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August 23, 2016

Tracy K. Kenney, Town Clerk
Town of Canton
801 Washington Street
Canton, MA 02021

RECEIVED
AUG 23 2016
TOWN CLERK
CANTON, MA

Re: **Canton Annual Town Meeting of May 9, 2016 – Case # 8036**
Warrant Articles # 33, 35, 36, 37, 38, and 39 (Zoning)
Warrant Article # 32 (General)

Dear Ms. Kenney:

Articles 32, 33, 35, 36, 37, 38, and 39 - We approve Articles 32, 33, 35, 36, 37, 38, and 39 from the Canton May 9, 2016, Annual Town Meeting. Our comments on Article 36 are provided below.

Article 36 - Article 36 deletes the existing text of Section 10.5.1 and inserts new text. Section 10.5.1, "Applicability," lists the structures and uses subject to Section 10.5's site plan requirements. The new Section 10.5.1 provides as follows:

No building, structure or additional impervious surface exceeding 3,000 square feet, except a residential structure for single or two (2) family use, shall be constructed or externally enlarged, and no non-residential use, including any charitable or philanthropic, religious or educational use or purpose, shall be expanded in ground area, or established in an existing building not previously used for non-residential purposes, except in conformity with a site plan bearing an endorsement of approval by the Board of Appeals.

Section 10.5 requires site plan review for religious and educational uses that enjoy certain protections from local zoning pursuant to G.L. c. 40A, § 3.

General Laws Chapter 40A, Section 3, protects various uses from a town's zoning power, including educational use and religious uses to which Section 10.5 applies and provides as follows:

No zoning . . . by-law shall...prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes...; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of

structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.

General Laws Chapter 40A, Section 3, provides that a Town by-law may not prohibit, or require a special permit for educational and religious uses, but may impose reasonable regulations in eight areas: the bulk and height of structures, yard sizes, lot area, setbacks, open space, parking and building coverage requirements. *See The Bible Speaks v. Bd. of Appeals of Lenox*, 8 Mass. App. Ct. 19, 33 (1979) (“The Legislature did not intend to impose special permit requirements, designed under [G.L. c. 40A, § 9], to accommodate uses not permitted as of right in a particular zoning district, on legitimate educational uses which have been expressly authorized to exist as of right in any zone.”)

The Supreme Judicial Court has indicated that local zoning requirements serving “legitimate municipal purposes” may be applied to Dover Amendment uses. *Trustees of Tufts Coll. v. City of Medford*, 415 Mass. 753, 757-758 (1993) (citing *MacNeil v. Town of Avon*, 386 Mass. 339, 341 (1982)). In addition, the Appeals Court recently upheld a site plan review requirement for Dover Amendment uses, limited (as here) to the application of reasonable regulations as set forth in G.L. c. 40A, § 3, as “consistent with a reasonable reading of the Dover Amendment, G.L. c. 40A, § 3, and *The Bible Speaks v. Board of Appeals of Lenox*, 8 Mass. App. Ct. 19, 31 (1978).” *Jewish Cemetery Assoc. of Mass., Inc. v. Bd. of Appeals of Wayland*, 85 Mass. App. Ct. 1105, *2 (2014).

As in *Jewish Cemetery Assoc.*, it appears reasonable for the Town to use a limited site plan review as the process by which it regulates the bulk and height of structures, yard sizes, lot area, setbacks, open space, parking and building coverage requirements for such statutorily protected uses. On this basis, we approve the new Section 10.5.1.

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 that 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 voted by Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,
MAURA HEALEY
ATTORNEY GENERAL

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cc: Town Counsel Paul R. DeRensis