



**Whately Planning Board**  
Minutes of Meeting, in person and via Zoom  
March 27, 2024

**1. Attendees**

Members Present: Brant Cheikes (chair), Judy Markland (remote), J.D. Ross, Laura Ross

Members Absent: Sara Cooper

Guests: Harlan Bean, Kaylee Bean (remote), Brett Bean (remote), Daniel Salls (remote)

**2. Call to Order**

The meeting was called to order at 5:02 pm. The meeting was inadvertently not recorded.

**3. Public Hearing for Common Driveway and Side Lot Access Permits for the Bean property, parcel 17-0-03 on Webber Road.**

The public hearing was opened at 5:02 pm.

The Board noted that the lot lines shown on the publicly posted surveyor's plan were incorrect. Shortly before the hearing, the property owner forwarded a digital copy of the corrected surveyor's plan. The Board discussed this difference between the posted plan and the corrected plan. It was noted that the corrected plan was more restrictive than the posted plan, by reducing the parcel area and further constraining the layout of driveways and structures within the subject parcel. For these reasons the Board determined that the public hearing could continue, and agreed to use the corrected plan for the remainder of the hearing.

The Board noted that the original as well as the corrected plan indicated that the western edge of a portion of the proposed common driveway was to be offset 10 feet from the property line. Town highway regulations require that driveways be set back at least 20 feet from all property lines. The 20-foot setback requirement is not stated in the Zoning Bylaws, however, the Zoning Bylaws do require Highway Department approval as one of the conditions for issuance of a Common Driveway Special Permit. The Highway Superintendent notified the Beans recently that he could not approve the driveway layout.

The property owners agreed that the driveway layout could be revised to accommodate the 20-foot setback requirement, and further agreed to submit a revised plan showing that change.

The Board noted that Fire Department approval for the plan had been received.

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The Board determined that the common driveway plan otherwise satisfied the grade, length and location requirements set forth in the Zoning Bylaws.

The Board reviewed the draft legal agreement submitted by the property owners. The agreement addresses ownership and maintenance of the common driveway, includes an easement providing permanent access for all properties, and provides rights for ingress, egress and installation and maintenance of gas, electric, telephone, cable and water and sewer lines. The Board determined that the agreement satisfactorily addresses all the requirements set forth in the Zoning Bylaws. The property owner agreed to submit a copy of the signed agreement once it is registered.

The Board reviewed with the property owner the fact that the common driveway cannot be extended in the future to serve additional lots.

The Board noted that a Common Driveway Special Permit shall state that the driveway is not a private road or public road, does not meet the standards for a town road and, if ever petitioned to be accepted and maintained as a public way by the town, must first be upgraded to the road standards required in the Whately Subdivision Standards at the petitioner's expense.

Public comment was invited. William Benner and Laura McDonough, both abutters within 300 feet of the property, both voiced support for the common driveway. There was no opposition.

The hearing then turned to the side lot access Special Permit application. The Beans are proposing a common driveway which provides side lot access to the property rather than a new driveway that accesses the property from its frontage on Webber Road. The Beans explained that they wish to preserve and continue their agricultural use of that portion of the property, and that creating a new driveway for access from Webber Road would make such agricultural use difficult or impossible.

Public comment was invited. No comments were received.

The public hearing was closed at 5:28 pm.

The Board discussed the Common Driveway Special Permit. The Board determined allowing access to Kaylee and Brett Bean's parcel (17-0-03) via a common driveway through Brandi and Bradley Bean's parcel (17-0-03-2) was in the town's interest, would maintain Whately's rural character, and would allow Kaylee and Brett to make maximum agricultural use of their land, continuing the farming tradition of Harlan Bean.

Judy moved to approve the Common Driveway Special Permit subject to three conditions:

1. The applicant must submit a revised plan reflecting the 20' setback from the western property line.

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2. An email must be received by the Planning Board from Highway Superintendent Keith Bardwell demonstrating his approval of the revised driveway plan.
3. Proof must be submitted that the common driveway agreement has been executed and recorded with the Registry of Deeds.

J.D. seconded the motion. Votes were recorded as follows: Judy – YES, Laura – YES, J.D. – YES, Brant – YES. The motion passed unanimously.

The Board discussed the Side Lot Access Special Permit. The Board noted that the common driveway just approved was to allow side lot access to Kaylee and Brett Bean's parcel. The Board determined that allowing side lot access to the parcel was in the best interest of the town from the perspective of protecting agricultural use and maintaining Whately's rural character.

Judy moved to approve the Side Lot Access Special Permit. J.D. seconded the motion. Votes were recorded as follows: Judy – YES, Laura – YES, J.D. – YES, Brant – YES. The motion passed unanimously.

The chair agreed to work with Kaylee Bean to obtain the outstanding documents, and to deliver the special permits as soon as practicable.

4. Public hearing for proposed zoning changes to create a Community Housing bylaw; remove Article VIII, Growth Control; and amend the Aquifer Protection Zoning District Bylaw and Zoning Map to remove references and zones related to the Whately Water District.

The public hearing was opened at 5:50 pm.

Brant summarized the Board's rationale for proposing the elimination of Article VIII, Growth Control, in its entirety from the town's Zoning Bylaws. He shared feedback received from Town Counsel on the proposal. Counsel felt that eliminating the Article was a reasonable and appropriate action. Counsel suggested that the full text of the current Article VIII of the Zoning Bylaw does not need to be reproduced as part of the eventual warrant article but left the ultimate decision on that to the usual warrant preparation process under the authority of the Selectboard and Town Administrator's office. Counsel recommended this language for the town meeting warrant:

To see if the Town will vote to amend the Town of Whately Zoning Bylaw by deleting in its entirety Article VIII, Growth Control, or take any other action relative thereto.

Brant summarized the Board's rationale for proposing amendments to ~171-28.4, Aquifer Protection District, and discussed the associated revisions proposed for the town's Zoning

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Map. He shared feedback received from Town Counsel on the proposal. Counsel recommended certain warrant article language for the zoning map proposal.

Judy reviewed the proposed new Community Housing bylaw, and summarized the Board's rationale for developing it. Judy reviewed the associated addition to the Table of Use, allowing Community Housing uses by Special Permit in the Agricultural/Residential Districts 1 and 2, as well as in the Commercial District, but not allowing said uses in either the Industrial or Commercial/Industrial Districts.

Brant shared feedback received from Town Counsel. Counsel offered several wording changes to improve clarity in areas where there could be questions about scope of a requirement or standard. Counsel recommended against using an existing bylaw section number and renumbering subsequent sections, as that could have unintended consequences given that there are various references to different bylaw sections throughout the bylaw. Counsel suggested that the bylaw be numbered 171-23.1, immediately following 171-23, Congregate elderly housing.

The revised Community Housing bylaw as amended by Counsel and discussed during the public hearing is shown in Appendix A.

The Board invited public comment on any of the proposed bylaw proposals. No comment either for or against any of the proposals was received.

The Board discussed Town Counsel's guidance regarding whether the proposed bylaw satisfied the conditions the legislature established for allowing a change to residential zoning to pass by a simple majority vote rather than the normal two-thirds supermajority vote. He concluded that it did.

The Board discussed the fact that Community Housing uses would be permitted by Special Permit in the Agricultural/Residential Districts 1 and 2, as well as in the Commercial District. The Board noted that these districts are now commonly used for housing, that residential use is currently permitted in all three districts, and that the use is not currently allowed within either the Industrial or Commercial/Industrial Districts.

The public hearing was closed at 6:27 pm.

Laura moved that eliminating Article VIII, Growth Control, from the Zoning Bylaw in its entirety, be approved for the next Annual Town Meeting warrant. J.D. seconded the motion. Votes were recorded as follows: Judy – YES, Laura – YES, J.D. – YES, Brant – YES. The motion passed unanimously.

Laura moved that all of (a) the proposed amendments to ~171-28.4, Aquifer Protection District, (b) the new Zoning Map, and (c) the associated language updating references to the new Zoning Map in ~171-4, Zoning Map established, be approved for the next Annual

Town Meeting warrant. J.D. seconded the motion. Votes were recorded as follows: Judy – YES, Laura – YES, J.D. – YES, Brant – YES. The motion passed unanimously.

Judy moved that the proposed Community Housing bylaw be approved for the next Annual Town Meeting warrant, and that this approval include the Board's determination that the zoning districts in which multi-family housing will be allowed by special permit, per the amendment, are eligible locations as described in section 1A of the Zoning Act. J.D. seconded the motion. Votes were recorded as follows: Judy – YES, Laura – YES, J.D. – YES, Brant – YES. The motion passed unanimously.

5. Discuss potential bylaw changes to clarify dimensional requirements for lots in Ag/Res 2 with frontage in Ag/Res 1.

The Board discussed the fact that ~171-10, Table of Dimensional Requirements, is unclear with regard to situations where a building lot is split into a portion lying within the Agricultural/Residential District 1, and another lying within the Agricultural/Residential District 2. Specifically, if development is intended in the Agricultural/Residential District 2 portion, but the lot has Lot Frontage in the Agricultural/Residential District 1, it isn't clear which dimensional requirements must be satisfied. Judy proposed amending the Table of Dimensional Requirements with a pair of footnotes. (See Appendix B.)

The Board discussed the proposed amendments and concluded that they reflected desired intent, that A/R2 dimensional requirements should only apply to developments that do not have Lot Frontage in A/R1.

Harlan Bean spoke in favor of the proposed amendments. He felt that they would resolve a potential zoning issue with the planned residential development envisaged on the parcel owned by Kaylee and Brett Bean, as well as a development considered by another property owner further north on Webber Road.

Judy moved that the proposed amendments to ~171-10, Table of Dimensional Requirements, be approved for a public hearing to be scheduled on Wednesday, April 24<sup>th</sup>, at 5:15 PM. J.D. seconded the motion. Votes were recorded as follows: Judy – YES, Laura – YES, J.D. – YES, Brant – YES. The motion passed unanimously.

6. Discuss Town Clerk's request for Codification amendments to the Subdivision Regulations.

The Board discussed a request from the Town Clerk related to an ongoing project to update the Codification of the Town of Whately's bylaws. The Clerk sent a document to the Planning Board for review and vote. The Board examined the document and identified a number of changes to be made. Many of the section references appeared to be incorrect. A recommended wording change from "Building Commissioner" to "Building Inspector" was

rejected by the Board because the Commissioner is the head of the department and the one to whom issues should be referred. Laura agreed to perform a careful comparison of the document from the Town Clerk against the approved and posted Subdivision Regulations, and note any corrections needed.

#### 7. Additional Items Not Anticipated

Brant summarized a letter received from attorney Margo Welch, pertaining to a planned purchase of property at address 105 Christian Lane. The request was unclear, nor was it clear whether the issue was within the Board's purview. Brant said he would circulate a copy of the letter for Board member review and discussion at a future meeting.

#### 8. Adjournment

The meeting was adjourned at 7:16 pm.

#### 9. Documents Reviewed (in Planning Board files)

1. Application for Common Driveway Special Permit, submitted by Kaylee Bean.
2. Application for Side Lot Access Special Permit, submitted by Kaylee Bean.
3. Plan of Proposed Common Driveway, Webber Road, Prepared for Kaylee Bean, Located in Whately MA, Sheet 1 of 2, Daniel Salls Land Surveying, signed and dated 02-07-24.
4. Plan of Proposed Common Driveway, Webber Road, Prepared for Kaylee Bean, Located in Whately MA, Sheet 2 of 2, Daniel Salls Land Surveying, signed and dated 02-05-24.
5. Document with filename "01 2024-03-02 Proposed Revisions Related to Aquifer Protection District.docx", sent to Town Counsel for review.
6. Document with filename "02 Proposed Whately Zoning Map 2024 date TBD.pdf", sent to Town Counsel for review.
7. Document with filename "03 2024-03-02 Elimination of Article VIII Growth Control.docx", sent to Town Counsel for review.
8. Document with filename "04 2024-03-02 Community Housing bylaw proposal.docx", sent to Town Counsel for review.
9. Email memo received from Town Counsel, dated March 27, 2024.
10. Letter received from Margo E. Welch, dated February 23, 2024.

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Submitted by:  
Brant Cheikes  
Chair, Planning Board

## Appendix A – Community Housing Bylaw with Town Counsel Revisions

**NOTE: Text in *italics underlined* font is proposed as an addition to the Zoning Bylaw**

### 171-23.1 Community Housing

The purpose of this section is to promote housing diversity and increase access to affordable residential housing within Whately while providing special permit oversight to ensure that the construction is appropriate for the site and the character of Whately's neighborhoods subject to the following conditions:

A. A minimum of twenty-five percent (25%) of the units shall have long-term affordability requirements per the Massachusetts Executive Office of Housing and Livable Communities (EOHLC) Subsidized Housing Inventory's requirements, and recorded with the Registry of Deeds.

B. The dimensional, density and occupant limit requirements of §171-9. C (Height regulations), §171.10 (Table of Dimensional Requirements), §171-20 (Two-family and multifamily dwelling units), and §171-37 (Accessory Apartment definition) may be waived, although reducing the size of required setbacks is discouraged. No waiver of dimensional or density limit requirements is permitted in the Aquifer Protection District.

C. Up to four dwelling units may be allowed in a structure and more than one building may be permitted per lot.

D. There may be a maximum of twelve units.

E. Occupancy may not exceed five inhabitants per unit.

F. The layout must be designed to mitigate traffic impacts that may reasonably be expected to result from the new dwelling units.

G. Parking requirements, as specified in §171-13(B)(1), may be reduced if it can be shown that adequate parking is available for the safety of residents, visitors, and any service vehicles that may reasonably be expected.

H. Septic systems and domestic water availability must be adequate for the proposed use.

## Appendix B – Proposed Revisions to Table of Dimensional Requirements

**NOTE: Text in *italics underlined* font is proposed as an addition to the Zoning Bylaw**

**~ 171-10. Table of Dimensional Requirements.**



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A. The Table of Dimensional Requirements shall be as follows:

	Minimum Lot Area  (square feet)	Minimum Frontage  (feet)	Front yard  (feet)	Rear/Sid e Yard *  (feet)	Maximum Lot Coverage  (percent)
<b>Agricultural/Residential District 1:</b>					
Lots with Public Water	40,000	175	50	20	30
Lots without Public Water	60,000	200	50	20	30
<b>Agriculture/Residential District 2: [added ATM 4-27- 2010, Art 11]</b>					
Lots with Public Water	80,000 **	200 ***	50	20	30
Lots without Public Water	120,000 **	300 ***	50	20	30
<b>Commercial and Industrial Districts</b>					
Commercial and Industrial uses	60,000	200	50	20	50
<b>Noncommercial/Nonindustria l Uses</b>					
Lots with Public Water	40,000	175	50	20	30
Lots without Public Water	60,000	200	50	20	30
Planned Industrial District (see 171- 28.1) [Added 2-5-1991 STM, Art. 3]					

\* Fifty (50) feet side and/or rear yards in new residential subdivisions adjacent to or nearby to farmland may be required to provide a buffer between the residential lot lines and farmland to minimize conflicts between residential and farming activities.

\*\* Where a lot has Lot Frontage in Agricultural/Residential 1, the area within Agricultural/Residential 1 may count toward the Minimum Lot Area.

\*\*\* Where the Lot Frontage is in Agricultural/Residential 1, the minimum requirements of that zoning district apply.