Elimination of Growth Control Bylaw

Proposed Zoning Bylaw Amendment for 2024 Annual Town Meeting

# Overview

**The Planning Board proposes to eliminate Article VIII – Growth Control, all sections, from the Town Zoning Bylaws.**

The following text was included in a Housing Production Plan (HPP) developed for the Town of Whately in 2023 under supervision of the town’s Housing Committee.[[1]](#footnote-1)

*Growth control bylaws were commonly enacted in Franklin County in the 1990s and 2000s after several decades of strong population growth and residential development. Whately’s current growth control bylaw was adopted in 1991 and requires that the Town give out no more than 10 building permits for a total of 10 dwelling units per year across the whole town. There is flexibility for additional permits in the case of an open space development or a minimum of 25% affordable housing development. However, the legal case of Zuckerman vs. Town of Hadley (2004) showed that phased growth bylaws are only permissible to “give communities breathing room for periods reasonably necessary for the purposes of growth planning.” There should be a timeframe associated with this bylaw, otherwise “zoning restrictions of an indefinite or unlimited duration on a municipality’s rate of development” are unconstitutional. Because Whately’s Growth Control Bylaw has no end date associated with it, developers may be able to challenge its validity. Even if a developer might know to challenge the bylaw, the need to challenge the bylaw might be enough to deter a developer from trying. Development has not been strong in Whately in recent decades. Development has been especially slow in recent years, with five single family homes or accessory units built in 2020, one in 2021, and three in 2022.*

The HPP offered two options for the Town to consider:

1. Insert an end date to the bylaw if the Town feels that it is still necessary to build capacity for public facilities and services.
2. Remove the growth control bylaw with its associated building permit cap.

The Planning Board assesses that Whately has excess capacity in its schools and water systems – the most expensive services to expand – and has concluded that option #1 cannot be reasonably justified. In the interest of removing potential obstacles to construction of new affordable housing, the Planning Board voted on 2/28/2024 to strike Article VIII in its entirety. The text of the current Growth Control bylaw is shown below.

# Text of Article VIII - Growth Control

The Planning Board proposes to remove the entire article below from the town’s zoning bylaws.

**ARTICLE VIII**

**Growth Control**

[Adopted 5-7-1991 ATM, Art. 19]

**~ 171-38. Purpose.**

The purpose of the Growth Control Bylaw is to promote orderly growth in the Town of Whately, consistent with the rate of growth over the last 10 calendar years, to phase growth so that it will not unduly strain the community's ability to provide basic public facilities and services, to provide the town, its boards and its agencies information, time and capacity to incorporate such growth into a master plan for the community and the regulations of the community and to preserve and enhance existing community character and the value of property.

**~ 171-39. Individual building permits.**

 A. No more than 10 individual building permits for new dwellings shall be issued in any one calendar year unless they meet the criteria found in Subsection B(3) or in ~ 171-40.

 B. Building permits for new dwellings will be available starting on January 1 of each year. Permits will be issued on a first-come, first-served basis subject to the following criteria:

 (1) No person may receive more than one building permit in a twelve-month period unless they meet the criteria of ~ 171-40.

 (2) No more than three permits for new dwellings can be issued in a twelve-month period that are on contiguous lots or that were under common ownership, whether contiguous or not, at the time of the adoption of this Article unless they meet the criteria of ~ 171-40.

 (3) Special conservation permits. Five permits in a twelve-month period will be available to applicants with substantial building lots who are willing to dedicate all of the land except that needed for a one-acre house lot to conservation purposes. The dedication would entail a deed restriction or a conservation restriction enforceable by the town or a nonprofit land trust and the town. The special conservation permits will not count toward the overall town building cap. To qualify for one of these permits, the following conditions must be met:

 (a) The parcel in question must contain a minimum of 15 acres and 400 feet of frontage on a public way.

 (b) All of the land except for the one acre needed for the building site must be placed under a conservation or a deed restriction enforceable by the town or a nonprofit land trust and the town.

 (c) Only one single-family dwelling or a duplex would be allowed on the lot.

 (d) The building shall be sited to minimize the impact on existing views, prime farmland, valuable forestland and other natural resources.

**~ 171-40. Multiple building permits.**

 A. Up to 10 building permits for 10 dwelling units within a calendar year may be granted using the criteria set out below. The permits would be exempt from the town building permit cap described in ~ 171-39.

 B. Any person, persons, corporations, partnerships or other equity interested in building on either more than three contiguous parcels or on more than one parcel of land held in common ownership at the time of passage of this article may apply for up to five permits in a twelve-month period, provided that they meet one or more of the following criteria:

 (1) The proposed development is an open space development as defined in ~171-25.

 (2) The site design for the proposed development minimizes the impact on prime farmland or prime forestland as designated on the land use maps prepared by the Franklin Regional Council of GovernmentsPlanning Department. Minimizing the impact can be accomplished by clustering the proposed units and placing the valuable resources under permanent conservation restrictions.

 (3) The proposed development incorporates a minimum of 25% affordable housing. For the purposes of this article, "affordable housing" will be defined as housing that meets the specifications of either federal or state housing assistance programs.

 C. If a development proposal which has been approved by all appropriate local boards and commissioners involves more than five dwelling units, the developer may request from the Planning Board a guaranty that five permits for five dwelling units will be issued each following year until the development is complete.

**~ 171-41. Procedures.**

 [Amended 4-30-1996 ATM, Art. 12]

To qualify for a building permit application, the applicant must fill out a growth control application, which he obtained from the Building Inspector. The applicant must complete the growth control application and have its date and time stamped by the Building Inspector. The Building Inspector will be responsible for maintaining a list of applicants and for reviewing the growth control application to determine the conformance of the project with the Growth Control Bylaw. Applicants will be given preference on a first-come, first-served basis for deciding the order of the waiting list. The applicant, upon completion of the phase growth application, is then able to apply for a building permit with the Building Inspector. The Building Inspector will notify the Planning Board of building permits issued under the Phase Growth Bylaw. The Planning Board has the authority to promulgate regulations regarding the contents of the growth control application and may revise it as necessary.

**~ 171-42. Building permit amendments.**

 No change may be made to an existing building permit without the approval of the Building Inspector as required by the State Building Code, 780 CMR 113.8 and 113.9.

**~ 171-43. Protection against zoning changes.**

 The protection against subsequent zoning change granted to land in a subdivision by MGL c. 40A, ~ 6, shall, in the case of development whose completion has been constrained by town actions taken under the Growth Control Bylaw, be extended the length of the time needed to complete a project, with a maximum of 10 years.

1. Town of Whately Housing Production Plan, 2023 Update, pp. 76-77. The Plan was approved in November 2023. [↑](#footnote-ref-1)