the protections given to ADU under G.L. c. 40A, § 3 and the Regulations.

B. Section 5.10.2 (B) (1) (e)’s Dimensional Requirements

As amended, Section 5.10.2 (B) (1) (e) allows ADUs in pertinent part as follows (with new text in underline and deleted text in strikethrough):

An accessory dwelling may be located in . . . (iii) an accessory building that conforms to the setback requirements of this Bylaw for accessory structures in the district in which it is located. . . . If an accessory building is located within ~~6 feet of a lot line~~ the setback, then such accessory dwelling unit shall be allowed only if the ~~Board of Appeals~~ applicable Special Permit Granting Authority, acting pursuant to Section 3.3, grants a ~~s~~Special ~~p~~Permit upon its finding that the ~~creation~~ location of such accessory dwelling unit is not substantially more detrimental to the neighborhood or the town than the use of such accessory building as a private garage or other allowed use.

As amended Section 5.10.2 (B) (1) (e) allows ADUs located in accessory buildings that conform to the setback requirements for accessory structures in the districts where it is located. The existing text also allows ADUs in accessory buildings within the setback by special permit. We approve the specific amendments to Section 5.10.2 (B) (1) (e) because they do not conflict with state law. However, the Town must ensure these provisions are applied consistent with the statutory protections for ADUs and the Regulations.

First, the Regulations, 760 CMR 71.03 (3)(b)(2), “Regulation of Protected Use ADUs in Single-family Residential Zoning Districts;” “Dimensional Standards,” that requires the Town to apply the most permissive dimensional standard, in relevant part as follows, with emphasis added:

(b) Municipality shall apply the analysis articulated in 760 CMR 71.03 (3)(a) to establish and apply reasonable Zoning or general . . .by-laws, or Municipal regulations for Protected Use ADUs, but in no case shall a restriction or regulation be found reasonable where it

exceeds the limitations, or is inconsistent with provisions, described below, as applicable:...(2) Dimensional Standards. Any requirement concerning dimensional standards, such as dimensional setbacks, lot coverage, open space, bulk and height, and number of stories, that are more restrictive than is required for the Principal Dwelling, or a Single-family Residential Dwelling or accessory structure in the Zoning District in which the Protected Use ADU is located, whichever results in more permissive regulation, provided that a Municipality may not require a minimum Lot size for a Protected Use ADU.

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. The Town must ensure that it applies dimensional requirements that are 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 ADU is located, whichever is more permissive.

Second, the existing text of Section 5.10.2 (B) (1) (e) requires a special permit for an ADU in an accessory building located within the setback. If this text was before us, we would disapprove it because it conflicts with G.L. c. 40A, § 3 and the Regulations, 760 CMR 71.00 that prohibit the imposition of a special permit requirement (except in limited situations not relevant here)<sup>7</sup> for an ADU, as explained in more detail below 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.

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<sup>7</sup> 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 the last paragraph of Section 4.2.2.2's special permit requirement.

It appears that the existing text in Section 5.10.2 (B) (1) (e) would require a special permit for an ADU in a pre-existing non-conforming accessory building located within the setback. It appears this text intends to address G.L. c. 40A, § 6's requirements for nonconforming structures and lots, that provides in pertinent part as follows:

Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

Although the existing text in Section 5.10.2 (B) (1) (e) requires a special permit, we remind the Town that G.L. c. 40A, § 3 prohibits the imposition of a special permit requirement in this situation. Moreover, G.L. c. 40A, § 6's requirements for pre-existing nonconforming structures and lots does not *require* a special permit and instead allows a "finding." Consistent with G.L. c. 40A, 3 and the Regulations, the Attorney General has consistently disapproved by-law provisions that impose a special permit requirement in relation to an ADU on or in a pre-existing non-conforming lot or structure but have approved provisions that require a finding under G.L. c. 40A, 6. See, e.g., decision to the Towns of Monson (issued May 12, 2025 in Case #11600) and Rockport (issued October 23, 2025 in Case # 11744) disapproving a special permit requirement; and decisions to the Towns of Medfield (issued August 26, 2025 in Case # 11853) and Duxbury (issued November 12, 2025 in Case # 11967) approving a finding requirement. Therefore, we strongly suggest that the Town discuss the existing text in Section 5.10.2 (B) (1) (e) requiring a special permit to allow ADUs on pre-existing nonconforming lots with Town Counsel and apply it consistent with G.L. 40A, § 3 and 760 CMR 71.03 (1).<sup>8</sup>

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<sup>8</sup> We note that G.L. c. 40A, § 6 does not *require* a special permit process and instead authorizes the Town to make a "finding." In limited circumstances, it may be appropriate for the Town to require a Section 6 finding for an ADU associated with a nonconforming structure or lot. See Petrucci v. Bd. of Appeals of Westwood, 45 Mass. App. Ct. 818 (1998) (no Section 6 "finding" required where applicant successfully demonstrated the unreasonableness of the application of the dimensional requirements to the structure . . ."). In circumstances where the regulations creating the increased nonconformity can lawfully be applied to the ADU, the Town may require that the applicant demonstrate that the altered structure use will not be substantially more detrimental to the neighborhood than the existing structure so long as the town applies objective, nondiscretionary criteria and no special permit is required. However, changing the use of a nonconforming structure to an ADU use, a statutorily protected use, cannot trigger scrutiny of the impact on a neighborhood because the ADU is a protected use and cannot be denied. Moreover, a Protected Use ADU is not "nonconforming" to any zoning rule that cannot lawfully be applied to it under the ADU statute and regulations. See Watros v. Greater Lynn Mental Health and Retardation Ass'n, Inc., 421 Mass. 106, 115 (1995); see also Ellsworth vs. Mansfield, Case No. 08 MISC 382311, 2011 WL 3198174, at \*4 (Mass. Land Ct. July 25, 2011) (no Section 6 finding required for Dover-protected educational use because "effectively, G.L. c. 40A, § 3 removes the non-conformity (the lack of frontage) because it would not be a 'reasonable regulation' of the proposed school in these circumstances"). As a result, construction or alteration of a structure for an ADU will not increase a nonconformity unless the nonconformity is created by regulations that can reasonably be applied to the ADU. We strongly suggest that the Town discuss this issue with Town Counsel.

### C. Section 5.10.2 (B) (4)'s Ownership Requirement

Section 5.10.2 (B) (4) provides that the ADU shall not be owned separately from the principal dwelling. Although the Regulations prohibit a municipality from imposing “owner-occupancy” requirements on either the ADU or the principal dwelling, the Regulations are silent on the issue of whether the ADU and the principal dwelling must remain in single ownership. In addition, both the statute and 760 CMR 71.02’s definition of ADU authorize a municipality to impose “additional restrictions” on an ADU. Based upon our standard of review, we cannot conclude that Section 5.10.2 (B) (4) is in conflict with state law.

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

It appears that Section 5.10.2 (B) (4)’s provisions are not intended to restrict who can own the ADU but is instead targeted at ensuring that the ADU remains an accessory use to the principal dwelling. Use, but not ownership, may be regulated through zoning. Goldman v. Town of Dennis, 375 Mass. 197, 199 (1978); Gamsey v. Bldg. Inspector of Chatham, 28 Mass. App. Ct. 614 (1990). Thus, “[a]lthough the limitation is phrased in terms of the type of ownership,” we cannot conclude that this provision conflicts with the Town’s zoning power. Goldman, 375 Mass. at 199.

For these reasons, and based upon our standard of review, we cannot determine that Section 5.10.2 (B) (4)’s ownership provisions are in conflict with the Regulations or are an unreasonable regulation under 760 CMR 71.03 (3). However, the Town should be prepared to satisfy the requirements of 760 CMR 71.03 (3) if this provision, as applied to a particular person, is challenged in the Court as unreasonable. The Town should consult closer with Town Counsel on this issue.

### V. **Conclusion**

We approve the specific by-law changes adopted under Article 25 because the changes do not conflict with state law. However, the Town should consult closely with Town Counsel when applying the approved text as well as the existing provisions to ensure they are applied consistent with G.L. c. 40A, § 3 and 760 CMR 71.00. If the provisions adopted under Article 25 or the existing text 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  
ATTORNEY GENERAL

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cc: Town Counsel Michael Cunningham