



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

MAURA HEALEY
ATTORNEY GENERAL

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

September 1, 2022

Elizabeth Cunniff, Town Clerk
Town of Groveland
183 Main Street
Groveland, MA 01834

Re: Groveland Annual Town Meeting of May 23, 2022 -- Case # 10624
Warrant Articles # 14 and 15 (Zoning)
Warrant Articles # 5, 6, 7, 8, 9, 10, 11, 12 and 13 (General)

Dear Ms. Cunniff:

Articles 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 - We approve Articles 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 from the May 23, 2022 Groveland Annual Town Meeting. Our comments regarding Articles 8 and 14 are provided below.

Article 8 - Under Article 8 the Town voted to amend the general by-laws by deleting Section 6.1 in its entirety and inserting a new Section 6.1, "Building Numbering/Street Naming." Section 6.1 requires all buildings to be assigned a street number and requires all buildings to be identified by the assigned street number. See Section 6-1 (6), "Building Numbering" and Section 6-1 (6), "Compliance." ¹ Section 6-1 (6), "Compliance," requires all numbers to be "displayed within 60 days of the enactment of this bylaw or within 60 days of the assignment of a new street number." It is unclear what the text "within 60 days of the enactment of this bylaw" means. However, G.L. c. 40, § 32 governs the effective date of general by-laws and requires that by-laws approved by the Attorney General must be posted or published before they go into effect. The by-law amendments adopted under Article 8 will not take effect until the requirements of G.L. c. 40, § 32 have been satisfied. The Town should consult with Town Counsel on the proper application of Section 6-1 (6), "Compliance," and the effective date of the by-law.

Article 14 - Under Article 14 the Town vote to amend the zoning by-laws, Section 50-2.1, "Terms Defined," to add a new definition of "Caretaker's Unit" to allow an owner or caretaker to live on site at their business in order to monitor the property after hours, as follows:

¹ The new Section 6.1 is missing a sub-section 4 but has two sub-section 6s. The Town should consult with Town Counsel about a future amendment of the by-law to fix the numbering of the Sections.

An accessory dwelling unit constructed in or attached to a principal Business or Industrial use structure, which unit has a separate kitchen, separate bathroom, two separate entrances, a floor area of less than one-half (1/2) the floor area of the principal occupancy's square feet up to a maximum of 900 square feet of habitable area, has one bedroom and which is occupied primarily by a person or persons, and their family, who are employed in part to either care for, monitor, or repair and maintain the principal use structure.

Because Article 14 poses no conflict with state law, we approve it. 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, the Town must apply the one-bedroom limitation consistent with G.L. c. 151B and the Fair Housing Act, as explained below.

Both Federal and State law prohibit discrimination in the provision of housing based on familial status (i.e., the presence of children in the household.). See 44 U.S.C. § 3604 and G.L. c. 151B, § 4, ¶ 6. The Fair Housing Act ("FHA") expressly prohibits discrimination in the rental or sale of a dwelling on the basis of familial status and provides that it shall be unlawful:

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

See 42 U.S.C. § 3604 (a).

"The phrase 'otherwise make unavailable or deny' encompasses a wide array of housing practices...and specifically targets the discriminatory use of zoning laws and restrictive covenants." Casa Marie, Inc. v. Superior Court of Puerto Rico for Dist. of Arecibo, 988 F.2d 252, 257 n. 6 (1st Cir. 1993).

Similarly, G.L. c. 151B, § 4, the Massachusetts Anti-Discrimination law, forbids discrimination in housing based on familial status. See G.L. c. 151B, § 4, ¶ 6. Both the Act and c. 151B, prohibit towns from using their zoning powers in a discriminatory manner, i.e., using its zoning powers to exclude housing for members of a protected class, i.e., a family with children. Violations occur when a Town uses its zoning power to intentional discriminate against a member of a protected class or when such zoning power has a discriminatory impact on members of a protected class. See Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265 (1977). Discriminatory effect can occur when a zoning rule, neutral on its face, is applied in a manner to exclude members of a protected class. In discriminatory impact cases, once it has been shown that a neutral action has a discriminatory impact, the burden shifts to the defendant to show that its actions furthered a legitimate bona fide government interest and that no alternative would serve that interest with less discriminatory effect. Huntington Branch, NAACP v. Town of Huntington, 844 F.2d 926, 939 (2d Cir.) (1988).

Based on the Attorney General's limited standard of review, we cannot conclude that Section 50-2.1's one bedroom limitation in the definition of "Caretaker Unit" necessarily violates the FHA or G.L. c. 151B. However, we suggest that the Town discuss this text with

Town Counsel to determine whether this text needs future amendments and whether it should be enforced in light of the FHA and G.L. c. 151B.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning bylaws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MAURA HEALEY
ATTORNEY GENERAL

Nicole B. Caprioli

By: Nicole B. Caprioli
Assistant Attorney General
Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600 ext. 4418

cc: Town Counsel William Hewig, III