Zoning and Residency questions

From Bill Dunkel

1/10/2022 6:40 PM

To: RUSSELL P CUMMING; Alison Cummings; Maureen Bell; Kord Scott - Selectman; George Dutton; Michael Tips-McLaine Cc: Vance Bell; Dawn Bower; chris cummings; Tom Johnson; kate wright

Russ, Alison, Mike, Select Board Members and Planning Commission Members,

On January 6th Russ sent a number of us an email which raised several important questions about zoning regulations and residency requirements in town.  In this message I am copying everyone that Russ included in his initial message, plus members of the Planning Commission.   In an effort to address the issues Russ raised, I spoke with John Bennett (Associate Director of the Windham Regional Commission),  Marie Caduto (Local Watershed Coordinator at the Agency of Natural Resources) and Terry Shearer (Dept. of Environmental Conservation, Drinking Water and Groundwater Protection Division in Springfield).   I have copied Russ's original message below.  My responses are in red and are based upon what I learned from talking with the experts noted above.

There has been a number of locations where there have been temporary housing units on parcels  within Windham.  Some have been  like converted school buses,  older motorhomes just parked,  smaller buildings not originally intended for habitation,   or Pop-up-campers, where individuals  have been living for more than a two week vacation stay.  According to our Zoning regulations (sec. 201.4) in Rural Residential areas one Single Family Dwelling and one Accessory Dwelling Unit are permitted per lot.  An Accessory Dwelling Unit is defined as "an efficiency or

one bedroom apartment that ...has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided ...the property has sufficient wastewater capacity."  I don't think most people would consider a school bus or a motorhome to be an efficiency apartment.  Thus, I think it is reasonable to conclude that they are not Accessory Dwelling Units and cannot remain on the property indefinitely.  This begs the question of how long can these vehicles remain and how long can someone live in them. Some of the occupants have in fact registered to vote in town elections  even while the parcel owner has stated that the individual is a "guest" in their home ( but living in an outbuilding).  This seems to me (and John Bennett) to be a Board of Civil Authority or perhaps (John Bennett) a Lister question.  What is the legal definition of a resident and how long does one have to live in town to be able to legally register to vote? Perhaps, Mike, you know the answer to this, or maybe we need to contact the Secretary of State's office.  The Planning Commission certainly is not in a position to write a regulation that defines a permanent resident from a temporary one, or that mandates how many days a person can occupy an Accessory Dwelling Unit, a camper, etc.

Many, if not all, of these temporary occupants do not have access to potable water or sanitary disposal situations.  Some are sourcing electricity from another residence on the parcel.  It is our understanding a temporary camper or motor home of a family  guest visiting for a brief period of time does not create a serious problem.

Tim Wakers, of the Timberside Homeowners group, called me to ask if there was zoning permitting a perspective lot owner to establish residency in a  "Small House"  like is sold in Newfane on Rt 30.  It would have no portable water source or sanitary disposal facilities and at this point no known electric service. Some of the by-laws of the association would not permit it to be placed.

According to Terry Shearer, a building or structure (i.e. a dwelling unit or accessory dwelling unit) must have a state approved wastewater system and source of potable water.  A composting toilet, chemical toilet or outhouse is not permissible; nor is a pump in the yard for water.  These systems must be within the dwelling.  An RV, motorhome, or even a "Small House" must have totally self-contained water and wastewater systems.  These are vehicles which must be registered, have a license plate and be able to be driven to a proper sanitation facility which services such vehicles and can properly dispose of their waste.  This would mean, I presume, that one cannot take the wheels off a motorhome, park it on a lot and rely upon its wastewater and potable water systems.  It would then, I assume, be classified as a "structure" and would need state approved waste disposal facilities and a potable water supply. There is an exemption for structures/dwellings that relied on such wastewater/wastedisposal systems prior to January 1, 2007.

THere have been several situations within Windham that have been investigated.  Zoning regulations allow for one residence per parcel. Many of these situations have .been resolved after letters have been sent or a visit by the State Police ( as on Burpee Pond Road at the Watts property).

The point of this email is to seek some tools for enforcement of the existing zoning regulations, like issuing fines  based on days or weeks of violations,  or  steps to provide notice for eviction of the offending resident and fines to the property owner.

Many properties in Windham are camps or  summer only living arrangements with outhouse or chemical toilets.  Zoning has made allowance for those types of housing situations.  Yes, Sec. 201.3 allows "chemical, incinerator, or privy-type toilet facilities ...in accordance with design standards of the VT Dept. of Environmental Conservation" only in Forest Districts. There can be no discharge of any kind of wastewater within 200 feet of a stream, well, brook, etc."  WE also understand that while some parcel owner is building a permanent home they may wish to "camp" on their property,  allowances have been made for that situation.   I do believe this matter should be reviewed and some formal language be included in defining the difference between a temporary residence on a parcel and a second residence on the same parcel occupied for say longer than 21 to say 30 days.

This is a complex area to discuss as in many situations, circumstances of the second residents may also need to be considered.  I agree that there needs to be more discussion of these issues and we may need to consult our town attorney.

Bill

Russ Cumming,  Lister