



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

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July 8, 2024

Valerie Fox, Town Clerk  
Town of Lincoln  
16 Lincoln Road  
Lincoln, MA 01773

**Re: Lincoln Annual Town Meeting of March 23, 2024 - Case # 11321  
Warrant Article # 3 (Zoning)**

Dear Ms. Fox:

**Article 3** – We approve the zoning by-law amendments and the related zoning map amendments adopted under Article 3 at the Lincoln Annual Town Meeting of March 23, 2024. We will return the approved map to you by regular mail.

The Attorney General’s approval of the by-law amendments adopted under Article 3 pursuant to G.L. c. 40, § 32 means that the by-law amendments will have lawful effect once the Town completes the posting/publishing requirements of G.L. c. 40, § 32. However, the Town must separately obtain the Executive Office of Housing and Livable Communities (EOHLC)’s determination that the Town has complied with Section 3A. See EOHLC “Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act,” p. 17.<sup>1</sup>

**I. Attorney General’s Standard of Review of Zoning Bylaws**

Our review of Article 3 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 v. Attorney General, 398 Mass. 793, 795-96 (1986). 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).

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<sup>1</sup> We recognize that the Town’s District Compliance Application is under review by EOHLC.

Article 3, 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.

## II. Comments on Article 3

Under Article 3, the Town amended the zoning map and several provisions in its existing zoning by-law, and adopted a new Section 12.9, “Multi-family and Mixed-Use Overlay Districts,” (Section 3A District) and new definitions, all to comply with G.L. c. 40A, § 3A. The Section 3A District is an overlay district divided into three subdistricts with varying allowed uses. All projects in the Section 3A District must include multi-family housing by right subject to site plan review under Section 17 of the existing zoning by-law. (Sections 12.9, “Procedures and Regulations,” and Section 12.9.1.1 “Permitted Uses”). The stated purpose of Article 3 is to comply with G.L. c. 40A, § 3A.<sup>2</sup>

### A. Parking

The Town submitted the proposed Section 3A zoning to EOHLC before the town meeting vote, and EOHLC issued a January 12, 2024 “Pre-adoption Review” letter to the Town. As EOHLC stated in the Pre-adoption Review letter, Section 5c(vii) of the Compliance Guidelines “prohibits minimum parking requirements associated with the non-residential uses allowed as of right.” (EOHLC letter, p.2, ¶ 5). The purpose of prohibiting minimum parking requirements for mixed-use developments in a Section 3A District is to “preserve pedestrian access to amenities in an existing village-style or downtown development.” Id

We appreciate that, in response to the EOHLC letter and before the town meeting vote, the Town removed the reference to mandatory minimum parking requirements in the Village Center Overly District (Section 12.9.2) so that the text now reads:

#### 8. Parking:

There shall be a minimum of one parking space required for each residential unit. Parking for mixed-use developments shall be per the approved Site Plan. The Planning Board may consider complementary uses, proximity to public transportation, proximity to municipal and street parking, transportation demand management (TDM) measures, and shared parking arrangements. Parking shall not be in front of buildings except as approved by the Planning Board.

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<sup>2</sup> We appreciate the letters we received from Robert Domnitz, J.D and Town Counsel regarding Article 3. These letters have informed our review.

(Section 12.9.2.3(a)(8)). We approve this text because it does not require application of the existing parking requirements in Section 15 of the zoning by-law. However, the provisions of Section 12.9.2.3(a)(8) cannot be applied to require a minimum number of parking spaces for any non-residential uses in a mixed-use development in this District because that requirement would conflict with Section 5c(vii) of the Compliance Guidelines. The Town should consult with Town Counsel or EOHLC with any questions on this issue.

**B. Permit Requirements for Wetlands/Watershed Protection and Aquifer/Watershed Protection**

Section 12.9.3.1 attempts to replace the existing special permit requirement for uses governed by Section 12.2 Wetland/Watershed Protection and Section 12.4, Aquifer/Watershed Protections, and instead require a “permit” from the Planning Board for such uses:

To the extent that property to be developed under Section 12.9.1 and/or Section 12.9.2 is subject to the requirements of section 12.2 Wetland/Watershed Protection and/or Section 12.4, Aquifer/Watershed Protections, the review and approval under said districts shall be conducted by the Planning Board, which shall issue a permit upon a finding that the requirements and criteria of said sections 12.2 and/or 12.4 have been met.

We appreciate that these amendments were likely proposed to address comments in the EOHLC “Pre-adoption Review” letter pointing out that the uses in the Section 3A District could not be subject to the special permit requirement in Sections 12.2 and 12.4 (because Section 3A prohibits any discretionary special permit for multi-family housing). However, the Town may wish to consider a future clarifying amendment to make clear that the “permit” referenced in Section 12.9.3.1 is not a discretionary special permit. The Town should consult with Town Counsel with any questions on this issue.

**III. Conclusion**

While we approve the amendments adopted under Article 3, the Town should consult with Town Counsel regarding a potential future clarifying amendment to Section 12.9.3.1 and consult closely with Town Counsel when applying the by-law, to ensure that these provisions will not compromise the Town’s ability to obtain Section 3A compliance approval from EOHLC. Please feel free to contact us with any questions.

**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 Joel Bard