Windham Planning Commission Minutes

4/22/24

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 6:30 PM

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

Chris moved to adopt the minutes. Cathy seconded. The minutes were adopted by all.

**II. Set Date for Public Hearing on Conditional Use Permit**

Bill announced that Michael & Mac can go ahead with the installation of their solar array without the need for a public hearing. Michael briefly described the projected array to be installed by Jonathan Nelson in June 2024 as a 92 kW system. In lieu of rent for the space, Jonathan Nelson will install a new 10kW solar array for Michael & Mac that is about 10% of the large array. In 2014, Michael & Mac had purchased a 4.8kW array which produces about 60% of the power in their all-electric house. The additional 10kW solar array will provide more energy than they need. Both the large array and Michael & Mac’s two smaller systems are net-metered and feed into the grid, but the smaller systems charge Michael & Mac’s Tesla batteries first.

On his screen Bill then shared Section 201.4 Rural Residential Districts and Section 206 Conditional Uses of the Windham Zoning Regulations in which a solar array is listed as needing a conditional use permit that would require a public hearing, be warned 15 days in advance, be listed in a newspaper, posted in three places in town, and abutting landowners would need to be notified in writing. However, Article III Administration and Enforcement in Section 301 B no. 6 lists some exemptions in accordance with Section 4446 of the Act. It says public utility power generation and transmission facilities regulated by the Vermont Public Service Board under 30 VSA, Section 248, including wind generators and solar collectors that are net metered or connected to the power grid. [Section 4413(b)] do not require a conditional use permit. Bill and Kord had asked Bob Fisher that morning if public utility power generation means a solar array built by a public utility or by a private solar company. Bob Fisher confirmed that this covers anyone who is building utility power generation and transmission facilities regulated by the Vermont Public Service Board. Section 506 Solar Energy Systems clarifies, however, that a conditional use permit is required if the generated power is used on site instead of going into the grid.

The Screening Regulations in Section B outline as purpose the preservation of the rural and scenic character of Windham and apply to ground-mounted solar installations. In Michael & Mac’s case the solar array will be out of view. In addition, there is a requirement to apply for and obtain a certificate of public good from the Public Service Board which Jonathan Nelson has already received. Nothing in that certificate stipulates adherence to town screening regulations.

Bill then asked the PC members if the language in the Zoning Regulations should be changed to clarify in more detail that a conditional use permit is only required for a solar array when the generated power is being consumed onsite? Antje asked why this makes such a difference. Bill explained that if the generated power feeds into the grid, the town has no jurisdiction over that.

Cathy then asked about screening regulations for one of her neighbor’s installations and will send the information in the Zoning Regulations under 506 B to the party concerned. The town screening regulations must be abided by according to the law.

**III. Uniform Density Requirement Language**

Bill reminds the PC of the inconsistent and confusing language regarding the density requirements in the Zoning Regulations.

Cathy noted that she has been attending the Vermont League of Cities and Towns legislature and the potential changes to Act 250. However, these mostly apply to municipal water and sewer systems which Windham does not have. Cathy assumed that Windham would be a tier 3 community, but Chris noted that tier 3 is anything above 2500 feet elevation. Most of Vermont is tier 2. Cathy suggested paying close attention to the VLCT changes and how they may be affecting Windham.

Bill noted that he is not suggesting a change to the density standards in Windham, but merely to change the language to make it less confusing as previously discussed in earlier meetings. Cathy suggested that the PC apply for the Zoning Bylaw Modernization Grant in July and get expert help with this language change.

Michael and Chris agreed that the language should be changed to be more clear and concise, especially since the state is trying to move in a direction that makes it easier for affordable housing to be built and to create areas of higher density by relaxing some of the Act 250 regulations.

Bill then asked the PC members to take a look at the two documents he provided in which one analyzes the current density language and the other suggests new density language before the next meeting to make some kind of decision. Antje asked if it might be helpful to take a look at the language surrounding towns are using for their density regulations. Bill agreed to do more research on that.

**IV. Development on Steep Slopes**

Bill brought up the 3 different options again on how to regulate development on steep slopes that were discussed in previous meetings (a) no development on slopes of 20% or steeper; b) allowing developments on slopes of 20% or more in certain zoning districts as conditional use; c) *"Get rid of all prohibitions on development on slopes but add a new section which requires that any development that disturbs an area greater than X number of square feet on slopes in excess of Y% must have an erosion control plan designed by a licensed environmental engineer."*). He noted that before the PC can make any decisions in this context it would need to see what such a slope looks like. Tom noted that the only way this can be done accurately is with surveying instruments. It turns out that the town road crew has those instruments and is willing to lend them to the PC to take some measurements at Michael & Mac’s property on Old Cheney Rd. Bill will propose a few dates before and after the May meeting for such an outing. Cathy suggested bringing along her laptop with the maps the state has to check congruence and how reliable they are.

Dawn suggested a visit the former DiStefano property to take measurements, but Bill cautioned about needing permission from the current landowner to do that. Antje offered to find out the name and address of the new owner.

**V. Definition of an ADU**

Bill reminds the PC of the current definition of an accessory dwelling unit and that according to the new law “one bedroom” no longer applies. There is no definition of “clearly subordinate to”, and in addition to “not to exceed 30% of the total habitable floor area of the single family dwelling”, “or 900 square feet, whichever is greater” needs to be added.

Bill suggested leaving the 30% for now and not increasing this number to 40% or 50% and revisiting this issue at another time. Cathy asked if the 900 square feet could also be changed. Bill thinks that this number is not changeable.

Everyone agreed to make the necessary changes (strike one bedroom and add 900 square feet), but to not change the percentage for now.

Cathy reminded the PC of the Conservation Commission meeting on May 1, 2024 with Andrew French, the manager of the West River Conservation District.

Antje asked if the PC could suggest to the SB and town clerk to add the expiration date of a building permit, namely after 6 months if the project has not started by then, and after 2 years if the project has not been completed by then. Cathy and Dawn thought that was a good idea and Bill offered to pass this suggestion along to the SB and town clerk. Michael thanked Bill for all he does.

Chris moved to adjourn, Cathy seconded. The motion passed and the meeting ended after 89 min.

Respectfully submitted by

Antje Ruppert