

Section 6.11 (B) (2) allows an increase in the Total Living Area by special permit, provided however that no special permit may be issued for any project if the project would result in the Total Living Area of the lot exceeding “6000 square feet for 3 acres” We approve the amendments adopted under Article 31 because the Attorney General has a limited power of disapproval with every “presumption made in favor of the validity of municipal by-laws.” Amherst v. Attorney General, 398 Mass. 793, 796 (1986). If a by-law is capable of any interpretation or application that would make it a legal one, then it must be approved under G. L. c. 40, § 32. See Concord v. Attorney General, 336 Mass. 17, 24-25 (1957). Based upon our review of the text of Section 6.11, the relevant case law, and all of the materials submitted to our Office, we conclude that Section 6.11 is not clearly inconsistent with G.L. c. 40A, § 3 or any other state law. Therefore, we approve Section 6.11 as adopted under Article 31. However, we offer the following comments regarding our analysis.

General Laws Chapter 40A, Section 3 prohibits the regulations or restriction on the interior area of single family residential buildings and provides in pertinent part as follows:

No zoning . . . by-law shall regulate or restrict the interior area of a single family residential building . . . 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, prohibits the regulation or restriction of the interior area of single-family residences; however, single-family residences may be subject to reasonable regulations pertaining to bulk and height of structures, yard size, lot area, setbacks, open space, parking, and building coverage requirements. Despite the prohibition against interior area regulation, the plain language of G.L. c. 40A, § 3, permits zoning by-laws that regulate single-family residences “through devices that operate against the exterior of such structures, and such regulations necessarily will affect its interior area.” 81 Spooner Road, LLC v. Town of Brookline, 425 Mass. 109, 113 (2008).

In 81 Spooner Road, the court concluded that a Brookline by-law creating a maximum gross floor area to lot size ratio was not inconsistent with G.L. c. 40A, § 3. The court concluded that the language of G.L. c. 40A, § 3 prohibiting the regulation of interior space prohibits only “‘direct’ regulation of interior area, and not incidental effects of reasonable dimensional, bulk, and density requirements.” 81 Spooner Road, 425 Mass. at 116; see also, White v. Armour, 2008 WL 4946478 (Mass.Land Ct.) (concluding that Weston’s prohibition on Residential Gross Floor Area (“RGFA”) exceeding certain limits was a valid bulk/height regulation and not a violation of G.L. c. 40A, § 3). As the Spooner court explained,

“Construing the prohibition in s. 3, second par., to mean direct regulation of interior area is sensible. It is based on a sound method of analysis used to resolve similar internal conflicts in other statutes, and it would make s. 3, second par., with its proviso a coherent and internally consistent piece of legislation. It permits municipalities to effectuate the legislative purpose of zoning, as set forth in St. 1975, c. 808, s. 2A, while simultaneously preserving the legislative policy against snob zoning and another stated purpose of zoning: “to encourage housing for persons of all income levels.”

Id. at 117.

While not identical to the by-law upheld in 81 Spooner Road, the Total Living Area Limit