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January 29, 2026

Patricia Dzuris, Town Clerk
Town of Chelmsford
50 Billerica Road
Chelmsford, MA 01824

**Re: Chelmsford Fall Annual Town Meeting of October 20, 2025 – Case # 12065
Warrant Articles # 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30,
and 31 (Zoning)
Warrant Article # 32 (General)**

Dear Ms. Dzuris:

Articles 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32 - We approve Articles 15 and Articles 17 through 32, and the map amendment adopted under Article 27, from the October 20, 2025 Chelmsford Fall Annual Town Meeting. We will return the approved map to you by mail. Our comments regarding Article 31 are provided below.

Article 16 - Under Article 16, the Town amended its zoning by-laws, Chapter 195, Attachment 1, “Use Regulation Schedule,” to make a number of identified changes, including adding a new column for the new zoning district Roadside Commercial Light District (“CBLT”). Except for amendments to Section B (2) and D (32) requiring a special permit for family-day care uses, that we disapprove because it conflicts with G.L. c. 40A, § 3, we approve the amendments adopted under Article 16. 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 also offer comments for the Town’s consideration regarding the use of “airport” in the CBLT.

I. Summary of Article 16

Under Article 16, the Town amended its zoning by-laws, Chapter 195, Attachment 1, “Use Regulation Schedule,” (“Schedule”) to make a number of identified changes. One change adds to Section D, “Commercial,” a new Section D.38, “Parking Lot accessory Use,” and allows the use in the CBLT by special permit (“PB”). The next changes amend Section E, “Industrial,” to add new Sections E. 22 and E. 23 allowing “Parking accessory use” by special permit in the CBLT and ultralight manufacturing by right in the CBLT. The next change adds a new note xiii regarding accessory parking lots. Lastly, the Town amended the Schedule to add a new column for the new zoning district, CBLT (“Roadside Commercial Light District”).

II. Attorney General’s Standard of Review of Zoning Bylaws

Our review of Article 16 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 (requiring inconsistency with state law or the constitution for the Attorney General to disapprove a by-law). 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.”) Rather, to disapprove a by-law (or any portion thereof), the Attorney General must cite an inconsistency between the by-law and the state Constitution or laws. Id. at 796. “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 16, as an amendment to the Town’s zoning by-laws, must be accorded deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002). 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). 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. Sections B (2) and D (32) that Require a Special Permit for “Family Day-Care[s]” Are Disapproved Because These Provisions Conflict with G.L. c. 40A, Section 3

As amended, the Schedule provides as follows in the new CBLT (with emphasis added):

B. Exempt Uses		
Section	Description	CBLT
2	Licensed family day-care facility for the day care of six or fewer children, including children living in the residence (for profit)	PB

D. Commercial		
Section	Description	CBLT
32	Family day-care home (nonexempt)	BA

In the CBLT, the use “Licensed family day-care facility for the day care of six or fewer children, including children living in the residence (for profit)” requires a special permit from the Planning Board (“PB”). And in the CBLT, the use “Family day-care home (nonexempt)” requires a special permit from the Board of Appeals (“BA”). The Town’s existing zoning by-laws, Section XX, “Terminology,” defines the term “Family Day-Care Home” as follows:

Any private residence which on a regular basis receives for temporary custody and care during part or all of the day children under seven years of age or children under 16 years of age if such children have special needs; provided, however, in either case, that the total number of children shall not exceed more than six, excluding participating children living in the residence.

Section XX does not define the term “Licensed Family Day-care Facility.” However, Section XX does define the term “Child Care Facility,” as follows:

A day-care center or school-age child-care program, as those terms are defined in MGL c. 28A, § 9.³ [endnote 3 provides: “Editor's Note: Sections 1 to 17 of MGL c. 28A were repealed 2008, c. 215, § 43.”]

We disapprove the special permit requirements (PB and BA), shown above in bold and underline, because these provisions conflict with G.L. c. 40A, § 3 that provides that a town cannot prohibit or regulate the use of family child care home and large family child care home, as follows:

Family child care home and large family child care home as defined in section 1A of chapter 15D shall be an allowable use and no city or town shall prohibit or regulate such use in its zoning ordinances or by-laws.

General Laws Chapter 15D, Section 1A, defines “family child care home” as follows:

a private residence which, on a regular basis, receives for temporary custody and care during part or all of the day, children under 7 years of age, or children under 16 years of age if those children have special needs, and receives for temporary custody and care for a limited number of hours children of school age under regulations adopted by the board. The total number of children under 16 in a family child care home shall not exceed 6, including participating children living in the residence. Family child care home shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation.

Because G.L. c. 40A, § 3 prohibits a Town’s zoning by-laws from prohibiting or regulating the use of “Family child care home,” it conflicts with state law to require a special permit (PB or BA) for the use of a family day-care for less than six children. For this reason, we disapprove and delete the portions of the Schedule shown above in bold and underline. We further note that the Town’s existing Schedule, not amended under Article 16, also requires a special permit for these uses in most of the Town’s other zoning districts. We encourage the Town to consult with Town Counsel regarding an amendment to the Schedule at a future Town Meeting to address this issue and in the interim not to require a special permit for these uses as such application would conflict with G.L. c. 40A, § 3. The Town should consult with Town Counsel with any questions on this issue.

IV. Additional Comments

In the CBLT, Section C (6) prohibits (“N”) airports. General Laws Chapter 90, Section 39B requires MassDOT review and approval of local laws that regulate the use and operation of aircraft. However, local laws that regulate only private non-commercial restricted landing areas (PRLAs) do not require MassDOT approval. See Roma v. Board of Appeals of Rockport, 478

Mass. 580, 592 n. 9 (2018) (the notice and safety requirements for noncommercial private restricted landing areas under G. L. c. 90, § 39B, fourth par., still apply, as does “the continuing authority of the division under the aeronautics code over aircraft landing areas that do not fall within the narrow definition of a noncommercial private restricted landing area.”). The Town should discuss with Town Counsel the application of the Roma decision to the Schedule’s reference to “airport” to determine whether this portion of the Schedule needs approval from MassDOT before it becomes effective.

Article 31 – Under Article 31, the Town amended its zoning by-laws, Article III, “Use Regulations,” Section 195-6.1, “Accessory Dwelling Units,” (“ADUs”) Subsection C, “Applicability/Eligibility,” to insert new paragraphs (4), (5), and (6) imposing additional requirements on ADUs. We offer comments for the Town’s consideration regarding these amendments.

I. 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 Executive Office of Housing and Livable Communities (“EOHLC”) promulgated regulations for the implementation of the legislative changes regarding ADUs.¹ See 760 CMR 71.00, “Protected Use Accessory Dwelling Units.”

We incorporate herein by reference our extensive comments to the Town regarding the recent statutory and regulatory changes related to ADUs in our decision issued to the Town on June 12, 2025 in Case # 11696.

II. Section 195-6.1 (C)(4) – Nonconforming Dwellings

Section 195-6.1 (C)(4) imposes a finding requirement on ADUs in nonconforming principal dwellings, as follows:

Where the principal dwelling is a nonconforming single or two family structure, the ADU shall meet the requirements of Section 195-8.E as applied by the Building Commissioner and the Board of Appeals as set forth therein, and when the principal dwelling is nonconforming multi-family (3 or more units) structure, the ADU shall meet the requirements of 195-8.C, as applied by the Planning Board, provided that in either instance a special permit shall not be required, and when a determination is required such determination shall not be subject to special permit criteria and shall be made by majority vote.

¹ The Regulations can be found here: <https://www.mass.gov/doc/760-cmr-7100-protected-use-adus-final-version/download>

We have reviewed the Town's existing zoning by-laws, Sections 195-8.C and 8.E. Although these existing provisions reference the need for a special permit, Section 195-6.1 (C)(4) explicitly exempts an ADU in a nonconforming structure from this special permit requirement and instead requires a "determination." For this reason, we approve this provision, but offer comments to ensure the proper application of this section.

It appears that this text may intend to reflect the requirements of G.L. c. 40A, § 6 regarding pre-existing nonconforming structures that provides: "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."

Because Section 195-6.1 (C)(4) requires a "determination" (which appears to be similar to a "finding") and does not require a special permit, we approve this provision. However, because ADUs are a Dover Amendment protected use, only in limited circumstances, may it be appropriate for the Town to require even 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 lot or structure to allow ADU use, a statutorily protected use, cannot trigger scrutiny of the impact on a neighborhood because the ADU is a Dover Amendment 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 the application of G.L. c. 40A, § 6 and Section 195-6.1 (C)(4) with Town Counsel.

III. Section 195-6.1 (C)(5) – Minor Site Plan Review

Section 195-6.1 (C)(5) requires an ADU in a multi-family principal dwelling (defined as three or more units) to undergo Minor Site Plan Review per Section 195-104.G of the Town's zoning by-laws. We approve Section 195-6.1 (C)(5)'s site plan review requirements, but offer comments for the Town's consideration to ensure the proper application of this provision.

The Regulations, 760 CMR 71.03 (3) (5), "Site Plan Review," allow a Town to impose site

plan review, but prohibits the imposition of a site plan review process that is not “clear and objective” or that imposes terms and conditions that are unreasonable or inconsistent with an as-of-right process as defined in M.G.L. c. 40A, § 1A.” The Town must ensure that its application of Section 195-6.1 (C)(5)’s site plan review requirements satisfy the standard to provide “clear and objective” site plan review requirements, otherwise it could result in the imposition of restrictions that may be unreasonable or inconsistent with the site plan review process for ADUs and Dover Amendment protected uses. See The Bible Speaks v. Board of Appeals of Lenox, 8 Mass. App. Ct. 19, 33 (1979) (town cannot require applicant to submit site plan and “informational statement” with details about its landscaping plans, projections about the increased impact on municipal services, and other details outside the scope of what the town could lawfully regulate under the Dover Amendment).

In addition, for uses allowed as of right, such as an 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 an ADU to ensure it is not applied in a manner that conflicts with the Dover protections afforded to ADUs.

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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