Town of Charlton
OFFICE OF THE TOWN CLERK
37 Main Street
Charlton, MA 01507
508-248-2249

VOTE CERTIFICATE

TOWN OF CHARLTON

At a legal meeting of the qualified voters of the Town of Charlton, held **May 19, 2025**, the following business was transacted under **Article 15:**

ARTICLE 15. **ZONING BYLAW AMENDMENT – AMEND §200-2.1 USES AND STRUCTURES ADDING DEFINITION OF ACCESSORY DWELLING UNITS AND ADD NEW SECTION UNDER §200-5 SPECIAL REGULATIONS RELATIVE TO ACCESSORY DWELLING UNITS**

To see if the Town will vote and amend the Zoning By-law by deleting the existing definition of Accessory Apartment and inserting in place thereof a new section provides a new definition for Accessory Dwelling Unit. The full text of the proposed amendment will be available for public review at Town Hall and on the Town's website prior to the Town Meeting. A public hearing will be held by the Planning Board as required under M.G.L. Chapter 40A, Section 5; or take any action relative thereto or thereon.

SPONSOR: PLANNING BOARD
MOTION: I move that Article 15 be accepted as printed in Appendix B and as amended.

RECOMMENDATION OF THE PLANNING BOARD: Planning Board supports this motion.
2/3rds Vote Needed per MGL Chapter 40A, Section 5, fifth paragraph

MOTION PASSES BY NECESSARY 2/3RD VOTE 58 – YES, 9 – NO

Appendix B: ARTICLE 15. ZONING BYLAW AMENDMENT – AMEND §200-2.1 USES AND STRUCTURES ADDING DEFINITION OF ACCESSORY DWELLING UNITS AND ADD NEW SECTION UNDER §200-5 SPECIAL REGULATIONS RELATIVE TO ACCESSORY DWELLING UNITS

To see if the Town will vote and amend the Zoning By-law by deleting the existing definition of Accessory Apartment and inserting in place thereof a new section provides a new definition for Accessory Dwelling Unit; or to take any other action relative thereto.

Section 2
Definitions

§ 200-2.1 Uses and structures.

ACCESSORY APARTMENT

~~A. An accessory apartment is a dwelling unit constructed within and/or added onto an existing, one-family dwelling or attached garage. An accessory apartment contains a full bathroom, kitchen, living room, and bedroom. An accessory apartment shall not have more than one (1) bedroom. Only one (1) accessory apartment will be allowed within or added onto a one-family dwelling or its attached garage. The owner(s) of the residence in which or for which the accessory apartment is created shall occupy at least one (1) of the dwelling units on the premises, except for bona fide, temporary absences. The owner's dwelling unit shall not be rented during any such temporary absence.~~

~~B. An accessory apartment shall be designed to maintain the appearance of a single-family residence as to the one-family dwelling of which it is a part, and shall be clearly subordinate to the one-family dwelling. Any exterior entrance to the apartment shall be located on the side or rear of the one-family dwelling, or of its garage, and any additions containing the apartment, in whole or in part, shall not increase the square footage of the original structure of the one-family dwelling by more than one thousand two hundred fifty (1,250) square feet. Accessory apartments may not be added to or expanded, and must be complete, separate housekeeping units that can be isolated from the original unit of the one-family dwelling. No more than two (2) persons may occupy an accessory apartment. For dwellings to be served by an on-site septic system, the owner must obtain written approval from the Board of Health before a building permit can be obtained for construction of the accessory apartment. This is to ensure that the existing sewage disposal system and water supply are adequate for the proposed accessory apartment.~~

Replace with:

ACCESSORY DWELLING UNIT (ADU). A self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities on the same Lot as a Principal Dwelling, subject to otherwise applicable dimensional, parking, setbacks, lot coverage and other requirements, of this bylaw.

Add:

GROSS FLOOR AREA. 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.

FOOTPRINT. Area of the ground that is covered by a structure, or structures on a building lot, including the foundations and all areas enclosed by exterior walls and footings and/or covered by roofing.

Add as new section 200-5.22:

Accessory Dwelling Units

A) The purpose of Accessory Dwelling Units (ADU) Bylaw is to:

1) Align with the minimum requirements of MGL. C 40A sections 1A, 3 and 760 CMR section 71.

2) Provide homeowners with a means of obtaining, through tenants in accessory apartments, rental income, companionship, security and services, and thereby enabling them to stay more comfortably in homes and neighborhoods they might otherwise be forced to leave.

3) Provide a mixture of housing that responds to changing family needs and smaller households.

4) Provide a broader range of accessible and more affordable housing.

B) Requirements:

1) Must comply with all other applicable laws and regulations, including but not limited to the Massachusetts State Building, Electrical, Plumbing, Gas and Energy codes, Wetlands Protection Act, Board of Health Regulations and utility connections.

2) The principal dwelling and or the accessory dwelling unit may not be sold separately for the property that it is located on.

3) May not have more than one per property and may not be used for Short-term Rental as defined in MGL c. 64G section 1.

4) May be attached to or create in an existing residential dwelling or it's detached garage, outbuildings, or newly created dwelling or detached building or as standalone building and must be on the same lot as the principal dwelling unit.

5) May have a separate entrance, either directly from the outside or through an entry hall or corridor shared with the Principal Dwelling sufficient to meet the requirements of the State Building Code for safe egress.

6) When attached to the principal dwelling unit the gross floor area and footprint of the ADU is limited to 1250 square feet and be designed to maintain the appearance of a single-family residence.

7) When created as part of an existing or new accessory structure, the gross floor area of ADU is limited to 900 square feet or one half the living area of the principle dwelling unit, whichever is less.

8) The footprint of the accessory structure containing the ADU shall be no more than 1250 square feet.

Amend §200-3.2 B. Use Regulation Table:[1]

		Districts							
		A or R-60	R-40	R-SE	NB	V	CB	IG	BEP
Residential Uses									
(a)	Dwellings, one-family	Y	Y	Y	Y	Y	Y	N	N
(b)	Accessory ~~apartments~~ Dwelling unit	Y	Y	Y	Y	Y	Y	N	N
©	Dwellings, two-family	N	Y	Y	Y	~~Y~~P	~~Y~~P	N	N
(d)	Multifamily dwellings (see § 200-5.1)	N	~~P~~SP	~~P~~SP	SP	SP	SP	N	~~SP~~N
(e)	Mobile homes, mobile home parks or trailers for human habitation. (See special regulations in § 200-5.2.)	N	N	N	N	N	N	N	N

[1] This section coordinates with changes to the use regulations table, Residential Uses in Article 18

(f)	Major residential development	P	P	P	SP	P	SP	N	~~SP~~ N
(g)	Dwelling units over first floor business uses	N	N	P	P	P	SP	N	~~SP~~ N
(h)	In one- and two-family dwellings, a mix of residential and business uses	N	N	P	P	P	~~P~~ SP	N	~~SP~~ N
(i)	Recreational vehicles used for human habitation for temporary visits not exceeding thirty (30) days in any successive twelve (12) months	Y	Y	Y	Y	Y	Y	Y	Y

A True copy, Attest

Karen M. LaCroix
Town Clerk

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

(508) 792-7600
(508) 795-1991 fax
www.mass.gov/ago

November 21, 2025

Karen LaCroix, Town Clerk
Town of Charlton
37 Main Street
Charlton, MA 01507

Re: Charlton Annual Town Meeting of May 19, 2025 – Case # 11831
Warrant Articles # 14, 15, 16, 17, 19, 20, 21 and 22 (Zoning)[1]

Dear Ms. LaCroix:

Article 15 - Under Article 15, the Town voted to amend it's zoning by-laws regarding Accessory Dwelling Units ("ADUs") by adding a new Section 200-5.22, "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 15 because the approved text does not conflict with state law. However, we disapprove and delete[3] the words "single-family" in Section 200-5.22 (B)(6) because this text conflicts 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).

In this decision we summarize the by-law amendments adopted under Article 15; discuss the Attorney General's standard of review of town by-laws and the recent statutory and regulatory

[1] In a decision issued August 25, 2025, we approved Articles 14 and 22 and by agreement with Town Counsel as authorized by G.L. c. 40, § 32, we extended our deadline for a decision on Articles 15, 16, 17, 19, 20 and 21 for 60 days until October 24, 2025. In a decision issued October 24, 2025, we approved Articles 16, 17, 19, 20 and 21 and by agreement with Town Counsel as authorized by G.L. c. 40, § 32, we extended our deadline for a decision on Article 15 for an additional 30 days until November 23, 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 also deleted from the Town's zoning by-law and does not take effect under G.L. c. 40 § 32.

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 15. In addition, we offer comments for the Town's consideration regarding certain approved provisions adopted under Article 15.

I. Summary of Article 15

Under Article 15 the Town voted to amend its zoning by-laws to add a new Section 200-5.22, "Accessory Dwelling Units" that imposes requirements on ADUs and by amending Section 200-3.2 (B), "Use Regulation Table," including allowing ADUs as-of-right in the Agricultural or Rural Residential (A or R-60), Low Density Residential (R-40), Residential-Small Enterprise (R-SE), Neighborhood District (NB), Village (V), and Community Business (CB) zoning districts and prohibiting ADUs in all other zoning districts.[5] In addition, the Town voted to amend Section 200-2.1, "Definitions," to add definitions for "Accessory Dwelling Unit" and "Gross Floor Area." Section 200-5.22 (B) (3) of 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. The by-law also requires an ADU to be in compliance with the State Building Code, Wetlands Protection Act and Board of Health regulations (Section 200-5.22 (B) (1)).

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

Our review of Article 15 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). "

---

[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."

[5] The other zoning districts are the Industrial General (IG) and the Business Enterprise Park (BEP). 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 Use Regulation Table, single-family dwellings are also prohibited in the IG and BEP Districts. For this reason, we approve the amendments to Section 200-3.2 (B) - "Use Regulation Table," 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.

Article 15, 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,

[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).

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 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

[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 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

parameters regarding Protected Use ADUs, we review the zoning amendments adopted under Article 15.

IV. Text Disapproved from Article 15 Because it Conflicts with G.L. c. 40A, § 3 and the Regulations

Section 200-5.22 (B) (6) sets design standards for an ADU in terms of a single-family residence as follows (with emphasis added):

> When attached to the principal dwelling unit the gross floor area and footprint of the ADU is limited to 1250 square feet and be designed to maintain the appearance of a **single family** residence.

We disapprove and delete the words "single-family" in Section 200-5.22 (B) (6) as shown above in bold and underline that imposes requirements on ADUs related to a single-family residence. The reference to "single-family" is in 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, 448 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 ways 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, by stating that the ADUs must maintain the appearance of a "single-family" residence, this provision conflicts with G.L. c. 40A, § 3 and the Regulations. For this reason, we disapprove the words "single-family" as shown above in bold and underline from Section 200-5.22 (B) (6).

---

topic "ADUS."

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 15 to ensure that the Town applies these provisions consistent with G.L. c. 40A, § 3 and the Regulations.

A. Section 200-5.22 (B) (2) - Common Ownership

Section 200-5.22 (B) (2) prohibits the separate sale of the principal dwelling or the ADU as follows: "The principal dwelling and or the accessory dwelling unit may not be sold separately for (sic) the property that it is located on." 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 200-5.22 (B) (2) is in conflict with state law.

In reviewing this provision, we have considered the question whether the by-law's requirement that the ADU "may not be sold separately" 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 200-5.22 (B) (2)'s requirement that the ADU may not be sold separately from the principal dwelling is 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 200-5.22 (B) (2)'s ownership provision is 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.

B. Section 200-5.22 (B) (7) - Size of the ADU

Section 200-5.22 (B) (7) references the size of the ADU by using the term "living area" rather than "Gross Floor Area," as follows (with emphasis added): "When created as part of an existing or new accessory structure, the gross floor area of ADU is limited to 900 square feet or one half the living area of the principal dwelling unit, whichever is less." The Town must ensure that Section 200-5.22 (B) (7) is applied consistent with G.L. c. 40A, § 3 and the Regulations, that allow an ADU as of right up to 900 square feet or one half the gross floor area (not the living area) of the principal dwelling unit, as explained below.

General Laws Chapter 40A, Section 3, and the Regulations require the Town to allow Protected Use ADUs as of right that are no larger in gross floor area than one-half the gross floor area of the principal dwelling or 900 square feet, whichever is smaller, but contain no other limitation on the minimum size of a Protected Use ADU. See West Street Associates, LLC, 488 Mass. at 324. Neither the new Section 200-5.22 nor the town's existing by-laws, define "living area." For this reason, the Town cannot apply the term "living area" in a manner that prohibits the ADU from being 50% of the gross floor area (as that term is defined in the Regulations) of the principal dwelling or 900 square feet, whichever is smaller. The Town should consult with Town Counsel to determine if Section 200-5.22 (B)(7) should be amended at a future Town Meeting to address this issue.

VI. Conclusion

We partially approve Article 15, except for the words "single-family" from Section 200-5.22 (B) (6), that we disapprove and delete as shown in Section IV above 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 15 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
Tasheena M. Davis
By: Tasheena M. Davis
Assistant Attorney General
Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
Tasheena.davis@mass.gov
413-523-7704

cc: Town Counsel Robert J. Hennigan