



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

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

May 18, 2026

Nancy L. Holmes, Town Clerk
Town of Nantucket
Town & Country Building
Nantucket, MA 02554

**Re: Nantucket Special Town Meeting of November 4, 2025 – Case # 12105
Warrant Article # 1 (Zoning)¹**

Dear Ms. Holmes:

Article 1 – Under Article 1, the Town voted to amend its zoning by-laws relating to “long-term and short-term rentals” to “expressly allow[] Long-Term Rentals and Short-Term Rentals as Principal Uses...” We approve Article 1 because, based on our standard of review, we cannot conclude that it conflicts with the Constitution or laws of the Commonwealth, including G.L. c. 40A, § 5’s two-year bar on repetitive petitions. *See Amherst v. Attorney General*, 398 Mass. 793, 795-796 (1986) (requiring inconsistency with state law or the constitution for the Attorney General to disapprove a by-law).

During the course of our review of Article 1, we received correspondence from an Attorney urging this Office to disapprove the by-law amendments, asserting that Article 1 is a repetitive petition under G.L. c. 40A, § 5, and therefore Town Meeting’s adoption “is void as contrary to G.L. c. 40A, § 5.” *See* Letter from Attorney Nina Pickering-Cook to AAG Gunagan dated December 15, 2025 (“Pickering-Cook Letter”). We also received input from Town Counsel and an Attorney representing a group of Nantucket property owners refuting that assertion and urging us to approve Article 1 because its adoption complied with G.L. c. 40A, § 5. *See* Letter from Attorney Amy Kwesell to AAG Gunagan dated January 22, 2026 (“Kwesell Letter”); and Letter from Attorney Daniel Bailey to AAG Gunagan dated January 9, 2026 (“Bailey Letter”).

We appreciate these communications as they have aided our review of Article 1. As explained below, the arguments advanced in the Opposition do not provide us with grounds to disapprove Article 1. In this decision, we summarize the by-law amendments adopted under Article 1; discuss the Attorney General’s standard of review of town by-laws; and then explain why, based on our standard of review, we approve the amendments adopted under Article 1. We

¹ On February 16, 2026, by agreement with Town Counsel as authorized by G.L. c. 40, § 32, we extended the deadline for our review of Article 1 for 60-days until April 17, 2026. On April 16, 2026, again by agreement with Town Counsel, we extended the deadline for our review of Article 1 for an additional and final 30 days until May 17, 2026.

emphasize that our decision in no way implies any agreement or disagreement with the policy views that may have led to the passage of Article 1. The Attorney General’s limited standard of review requires her to approve or disapprove by-laws based solely on their consistency with state law and not on any policy views she may have on the subject matter or wisdom of the by-law. Amherst, 398 Mass. at 795-796, 798-99.

I. Summary of Article 1 and the Town’s Prior Attempts to Regulate Rentals

A. Summary of Article 1

Under Article 1, the Town voted (by a counted vote of 1,045 in favor and 421 against), to amend several sections of its zoning by-laws regarding Long-Term Rentals (“LTRs”) and Short-Term Rentals (“STRs”) to expressly allow these uses as principal uses in the Town. The first change amends Section 139-2, “Definitions,” to add new definitions for the terms “Long-Term Rental (LTR);” “Short-Term Rental (STR);” and amend the definition of “Use, Principal” to add a second sentence, all as follows:

Long-Term Rental (LTR): The rental or leasing of any residential Dwelling Unit, or portion thereof, in exchange for compensation.

Short-Term Rental (STR): A dwelling unit or portion(s) thereof that is not a transient residential facility, where: (i) at least one room or dwelling unit is rented to an occupant or sub-occupant; and (ii) all accommodations are reserved in advance. Rental periods with a change in occupancy in excess of 31 calendar days shall not be considered a Short-Term Rental. The rental of property for a total of 14 days or less in any calendar year shall not be considered a Short-Term Rental.

Use, Principal: A use which is expressly permitted by this chapter (other than as an accessory use), either with a special permit or without need of one. Principal use shall include the renting or leasing of a Dwelling Unit, whether for Short-Term Rental or Long-Term Rental.

The second change amends Section 139-7A, “Town of Nantucket Use Chart,” to add two new lines for the uses “Short-Term Rental (STR)” and “Long-Term Rental (LTR)” and (1) to allow STRs by right (“Y”) in all zoning districts except the Commercial Industrial (“CI”) District, where the use is prohibited (“N”); and (2) to allow LTRs by right in all zoning districts. The last change adopted under Article 1 adds a new footnote to Section 139-7A that provides as follows: “All Short-Term and Long-Term Rentals shall be subject to all applicable provisions of the Town Code. In particular, in order for a Dwelling Unit to be used as a Short-Term Rental Principal Use, the Dwelling Unit must comply with all provisions of c. 123 and 338 of the Town Code. All other Short-Term Rentals are expressly prohibited.”

As explained in the Planning Board’s minutes regarding Article 1, Town Meeting would have before it two articles regarding STRs: Article 1 (a citizen petition article) and Article 2 (a Planning Board sponsored article). See Planning Board minutes of October 9, 2025 and October 16, 2025 (collectively “Planning Board minutes”).² The Planning Board minutes addressed

² The Planning Board held a meeting on October 9, 2025 where extensive discussion among residents and

Articles 1 and 2 together and the Planning Board stated: “The community needs to consider which approach and at what costs are acceptable. Also how the island deals with Short Term Rentals (STR) in the future.” Id. Further, the Planning Board minutes state in relevant part: “Chair Iverson stated that the issue of Short-Term Rentals (STRs) is not a Planning Board decision, however a community decision to be made at Town Meeting. Chair Iverson explained that the intent for Article two is to provide voters with an option.” Id. In addition, the Chair stated “the Planning Board has supported full codification of Short-Term Rentals (STRs) for the past six years...” Id. The Planning Board’s Article (Article 2) differed in some respects from the citizen petitioned Article 1 including that Article 2 sought to impose limits on how many days a STR could be rented.³ Id.

There were significant public comments regarding Articles 1 and 2 at the Planning Board’s October 9, 2025 meeting. Moreover, the minutes reflect that the Planning Board thought it could only recommend one of the two articles based on the answer given to a resident who asked if the Planning Board could recommend both articles, either article or only one article? In response, Mrs. Snell, the Director of Planning, stated that “the Board’s responsibility is to make a recommendation to Town Meeting, which may or may not align with it, however the Board typically must choose one article to support if it makes a recommendation.” Id.

Following extensive public comment, the Board members “agreed to discuss Articles one and two separately, however they acknowledged that their discussion would overlap.” Id. The Planning Board voted 3-2 to take no action on Article 1 and voted to provide a summary to Town Meeting as follows: “This article would resolve zoning issues related to short-term rental litigation that this town and some residents have faced. However, the majority of the Board felt that it was not restrictive enough and did not include adequate limitations.” Id. In addition, the Planning Board voted 3-2 to give a positive recommendation on Article 2 to Town Meeting and voted to provide a summary to Town Meeting as follows: “This Article would resolve zoning issues related to short-term rental litigation that this town and some residents have faced. The majority of the Board felt it also included appropriate limitations for both the zoning and general by-laws.” Id.

B. Town Meeting’s Prior Attempts to Regulate Rental Property

Prior to Article 1’s adoption at the November 4, 2025, Special Town Meeting, three other Nantucket Town Meetings took up separate proposed by-laws seeking to regulate property rentals, including STRs, in the Town. We summarize these Articles, as well as the Planning Board’s recommendations and Town Meeting’s actions below.

the Planning Board took place regarding Articles 1 and 2. On October 16, 2025, the Planning Board held its public hearing on Articles 1 and 2 and incorporated into that hearing the comments from the October 9, 2025 meeting by a unanimously passed motion to “adopt the previous public comment[s].”

³ The Planning Board minutes included information provided by a citizen stating that Article 1’s purpose is to “address[] concerns raised by Judge Fay, the function – it codifies all rentals both current and future under the Zoning Bylaw and the effect – there are implications for homeowners, visitors and the local economy.” Id. Article 2’s purpose is to “limit[] short term rentals to 49 days between June 15th and August 31st, and 21 days during the rest of the year, which the total limit would be 70 rental days per year per homeowner.” Id.

1. *May 2024 Annual Town Meeting – Article 59*⁴

Town Meeting considered a zoning proposal that would:

(1) amend Section 139-2, “Definitions,” to add new terms including definitions for the terms: corporations; Long Term Rental; and Short Term Rental and revise the definition of the term commercial;

(2) amend Section 139-7A, “Use Chart,” to add new uses for Short Term Rental and Long Term Rental and allow the uses (“Y”) in all districts except the CI District where the uses are prohibited (“N”); and

(3) amend Section 139-7B to add a new note # 8 that states: “Notwithstanding the permission to engage in the Short Term Rental of a dwelling granted in the Use Chart, no person or entity shall engage in the activity of Short Term Rental unless that activity is in strict compliance with all present and future regulations contained in Chapter 123 of the Town Code.”

Planning Board recommendation: Favorable Recommendation
Town Meeting vote: Failed (476-293)

2. *September 2024 Special Town Meeting – Article 1*

Town Meeting considered a zoning proposal that would:

(1) amend Section 139-2, “Definitions,” to add new terms including definitions for the terms: Cottage Colony, Hosted Stay, Operator, Owner, Short-Term Rental, and Nantucket Vacation Rental;

(2) amend Section 139-7A, “Use Chart,” to: (a) add Short-Term Rental and insert a “N” (prohibited) in all columns and (b) add Nantucket Vacation Rental and insert a “Y” (allowed) in all districts except in the CI District where the use is prohibited (“N”);

(3) amend Section 139-7A add the following new text: “Nantucket Vacation Rentals shall be subject to the requirements of § 139-38;” and

(4) add a new Section 139-38, “Nantucket Vacation Rental,” that would impose extensive requirements on the Nantucket Vacation Rentals.

Planning Board recommendation: Favorable Recommendation
Town Meeting vote: Failed (416 – 472)

⁴ According to the Finance Committee’s report to Town Meeting in the Town Meeting Warrant, the purpose of Article 59 was to address a possible negative decision in the pending lawsuits.
See <https://portal.laserfiche.com/Portal/DocView.aspx?id=251139&repo=r-ec7bdbfe>

3. *May 2025 Annual Town Meeting – Article 66*

Town Meeting considered a zoning proposal that would:

(1) amend Section 139-2, “Definitions,” to add a new term for “Short Term Nantucket Vacation Rental (NVR);”

(2) amend Section 139-7A, “Use Chart,” to add a new use Short-Term Nantucket Vacation Rental (NVR) and insert a “Y” in all columns indicating that such use is allowed in all districts except the CI District where the use is prohibited (“N”);

(3) add a new Section 139-38, “Short-Term Nantucket Vacation Rentals” that requires a certificate of registration from the Health Department.

Planning Board recommendation: Favorable Recommendation
Town Meeting vote: Failed (468 – 321)

II. The Attorney General’s Standard of Review of Zoning By-laws

Our review of Article 1 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, 398 Mass. at 795-96. 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.”) “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). “The legislative intent to preclude local action must be clear.” Id. at 155. Massachusetts has the strongest type of home rule and municipal action is presumed to be valid. Connors v. City of Boston, 430 Mass. 31, 35 (1999) (internal quotations and citations omitted).

Article 1, as an amendment to the Town’s zoning by-laws, must be given deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002) (“With respect to the exercise of their powers under the Zoning Act, we accord municipalities deference as to their legislative choices and their exercise of discretion regarding zoning orders.”). 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). “If the reasonableness of a zoning bylaw is even ‘fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.’” Id. at 51 (quoting Crall v. City of Leominster, 362 Mass. 95, 101 (1972)).

III. The Opposition Does Not Provide Grounds to Disapprove Article 1

We approve Article 1, because as explained below, we cannot conclude that Article 1 violates G.L. c. 40A, § 5’s two-year bar on repetitive petitions or otherwise conflicts with state

law. See Amherst, 398 Mass. at 795-796 (requiring inconsistency with state law or the constitution for the Attorney General to disapprove a by-law).

During the course of our review of Article 1, we received an opposition from an Attorney representing a Nantucket resident who urges our disapproval by asserting that the by-law violates G.L. c. 40A, § 5. See Pickering-Cook Letter. Specifically, Attorney Pickering-Cook asserts that the November 4, 2025 Special Town Meeting was precluded from *voting* on Article 1 because “Article 1 proposes amendments which are substantially the same as the failed predecessor articles, and the Planning Board did not recommend the passage of Article 1.” Id.

We also received correspondence from Town Counsel urging our approval of Article 1 by asserting that Article 1 is not subject to a two-year bar under G.L. c. 40A, § 5. See Kwesell letter. Specifically, Attorney Kwesell asserts that Article 1 did not constitute a repetitive zoning petition because “in the last two years, the Planning Board recommended favorable action [on three prior articles]...and [the prior articles] are of a different character than what was proposed in Article 1.” Id. In addition, we received a letter from Attorney Bailey urging approval, asserting that Article 1 is different from prior articles and explaining that “Article 1 was introduced as a corrective zoning amendment to address a perceived ambiguity in the Zoning Bylaw as a result of the Court’s *Ward* decision, which highlighted the lack of language in the Zoning Bylaw which authorized the rental of residential dwellings, for any length of time, as a Principal Use.”⁵ See Bailey Letter.

General Laws Chapter 40A, Section 5 addresses repetitive zoning petitions in relevant part as follows:

No proposed zoning...by-law which has been unfavorably acted upon by a...town meeting shall be considered by the...town meeting within two years after the date of such unfavorable action unless the adoption of such proposed...by-law is recommended in the final report of the planning board.

The opposition asserts that the phrase “is recommended in the final report of the planning board,” refers to the Planning Board recommendation following the unfavorable action by a Town Meeting. See Pickering-Cook Letter. The opposition further asserts that because the Planning Board did not recommend the current pending Article 1, Town Meeting was precluded from *voting* on Article 1 at the November 4, 2025 Town Meeting. Id. Town Counsel disagrees and asserts that the phrase “is recommended in the final report of the planning board,” refers to the Planning Board’s recommendation of either the current pending article or the previously defeated article, and that as long as the Planning Board has recommended at least one of those two articles, Town Meeting may vote on the Article. See Kwesell Letter. Both Town Counsel and Attorney Pickering-Cook cite to the case of Penn v. Town of Barnstable, 96 Mass. App. Ct. 205, 205-206 (2019) in

⁵ Attorney Bailey further asserts that “[h]istorically, the Bylaw had included language in the definition of principal use concerning rentals, but a 2015 Bylaw amendment removed that language, apparently inadvertently. Article 1 seeks to restore the right to rent one’s residential property by defining Principal Use to expressly include the short-term and long-term rental or leasing of a dwelling unit, and by adding corresponding definitions for both long-term and short-term rentals. Article 1 aims to rectify the unintended consequences of the 2015 revisions and to ensure that both long-term and short-term rental use of residential dwelling units remain authorized principal uses under the Zoning Bylaw.” Id.

support of their position. We address this case below as adjudicated by both the Land Court and the Appeals Court.

In Penn, the Barnstable Town Council attempted to amend the Town’s zoning ordinance regarding commercial parking regulations. Penn v. Barnstable, 2018 WL 2085547 at * 1 (Mass. Land Court April 30, 2018). The Plaintiffs challenged the ordinance, claiming that the Town failed to follow G.L. c. 40A, § 5 in adopting the amendment; and the Land Court agreed. Id. As outlined by the Land Court, the Town Council placed a proposal on its legislative docket (No. 2016-54) to create the Hyannis Parking Overlay District (“HPOD”). Id. The Town Council referred the proposal to the Town’s Planning Board and the Planning Board held a public hearing in February of 2016. Id. Following the public hearing, the Planning Board voted “not to recommend adoption of Item No. 2016-54.” Id. Thereafter, on March 24, 2016, the Town Council voted seven in favor and four against No. 2016-54 and the proposal failed because it did not achieve a two-thirds vote of the Town Council to pass as required by G.L. c. 40A, § 5. Id.

Two weeks after their March 24, 2016 vote, the Town Council voted to “reconsider” No. 2016-54 at their May 5, 2016 meeting, and discussion was continued to their June 16, 2016 meeting. Id. At the June 16th meeting, the Town Council voted as follows: (1) to unanimously “withdraw” No. 2016-54 with the understanding that it would be “changed;” (2) to docket a new zoning amendment called No. 2016-166; and (3) to unanimously refer No. 2016-166 to the Planning Board for a hearing. Id.

Following the Planning Board’s hearing on No. 2016-166, the Planning Board voted three to two to recommend approval of No. 2016-166. Id. Thereafter, the Town Council made a series of preliminary votes and then voted 11-2 to adopt No. 2016-166.⁶ The Plaintiff then commenced suit alleging that the Town violated G.L. c. 40A, § 5 when it created the HPOD. Id. The Plaintiff’s principal argument was that “once the Town Council rejected...No. 2016-54 [following the Planning Board’s negative recommendation]...it was barred from considering it or any similar item for two years.” Id. The Plaintiff’s “point to one chief mistake in the Town’s adoption of []No. 2016-166: it came ‘within two years’ of the Council’s rejection of []No. 2016-54, an item that hadn’t been ‘recommended in the final report of the planning board’ on []No. 2016-54.” Id. at * 3. The Land Court concluded that No. 2016-166 was identical to Item No. 2016-54 “but for three things.” Id. at * 2.

The Land Court’s determination held that whether § 5 limited the Council’s ability to approve No. 2016-166 (the second zoning proposal) turns in part on whether No. 2016-166 is materially different from the “unfavorably acted upon” No. 2016-54.” Id. As to whether “[]2016-166 is close enough to []No. 2016-54 to come within the scope of § 5’s bar on reconsideration of defeated items that haven’t received a planning board’s blessing” the Land Court held that the items were similar enough that “No. 2016-166 is within the scope of § 5’s two-year bar on

⁶ The preliminary votes by the Town Council were: (1) by a vote of 11-2 the Town Council found that No. 2016-166 “is not a proposed zoning ordinance which has been previously acted upon unfavorably the Town Council and is not the same ordinance which was unfavorably acted upon by the Town Council as No. 21-6-54; and (2) by a vote of 10-3 that No. 2016-166 “contains specific, substantive and material changes that distinguish it from the content of []No. 2016-54.” Id.

reconsideration of []No. 2016-54.” Id. at *3-4. For these reasons, the Land Court held that the Town “failed to comply with c. 40A, § 5 in adopting []No. 2016-166.” Id. at *4.

The Land Court’s decision was then appealed. See Penn vs. Town of Barnstable, 96 Mass. App. Ct. 205 (2019). Although the Appeals Court agreed with the Land Court’s judgment annulling the Town’s adoption of No. 2016-166, the Appeals Court’s decision was based on “the same character” issue, and not the issue of the Planning Board’s recommendation. Id. at 210. Notably, with regards to the portion of G.L. c. 40A, § 5, that states that a proposed by-law which has been unfavorably acted by a city council or town meeting cannot be considered within two years of the date of such unfavorable action “unless the adoption of such proposed ordinance or by-law is recommended in the final report of the planning board,” in footnote # 9, the Appeals Court stated:

The judge construed the “unless” clause of the statute as referring to the planning board’s final report on the earlier, defeated proposal. That is, as applied to this case, the judge concluded that, because the planning board voted against recommending adoption of...no. 2016-54, the two-year bar applied even though the planning board later voted in favor of...no. 2016-166. In its reply brief, the town suggests that the judge erred and that the relevant final report is the favorable vote that the planning board recorded on...no. 2016-166. The plaintiffs, for their part, appear to agree with the town’s reading of the “unless” clause, but argue that the town council “considered” item no. 2016-166 before the planning board’s vote on that item. We do not reach these issues, neither of which has been adequately briefed.

Penn, 96 Mass. App. Ct. at 210.

In reviewing Article 1 for consistency with G.L. c. 40A, § 5, we have reviewed the prior three zoning articles that relate to STRs and that were voted down by three prior Town Meetings, as well as the current pending zoning article that was favorably acted upon by the November 4, 2025 Town Meeting. The three prior zoning articles all received favorable Planning Board recommendations; however, the current pending zoning article did not.⁷ Here though, unlike in Penn, the Planning Board recommended the prior zoning Articles to Town Meeting, but Town Meeting took unfavorable action on those Articles. Therefore, the circumstances surrounding Article 1 are inapposite to those in the Penn case. In Penn, the Planning Board did not recommend adoption of the zoning change and the Town Council subsequently voted down the change. Here, the Planning Board recommended adoption of the articles that Town Meeting subsequently voted down. The Penn case does not address the question of whether another Town Meeting is free to consider the same (or similar) proposal by virtue of the Planning Board’s positive recommendation of the first article; or whether another Town Meeting could only consider the same (or similar)

⁷ It is important to note however that in general terms, the Planning Board continued to support a zoning article that regulates STRs. See Planning Board Minutes, *supra*, (“the Planning Board has supported full codification of Short-Term Rentals (STRs) for the past six years.”). However, at the November 4, 2025 Special Town Meeting, there were two articles on the warrant that both including STR provisions. The first article (Article 1) was a citizen petitioned article; and the second article (Article 2) was a Planning Board drafted article. In addition, according to the Planning Board’s minutes, the Planning Board believed that they could only recommend one of the two articles. Id. (“...the Board typically must choose one article to support if it makes a recommendation.”)

proposal if at another Planning Board hearing, the Planning Board continued to recommend the article. Put another way, the Penn case does not answer the question of whether the relevant Planning Board recommendation is the first recommendation (the one prior to the Town Meeting's unfavorable action) or the second recommendation (the one prior to Town Meeting's favorable action).⁸

Because case law does not definitively answer the question regarding which Planning Board recommendation controls under G.L. c. 40A, § 5, we cannot, under our standard of review, conclude that the Planning Board's recommendation in support of the three prior zoning articles and the Planning Board's subsequent negative recommendation of Article 1 prior to the November 4, 2025 Special Town Meeting, results in a two-year bar against the November 4, 2025 Special Town Meeting considering Article 1.⁹ Therefore, the issue of the Planning Board's negative recommendation of Article 1, following its positive recommendations of the three prior articles does not give us grounds to disapprove Article 1 as in conflict with G.L. c. 40A, § 5

We further note that even if it is the Planning Board's recommendation on Article 1 that controls whether Town Meeting can vote on Article 1 (as Attorney Pickering-Cook urges), G.L. c. 40A, § 5 does not prohibit a subsequent Town Meeting from considering a zoning proposal that is not substantially the same as a prior defeated article. Penn, 96 Mass. App. Ct. at 210 ("...the Supreme Judicial Court construed the two-year bar to apply to 'any new action of the same character' as the previously defeated proposal.") Town Counsel asserts that G.L. c. 40A, § 5 does not constitute a repetitive zoning petition because the current pending Article 1 is of a "different character" than what was previously proposed. See Kwesell Letter. In addition, Attorney Bailey also asserts that Article 1 is not substantially similar to prior articles in that Article 1 "seeks to restore the right to rent one's residential property by defining Principal Use to expressly include the short-term and long-term rental or leasing of a dwelling unit" and is thus "a corrective zoning amendment to address a perceived ambiguity in the Zoning Bylaw as a result of the Court's *Ward* decision."¹⁰ See Bailey Letter. Attorney Pickering-Cook does not agree and asserts that Article 1

⁸ See also Kitty v. Springfield, 343 Mass. 321, 324 (1961) (holding, under a prior version of G.L. c. 40A, § 5, that "[w]e assume (because the zoning change under discussion was recommended by report of the planning board) that § 8 would not prevent a renewed presentation of the proposed ordinance within two years...if done in accordance with the procedure out-lined in [the statute]. Nevertheless, § 8 does indicate a legislative intention that, with respect to changes not recommended by the planning board, unfavorable action by a city council shall for two years prevent any new action of the same character.")

⁹ Importantly, it appears that the Planning Board did not believe that G.L. c. 40A, § 5 barred Town Meeting's consideration of Article 1 at the November 4, 2025 Special Town Meeting. See Attorney General's By-law Submission Form 7 with a certification signed by the Town Clerk on behalf of the Town stating "I certify that information set forth above is complete and accurate and that within the two years prior to this town meeting, either (1) No unfavorable action was taken on any of the above articles, or (2) the Planning Board recommended the adoption thereof;" see also Planning Board Minutes, *supra*, (Planning Board chair stated that the issue of short-term rentals "is not a Planning Board decision" but is instead "a community decision to be made at Town Meeting." To that end, the Planning Board voted to provide a summary statement regarding both Articles 1 and 2 to Town Meeting).

¹⁰ The Land Court issued a decision in the case of Ward v. Town of Nantucket, 24 Misc. 000543 (MDV), 2025 WL 1684110 (2025), on June 6, 2025, approximately 5 months prior to the November 4, 2025 Special Town Meeting.

is substantially the same as prior zoning articles that failed to pass Town Meeting. See Pickering-Cook Letter.

Because we cannot conclude, based on the available case law, that the Planning Board’s negative recommendation of Article 1, following their positive recommendation of the three prior zoning articles (that were all acted upon unfavorably by Town Meeting), constitutes a two-year bar under G.L. c. 40A, § 5, we do not have to resolve the issue of whether the zoning proposals are substantially the same. However, as this issue was raised in all three communications, we briefly address it below.

As part of our review of Article 1, and as discussed above in more detail, we have compared the three prior zoning articles to the current pending article and note that these four zoning articles contain both similar and different provisions. Notably, Article 1 includes regulation of LTRs and includes an amended definition of “Use, Principal” that includes both LTRs and STRs, whereas the most recent article that Town Meeting took unfavorable action on (Article 66 from the May 2025 Annual Town Meeting) did not address LTRs at all and none of the three prior zoning articles sought to amend the definition of “Use, Principal” to specifically include both LTRs and STRs.¹¹

Given this, and based on our standard of review, it appears that Article 1 (favorably acted upon by the November 4, 2025 Special Town Meeting) and the three prior articles (unfavorably acted upon by the three prior Town Meetings), contain enough differences that they do not constitute identical proposals. However, whether those differences are significant enough to render the proposals of the “same fundamental or essential character,” Penn, 96 Mass. App. Ct. at 211, is a question that requires a factual determination that is beyond our limited scope of review. Even if we were to resolve the open question regarding which Planning Board recommendation controls for purposes of G.L. c. 40A, § 5’s prohibition on repetitive petitions, because it appears that Article 1 and the prior zoning articles are not identical, the opposition’s assertions to the contrary do not provide us with grounds to disapprove Article 1.

IV. Conclusion

We approve Article 1 because, based on our standard of review, we cannot conclude that Article 1 conflicts with state law, including G.L. c. 40A, § 5. The Town should consult with Town Counsel with any questions regarding the proper application of Article 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.

¹¹ Further, the only prior article to address LTRs was Article 59 considered at the May 2024 Annual Town Meeting and there the proposal was to allow LTRs in all districts except the CI District where LTRs would be prohibited. Whereas under the current pending Article 1, LTRs are allowed in all zoning districts including the CI District.

Very truly yours,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

Kelli E. Gunagan

By: Kelli E. Gunagan
Assistant Attorney General
Director, Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(774) 214-4406

cc: Town Counsels Lauren F. Goldberg, John W. Giorgio, and Amy E. Kwesell