



MAURA HEALEY  
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

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

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

September 8, 2022

Colleen E. Morris, Town Clerk  
Town of Oak Bluffs  
P.O. Box 2540  
Oak Bluffs, MA 02557

Re: **Oak Bluffs Annual Town Meeting of April 12, 2022 -- Case # 10515**  
**Warrant Article # 25 (Zoning)**

Dear Ms. Morris:

Article 25 -- We approve Article 25 from the April 12, 2022 Oak Bluffs Annual Town Meeting.<sup>1,2</sup> Under Article 25, the Town voted to amend the zoning by-laws to add a new Section 10.5, "Planning Board – Associate Member," to allow for an associate member of the Planning Board as follows:

The Planning Board, when it is sitting as the Special Permit Granting Authority, shall consist of five elected members and one associate member. The Select Board may designate an associate member to sit on the Board for purposes of acting on a special permit application in the case of absence, inability to act or conflict of interest of a regular member on the part of any member of the Planning Board. The Associate Member shall be a registered voter in the Town of Oak Bluffs. The term of Associate Member shall be two years.

General Laws Chapter 40A, Section 9 authorizes towns to adopt a zoning by-law allowing for an associate Planning Board member as follows:

Zoning...by-laws may provide for associate members of a planning board when a planning board has been designated as a special permit granting authority. One associate member may be authorized when the planning board consists of five members, and two associate members may be authorized when the planning board

<sup>1</sup> The posted and published planning board hearing notices for Article 25 did not include a statement where the text (and map, if any) of the proposed amendment may be inspected. This statement is required pursuant to G.L. c. 40A, § 5. However, the notices included the exact text of the by-law amendment. Therefore, we approve the zoning by-law amendment adopted under Article 25.

<sup>2</sup> On August 9, 2022, by agreement with Town Counsel, we extended the deadline for our review of Article 25 for an additional 30 days until September 9, 2022.

consists of more than five members. A...town which establishes the position of associate member shall determine the procedure for filling such position. If provision for filling the position of associate member has been made, the chairman of the planning board may designate an associate member to sit on the board for the purposes of acting on a special permit application, in the case of absence, inability to act, or conflict of interest, on the part of any member of the planning board or in the event of a vacancy on the board.

The statute allows the Town to determine the process for filing the position of associate Planning Board member, but once the position of associate Planning Board member has been established, the statute requires that only the Chairperson of the Planning Board (not the Selectboard as the by-law implies) may determine when the associate member actually serves (for the purposes of acting on a special permit application, or in the case of absence, inability to act, or conflict of interest). The Town may wish to consult with Town Counsel to determine if a future amendment to the by-law is needed to clarify the by-law in this respect. The Town should 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  
Municipal Law Unit  
10 Mechanic Street, Suite 301  
Worcester, MA 01608  
(508) 792-7600 ext. 4418

cc: Town Counsel Michael Goldsmith

Oak Bluffs, MA  
Town Clerk's Office  
*Sept 5 2022*  
Rec'd for Record  
AT H M M  
*3:36 PM*

A TRUE COPY ATTEST:  
*Gallen E. Monice*  
TOWN CLERK OF  
OAK BLUFFS, MA.