



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](http://www.mass.gov/ago)

August 15, 2022

Laura J. Caruso, Town Clerk  
Town of Sutton  
4 Uxbridge Road  
Sutton, MA 01590

**RE: Sutton Annual Town Meeting of May 9, 2022 - Case # 10520  
Warrant Article # 19 (Zoning)**

Dear Ms. Caruso:

**Article 19** - Under Article 19 the Town voted to amend the Town's Accessory Apartments by-law to limit accessory apartments to one bedroom and to require accessory apartments to be part of a main dwelling or a detached accessory structure. Because Article 19 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).

This letter briefly describes the by-law; discusses the Attorney General's limited standard of review of town by-laws under G.L. c. 40, § 32; and then explains why, governed as we are by that standard, we approve it.

**I. Description of Article 19**

Under Article 19 the Town voted amend Section VI.L. "Accessory Apartments" to limit accessory apartments to one bedroom and to require accessory apartments to be part of a main dwelling or a detached accessory structure as follows (new text in bold and deleted text in strikethrough):

An accessory apartment is a dwelling unit constructed within and/or added onto a single family dwelling or detached accessory building. Accessory apartments must be complete separate housekeeping units that can be isolated from the original unit of the single family dwelling. The Board may waive strict compliance with any provision of this bylaw if it deems it in the public interest and determines that the intent of the bylaw has been maintained. Written record must be kept of such waivers including the reasons for them.

a. An accessory apartment shall only have ~~no more than~~ one bedroom.

\*

\*

\*

"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 VI.L. (a)'s one bedroom limitation necessarily violates the FHA or G.L. c. 151B. However, we strongly suggest that the Town discuss this text with Town Counsel. Specifically, the Town should discuss with Town Counsel 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 by-laws 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

*Kelli E. Gunagan*

By: Kelli E. Gunagan  
Assistant Attorney General  
Municipal Law Unit  
10 Mechanic Street, Suite 301  
Worcester, MA 01608  
(508) 792-7600

cc: Town Counsel Thomas W. McEnaney



**L. Accessory Apartments**

The intent of this section of the bylaw is to 1) increase the diversity of housing options for town residents in response to demographic changes, particularly the demand for housing for senior family members; 2) encourage better utilization of existing housing stock while maintaining the appearance and character of the town's single family neighborhoods; and 3) eliminate the continued construction of illegal unregulated apartment units, and 4) create another potential source of affordable housing units.

An accessory apartment is a dwelling unit constructed within and/or added onto a single family dwelling or detached accessory building. Accessory apartments must be complete separate housekeeping units that can be isolated from the original unit of the single family dwelling.

The Board may waive strict compliance with any provision of this bylaw if it deems it in the public interest and determines that the intent of the bylaw has been maintained. Written record must be kept of such waivers including the reasons for them.

- a. An accessory apartment shall only have one bedroom.
- b. Only one (1) accessory apartment shall be allowed per lot.
- c. The owner(s) of the property shall reside on the premises.
- d. An accessory apartment shall be designed to maintain the appearance of the single family dwelling or which it is a part, and shall be clearly subordinate to the single family dwelling. A detached accessory apartment shall look like a barn or garage.
- e. Accessory apartments shall not exceed 1,200 s.f. No floor area may be excluded from this calculation, other than unfinished attic or basement areas, or storage areas that cannot be accessed directly from the accessory apartment.
- f. No more than two (2) persons may occupy an accessory apartment.
- g. Board of Health must approve the addition of the unit before the permit can be granted.
- h. An accessory apartment shall be a portion of the main dwelling, or a portion of a detached accessory structure such as a garage or barn.

A True Copy Attest:



Laura J Caruso