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November 7, 2025

Jacklyn R. Morris, Town Clerk
Town of Sherborn
19 Washington Street
Sherborn, MA 01770

Re: Sherborn Annual Town Meeting of April 29, 2025 – Case # 11785
Warrant Articles # 17, 18, 19, and 20 (Zoning)
Warrant Articles # 15 and 24 (General)[1]

Dear Ms. Morris:

Articles 19, 20, and 24 - We approve Articles 19, 20, and 24 from the April 29, 2025 Sherborn Annual Town Meeting. Our comments regarding Articles 19, 20, and 24 are provided below.

Article 19 - Under Article 19 the Town made specific amendments to several sections of its zoning by-laws regarding Accessory Dwelling Units ("ADUs") 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").[2]

We approve the specific amendments adopted under Article 19 because the approved text does not 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). However, we offer comments below for the Town's consideration regarding certain provisions.

In this decision we summarize the by-law amendments adopted under Article 19; discuss the Attorney General's standard of review of town by-laws and the recent statutory and regulatory

[1] In a decision issued August 13, 2025 we approved Articles 15, 17, and 18, and by agreement with Town Counsel as authorized by G.L. c. 40, § 32, we extended our deadline for review of Articles 19, 20, and 24 for 60-days until October 12, 2025. On October 9, 2025, by agreement with Town Counsel, we extended the deadline for our decision on Articles 19, 20, and 24 for a second and final 30 days until November 11, 2025.

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

changes that allow Protected Use ADUs as of right;[3] and then explain why, based on our standard of review, we approve the specific amendments adopted under Article 19. In addition, we offer comments for the Town's consideration regarding certain approved provisions.

I. Summary of Article 19

Under Article 19, the Town amended several sections of its zoning by-laws regarding ADUs to make specific changes. The first change amends Section 240-1.5, "Definitions," to amend certain ADU related definitions. The next change amends Section 240-3.2, "Schedule of Use Regulations," to allow Protected Use ADUs by right and other ADUs by special permit. The last change amends the Town's Table of Use Regulations to allow ("A") Protected Use ADUs in all zoning districts and to permit other ADUs by special permit ("P") in all zoning districts.

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

Our review of Article 19 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 19, 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.

[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."

III. Summary of Recent Legislative Changes Regarding ADUs

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

On January 31, 2025, the EOHLC promulgated regulations for the implementation of the legislative changes regarding ADUs. See 760 CMR 71.00, "Protected Use Accessory Dwelling Units."[4] The Regulations define key terms and prohibit certain "Use and Occupancy Restrictions" defined in Section 71.02 as follows:

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

While a municipality may reasonably regulate a Protected Use ADU in the manner authorized by 760 CMR 71.00, such regulation cannot prohibit, require a special permit or other discretionary zoning approval for, or impose a "Prohibited Regulation"[5] or an "Unreasonable Regulation" on, a Protected Use ADU. See 760 CMR 71.03, "Regulation of Protected Use ADUs in Single-Family Residential Zoning Districts."[6] Moreover, Section 71.03 (3)(a) provides that

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

[5] 760 CMR 71.03 prohibits a municipality from subjecting the use of land or structures on a lot for a Protected Use ADU to any of the following: (1) owner-occupancy requirements; (2) minimum parking requirements as provided in Section 71.03; (3) use and occupancy restrictions; (4) unit caps and density limitations; or (5) a requirement that the Protected Use ADU be attached or detached to the Principal Dwelling.

[6] For example, a design standard that is not applied to a Single-Family Residential Dwelling in the Single-Family Residential Zoning District in which the Protected Use ADU is located or is so "restrictive,

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

We incorporate by reference our more extensive comments regarding these recent statutory and regulatory changes related to ADUs in our decision to the Town of East Bridgewater, issued on April 14, 2025 in Case # 11579.[8] Against the backdrop of these statutory and regulatory parameters regarding Protected Use ADUs, we review the specific zoning amendments adopted under Article 19.

IV. Comments Regarding Section 240-3.2 (2A) – Protected Use Accessory Dwelling Units

Under Article 19, the Town added a new Section 240-3.2 (2A), "Protected Use Accessory Dwelling Units," that allows ADUs as follows (with emphasis added):

> This use is allowed in all Districts. An attached or detached Accessory Dwelling Unit (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, § 1A, provided that only one ADU on a lot may qualify as a Protected Use ADU. An ADU that is nonconforming to Zoning shall

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excessively, burdensome, or arbitrary that it prohibits, renders infeasible, or unreasonably increases the costs of the use or construction of a Protected Use ADU" would be deemed an unreasonable regulation. See 760 CMR 71.03 (3)(b).

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

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

still qualify as a Protected Use ADU if it otherwise meets this definition. Such unit may only be rented or licensed for occupancy for terms of more than 30 days.

Section 240-3.2 (2A) provides that an ADU "may only be rented or licensed for occupancy for terms of more than 30 days." We approve this provision because it appears the Town intends this provision to prohibit an ADU from being used as a short-term rental ("STR"). However, we encourage the Town to consult with Town Counsel to determine whether this provision should be amended at a future Town Meeting to specifically reference a STR rather than stating that an ADU "may only be rented...for terms more than 30 days" because G.L. c. 40A ,§ 3 and the Regulations explicitly prohibit towns from prohibiting or unreasonably regulating the rental of ADUs,, other than as a STR as defined in section 1 of chapter 64G.[9] For this reason, the Town may wish to amend this provision to reference STR to avoid any confusion that this provision relates to a prohibition on the rental period of ADUs other than as allowed under G.L. c. 64G. The Town should discuss this issue in more detail with Town Counsel.

V. Conclusion

We approve the specific amendments adopted under Article 19. The Town must ensure that these provisions are applied consistent with G.L. c. 40A, § 3 and 760 CMR 71.00. If the provisions adopted under Article 19, are used to deny a Protected Use ADU, or otherwise applied in ways that constitute an unreasonable regulation in conflict with 760 CMR 71.03 (3), such application would violate G.L. c. 40A, § 3 and the Regulations. The Town should consult with Town Counsel and EOHLC to ensure that the approved by-law provisions are applied consistent with G.L. c. 40A, § 3 and the Regulations, as discussed herein.

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

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

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

Article 20 - Under Article 20 the Town amended its zoning by-laws to add a new Section 240-5.7, "Multi-family Overlay District" ("MOD"), to allow multi-family housing by right in compliance with G.L. c. 40A, § 3A. See Attorney General v. Town of Milton, 495 Mass. 183, 196

[9] The occupancy limits for STRs in G.L. c. 64G, § 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." By referring to G.L. c. 64G, the Room Occupancy Excise statute, G.L. c. 40A, §§ 1A and 3 and the Regulations define a STR as the rental of an ADU with stays of not more than 31 consecutive calendar days. See G.L c. 64G, § 1's definition of "Occupancy" as quoted in pertinent part above.

(2025) (General Laws Chapter 40A, Section 3A "creates an affirmative duty for each MBTA community to have a zoning bylaw that allows for at least one district of reasonable size where multifamily housing is permitted as of right."). We approve Article 20, and the related map amendment, because the 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). We will return the approved maps to you by mail.

While we approve Article 20, the Town must also separately obtain the Executive Office of Housing and Livable Communities' ("EOHLC") determination that the Town has complied with Section 3A. See 760 CMR 72.09, "Multi-Family Zoning Requirements for MBTA Communities." We understand that the Town received District Compliance from EOHLC on July 21, 2025. See EOHLC "Submission Statuses" at https://www.mass.gov/info-details/multi-family-zoning-requirement-for-mbta-communities. We note however, that EOHLC's decision on the Town's application for District Compliance has no impact on the date the by-law amendments have lawful effect. The Attorney General's approval of the by-law amendments pursuant to G.L. c. 40, § 32 means that the by-law amendments are in effect as of the date of the Town Meeting vote, and can be implemented, once the Town completes the posting/publishing requirements of G.L. c. 40, § 32.

Article 24 – Under Article 24 the Town amended its general by-laws to add a new Section 7-2.1, "Recording of Public Meetings." The new by-law applies to ten boards and committees of the Town, as identified in Section 7-2.1 (A) and requires that all public meetings, public hearings or work sessions be recorded (audio and video), except for Executive Sessons. Section 7-2.1 (E) requires the unedited records to be archived and retained as required under the Statewide Public Records Retention Scheule and requires them to be made available upon a request under G.L. c. 66, § 10, the Public Records Law. In addition, Section 7-2.1 (F) provides that the recordings are subject to G.L. c. 4, § 7 (26) and the Public Records Law. The by-law provides that the recordings are not a replacement for the requirements under the Open Meeting Law to keep minutes and further provides that the by-law "shall [not] be construed to preclude any of the provisions or requirements" of the Open Meeting Law. Sections 7-2.1 (G) and (I).

We approve the new Section 7-2.1 because it does 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 below to ensure the by-law is applied consistent with the Open Meeting Law (G.L. c. 30A, §§ 18-25), and the State's Public Records Law (the State's Open Meeting Law, and G.L. c. 66, § 10).

I. Article 24's Recording Requirements Must be Applied Consistent with the Recording Provisions of G.L. c. 30A, § 20, the State's Open Meeting Law

The Open Meeting Law allows a citizen to make a video or audio recording of an open session (not executive session) of a public meeting after notifying the chair of the public body. G.L. c. 30A, § 20 (f). The recording is subject to "reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting." G.L. c. 30A, § 20 (f). The Open Meeting Law does not require that a public body video or audio record its meetings. See OML 2022-140 (finding that an allegation that a video recording

of a meeting was deleted, even if true, does not constitute a violation of the Open Meeting Law).[10] Because the Open Meeting Law does not govern whether a public body records its meetings, we cannot conclude that Article 24's recording requirements conflict with the Open Meeting Law. However, the Town must ensure that it does not apply Article 24 in a manner that interferes with a citizen's ability to record an open (not executive) session of a public meeting pursuant to G.L. c. 30A, § 20 (f). The Town should consult with Town Counsel with any questions on this issue.

II. Article 24's Recording Requirement Must be Applied Consistent with G.L. c. 66, § 10, the State's Public Records Law

Section 7-2.1 (E) states that the "recordings shall be made available upon request pursuant to MGL Ch 66, § 10." General Laws Chapter 4, Section 7 (26) defines a "public record" to include, among other things, "recorded tapes" and "other documentary materials or data, regardless of physical form or characteristics," made or received by a municipality. General Laws Chapter 66, Section 10, the State's Public Records Law, governs whether a "public record" is subject disclosure under the Public Records Law (not the by-law). The authority to determine the public records status of information held by a municipality is given to the Supervisor of Public Records. See G.L. c. 66 § 10. While Article 24 requires the recording "shall be made available," the Town must ensure that its treatment of any recording of a public meeting is consistent with G.L. c. 66, § 10, including requests for copies of any recorded meetings. The Town may wish to discuss this issue with Town Counsel.

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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[10] Open Meeting Law determinations may be found at the Attorney General's website: OML Determination Lookup (https://massago.hylandcloud.com/231publicaccess2/oml.html).