



Whately Planning Board
Minutes of Hybrid Meeting
In person at Town Offices and via Zoom
February 28, 2024

1. Attendees

Planning Board Members Present: Brant Cheikes (chair), Sara Cooper, Judy Markland, J.D. Ross, Laura Ross.

Mary McCarthy (Board secretary).

Guests: Brett Bean, Harlan Bean, Kaylee Bean, Mike Busa, Ben Langlois, Daniel Salls.

2. Call to Order

The meeting was called to order at 5:05 PM. The meeting was recorded.

The meeting recording is posted online here:

<https://www.youtube.com/watch?v=RP2aL-juqLU>

3. Applications for ANR and Common Driveway Special Permit from the Bean Family, Webber Road

Harlan Bean summarized the lot changes shown in the plan dated 2/5/24. The plan shows proposed changes to two parcels: 17-0-03 and 10-0-32 (aka 81 Webber Road). Harlan Bean owns 17-0-03 and co-owns 10-0-32 with his mother.

The first change involves subdividing 17-0-03 into two portions, one approximately 7.110 acres in size (indicated on the subdivision plan as Parcel B) and the other approximately 20.9 acres in size (indicated on the subdivision plan as Remaining Land of Harlan R. Bean). Parcel B is to be conveyed to Kaylee and Brett Bean for the purpose of building a single-family home.

The second change involves carving out a small triangular portion of parcel 10-0-32 (noted as Parcel C on the subdivision plan), thereby reducing 10-0-32 in size. Parcel C is to be conveyed to and combined with Parcel B. In so doing, the combined parcels would achieve the 200 foot minimum frontage required for lots in A/R1 without public water, making them together a buildable lot.

Harlan pointed out that Parcel C currently includes an asphalt driveway that leads from Webber Road to the residence at 81 Webber Road. The plan shows how a proposed new driveway portion could be built that would conform to zoning and driveway regulations and

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allow the driveway for 81 Webber Road to lie entirely within the new boundaries of the lot. He explained that this driveway will not be built until the lot is to be sold. This plan is agreeable to Kaylee and Brett. In addition, the plan notes an existing non-conforming driveway encroachment to remain, with an easement to be recorded. As evidence, a quitclaim deed was submitted by the applicants noting said easement.

The Board concluded that the ANR plan is straightforward and consistent with the subdivision regulations for plans believed not to require approval (section 234-5 of Whately's Subdivision Regulations).

Sara moved to endorse the ANR, Judy seconded the motion. Sara, Judy, J.D., and Brant all voted YES. Laura was not eligible to vote because she joined the discussion late. The Board thereby endorsed the ANR with four votes.

The conversation shifted to the application for a common driveway submitted by Kaylee Bean. Brant noted that Kaylee and Brett Bean appear to be proposing to build a single-family dwelling on the approximately 7.110 acre lot resulting from the subdivision of parcel 17-0-03, and further, that they appear to be proposing to situate the residence more than 400 feet from the town right of way, and thus in the A/R2 portion of the lot. Brant wondered whether the placement of the residence in the A/R2 portion of the lot would require that the entire building project satisfy the dimensional requirements for lots in A/R2, despite the fact that the lot would have its frontage in the A/R1 portion of the lot. If the project needed to meet the A/R2 dimensional requirements, the lot would need to have 300 feet of frontage rather than 200 feet, which would mean that the ANR just endorsed would not have the desired effect of creating a buildable lot. This generated some inconclusive discussion.

Harlan then spoke to the plan for a common driveway. Parcel 170-03-2 is owned by Bradley and Brandi Bean, and they are in the process of building a single family residence there. A new driveway has been built to serve their residence. The Bean family wishes to extend that driveway further to serve the residence to be built for Kaylee and Brett Bean. The common driveway avoids the agricultural field, and the Bean family believes that it is the best solution to enabling roadway access for both residences without interfering with ongoing agricultural use.

Because the proposed common driveway would not enter Kaylee and Brett's lot from its road frontage, Judy pointed out that a side lot access permit would be necessary as well. This requires Kaylee and Brett to submit a separate special permit application with the required fee. The Planning Board will need to hold public hearings on both permit applications.

The Board discussed whether the public hearing on the two Special Permits could be held on the same date – March 27th – currently planned for a public hearing on proposed bylaw

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amendments. The discussion concluded with an agreement that the Board would reach out to the Beans over the next few days to finalize a date for the public hearing.

4. Floodplain Bylaw Update

Judy provided a brief update. Sylvie Jensen (Community Development Coordinator) and Scott Jackson (Conservation Commission chair) have been having conversations aimed at clarifying the role of the Conservation Commission in administration of a new floodplain bylaw which is currently in draft form. Judy believes that they are making progress. Once that matter is resolved, the Planning Board should be in position to resume its work bringing the new floodplain bylaw to Town Meeting.

Sylvie joined the meeting after this agenda item was covered. Towards the end of the meeting she was invited to comment further. She confirmed that she had spoken with Scott Jackson. She felt that the Conservation Committee would be willing to serve in an advisory role in support of Sylvie in the role of Floodplain Administrator. She went further to say that she expected that a floodplain permitting application would need to be developed, along with a set of guidelines and approval criteria.

5. Discussion of Zoning Bylaws and Bylaw Changes for Annual Town Meeting

The Board turned its attention to decision making about zoning bylaws and bylaw changes that it wished to bring before voters at Annual Town Meeting.

Discussion started with a focus on Article VIII – Growth Control – currently part of the Zoning Bylaws. The Board has previously discussed a recommendation that Article VIII be stricken in its entirety from the Zoning Bylaws. This is due to the fact that articles of this nature which place specific time limits have been found by state courts to be unconstitutional and are therefore unenforceable.

J.D. moved to strike Article VIII – Growth Control - in its entirety from the Zoning Bylaws, and Sara seconded the motion. The group confirmed that Article VIII includes sections 171-38 through 171-43, inclusive. Sara, Judy, J.D., Laura, and Brant all voted YES, so the motion passed unanimously.

Next, the Board considered a revised draft of the proposed new Community Housing bylaw. Judy moved to accept the revised Community Housing bylaw as depicted in the draft circulated to the Board, including the addition to the Table of Use Regulations, and J.D. seconded the motion.

During the discussion of the motion, Judy summarized the significant changes that she had made guided by comments from the Housing Committee and with advice from Megan Rhodes of FRCOG. The Board discussed those changes, felt comfortable with the wording

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of the bylaw in its current form, and felt ready to take the proposed bylaw to a public hearing.

The vote was called. Sara, Judy, Laura, J.D. and Brant all voted YES, so the motion passed unanimously.

Brant took the action to submit the necessary materials about the bylaw changes to Town Counsel for review. The Board agreed to schedule a public hearing on the bylaw changes on March 27th, and agreed that public notice would be given in a paper of record on March 12 and March 19.

The Board returned to the question of scheduling the public hearing for the Beans' common driveway and side access permits. The group agreed to place the Bean hearings on the same date as the bylaw hearing, March 27th.

6. Additional Items Not Anticipated

Mike Busa described a zoning-related issue he has encountered with parcel 17-0-05 he is acquiring on Webber Road. He wishes to build a single-family home on the lot. The lot meets the dimensional requirements for building in A/R1. But the building plan would likely need to place the single-family dwelling partially or fully in the A/R2 portion of the lot, i.e., more than 400 feet from the town right of way. This has raised the question of whether this building placement would trigger the A/R2 dimensional requirements instead. The table of dimensional requirements in the current bylaws do not seem to clearly address this situation.

According to Busa, the building inspector seems to be leaning towards interpreting the bylaws to mean that, when structures are placed in A/R2, the entire building project must meet the dimensional requirements for A/R2. This interpretation would preclude building on the lot Busa seeks to purchase.

Judy shared some background on the open space/cluster development bylaw (171-25) that led to the introduction of the A/R2 zone in 2009. Her recollection was that the situation facing Mike Busa was not anticipated at the time but felt that the planning board never intended to limit residential housing in this manner. As his next step, Busa planned to explore the possibility of a variance from the Zoning Board of Appeals.

7. Adjournment

At 7:14 PM, J.D. moved to adjourn, and Sara seconded. The motion passed unanimously.

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8. Documents Reviewed (on file with the Planning Board)

1. ANR Application and Subdivision Plan, markings as follows: “Plan of Land, Approval Not Required, Webber Road, Prepared for Kaylee Bean, Located in Whately Massachusetts”. The plan was prepared by Daniel Salls Land Surveying, of Sunderland MA, and dated 02-05-24.
2. Revised draft of Community Housing bylaw.

Brant Cheikes
Chair, Planning Board