Windham Planning Commission Minutes

3/11/24

Present: Bill Dunkel, Cathy Fales, John Finley, Tom Johnson, Dawn Bower, Michael Simonds (Zoning Administrator), Chris Cummings, Antje Ruppert

Bill Dunkel started the meeting at 6:31 PM

**I. Act on Minutes of February Meeting**

Chris moved to adopt the minutes. Cathy congratulated Antje for a first job well-done. John seconded. The minutes were adopted with a few corrections (see attached).

**II. Zoning Regulations and the Home Act**

**A) Revise definition of an Accessory Dwelling Unit**

Bill shared his screen to show the Windham Zoning Regulations document and the current definition of Accessory Dwelling Unit that needs to be revised. It currently reads (changes included):

**Accessory Dwelling Unit**: an efficiency or ~~one-bedroom~~ apartment that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided there is compliance with all the following:

(i) The property has sufficient wastewater capacity.

(ii) The unit does not exceed 30 percent or 900 square feet (whichever is greater) of the total habitable floor area of the single-family dwelling.

(iii) Applicable setback, coverage, and parking requirements specified by law are met.

Bill: 1. The language of “one-bedroom apartment” in the definition of an ADU was eliminated.

2. There is no clear legal definition, however, what “clearly subordinate to” means, which we noted in our last meeting.

3. The unit does not exceed 30 percent of the total habitable floor area of the main dwelling, and the new law added “or 900 square feet, whichever is greater.”

In the last meeting it was noted that according to the new law an accessory dwelling unit can be larger than 30 percent of the total habitable floor area and there is no upper limit specified. If we wanted, we can change this percentage and say that “the unit does not exceed 40 percent or 50 percent.” However, we can also just leave it as is and not make any other changes to the language.

Michael said that he certainly would want to advocate for as much living space in Windham as possible and would agree to the change that Bill had first suggested (50 percent).

Bill had talked with Bob Fisher who mentioned that it might be risky to try to increase it to more than 50 percent. 40 percent might be a reasonable initial effort to increase the size.

John asked what the state’s definition of an efficiency is?

Bill responded that that is a fair point. Based on the discussion he had with the town lawyer, he does not think that anybody else has any clarity about that either.

Discussion then ensued about the definition of an efficiency. Chris noted that from a real estate point of view an efficiency is a self-sufficient unit where one can cook and which has facilities in addition to a bedroom and a bathroom. Cathy suggested that an efficiency could also be an open space without necessarily separate bedrooms. Chris said that there could be more than one bedroom; it is not limited to one. John suggested calling it a living space.

John then asked what the actual objective is regarding the increase of size beyond 30 percent. What if someone has a 10,000 square foot home and puts up a 5000 square foot subordinate unit? Chris responded that the objective is to create more opportunity for living spaces on the lower to middle income end.

John cautioned that someone could build another regular house on a one-acre piece of property and then the zoning would need to be changed.

Bill noted that the addition of the 900 square foot limit clarifies the size issue some more.

Dawn suggested leaving the language as is.

John followed by asking what governs the size of a septic system? Cathy and Chris responded the number of bedrooms. John then noted that based on bedrooms, an efficiency could potentially have a septic system designed for one bedroom, but what if 5 people were living in that space? There is no direct limit of how many people can live in an efficiency. Cathy and Tom noted that the reviewing agency would have to verify the septic design, but John countered that the reviewing agency would only review what the engineer hands them. Bill then raised the question whether an engineer would design the same septic system for a tiny house of about 200-300 square feet and a 1500 square foot home. John responded yes, since it would be based on human usage not on size. Chris thought that for an open space of 1500 square feet with several bedding locations a proper design would be based on bed spaces in that unit. John voiced concern about the possibility that someone could build an accessory dwelling unit for an elderly parent (one person). Then the parent passes away and the owner decides to move, and the new owner moves four or five people in the unit that has a septic system designed for one person only. Chris noted that if one increases capacity in the house one is supposed to upgrade the septic system. Tom pointed out that the PC does not have any authority to regulate wastewater at all. Chris stated that an owner cannot sell a house or advertise a living space for rent that exceeds the capacity of the septic system, but that is not to say that someone might not be cheating in the interim until they sell their property.

John asked when this definition needed to be updated by. Bill responded that according to his conversation with the lawyer a deadline has not been specified.

Cathy asked Michael if anyone had come to him asking for a permit that met the state law but not the town law. Michael said that he has not encountered that conflict.

John suggested implementing the required change and leaving the rest of the definition until situations arise where the PC may need to go back and adjust the size. Bill agreed to strike the “one-bedroom” limit from the ADU definition, add “900 feet, whichever is greater”, and to think more about the wastewater issue. Dawn asked if the 900 square feet apply to a one-story or a two-story unit? Bill responded that it refers to the total living space which could be two-stories.

**B) Clarify Density Standards in zoning districts**

Bill shared the Windham Zoning Regulations Density Standards document he prepared and requested that the PC look at the varying definitions for the zoning districts and update the records.

For the **Recreational Commercial District (RC)** (Timber Ridge, and previous Tater Hill golf course), *the Windham Zoning Regulations do not define a “unit”. There is a definition of a “Dwelling unit” and “Accessory dwelling unit”. Does this mean in RC districts one may have a single family house or a duplex, or a single family house, or duplex,* and *an ADU?*

For the **Hamlets** (one in South Windham, and one near the Meeting House), the *Windham Zoning Regulations define a* *“structure” as “Any feature, which has been or intends to be added to a site such as barns, house, camps, sheds, TV Antennas, chicken coops, etc. A complete list is contained in the Town Zoning Application.” There is no definition of a “principal structure.” This density requirement suggests that a house and a barn, or perhaps a house and shed, would violate the density standard because that would be two principal structures on a lot. This makes no sense, especially in a Hamlet, where many lots already have a house and a barn.*

In the **Forest District** *“below 2000 feet, a private camp is permitted and a single family dwelling (and now a duplex, too, because of the Home Act) as a conditional use. Above 2000 feet the only dwelling that is allowed is a private camp, as a conditional use. Does this standard mean that below 2000 feet one may have a private camp or a dwelling unit, but not both?*

For the **Rural Residential District (RR)** *the Windham Zoning Regulations define a dwelling unit and an accessory dwelling Unit. They also define a single family dwelling and a two family dwelling.*

*Does this standard mean that there can be just a single family dwelling or a duplex on a lot? Or, does it mean there can be a single family dwelling or a duplex, and a ADU? In other words, is an ADU considered to be a “dwelling”? If an ADU is not a dwelling, what is it? If it is a dwelling, should we change the density standard to “two dwellings per lot”? If we consider an ADU to be a dwelling, that may affect the density standards in other zoning districts, also.*

For the **Historic District (HD)** *the Windham Zoning Regulations define an Accessory Structure as “Shed, wood storage bins, swimming pools (in ground), tennis courts, dog kennels, chicken house, and other structures not covered by the above.” I find this very problematic for several reasons. If the purpose of the Historic District is to preserve the character of the oldest parts of Windham, why would swimming pools, tennis courts or dog kennels (which are Accessory Structures) be a permitted use? Also, this section says nothing about barns. Our regulations define a barn as a Structure, but not as an Accessory Structure. Technically, this density standard seems to mean that in the Historic District one cannot have both a house and a barn on a lot. But a farmhouse, with a barn, is exactly what normally existed in villages in the old days!*

Bill noted that the language for these different districts needs to be clarified and what is permissible. John agreed that standard terminology should be used. There are 5 districts in Windham and the PC needs to determine in layman's terms what each of those districts should look like and then get some guidance from an expert with regard to proper language. Bill brought up the example of the **Historic District** which according to the current Zoning Regulations can have one dwelling with accessory structures. An accessory structure is defined as a shed, a wood storage bin, swimming pool, in-ground, tennis courts, dog candles, chicken house, and other structures not covered by the above. There is no mention about barns. The Windham Zoning Regulations define barns as a structure, but not an accessory structure. So, that technically means that in a historic district, one can't have a house and a barn which is absurd, because a farmhouse and a barn is exactly what the historic district used to look like. That is what the PC is supposed to be preserving. Bill offered to try and come up with some clearer language and suggested that at the next meeting the PC should attempt to articulate clearer language for each district. Antje asked if it would make sense to ask for professional guidance first and then go back to the drawing table. Bill agreed to check with the Windham Regional Commission to see if someone there might be willing to offer guidance. He also pointed out that changes to the language of the Density Standards will have to go through a series of public hearings to make sure the Windham residents agree with them. Cathy suggested having a conversation with Mike McConnell from the Windham Regional Commission and Bill agreed to do that with her.

**III. Zoning Permit Application Form**

Bill shared the amended Zoning Permit Application Form (changes indicated in red) and noted that it has been passed on to the Select Board. The Select Board has not yet had time to review or approve the changes but Ellen McDuffie reviewed them and added comments (indicated in blue) (see attached). Cathy and Bill suggested that Michael take a look at the additions that Ellen suggested. Michael agreed. Bill announced that he will send the amended and commented form to all members of the PC.

**IV. Measuring Slope**

With reference to previous discussions, Bill recalled that there are 3 possible ways to deal with developments on slopes.

1) Keep the current prohibition against all development on slopes of 20 percent or greater.

2) Allow development on slopes of 20 percent or greater as a conditional use.

3) Allow development on slopes of 15 percent or more which disturb more than a thousand square feet of land as a conditional use.

Bill recalled the rough draft he created to put the discussion about the topic in a format:

Rough Draft of a Zoning Regulation Related to Development on Steep Slopes

1/29/24

Purpose

Disturbance of land surface for construction increases the risk of environmental and property

damage to adjacent lands, waters and structures due to erosion and runoff. The purpose of this

regulation is to:

- prevent landslides, slope failure and soil instability,

- prevent soil erosion, including the loss of topsoil,

- minimize stormwater runoff and prevent flooding,

- control sedimentation and prevent water quality degradation, and

- provide safe, stable building sites.

Bylaw

Accordingly, the construction, or placement, of any dwelling unit (including Accessory Dwelling

units, RVs and tiny houses) on a slope of 15%, or more, or any development that will disturb

more than 1000 square feet of land on a slope of 15%, or more, requires a conditional use

permit from the Zoning Board of Adjustment.

Applicants should be aware that any development that will disturb a cumulative total land

surface of one acre or more (regardless of slope) requires a Construction General Permit 3-9020

issued by the Vermont Agency of Natural Resources.

Process

● The Applicant fills out a zoning permit application, referring to ANR slope maps as an

initial guideline.

● The Zoning Administrator decides, based upon ANR maps and a site visit, whether to

sign the permit.

(Note: The ZA may refuse to sign the application because he cannot determine whether

the slope is equal to, or greater than, 15%, and/or whether the area of disturbance is

greater than 1000 square feet. Or, the ZA may refuse to sign because it seems obvious

that the slope exceeds 15% and disturbance exceeds 1000’ feet, in which case a

conditional use permit is required.)

● If the ZA does not sign the permit, the applicant can provide the ZA with documentation

that proves the slope is less than 15% and/or that the land disturbance will be less than

1000 square feet. Then the ZA may sign the application.

● If documentation proves that the area of disturbance is greater than 1000 square feet

and the slope is 15%, or more, the applicant may request a conditional use permit from

the Zoning Board of Adjustment. This requires a public hearing. (See Sec. 206 of

Windham Zoning Regulations.)

● Prior to the public hearing the applicant must provide the ZBA with a site plan in

accordance with Sec. 204 of our zoning regulations, and an erosion &amp; sedimentation

control plan developed by a licensed civil or environmental engineer.

● In order to grant a conditional use permit, the ZBA must be convinced that these plans

will adequately protect the following assets from erosion, sedimentation, pollution or

other damage caused by the proposed construction or development:

1) streams, ponds, wetlands, vernal pools and other public waters

2) abutting properties

3) town roads and culverts

● The ZBA reserves the right to add other conditions designed to protect the public, town

property and natural resources.

Bill noted that at some point the PC will need to decide what needs to be done about development on slopes and to clarify the language. Where to measure slope, namely in the area that's disturbed by the development, and how to go about assessing slope had previously been decided. Michael noted objecting to the regulation (prohibition) altogether and reiterated to organize a road trip to Old Cheney Rd. when the weather gets better to look at 11 elements there which would all violate these regulations. Cathy said that her personal preference would be “15 percent and above as a conditional use”, because she believes it would cause people to think about what they're doing and to get proper help in siting. Dawn agreed with Cathy.

Bill pointed out that a change from the strict prohibition of developing on a slope of 20 percent or greater to a 15 percent or 20 percent slope as a conditional use creates some flexibility and the potential ability to develop on a steep slope as long as the conditions are met. From a realtor standpoint, Chris thought that having a clear guideline is important to establish in order to avoid another DiStefano case. Dawn agreed with Chris. Bill suggested that this topic should be further discussed at the next meeting.

Due to time conflicts the next meeting was scheduled for April 22 at 6:30PM.

Michael moved to adjourn the meeting and John seconded. The meeting ended at 8:05 PM.

Respectfully submitted,

Antje Ruppert