



## TOWN OF WHATELY

### Whately, Massachusetts

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Planning Board  
Brant Cheikes, Chair

Mailing address:  
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#### Minutes of the November 29, 2023 Virtual Meeting 5:00 pm via Zoom

Present: Members Brant Cheikes (chair), Sara Cooper, Tom Litwin, Judy Markland, JD Ross.

Others attending: John Baronas, Dan Hurwit

The meeting was called to order at 5:03pm and was recorded.

#### Welcome JD Ross.

Chair welcomed JD Ross as a new member of the Planning Board, filling the seat vacated by Don Sluter. Chair thanked JD for stepping forward to provide this valuable service to the Town of Whately.

#### ANR Application for 39 Laurel Mountain Rd.

Dan Hurwit informed the Board that he planned to submit an ANR (Approval Not Required) application for Board consideration, pertaining to property located at 39 Laurel Mountain Rd. Mr. Hurwit was advised to complete Form A (available from the Planning Board's webpage at the Town of Whately website) and follow its directions. The Board discussed the date of its next meeting and decided to postpone the regular meeting scheduled for December 27th to January 3rd to review Mr. Hurwit's ANR application.

#### Discussion of activity related to Nourse Farms Greenhouse Project on River Rd.

The Chair provided an update to the Board regarding certain activities since the last Board meeting in October. Key points of this update are below:

- The Building Inspector contacted the Chair on October 26<sup>th</sup> regarding what was described as a proposed 15-acre greenhouse project by Nourse Farms for a parcel on River Rd across the street from their existing facilities. The Building Inspector asked whether the Planning Board felt the project should undergo site plan review.
- This was a complicated question to answer since Whately's Zoning Bylaws exempt "normal agricultural uses" from site review. The issue was that it wasn't clear whether the described project did or did not fit that description. A public meeting and discussion would be needed to resolve that question, but apparently the project was extremely time sensitive and could not wait until the next regular meeting of the Planning Board (tonight's meeting).
- The Chair discussed the relevant zoning bylaws and emphasized that it is the Building Inspector's legal role and authority to make decisions about whether and under what

circumstances the bylaws demand that a site plan review. The Chair reminded the Board that it is not appropriate for any member to provide guidance or direction to anyone related to zoning matters outside of properly noticed public meetings.

- The Chair summarized several interactions with the Building Inspector, representatives of Nourse Farms, and the Whately Town Administrator that took place during the period October 26 through November 9. Ultimately, the Building Inspector directed Nourse Farms to seek site plan review, but also issued a foundation-only building permit allowing the project to proceed while awaiting site plan review.
- On November 8<sup>th</sup>, the Chair noticed an upcoming public meeting of the Agriculture Commission, scheduled for November 14<sup>th</sup>. The Chair requested meeting time to discuss the Nourse Farms greenhouse project and obtain an opinion as to whether the Agriculture Commission considered it “normal agricultural use” that should be exempted from site review. The Chair explained that he made it clear that he wasn’t representing the Planning Board in any way since the Board had not been able to hold a public meeting related to the matter.
- At its November 14<sup>th</sup> meeting, the Agriculture Commission voted unanimously to recommend that the Nourse Farms greenhouse project be considered as a normal agricultural use exempt from site review.
- After learning of this vote, the Building Inspector rescinded the requirement for site plan review.

#### Discussion of Farmstand Bylaw as it relates to Simmers Creamy on River Rd.

Judy Markland presented a draft letter to the owners of Simmers Creamery on River Road that she had agreed to write at the Board’s October meeting. The letter was in response to Board member concerns that the new owners might not be aware of the constraints of the agricultural zoning exemption under which retail sales are allowed on the property.

The Board agreed that keeping a farmstand on that parcel is good for the town. JD Ross mentioned that he had been contacted at one point about helping the new owners as a hired building contractor. At the time the new owners were considering enclosing portions of the farmstand. JD thought that enclosing it in that way might convert the farmstand into something more like a restaurant, which could raise permitting questions, so he had suggested that they reach out to the Building Inspector.

After further discussion, the Board agreed that sending a polite and non-confrontational letter was warranted, and the Chair said that he would be willing to review the draft letter, propose any edits he feels necessary, review those edits with Judy, and then arrange for the final letter to be sent. The Board agreed that the letter should be CC’d to the Building Inspector, the Town Administrator, the Zoning Board of Appeals, and the Agriculture Commission.

Motion. Judy then moved that the Chair revise the draft letter as needed, coordinate a final draft with Judy, and then send it. Sara seconded the motion. The motion passed unanimously, with Brant, Judy, Sara, Tom and JD voting in favor.

#### Discussion of local control of solar projects.

Judy requested that the Board write the Select Board urging them to support state legislature bills S.1319/H.2082 which would increase local control over large-scale solar projects by removing the provision in MGL 40A, sec 3 that prohibits “unreasonable regulation” in local

zoning. The bill was described in an article from the Greenfield Recorder that she had circulated. When the state law was enacted in the mid-1980's, there were no large-scale ground-mounted solar facilities, only homeowner ones, and the provision was long believed not to apply to industrial-scale projects. A recent court case found otherwise and communities' ability to regulate these large projects is now substantially reduced.

John Baronas spoke at length in opposition to local control of solar facilities, with particular specific reference to the solar-specific setback in Whately's bylaw, which he stated had prevented him from placing a solar generation facility on his property.

After hearing Baronas's perspective, the Board members noted that the current discussion is focused on whether the board should support legislation giving municipalities increased power to regulate large solar projects.

The Board felt that they couldn't decide on whether to send a letter on this matter without seeing a draft first. The Chair proposed, and Judy agreed, that Judy would draft a letter for consideration by the Board at a future meeting.

#### Zoning Revisions related to affordable housing.

The Chair reviewed his discussions with the chair of the Housing Committee which indicated uncertainty about the best strategy. Judy noted that the Planning Board had agreed in September to work on two options to encourage more affordable units: one that would relax dimensional requirements where permanent affordability restrictions are imposed and another to try to improve the cluster zoning bylaw.

JD Ross expressed the view that Whately zoning bylaws create obstacles to the development of multi-family housing. He highlighted several challenges, including large lot sizes, high building costs, and other restrictions on multi-family dwellings. He suggested that easing restrictions on multi-family housing and reducing lot sizes could increase housing opportunities. The discussion touched on issues with the open space cluster development bylaw and the need for more input from builders to inform decisions.

The Board agreed to continue this discussion at its next meeting, and explore specific proposals related to affordable housing, potentially through a joint meeting with Whately's Housing Committee. One idea that was discussed involved gathering insights from builders and developers to better understand the obstacles to affordable housing development in Whately.

#### Approval of Minutes.

The Board reviewed draft minutes of the meeting of May 3<sup>rd</sup>. Minor corrections were noted, including these:

- Add meeting attendance of Jane Grybko
- Correct Phil Orloski to Bill Orloski

Tom moved to approve the minutes as revised, Sara seconded the motion. Brant, Sara, Tom, and Judy voted Yes, and JD Ross abstained. The motion carried.

#### Closing Items.

The Chair elected to defer most other low-priority items to the next meeting. As the meeting concluded, the Chair noted these items:

1. He will follow up with Sylvie Jensen (Community Development Coordinator) regarding the status of the Floodplain Bylaw revision project, as well as the results of her research regarding solar canopy heights.
2. He will prepare and submit the FY25 Planning Board budget proposal to the Town Administrator by the December 31 deadline.
3. He will follow up with FRCOG regarding preparation of a draft revised zoning map that redraws the boundaries of the Aquifer Protection Overlay District.
4. He will follow up with the Assessor's Office regarding the addition of zoning layer to the online Assessor's map system.
5. A new office area has been set aside in the Town Office building for use by the Planning Board, Zoning Board of Appeals, and Conservation Commission.
6. The Town Clerk has requested that the Planning Board resume the pre-COVID business practice of having site review applications and supporting materials delivered to the Planning Board during regular business meetings, rather than to the Town Clerk.
7. That he has been issued a key to Town Offices to enable on-site Board meetings and related activities outside of regular business hours, and that he will deliver a backup key to Sara Cooper in case a situation arises such that Brant cannot get to Town Offices himself.

Tom Litwin noted that he is stepping down from the Planning Board effective December 31<sup>st</sup>. The Board thanked Tom for his many years of service on the Board.

A brief discussion was held about possible candidates to fill Tom's position. Two candidates were suggested, and Brant agreed to make initial outreach.

#### Adjournment.

At 8:05 PM, Sara moved to adjourn the meeting and Judy seconded. Brant, Sara, Judy, Tom, and JD voted Yes and the motion carried unanimously.

#### Documents discussed at the meeting and on file:

Draft letter to the Smiarowski Brothers re zoning provisions at 255 River Road

"Advocates back solar bill", Greenfield Recorder, Nov. 17, 2023, pp A1 & A8.