**Windham Planning Commission Minutes**

**2/12/24**

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

Bill Dunkel started the meeting at **6:33 PM** by welcoming Antje Ruppert as the new Planning Commission clerk. Antje had met with Bill the Friday (2/9/24) before to get informed about the issues the PC is currently dealing with.

Antje thanked the members of the Commission for the appointment and trust invested in her and hopes to do them justice. Bill had explained to Antje that the meetings are all on Zoom at the moment and are being recorded. In addition, a written transcript is created of the recording which is helpful for the preparation of the minutes. Antje suggested attaching this transcript to the minutes upon submission for additional information going forward.

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

Bill shared the minutes of the last meeting on the Zoom screen for approval and asked if anyone had any suggestions for changes or corrections.

Cathy Edgerly pointed out that after a phone call with ANR she does believe that the ANR maps to gauge the slope of a building site are actually detailed enough for use.

Vance Bell then moved to approve the minutes and Dawn Bower seconded. The minutes were unanimously adopted.

**II. Home Act and Zoning Regulations**

Bill noted that on Friday morning (2/9/24) he had had a Zoom meeting with Kord Scott and the town’s attorney Bob Fisher primarily about the details of the Home Act, the law the legislature passed in the spring of 2023 to counter the housing crisis and make housing more affordable in Vermont. This act has a number of potential impacts on Windham’s zoning regulations.

Three things the PC **must do** to comply with the HOME Act.

1. Change the definition of ADU to eliminate language about one bedroom (an ADU now can have multiple bedrooms).
2. Add language which says the maximum size of an ADU must be at least 900 square feet. I.e. “...may not exceed 30 percent of the total habitable floor area of the *main dwelling* *or 900 square feet, whichever is greater.”*
3. Make a two family dwelling (a duplex) a permitted use.

Bill then shared the current zoning regulations for Windham on the Zoom screen and pointed to the definition of an Accessory Dwelling Unit (ADU):

“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 in compliance with all of the following:

(i) The property has sufficient wastewater capacity

(ii) The unit does not exceed 30 percent of the total habitable floor area of the single-family dwelling.

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

According to Bill’s recollection, the zoning regulations from 2010 did not include this definition of an accessory dwelling unit. It must have been added sometime between 2010 and 2016.

According to the new law, an accessory dwelling unit may now have more than one bedroom which is easy to change. What has not been clearly defined is the meaning of “clearly subordinate”. Bill spoke with two lawyers about this but neither had a definitive answer.

Also, an ADU can now exceed 30 percent of the floor area or 900 square feet (whichever is greater). The law does not stipulate a limit to that anymore. So, the PC needs to decide what language to add here.

Back to the conversation with Kord Scott and Bob Fisher, Bill pointed out that there are some things the PC **should do** with regard to density:

1. Create uniform language about density in all zoning districts.
2. Continue to consider an ADU as *not* a dwelling unit when calculating density.

The current zoning regulations state that in our rural residential areas there can be one dwelling per lot (lot = 1 acre). For recreational commercial areas (like Tater Hill or Timber Ridge) the regulations say one unit per lot, for the hamlets one principal structure per lot, and in the forest district one dwelling unit per lot, which is rather confusing. Also, do we consider an ADU to be a dwelling or not a dwelling when we're calculating density?

So these are the things the PC **could do**:

1. Increase the maximum size of an ADU to some number less than 50 percent, which will allow for larger ADUs. (Presumably an ADU still could not house more than one family, or it would be a two family dwelling and would not be “clearly subordinate” to the main dwelling on the lot).
2. Change the definition of an ADU so that whatever dwelling on the property has fewer bedrooms is considered to be the ADU. Or say something like:

“The unit does not exceed 40 percent of the total habitable floor area of the main dwelling or 900 square feet, whichever is greater, and also has fewer bedrooms than the main dwelling on the lot.”

1. Allow for greater density in some of our zoning districts, such as Hamlets or Recreational/Commercial. For example, we could allow two dwellings per lot in these areas. Or, we could allow one principal dwelling and two ADUs (to accommodate a “family compound”).
2. Have a discussion at Town Meeting and/or a town wide survey to see whether residents are open to any of the above possibilities.

John Finley asked what the actual objective is for the town in terms of an increase in size of an ADU?

Bill responded that this is exactly what needs to be discussed. He did not think there was previously an option to change the language, but now there is.

Bill then asked if anyone had any thoughts at the moment about creating uniform language about density, or any thoughts about considering an ADU as not a dwelling for the density calculation.

Michael said that he would like to give landowners as much flexibility to do what they want to do with their building and their land and to encourage them to provide housing for relatives, friends, strangers, whatever, because the price of housing is a real problem in Vermont and in Windham.

Bill concluded that we need to make a decision about the definition of an ADU and whether or not we change the density requirements in all, or some, of Windham’s zoning districts to say that one could have more than one accessory dwelling unit (e. g. tiny houses).

The goal for the PC is to bring the zoning in compliance with the Home Act.

Cathy noted that she listened to the VLCT chat in the morning and heard that a change of Act 250 is being planned which may impact the changes to our zoning regulations. She also asked if a change of the zoning regulations would require a public hearing. Bill said yes, changing the regulations requires two public hearings, one by the Planning Commission and then one by the Selectboard.

Bill asked if anyone would be willing to create uniform language about density in all of the zoning districts and to send him their thoughts. He will also work on this before the next meeting. There is no reason why we have different language for each district.

**III. Changes to Zoning Permit Application Form**

Bill noted the changes in language that had been discussed before and were largely agreed upon. The addition of “**Any construction activities that result in a total earth disturbance equal to, or greater than one acre of land, or that disturb less than an acre but are part of a larger development that ultimately will disturb an acre or more of land, must receive a permit from the Vermont Department of Environmental Conservation.”** is purely informational.

Tom had pointed out earlier that point 8 of the drawing requirements in a zoning permit application is tricky and will depend on what the PC decides in terms of slope regulations.

John noted that the term drawing may not be specific enough. Cathy suggested using “drawing to scale” similar to other towns.

John stated that a previously submitted application did not show the relationship of the new structure to existing structures as required in number 3. It also did not show the property dimensions as required in number 1.

Michael suggested that a sample drawing should be provided to applicants when they pick up the Zoning Permit Application form. He really would like to make it easy for landowners to submit the application and not require a costly professional. Vance agreed to work on a sample drawing for the Zoning Permit Application form.

Cathy asked to change the language under no. 4 on the first page “Approved applications are provided to the listers of Windham for their review.” to “Approved applications are provided to the listers of Windham for their information.” because the listers’ review is not part of the approval process. Tom suggested the following redactions: “**4. Approved applications are provided to the listers of Windham~~for their review~~. This allows for listed values to be consistent with the States directives and laws concerning appraisals for the purpose of fair and equitable property taxes. ~~This review is not part of the approval process.”~~**

Everyone approved this new wording.

**IV. Measuring Slope**

With reference to the minutes of the PC meeting from January 16, 2024, Bill recalled that there are 3 possible ways to deal with slope.

1. Keep the current prohibition against all development on slopes of 20% or greater.
2. Allow development on slopes of 20% or greater as a conditional use.
3. Allow development on slopes of a certain percentage (to be determined) which also disturb a certain amount of land (to be determined) as a conditional use.

Bill introduced the following rough draft of a regulation as an example of the third way of dealing with slope:

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 and 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.

Tom suggested that any kind of potential area disturbance should be indicated on the site drawing attached to the Zoning Permit application.

Bill then asked Michael how he felt about this. Michael responded that he hated it because he believes that every property on Old Cheney Road, for example, has a slope of more than 45 percent and that development there had not resulted in run-off of any sort onto anyone’s property. He feels uncomfortable forcing landowners to hire costly professionals to submit permit applications that comply with the zoning regulations.

John agreed that we should allow people to have the most reasonable use of their property but also make sure it is done properly.

Bill noted that this sample regulation might allow development on a piece of land that cannot be developed according to our current zoning regulations. He asked which of the following two scenarios Michael would agree with:

(i) regardless of where slope is measured, there should be a zoning regulation that says a slope greater than X - whatever X is - can’t be built on, or

(ii) there should be a regulation that says a slope that's greater than X may only be built on if a conditional use permit is obtained?

Michael agreed with the latter option.

Bill suggested that this topic should be further discussed at the next meeting.

Michael moved to adjourn the meeting and Dawn seconded. The meeting ended at **8:09 PM**.

Respectfully submitted,

Antje Ruppert