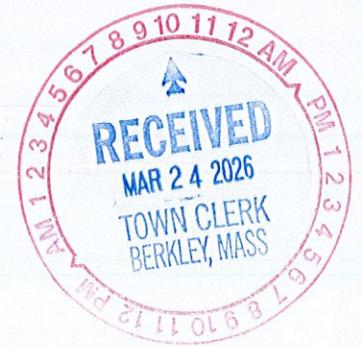




TOWN OF BERKLEY
MASSACHUSETTS

OFFICE OF
TOWN CLERK
Heather J. Almy



www.townofberkleyma.com

TOWN BULLETIN

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS

TO: EITHER OF THE CONSTABLES OF THE TOWN OF BERKLEY IN THE COUNTY OF BRISTOL

GREETING: IN THE NAME OF THE COMMONWEALTH OF MASSACHUSETTS, YOU ARE DIRECTED TO NOTIFY THE INHABITANTS OF THE TOWN OF BERKLEY OF CHANGES IN BY-LAWS AS APPROVED BY THE ATTORNEY GENERAL'S OFFICE ON MARCH 4, 2026 BY POSTING UP ATTESTED COPIES THEREOF OF THIS TOWN BULLETIN

- ONE AT THE NEW TOWN HALL
- ONE AT THE OLD TOWN HALL
- ONE AT THE BERKLEY PUBLIC LIBRARY
- ONE AT THE PUBLIC SAFETY BUILDING
- COMMON CROSSING
- FIRE STATION #2

A copy of which is also available at the Office of the Town Clerk for public review.

I hereby certify that notification is posted in five suitable places in addition to the New Town Hall, one in each precinct on this 24 day of March, 2026

CONSTABLE SIGNATURE



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Heather J. Almy

www.townofberkeleyma.com

In accordance with Massachusetts General Laws, c. 40, s. 32, I hereby notify the inhabitants of Berkley, Massachusetts of the following:

ATTORNEY GENERAL CASE #12154

As duly qualified Town Clerk of the Town of Berkley, I hereby certify that at the Special Town Meeting held in the Town of Berkley on November 15, 2025, the following action was taken:

WARRANT ARTICLE 4

Voted: To amend the Berkley Zoning By-Law, being Article 21 of the Town's General By-Laws by adding a new Section 9.3 thereto, entitled "Residential Development Overlay District (RDOD)," and to amend the "Town of Berkley Zoning Map" referenced in said Zoning By-Law, Section 2.2, to add the RDOD thereto, the complete text of which is included and the Zoning Map amendment shown on the handout entitled "Residential Development Overlay District (RDOD)"

The aforementioned handout entitled "Residential Development Overlay District (RDOD)"
reads as follows:

Article 21 Section 9.3 Residential Development Overlay District (RDOD):

9.3.1 Purpose.

The purpose of the Residential Development Overlay District (RDOD) is to promote a lively, prosperous multi-family neighborhood close to existing municipal services and quality-of-life amenities. This bylaw encourages



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village-style residential development that interacts with the street. Specifically, this Bylaw is established to fulfill the following purposes:

1. To encourage village-style development and build a range of market-rate housing to meet the demands of young families and seniors; and
2. To meet the requirements of M.G.L. c. 40A § 3A.

9.3.2 Establishment and Applicability.

The area known as the Residential Development Overlay District shall be established as an overlay district, as shown on the official Town of Berkley Zoning Map, as amended. This Section shall apply only to those uses allowed hereunder. For all other uses, the underlying zoning shall remain in full force and effect. The Planning Board may adopt, and amend, rules and regulations for the administration of this Bylaw that are consistent herewith.

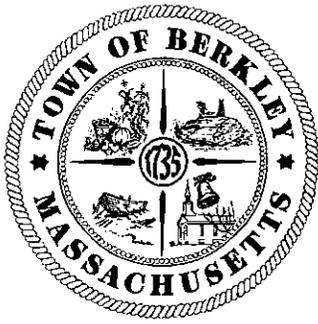
All lots and improvements in the RDOD shall be governed by this Section 9.3. If there is any conflict between Section 9.3 and other requirements of this Zoning Bylaw, the provisions of this Section 9.3 shall control, unless otherwise stated.

Any requirements within other sections of the Zoning Bylaw related to Multifamily Dwellings or Multifamily Uses shall not be required of Multi-Family Housing as defined herein unless specifically stated in this Section. If there are any conflicts between this Section 9.3 and any other provisions of the Zoning Bylaw, the provisions of this Section shall control as it relates to Multi-Family Housing as defined and allowed herein.

9.3.3 Site Plan Review.

As defined in Section 10.6 SITE PLAN REVIEW, the Planning Board shall be the designated Site Plan Review Authority. All proposed developments within the Residential Development Overlay District shall require site plan review and shall be subject to the provisions of the aforementioned section, as may be amended from time to time.

9.3.4 Definitions.



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For the purposes of this Section 9.3 RESIDENTIAL DEVELOPMENT OVERLAY DISTRICT, the following definitions shall apply. Terms not defined herein shall have the meanings given under Section 11.0 DEFINITIONS of these Zoning By-Laws or under M.G.L. c. 40A.

1. **Applicant:** A person, business, or organization that applies for a building permit.
2. **As of right:** Development that may proceed under the Zoning in place at time of application without the need for a special permit, variance, zoning amendment, waiver, or other discretionary zoning approval. "As of right" uses may also be referred to as "by-right" uses.
3. **EOHLC:** The Executive Office of Housing and Livable Communities or any successor agency.
4. **Mixed-Use Development:** A development containing a mix of residential uses and non-residential uses, including, but not limited to, commercial, institutional, or other uses.
5. **Multi-Family Housing:** A residential building with three or more residential dwelling units or two or more buildings on the same lot with more than one residential dwelling unit in each building.
6. **Section 3A:** Section 3A of the Zoning Act.

9.3.5 Permitted Uses.

The following uses are permitted as of right within the Residential Development Overlay District:

1. **Multi-Family Housing.**
2. **Mixed-Use Development (provided the non-residential use is limited to the ground floor only).** Ground floor non-residential uses in a mixed-use development may only include the following:
 - a. **As of Right.**
 - Art gallery
 - Bakery
 - Bank or financial services office



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- For profit educational use
 - General services shop
 - Personal services shop
 - Professional or business office
 - Restaurant or other facility
 - Retail store
- b. Lobbies, Entry Spaces, and Circulation. Lobbies, entry spaces, and general circulation areas for upper floor residential units shall be allowed on the first floor so long as they encompass no more than 10% of the ground floor.
- c. Special Permit of the Planning Board.
- Bar or tavern
 - For-profit entertainment or recreation facility
 - Medical or dental office
 - Veterinary office or hospital
3. Accessory Uses. The following uses are considered accessory as of right to any permitted uses described in Section 9.3.5 Permitted Uses:
- a. Parking, including surface parking and parking within a structure such as an above ground or underground parking garage.
 - b. Other accessory uses, provided they meet the definition of "Accessory Building or Use" as defined in Section 11.0 DEFINITIONS.



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9.3.6 Dimensional Standards.

Notwithstanding anything to the contrary in this Section 9.3, the dimensional requirements applicable in the Residential Development Overlay District are set forth in the Table of Dimensional Standards below. Landscaped buffer zones as defined in Section 9.3.7 Development Standards shall extend certain setbacks where required.

Table of Dimensional Standards	
Dimension	Standard
Minimum Lot Size (Square Feet)	40,000
Maximum Height (Stories)	2
Maximum Height (Feet)	35
Maximum Lot Coverage ¹ (%)	60
Minimum Open Space (%)	25
Minimum Lot Frontage (Feet)	100
Minimum Front Yard Setback (Feet)	15
Minimum Side Yard Setback (Feet)	20
Minimum Rear Yard Setback (Feet)	20
Maximum Units per Acre	15

1. **Multi-Building Lots.** In the Residential Development Overlay District, lots may have more than one principal building.
2. **Exceptions.** The limitation on height of buildings shall not apply to chimneys, ventilators, towers, silos, spires, or other ornamental features of buildings, which features are in no way used for living purposes and do not constitute more than 25% of the ground floor area of the building.

¹ "Lot coverage" refers to total ground-plane impervious surfaces.



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- a. **Renewable Energy Installations.** The Planning Board may waive the height and setbacks in Section 9.3.6 Dimensional Standards to accommodate the installation of solar photovoltaic, solar thermal, living, and other eco-roofs, energy storage, and air-source heat pump equipment. Such installations shall not create a significant detriment to abutters in terms of noise or shadow and must be appropriately integrated into the architecture of the building and the layout of the site. The installations shall not provide additional habitable space within the development.

9.3.7 General Development Standards.

The following General Development Standards shall apply to all developments within the Residential Development Overlay District, unless otherwise stated.

1. **Parking Requirements.** All proposed multi-family housing and mixed-use developments shall have 2 parking spaces per residential dwelling unit. For mixed-use developments, the parking standards for the non-residential portion of the building shall be as defined in Section 6.1.2 Table of Parking Requirements. Where possible, parking lots should be located behind the principal building(s) and should be screened from the primary right-of-way to encourage village-style neighborhood development.
2. **Signage.** Free-standing signs are limited in number to one per principal structure. All signage shall comply with the standards set in Section 6.2 SIGNS.
3. **Pedestrian amenities.** Pedestrian amenities such as benches, public art, planters, trash receptacles, etc. shall be provided and located along sidewalks, and in landscaped areas, open spaces, and plazas.
4. **Crosswalks.** All crosswalks shall be constructed to provide a change in color and/or-texture from the regular roadway surface. All crosswalks, sidewalks and walkways shall be ADA compliant.
5. **Lighting.** Access ways, parking areas, and pedestrian walkways shall have adequate lighting for security and safety reasons. Lighting shall meet the following standards:
 - a. The luminaries/lighting fixtures shall be the shoe box type or decorative in nature (with interior directional shields), consistent with the architectural theme of the development. Flood and area



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lighting is unacceptable. All luminaries/lighting fixtures shall have a total cutoff of all light at less than ninety (90) degrees from vertical. The lighting fixture shall only be visible from below.

- b. Reflectors of proper distribution shall be selected for maximum efficiency. Reflectors and shielding shall provide total cutoff of all light at the property lines of the parcel to be developed.
 - c. The luminaries/lighting fixtures shall not exceed twenty (20) feet in height or the height of the building's roofline whichever is lower. The luminaries/lighting fixtures for sidewalks/paths shall not exceed 12 feet in height.
 - d. Where wall-pack type luminaries/lighting fixtures are utilized for outdoor lighting fixtures, the fixture shall be equipped with a prismatic lens to reduce glare. Wall-pack lighting shall be designed to a maximum cutoff of seventy (70) degrees from vertical. The location of the wall-pack on the structure shall not exceed 20 feet in height.
 - e. All luminaries/lighting fixtures shall be restricted to a maximum foot-candle level of 8.0 (initial), as measured directly below the fixture at grade.
6. **Plantings.** Plantings shall include species that are native or adapted to the region. Plants on the Massachusetts Prohibited Plant List, as may be amended, shall be prohibited. A Landscaping Plan including information on the location, size, type and number of existing and proposed landscape features, including species selected for approval by the Planning Board or its agent, shall be provided. The use of drought resistant varieties is encouraged. Said plan may be required to be prepared, stamped and signed by a Landscape Architect registered in the Commonwealth of Massachusetts. Approval of the plan shall not be unreasonably withheld.
 7. **Utilities.** All new utilities shall be placed underground.
 8. **Stormwater Management.** Applicants must submit an Operations and Management Plan to the Board of Selectmen or its agent for both the construction activities and ongoing post-construction maintenance and reporting requirements that demonstrate compliance with the most current versions of the Massachusetts Department of Environmental Protection Stormwater Management Standards, the Massachusetts Stormwater Handbook, and Massachusetts Erosion Sediment and Control Guidelines.



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9. Buildings.

- a. **Facades.** Horizontal facades greater than one hundred (100') feet should incorporate recesses and projections at a minimum of (10') feet in width and two (2') feet in depth to limit massing.
- b. **Fenestration.** Mixed-use developments shall have a minimum fenestration of forty-five percent (45%) of the ground floor's street side facade(s).

10. Buffers and Screening.

- a. **Screening for Parking.** Surface parking adjacent to a public sidewalk or an abutting property shall be screened by a landscaped buffer of sufficient width to allow the healthy establishment of trees, shrubs, and perennials, but no less than 6 (six) feet. The buffer may include a fence or wall of no more than three feet in height unless there is a significant grade change between the parking and the sidewalk.
- b. **Additional Screening.** Exposed storage areas, machinery, dumpsters, service areas, truck loading areas, utility buildings and structures shall be screened from the view of abutting uses and streets using plantings, fences, and other methods compatible with the goals of this bylaw.

11. **Waivers.** Upon the request of the applicant and subject to compliance with Section 3A and its associated rules and regulations, the Planning Board may waive one or more requirements of this Section 9.3.7 General Development Standards, in the interests of design flexibility and overall project quality, and upon a finding of consistency of such variation with the overall purpose and objectives of the Residential Development Overlay District.

9.3.8 Invalidity and Severability.

The invalidity of any section or provision of this Bylaw shall not affect the validity of any other provision thereof and said section or provision shall be deemed severable.

9.3.9 Exemptions.

The Planning Board shall have the right to waive strict compliance with the provisions of this by-law for municipal uses proposed within the Residential Development Overlay District.



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WARRANT ARTICLE 5

Voted: To amend the Berkley Zoning By-Law, being Article 21 of the Town's General By-Laws, by adding a new Subsection 9.3.5.2(c) thereto, entitled "Special Permit of the Planning Board," to allow the following uses for the purpose of mixed-use development within the Residential Development Overlay District by grant of a special permit from the Planning Board: bar or tavern, for-profit entertainment or recreation facility, medical or dental office, and veterinary office or hospital.

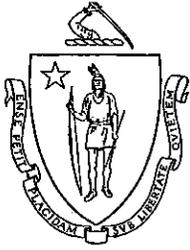
A copy of the Office of the Attorney General's approval letter, dated March 4, 2026 is attached.

Pursuant to G.L. c. 40, § 32, zoning by-laws take effect once the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, zoning by-laws and amendments are deemed to have taken effect from the date they were voted by the Town Meeting, unless a later effective date is prescribed in the by-law.

Notice is given that claims of invalidity by reason of any defect in the procedure of the adoption of the zoning amendments above may only be made within ninety (90) days of this posting.

A TRUE RECORD ATTEST:


HEATHER J. ALMY, TOWN CLERK



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/ag

March 4, 2026

Heather Almy, Town Clerk
Town of Berkley
1 North Main Street
Berkley, MA 02779



Re: Berkley Special Town Meeting of November 15, 2025 -- Case # 12154
Warrant Articles # 4 and 5 (Zoning)

Dear Ms. Almy:

Articles 4 and 5 – We approve Articles 4 and 5, and the map amendment adopted under Article 4, from the November 15, 2025 Berkley Special Town Meeting. Our comments on Article 4 are provided below. We will return the approved map to you by regular mail.

Article 4 - Under Article 4, the Town amended its zoning by-laws to add a new Section 9.3, “Residential Development Overlay District (RDOD),” to allow multi-family housing by right in compliance with G.L. c. 40A, § 3A. See Attorney General v. Town of Milton, 495 Mass. 183, 196 (2025) (General Laws Chapter 40A, Section 3A “creates an affirmative duty for each MBTA community to have a zoning bylaw that allows for at least one district of reasonable size where multifamily housing is permitted as of right.”).

While we approve Article 4, the Town must also separately obtain the Executive Office of Housing and Livable Communities’ (“EOHLC”) determination that the Town has complied with Section 3A. See 760 CMR 72.09, “Multi-Family Zoning Requirements for MBTA Communities.” We understand that the Town received Interim Compliance from EOHLC. See EOHLC “Submission Statuses” at <https://www.mass.gov/info-details/multi-family-zoning-requirement-for-mbta-communities>. We note however, that EOHLC’s decision on the Town’s application for District Compliance has no impact on the date the by-law amendments have lawful effect. The Attorney General’s approval of the by-law amendments pursuant to G.L. c. 40, § 32 means that the by-law amendments are in effect as of the date of the Town Meeting vote, and can be implemented, once the Town completes the posting/publishing requirements of G.L. c. 40, § 32.

In addition, we offer the following comments below for the Town’s consideration to ensure the proper application of the new Section 9.3.

Section 9.3.3, “Site Plan Review,” requires site plan review under Section 10.6 of the

Town's existing by-laws. Section 10.6.7 state that site plan "shall be granted [by the Planning Board] upon determination by the Board that the plan meets Section 10.6.7's objectives, including "[p]rotect[ing] . . . adjacent areas against detrimental or offensive uses on the site by provisions of adequate surface water drainage, buffers against lighting, sight, sound, dust, vibration, and the allowance of sun, light, and air." In addition, Section 10.6.7 states that the Planning Board "shall use the parking, signage, landscaping and other performance standards prescribed in Section 6.0 of this By-law in considering all site plans."

We approve Section 9.3.3's site plan review requirement, but the Town must ensure that Sections 6.0 and 10.6.7's existing site plan review criteria do not impose any discretionary review on a multi-family use allowed by right in the RDOD and must ensure site plan review is applied consistent with state law, as explained below.

As to conditions and criteria imposed under Sections 6.0 and 10.6.7, the Town must ensure that they are not applied in a manner to impose discretionary criteria or otherwise used to deny an as-of-right multi-family use in the RDOD. See 760 CMR 72.04 ("To comply with M.G.L. c. 40A, § 3A, a Multi-family zoning district must allow Multi-family housing As of right, meaning that the construction and occupancy of multi-family housing is allowed in that district without the need for a special permit, variance, zoning amendment, waiver, or other discretionary approval" (emphasis added)).

In addition, as applied to an as-of-right use, the Planning Board's authority to disapprove site plan review for as-of-right uses is limited. Site plan approval acts as a method for reasonably regulating as-of-right uses rather than for prohibiting them. Y.D. Dugout, Inc. v. Bd. of Appeals of Canton, 357 Mass. 25, 31 (1970). Where "the specific area and use criteria stated in the by-law [are] satisfied, the [reviewing] board [does] not have discretionary power to deny...[approval], but instead [is] limited to imposing reasonable terms and conditions on the proposed use." Prudential Ins. Co. of America v. Westwood, 23 Mass. App. Ct. 278, 281- 82 (1986), quoting from SCIT, Inc. v. Planning Bd. of Braintree, 19 Mass. App. Ct. 101, 105 n.12 (1984). Therefore, the Town cannot deny site plan approval for by-right uses.

In sum, for as-of-right uses, "a zoning by-law may require site plan approval for uses that are otherwise permissible as-of-right, provided the site plan review provisions of the by-law (a) set forth proper standards for review; (b) do not authorize prohibition of the permitted use; and (c) provide for regulation of the permitted use through reasonable terms and conditions." Muldoon v. Marblehead, 72 Mass. App. Ct. 372, 374 (2008) citing Castle Hill Apartments Ltd. Partnership v. Planning Bd. of Holyoke, 65 Mass. App. Ct. 840, 841 (2006) (board limited to imposing reasonable conditions on use). In light of these limitations on site plan review for as-of- right uses, the Town should consult with Town Counsel when applying Section 9.3.3's provisions to multi-family housing in the RDOD to ensure that its site plan review process does not exceed the allowable use of site plan review for as-of-right uses established under current state law.

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.

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 Counsel Adam J. Costa

Proposed Residential Development Overlay District (RDOD)



APPROVED

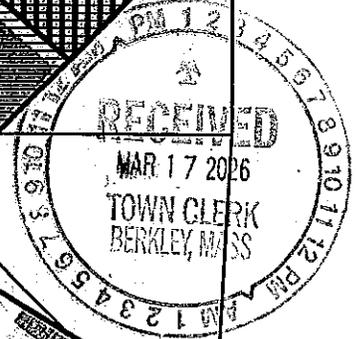
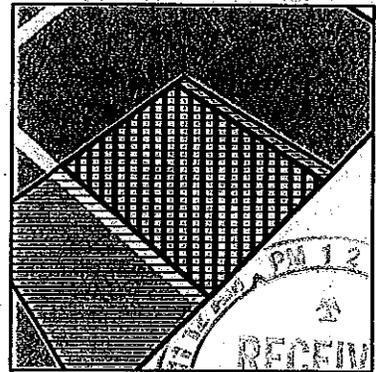
Attorney General's Office

By: Kelli Suragan / N.O.K.

Date: March 11, 2026

Art. 4 Town Meeting Date 11/15/25

East Taunton



A True Copy of this
~~Heath G. Almy~~ 12/8/25
 Heath G. Almy
 Town Clerk, Berkley MA
 Heath G. Almy
 Town Clerk, Berkley MA



October 9th, 2025: Maps produced by SRPEDD are for the sole purpose of aiding regional planning decisions and are not warranted for any other use. This map is not intended for engineering, legal, or survey purposes. Data sources: MassGIS, MassDOT and the Town of Berkley.

Esri, NASA, NGA, USGS, Esri, NASA, NGA, USGS, FEMA. Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, (c) OpenStreetMap contributors, and the GIS User

Legend

- | | | | |
|--|--|--|-------------------------------------|
| | Berkley Town Boundary | | Special Business Overlay District |
| | Berkley Parcels | | Aquifer Protection Overlay District |
| | Proposed Residential Development Overlay District (RDOD) | | General Business District |
| | | | Residential District |

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