



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
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MAURA HEALEY
ATTORNEY GENERAL

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March 30, 2021

Barbara Hancock, Town Clerk
Town of Deerfield
8 Conway Street
Deerfield, MA 01373

Re: **Deerfield Special Town Meeting of October 22, 2020 -- Case # 9948**
Warrant Articles # 6 and 7 (Zoning)

RECEIVED
2021 APR -6 AM 10:15
TOWN OF DEERFIELD

Dear Ms. Hancock:

Article 6 - We approve Article 6 from the October 22, 2020 Deerfield Special Town Meeting. Our comments regarding Article 6 are provided below.

Article 7 - Because of a procedural defect in the adoption of Article 7, the Attorney General has elected to proceed under the authority conferred by G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000, and place this Article on "hold."

In the materials submitted to us the Town provided the following information pursuant to G.L. c. 40, § 32, and c. 40A, § 5: on Form 7, the Town certified that the Planning Board Hearing notice was posted on October 19, 2020 for a Planning Board hearing to be held on October 21, 2020. The Town Clerk informed us that the Planning Board left "plans and notices out on a table in the foyer, for public inspection" but that the Planning Board's hearing notice was "not given to the Town Clerk to timestamp and post" and therefore the Town Clerk was unable to provide this Office with the date the Planning Board hearing notice was "made public in [the] foyer." See email dated January 25, 2021 from Town Clerk Barbara Hancock to AAG Caprioli. Without this information, we are unable to determine whether the Planning Board's hearing notice was posted for at least fourteen days prior to the hearing, as required by G.L. c. 40A, § 5. Apart from this defect, the notice appears to satisfy the requirements of the statute.

Therefore, the 90-day period prescribed for the Attorney General's review of Article 7 is suspended in accordance with G.L. c. 40, § 32.

A signed copy of Form 299 is enclosed. Once the procedures outlined in Form 299 are completed, and after the expiration of the 21-day period required by Chapter 299 of the Acts of 2000, please return a copy of Form 299 to us along with your certification that a true copy has

been posted and published as required by Chapter 299. Please feel free to contact this Office with any questions about this procedure.

Article 6 - Article 6 amends the Town's zoning by-laws to delete Chapter 179, Section 4300 and insert a new Section 4300, "Flood Plain District." The stated purpose of the new by-law is to: (1) promote the health, safety, and general welfare of the Town from the detrimental effects of floods; (2) to ensure an adequate quality and quantity of water; (3) to conserve the Town's natural resources and prevent contamination of the environment; and (4) to preserve the natural flood control and flood storage characteristics and prevent alteration to the natural flow of the river. Section 4301, "Purpose."

The new Section 4300 requires all development within the Floodplain District to comply with the Wetlands Protection Act (G.L. c. 131, § 40) and the Massachusetts State Building Code. See Sections 4306 and Section 4310. Specifically, Section 4310 (c)(3) provides for certain elevation and structural requirements for uses in the Floodplain District. However, Section 4306 cites to the requirements for construction in the Floodplain as "Section 744" of the Building Code. This appears to be an incorrect citation. According to the BBRs, the Building Code regulates flood resistant construction in the Residential Code at 780 CMR R322 and in the Base Code at 780 CMR Appendix G. The Town may wish to correct the Building Code citation in Section 4306 at a future Town Meeting. In addition, the Town must ensure that the new Section 4300 is applied consistent with the Building Code and consult with Town Counsel with any questions on this issue.

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

Nicole B. Caprioli

By: Nicole B. Caprioli
Assistant Attorney General
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Worcester, MA 01608
(508) 792-7600 ext. 4418

cc: Town Counsel Lisa Mead



FRANKLIN SS

I, Barbara J. Hancock, duly appointed and qualified Clerk of the Town of Deerfield, hereby certify that the following vote was taken at the Special Town Meeting held on Thursday, October 22, 2020 at the Frontier Regional School on 113 North Main Street in the Village of South Deerfield.

ARTICLE 6 – Deerfield Zoning Bylaw Amendment c. 179 § 4300 Flood Plain District

VOTED that the Town replace Chapter 179, Section 4300, Flood Plain District, of the Deerfield Zoning bylaws with the following as presented in the Warrant:

4300. FLOOD PLAIN DISTRICT.

4301. Purpose. The purpose of the Flood Plain District is to promote the health, safety, and general welfare of the community by protecting life and property from the detrimental effects of floods; to ensure an adequate quality and quantity of water; to conserve the natural resources of the Town; ~~and~~ to prevent temporary and permanent contamination of the environment, to preserve the natural flood control and flood storage characteristics of the floodplain; and to prevent any alterations to the natural flow of the river.

4302. Definitions. For the purposes of this bylaw, the following definitions apply:

Encroachment - fill, construction of new structures, substantial improvement to existing structures or other development.

Floodway - the channel of a river or other watercourse plus any adjacent areas that must be kept free of encroachment in order that the 100-year flood may be carried without any increase in flood heights, as shown on the Flood Boundary and Floodway Map.

Floodplain - areas which would be flooded during the occurrence of the 100-year flood, shown as Zones A, A1-30 on the Flood Insurance Rate Maps.

Riverine Material - stone, rock, gravel, soil or other materials which comprise the river's bed or riverbank.

Substantial Improvement - improvement to a structure or building which exceeds 25% of the original footprint of such structure or building.

4303. Establishment of Districts. The Flood Plain District includes all special flood hazard areas designated as Zone A, A1-30 on the Deerfield Flood Insurance Rate Map (FIRM) and the Flood Boundary - Floodway Maps, dated July 2, 1980, on file with the Town Clerk, Planning Board, and Building Inspector. All maps are hereby made a part of this Zoning By-Law and are on file in the office of the Town Clerk.



4304. Use Regulations. The Flood Plain District is an overlay district superimposed over the underlying districts set forth in this Zoning By-Law. Within the Flood Plain District, the requirements of the underlying district continue to apply, subject to the following additional provisions:

4305. Floodway Regulations. In the floodway designated on the Flood Boundary - Floodway Map, all encroachments, including fill, new construction, substantial improvements to existing structures and other developments, are prohibited.

4306. Floodplain Regulations. All development within the Floodplain District, including structural and non-structural activities, whether permitted as a right or by Special Permit must be in compliance with the Massachusetts River Protection Act and the Massachusetts Wetlands Protection Act, (MGL Ch131 s40), and with the requirements of the Massachusetts State Building Code pertaining to construction in the Flood Plain (currently Section 744).

4307. Permitted Uses. The following uses in the Floodplain District of low flood damage potential and causing no obstruction to flood flows shall be permitted provided they do not require structures, fill, or storage of material or equipment:

- h. Agricultural uses such as farming, grazing, and horticulture, including barns or farm-related structures, and irrigation and maintenance of farmlands.
- i. Forestry uses.
- j. Outdoor recreational uses, including fishing, boating, play areas and foot, bicycle or horse paths.
- k. Conservation of water, plants, and wildlife.
- l. Wildlife management areas.
- m. Buildings lawfully existing prior to the adoption of these provisions.
- n. Municipal or civic uses, including water or wastewater treatment facilities.

4308. Prohibited Uses.

- a. No dumping or filling in the river is permitted. Maintenance of the riverbank may be done under requirements of MGL Ch 131s 40, and any other applicable laws, by-laws, and regulations, and must be done using natural riverbank best management practices. Agricultural uses may restore flooded fields to pre-storm conditions.
- b. No impoundments, dams, or other water obstructions may be located within the District.
- c. Commercial or industrial uses are prohibited in the district.
- d. Dumping of trash, garbage or other materials on or near the riverbank is prohibited.
- e. Construction of any kind on slopes of greater than 25% within the district is prohibited.
- f. No discharge of pollutants directly to the any river or water body is permitted.
- g. All other uses not specifically permitted or allowed by site plan approval within the overlay zone are prohibited.



4312. Uses by Special Permit

- c. No structure or building in the Floodplain District shall be erected, constructed, substantially improved, reconstructed, or otherwise created or moved; no earth or other materials dumped, filled, excavated, or transferred, unless a Special Permit is granted by the Planning Board.
- d. The following uses may be allowed by Special Permit in accordance with the Special Permit regulations of this Zoning By-Law, and additional restriction and criteria contained herein:
 - i. Single and two family residences.
 - ii. Residential accessory uses including garages, driveways, private roads, utility rights-of-way and on-site waste-water disposal systems.
 - iii. Enlargement or alteration of an existing structure, provided that the addition is no more than 25% larger than the footprint of the structure that existed at the time of the adoption of this bylaw.
 - iv. Moving of riverine materials to protect municipal infrastructure.
 - v. Parking or storage of vehicles, trailers or equipment within 200 feet of the riverbank.

4313. Special Permit Procedures

- a. The Planning Board shall be the Special Permit Granting Authority for the Floodplain District.
- b. The following Special Permit requirements apply in the Floodplain District:
 - i. With Zone A 1-30, where base flood elevation is not provided on the FIRM, the applicant shall obtain any existing base flood elevation data. These data will be reviewed by the Building Inspector for their reasonable utilization toward meeting the elevation or flood proofing requirements, as appropriate, of the State Building Code.
 - ii. No encroachments (including fill, new construction, substantial improvements to existing structures, or other development shall be allowed unless it is demonstrated by the applicant that the proposed development, as a result of compensating actions, will not result in any increase in flood levels during the occurrence of a 100-year flood in accordance with the Federal Emergency Management Agency's regulation for the National Flood Insurance Program.
 - iii. The proposed use shall comply in all respects to the provisions of the underlying District in which the land is located.
 - iv. The Board may specify such additional requirements and conditions as it finds necessary to protect the health, safety and welfare of the public and the occupants of the proposed use.
 - v. Within 10 days of the receipt of the application the Board shall transmit one copy of the development plan to the Conservation Commission, Board of Health



and Building Inspector. Final action shall not be taken until reports have been received from the above Boards or until thirty-five (35) days have elapsed.

- vi. On-site wastewater disposal systems shall be located as far from rivers or water bodies as is feasible.
- c. In addition to the provisions of Section 4310-a, in order to issue a Special Permit, the Planning Board must find that the proposed use is compliant with the following provisions:
 - i. In the Floodplain District, proposed uses must:
 1. Not create increased flood hazards which are detrimental to the public health, safety and welfare;
 2. Comply in all respects with the provisions of the underlying District or Districts within which the land is located;
 3. Comply with all applicable State and Federal laws, including the Massachusetts Wetlands Protection Act (MGL Ch 131 s40) and the Massachusetts State Building Code, including:
 - a. All buildings or structures erected or substantially improvements erected, after the adoption of this bylaw, within a flood-hazard zone shall be elevated so that the lowest floor is located at or above the base flood elevation. All basement/ cellar floor surfaces shall be located at or above the base flood elevations.
 - b. The structural systems of all buildings or structures shall be designed, connected and anchored to resist floatation, collapse or permanent lateral movement due to structural loads and stresses from flooding equal to the base flood elevation.
 4. Be situated in a portion of the site that will conserve riverfront vegetation and maximize open space retention;
 5. Be integrated into the existing landscape through features such as vegetative buffers and through retention of the natural shorelines;
 6. Not result in water pollution, erosion or sedimentation;
 7. Minimize obstruction of scenic views from publicly accessible locations;
 8. Preserve unique natural and historical features;
 9. Minimize tree, vegetation and soil removal and grade changes.

4314. Nonconforming Uses

- a. Any lawful use, building, structures, premises, land or parts thereof existing at the effective date of this By-Law or amendments thereof and not in conformance with the provisions of this By-Law shall be considered to be a nonconforming use.



- b. Any existing use or structure may continue and may be maintained, repaired, and improved, but in no event made larger.
- c. Any nonconforming structure which is destroyed may be rebuilt on the same location but no larger than its overall original square footage.

Motion carried by 2/3rds, so declared the Moderator

A true copy,

Attest:

Barbara J. Hancock
Barbara J. Hancock, Town Clerk

RECEIVED
2021 APR -6 AM 10:15
TOWN OF DEERFIELD

Date: April 6, 2021

On this date, I have posted copies of the bylaw amendment(s) passed at the October 22, 2020 Special Town Meeting and approved by the Attorney General of Massachusetts on March 30, 2021 at the following five public places in Town: Deerfield Town Offices, South Deerfield Post Office, Old Deerfield Post Office, Deerfield Convenience Store, Deerfield Spirit Shop. Any claims of invalidity by reason of any defect in the procedure of a zoning adoption or amendment may only be made within ninety days of this posting, according to MGL C40 S32. Copies of this by-law may be examined at the Town Clerk's Office, 8 Conway St, South Deerfield or on the Deerfield website, www.deerfieldma.us.

Barbara J. Hancock
Barbara J Hancock, Town Clerk

Attorney General's Notice

*Pursuant to G.L. c. 40, § 32, as amended by
Chapter 299 of the Acts of 2000*

**Town of Deerfield-- Case No. 9948
Special Town Meeting of October 22, 2020
Article # 7**

Attorney General's Limited Authority to Waive Procedural Defects in the Notice of the Planning Board Hearing

Pursuant to the provisions of G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000, if the Attorney General finds there to be any defect in the procedure of adoption or amendment of any zoning by-law relating to the form or content of the notice of the Planning Board hearing prescribed by G.L. c. 40A, § 5, or to the manner or dates on which said notice is mailed, posted or published as required by that section, then instead of disapproving the by-law or amendment by reason of any such defect, the Attorney General may elect to proceed under the defect waiver provisions of G.L. c. 40, § 32. Under those provisions, the Attorney General is conditionally authorized to waive any such defect.

Defect Determined in Notice of Planning Board Hearing

The Attorney General has determined that the planning board hearing notice relating to the above Article failed to comply with the notice requirements for such hearing established by G.L. c. 40A, § 5. Section 5 provides in part (with emphasis added):

No zoning...by-law or amendment thereto shall be adopted until after the planning board in a...town has...held a public hearing thereon...at which interested persons shall be given an opportunity to be heard.... Notice of the time and place of such hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published in a newspaper of general circulation in the...town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing, and by posting such notice in a conspicuous place in the...town hall for a period of not less than fourteen days before the day of said hearing. Notice of said hearing shall also be sent by mail, postage prepaid to the department of housing and community development, the regional planning agency, if any, and to the planning board of each abutting city and town...

Based on the materials submitted to this Office, we have identified the following defect: the Town certified that the Planning Board Hearing notice was posted on October 19, 2020 for a Planning Board hearing to be held on October 21, 2020. The Town Clerk informed us that the Planning Board left "plans and notices out on a table in the foyer, for public inspection" but that the Planning Board's hearing notice was "not given to the Town Clerk to timestamp and post" and therefore the Town Clerk was unable to provide this Office with the date the Planning Board hearing notice was "made public in [the] foyer." Without this information, we are unable to determine whether the Planning Board's hearing notice was posted for at least fourteen days prior to the hearing, as required by G.L. c. 40A, § 5. Apart from this defect, the notice appears to satisfy the requirements of the statute.

Attorney General's Election to Proceed Under the Waiver Provisions of G.L. c. 40, § 32

The Attorney General has elected to proceed under the limited defect waiver authority conferred by G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000.

Suspension of Review of Zoning By-Law Amendments

The 90-day period prescribed by law for the Attorney General's review of local by-laws is therefore suspended in accordance with the provisions of G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000.

Posting and Publication of This Notice

The Town Clerk shall post a true copy of this Notice in a conspicuous place in the Deerfield Town Hall for a period of not less than 14 days and shall publish a copy once in a newspaper of general circulation in the Town of Deerfield.

Filing of Claim That Defect in Notice Was Misleading or Otherwise Prejudicial

Within 21 days of the date on which this Notice is published in a newspaper of general circulation in the Town of Deerfield, any resident of the Town of Deerfield, or the owner of any real property in the Town of Deerfield or any other party entitled to notice of the planning board hearing may file with the Town Clerk a written statement that the notice defect was misleading or otherwise prejudicial. The statement must include the reasons supporting the claim that the defect in the Planning Board Notice was misleading or otherwise prejudicial. This statement must be actually on file with the Town Clerk not later than 21 days from the date on which this Notice is published in the newspaper.

Town Clerk's Certification of Compliance with This Notice

After the expiration of the 21-day period, the Town Clerk shall submit to the Attorney General a true copy of this Notice with a certification of compliance with the publishing and posting requirements of the preceding paragraph, and a certification that either (a) no claim was filed within the 21-day period, or (b) one or more claims were filed within the 21-day period. The Town Clerk shall submit to the Attorney General true copies of any such claim(s).

Resumption of Attorney General's Review

Upon receipt of one original copy of this Notice with the Clerk's certification, the 90-day period provided for the Attorney General's review under G.L. c. 40, § 32, shall resume. If no claim is made, the Attorney General has the discretion to waive any such defect; if any claim is made, however, the Attorney General may not waive any such defect.

Note: By not filing a claim under this provision, a person shall not be deprived of the right to assert a claim of invalidity arising out of any possible defect in the procedure of adoption or amendment, as provided in G.L. c. 40, § 32, and in G.L. c. 40A, § 5.

Date: March 30, 2021

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 Lisa Mead

Chapter 299 of the Acts of 2000

AN ACT RELATIVE TO ZONING BY-LAWS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide forthwith an alternative procedure for the attorney general to review zoning by-laws, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 32 of chapter 40 of the General Laws is hereby amended by adding the following two paragraphs:-

Notwithstanding the provisions of the preceding paragraph, if the attorney general finds there to be any defect in the procedure of adoption or amendment of any zoning by-law relating to form or content of the notice of the planning board hearing prescribed in section 5 of chapter 40A, or to the manner or dates on which said notice is mailed, posted or published as required by said section 5, then instead of disapproving the by-law or amendment because of any such defect, the attorney general may proceed under the provisions of this paragraph. If the attorney general so elects, written notice shall be sent to the town clerk within a reasonable time setting forth with specificity the procedural defect or defects found, including a form of notice thereof, whereupon the running of the 90-day period provided for the attorney general's review pursuant to this section shall be suspended. The town clerk shall forthwith post the notice in a conspicuous place in the town hall for a period of not less than 14 days, and shall publish it once in a newspaper of general circulation in the town. The notice shall state that any resident, the owner of any real property in the town, or any other party entitled to notice of the planning board hearing, who claims that any such defect was misleading or was otherwise prejudicial may, within 21 days of the publication, file with the town clerk a written notice so stating and setting forth the reasons supporting that claim. Forthwith after the expiration of said 21 days, the town clerk shall submit to the attorney general either (a) a certificate stating that no claim was filed within the 21 day period, or (b) a certificate stating that one or more claims were filed together with copies thereof. Upon receipt of the town clerk's certificate, the 90-day period provided for the attorney general's review pursuant to this section shall resume; but if the expiration of the 90-day period is less than ten days from the date on which the town clerk's certificate was received, then the review period shall be extended to the tenth day following such receipt. If no claim was made, the attorney general may waive any such defect; but, if any claim is made then the attorney general may not waive any such defect. However, by not filing a claim under this paragraph, a person shall not be deprived of the right to assert a claim of invalidity arising out of any possible defect in the procedure of adoption or amendment as provided in this section and in section 5 of chapter 40A.

Notwithstanding the provisions of the first paragraph of this section, the attorney general and the town counsel may, by an agreement in writing setting forth the reasons therefor and filed with the town clerk before the end of the 90-day period, extend the 90-day period provided for the attorney general's review pursuant to this section for not more than an additional 90 days.

Approved October 18, 2000.