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By Darlene Brady at 10:38 am, May 22, 2023

TOWN OF KENT
PLANNING AND ZONING COMMISSION
41 Kent Green Boulevard, P.O. Box 678, Kent, CT 06757

REGULAR MEETING MINUTES

The Planning and Zoning Commission held a regular meeting on Thursday, May 11, 2023, via zoom beginning at 7:00 p.m.

1. CALL TO ORDER

Mr. Winter called the meeting to order at 7:01 p.m.

2. ROLL CALL AND APPOINTMENT OF ALTERNATES IF REQUIRED

Commissioners Present: Matthew Winter, Chairman; Karen Casey, Darrell Cherniske, Alice Hicks, Anne McAndrew, Wes Wyrick

Staff Present: Tai Kern, Land Use Administrator

Guest Present: Glenn Chalder, Planimetrics

Mr. Winter elevated Ms. McAndrew to voting status.

3. READING AND APPROVAL OF MINUTES:

3.A. Regular Meeting Minutes of April 13, 2023.

Mr. Wyrick moved to approve the Regular Meeting Minutes of April 13, 2023. Mr. Cherniske seconded and the motion carried unanimously.

3.B. Special/Informational Meeting Minutes of April 20, 2023.

Ms. Hicks moved to accept the Special/Informational Meeting Minutes of April 20, 2023. Ms. Casey seconded and the motion carried unanimously.

3.C. Special Meeting Minutes of April 21, 2023

Mr. Wyrick moved to approve the Special Meeting Minutes of April 21, 2023. Ms. Hicks seconded and the motion passed unanimously.

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3.D. Special Meeting Minutes of April 26, 2023

Mr. Wyrick moved to approve the Special Meeting Minutes of April 26, 2023. Ms. Casey seconded and the motion passed unanimously.

3.E. Special Meeting Minutes of May 3, 2023

Mr. Wyrick moved to accept the Special Meeting Minutes of May 3, 2023. Mr. Cherniske seconded and the motion carried unanimously.

Ms. Hicks moved to add item 9.C., acceptance of Alternate Richard Chavka's resignation and recommendation of alternate to the agenda. Mr. Wyrick seconded and the motion carried unanimously.

4. PUBLIC COMMUNICATIONS (ORAL):

No action taken.

5. OLD BUSINESS:

5.A. PUBLIC HEARINGS (Possibility of closure, discussion and decision on the following):

5.B. DISCUSSION AND POSSIBLE DECISION

5.B.1. Pre subdivision review- 25 Carter Road – 3 Lot Subdivision

Mr. Winter asked Ms. Kern if she had any comments. Having none the discussion was turned over to Mr. Glenn Chalder of Planimetrics.

Mr. Chalder said that he looked at the preliminary plan as well as the Town's regulations. He explained that the pre-application discussion is a good way to review the proposal and guide the applicants. He then shared his report. He noted a couple of key items. The Commission is working on updating the subdivision regulations and that the date of the application will dictate which regulations would apply. He continued that they are not aware of any proposed changes that could affect this application. There is an issue with the design and approval of the septic plan; as a result the approval of the subdivision will be held until they receive the TAHD report. There would be no way to approve the subdivision with contingencies in case possible modifications are required by the septic report. Mr. Chalder said that the subdivision appears to comply with the zoning regulations. A conservation development is not required due to the size of the proposal and the rear lot requirements seem to have been met. The septic approval would be required; without it the application would be deemed incomplete.

Mr. Chalder continued that the information in the red box would need to be conveyed to the applicant and is specific to open space and whether or not a public hearing should be held.

With regard to #3, Mr. Chalder said that he looked through the subdivision regulations and noted that some of the information could be required but he is not convinced that it should be required. He believes

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that there is sufficient information. With regard to #4, he noted that there are some things that the applicant will still need to provide such as the type of soils.

Mr. Winter asked about the soils and asked how they can comply with a section 3420 in the regulations. Mr. Chalder referred him to #4 on his report and said that the applicant can summarize what has been done. Mr. Winter asked if the size of the lot would be based on the soils where the subsurface sewage system would be placed. Mr. Chalder said yes. Mr. Winter asked the applicant to provide that information on the site plan in order to determine the size of each of the proposed lots.

Mr. Winter asked Mr. Chalder if he thought it would be a good idea to have a discussion on the items listed in #2 of his report. Mr. Chalder agreed. He said that the issue about the public hearing will have to be decided by the Commission eventually and felt it would be good information for the applicant. Mr. Winter asked the Commission for their thoughts.

Mr. Wyrick commented that any open space would not be meaningful and asked for a fee in lieu of. In terms of the public, he believes that because it is a small subdivision he would not opt for a public hearing. Ms. Hicks asked Mr. Wyrick for an explanation of “not be meaningful” in terms of open space and wondered if he was comparing it to the size of the individual lots. Mr. Wyrick said he was.

Ms. Casey said that she agrees with Mr. Wyrick on the open space requirement but disagrees with his comment on the public hearing aspect since the neighborhood is “sensitive”. Mr. Cherniske agreed with Ms. Casey with regard to the public hearing but thought the requirement for the open space might be a good idea based on the current density of the area. After review, Mr. Cherniske agreed with Mr. Wyrick. Ms. Hicks asked about the amount of the fee in lieu of open space. Mr. Chalder said that would be something that is based on the statute which states that the fee in lieu of open space would be 10% of the fair market, predeveloped value of the entire parcel. Those fees would be placed in a fund to purchase additional open space and it would be a discretionary decision by the Commission. Ms. Hicks asked about the size of the open space. Mr. Chalder referred her to the regulations. Mr. Winter said that he originally thought that they should request open space but it seems that the Commission should request a fee in lieu of. Ms. Hicks asked if a public hearing was held, would comments from the public hearing affect their decision regarding open space. Mr. Chalder said that this was not something to decide tonight but that decision would be made during the review of the application. He feels that the applicant now has an idea of how the Commission is thinking moving forward. Mr. Winter said that he felt it was a good idea to have a public hearing. Mr. Chalder agreed especially since this is the first subdivision that they have had before them.

Mr. Jason Perillo, representing High Watch Recovery Center, said that he has no questions and thanked the Commission and Mr. Chalder for guidance. He continued that he will get the Commission the information required.

Mr. Tom Willis, representing High Watch Recovery Center, said that Cathy Weber, Town Sanitarian, came out to the property and the design of the lots was determined on her review. He said that he can get a soil scientist if necessary. Mr. Chalder replied that there was no need to get a soil scientist, the information they have is sufficient; they just need to add it to the application.

With regard to the open space, Mr. Willis asked if that meant that people can walk around the houses? He would love to donate it to the Land Trust. Mr. Chalder clarified that the regulations allow the

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Commission to work with the applicant on the determination of the open space. He suggested that they come back in compliance with section 3.8 of the regulations. Mr. Willis believes that they can come back with all the information. The next step would be to come back with an application but Mr. Chalder cautioned that they need to come back with a complete application. Mr. Perillo asked if there was a timeline between the pre-application process and the submission of the actual application. Mr. Chalder said that there was not. He did caution them that the subdivision regulations were in flux and suggested that they keep apprised of that progress.

5.B.2. Application #s 22-23SP and 23-23C and request for modification to 43-15SP, 33 Camps Rd., LLC., 33 Camps Rd, Map 17, Block 28, Lot 30, to allow for farm store, outdoor tasting room, standard pours, sale of beer in sealed containers, events and entertainment (decision by 6/17/23 or extension granted by applicant)

Mr. Winter commented that he thought the Commission will need another meeting to discuss this topic since they will be giving Ms. Kern direction with regard to a Resolution.

Mr. Winter asked if the Commission approved the waivers at the last meeting. Ms. Kern replied that they did not and Mr. Winter felt that there should be a discussion about the waivers in order to approve them. Ms. Kern read off the waivers that were requested. Mr. Winter said that he thought they sounded reasonable and all of the documents were looked at the last time an application was submitted.

Mr. Wyrick moved to approve the waivers requested. Mr. Cherniske seconded. During discussion Ms. Casey said that she was concerned with the request to waive the traffic study since that was brought up during the public hearing. Ms. McAndrew agreed with Ms. Casey. Ms. Hicks changed her vote from an abstention to a nay since she believed that these were issues that were going to be discussed during their deliberation on the application. The motion failed with 3 ayes, 1 abstention and 2 nays.

A discussion about the approval process of the waivers was held. Mr. Winter felt that he was very specific regarding the approval of the waivers prior to the closing of the public hearing. Ms. Hicks said that she was conflicted about the timing and the meaning “waiver”. Mr. Winter explained their use and said that once the waivers are approved and the public hearing is closed, no additional information can be requested for submission. Ms. Kern said that she could ask Attorney Zizka about the process of accepting/denying waivers.

Mr. Winter suggested that the application be tabled because the waivers had not been accepted. Mr. Wyrick felt that even though the waivers had not been approved there could still be a discussion. He asked when the appropriate time was to approve/deny the waivers. Ms. Kern said that the waivers were not approved during the public hearing. Mr. Wyrick then made the following motion:

Mr. Wyrick moved to approve the waivers as presented. Mr. Cherniske seconded. Mr. Winter asked for discussion before the vote. Having no discussion, Mr. Wyrick, Mr. Cherniske and Mr. Winter voted aye. Ms. Casey and Ms. McAndrew voted nay. Ms. Hicks abstained. The motion carried.

Mr. Winter asked Ms. Kern to speak with Attorney Zizka. Ms. Kern agreed.

Mr. Winter said that the applicant is looking for a farm brewery, serving room tied to the brewery for the sale of sealed containers, food service, farmstore, special events and there was some talk by the applicant

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of abandoning the bed and breakfast use. He would like to look at the application in conjunction with the regulations.

With regard to the farm brewery, Mr. Winter said that he believes that the use fits the regulations and the definition of a farm brewery. Mr. Wyrick said that it is a farm brewery and agreed with Mr. Winter. There was no need to revoke the farm brewery. Ms. Hicks said that the special permit also talks about wholesale and offsite delivery and tours and tastings and that she disagrees with Mr. Winter. She believes that the use of the brewery is being changed. Mr. Wyrick said that the past modifications changed the original special permit. Ms. Hicks said that they are asking for more modifications. Mr. Winter said that he wanted to just confirm that the farm brewery itself was still an approved use under 3234.6 a and c; once that was confirmed they would move on to the next request. Ms. McAndrew asked for confirmation about a statement made by the applicant that they were no longer growing grains on site. Mr. Winter agreed but what he remembered was the decrease in hop production. Mr. Wyrick agreed but felt that they were still operating in the spirit of what they wanted to do. Ms. McAndrew asked if a certain percentage was required to be grown on site. The answer was no; they are required to acquire 20% farm grown grains from within a 50-mile radius. Mr. Cherniske said that they submitted 60% comes from within the 50-mile radius. Ms. Kern also commented that, as represented by the submission from the applicant, multiple crops such as rhubarb, peaches, raspberries, 2.5 acres of hops, etc. are still being grown on site.

Mr. Winter asked that they start discussing the farm brewery and went back to the definition. Mr. Winter then moved on to section 3234.6 on page 45. He commented that there are grains being grown on site. With regard to the amount of what is produced, there was testimony that they are producing less than noted. Mr. Wyrick agreed with that. Mr. Winter said that the retail sale of growlers, according to testimony, had been reduced and they currently have permission to sell wholesale and sell on a limited basis for offsite consumption. He asked if the Commission felt that cans and bottles were the same as a growler. Ms. McAndrew asked if they currently sold cans. Ms. Hicks said they do and it was not allowed. Mr. Winter said that a Notice of Violation was submitted and he assumes that they have stopped. Ms. Hicks said that she does not believe that growlers and a can of beer is the same thing. She believes that the change is significant. Mr. Winter said that he does not believe that a sealed container should include bottles and cans. Ms. Casey agrees with Ms. Hicks and that growlers go hand in hand with the farm theme. She believes that it should be kept "farm like" and that they increase their wholesale production. She also wonders how that fits in with liquor licensing laws. Mr. Wyrick said that she agrees with Ms. Hicks and Ms. Casey. Mr. Cherniske said that he felt the original concept of the approval of the tastings was to see what they wanted to buy; buy it and leave. He does not have a problem with visitors buying a can or a growler and leaving.

Mr. Winter said that they have permission to run a farmstand by right and now they are looking for a farmstore which is meant to sell things grown/produced on the farm. So, if there is beer in the cooler to buy and leave and drink offsite is that different than purchasing raspberry jam from a raspberry farm.

Ms. McAndrew asked about the liquor license and believes that the Commission should confirm that they are operating within the legal framework. Ms. Kern said that she did talk to the Department of Liquor regarding the pours and she was told that there is no size requirement. She did not discuss retail sales of the cans/bottles and will discuss that with them if the Commission thought it would be necessary. Ms. Hicks said that putting their beer in their can is very different than importing other beers. She asked how that would be controlled. Ms. McAndrew said to also think about whether or not they can sell beer when the tasting room is not open. Mr. Winter said that conditions can be added regarding that. He also said

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that regulating liquor sales is not under their purview. Mr. Wyrick agreed with Mr. Winter and said that the onus falls on the applicant. Mr. Winter said that he is relatively certain that one of the conditions of approval was the continued good standing of their liquor license and would expect that this condition would carry over to this approval should it be given.

Ms. Hicks asked about the definition of “farmstore” and asked how that differs from the “farmers market”. Mr. Winter said that the “farmers market” is allowed by site plan in the village commercial district. There is no definition. A “farmstore” when accessory to a farm, selling what is grown on their farm or a farm within a 50-mile radius. Ms. Hicks asked how a farmstore would affect traffic. If they receive approval, she believes that there will be a different traffic pattern. Ms. Casey said that was exactly her point. Ms. Hicks said that she wished they had this discussion prior to the discussion on the approval of the waivers because she now feels that the Commission should be requiring the traffic study. Mr. Winter said that if half of the Commissioners think they need additional information, the only thing to do is to request that the applicant withdraw the application and have it resubmitted and begin the process again. Mr. Cherniske said that any time a traffic study has been requested in the past, there is never enough traffic to make it meaningful. Ms. Casey said that the point is that it was mentioned during the public hearing by those residents who live in the area. Mr. Cherniske replied that the Commissioners should listen to the comments and have a basic understanding of the neighborhood and that the traffic study will not add anything of substance. Ms. Casey said that she would not like to start the process over but would rather condition their hours of operations and deny some of the requests that could add traffic. Mr. Wyrick agreed with applying conditions of approval.

Mr. Winter asked the Commission how much time they wanted to commit to this discussion. Ms. Casey suggested that they move on and come back to this at the end of the meeting.

Ms. Casey moved to table the discussion until the tail end of the meeting and let other applicants come forward now. Mr. Wyrick seconded and the motion passed unanimously.

Ms. McAndrew said that she would like to clarify that her initial comment regarding their liquor license was not made to say that they were operating without a liquor license; she wanted to make it clear that there are different levels.

Mr. Winter said that they are permitted as a farm brewery and can produce beer on the property and sell it wholesale. He believes that both of them are satisfying their current use. With regard to the serving room, the regulation allows them to operate a tasting capacity and the capacity was to allow for and promote the onsite sale of growlers for offsite consumption. The sealed container sales could fit within the regulation if they allow a farm store and the farm store allows the sale of things produced off site and within a 50 mile radius. He continued that if they just allow tastings for offsite consumption, outdoor use and food service is not allowed. Mr. Wyrick agreed. Mr. Winter continued that the farm store should be fine but it should not be a farmers market. With regard to the special events the harvest festival does not apply any more and they should apply for special events as directed in the regulations. With regard to the air b-n-b should not be included in the resolution. Mr. Winter believes that a resolution of approval can be crafted within those perimeters. Mr. Wyrick asked if Ms. Kern could craft a resolution of approval but they did not ask about a resolution of denial. Ms. Kern asked about the pours. Mr. Winter said that he was leaning toward allowing tastings in order to purchase for offsite consumption. He thinks that a resolution of approval could be crafted and picked apart at the next meeting.

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Ms. Hicks said that the vendors at the Kent Land Trust Farmer's Market are people who also participate in the "farmstore" at the brewery and she does not believe that is the true meaning of "farmstore". She asked that the definition be clear. Mr. Winter said that it could be worked into the resolution of approval.

Ms. McAndrew and Ms. Casey asked about the hours of operation. Ms. Casey said that should be clarified and conditioned. The events should be held via a special permit. Ms. Casey said that she does not want to be shut down but at least conditioned in order to satisfy the concerns of the neighbors.

Ms. Hicks asked about the serving of food. Ms. Casey agreed. Ms. Casey also stated that if they want to increase their hours of operation and special events, they should move to the commercial zone. Mr. Winter agreed and said that it is not a place to sit and socialize; the initial approval was to have the beer bottled for sale around the country. Ms. McAndrew stated that they will need to ensure that parking is provided. Ms. Casey said that she was worried about traffic.

Mr. Winter said that Atty Zizka confirmed that any new approvals supercede past approvals within the special permit. He suggested combining all the special permits into one special permit approval.

Ms. Kern reminded that the "seasonal" tours/tastings were not approved for year round. The operation was 4 days per week with a close at 7 pm. The months of operation were never changed. She asked if the farm stand was going to be removed and a farm store put in its place. Ms. Hicks said that she could not do that as a farm stand is by right. Mr. Winter clarified that if they removed the approval for a farm stand and give them a farm store, they could still have a farm stand as of right. Ms. Kern asked about the seasonality of the operation. Ms. Casey said that it would seem that it would naturally be seasonal. Mr. Cherniske said that if they were going to give them a use of a farm store, it should not be seasonal. Ms. Hicks asked if they could limit the hours of operation for the farm store as well as the tastings/tours. Ms. McAndrew said that she did not think a farm store should be allowed since it was not in the commercial district.

Mr. Winter asked that Ms. Kern create a Resolution of Approval and use that to craft a Resolution of Denial to be reviewed at the next meeting. Ms. Kern said that she can create what is required based on this conversation.

5.B.3. Landrigan Family Trust – 160 Ore Hill Rd. – Request for Discussion

Mr. Winter reminded the Commission that this was on the agenda last month and that this was a subdivision where questions from Attorney Manasse were referred to Attorney Zizka.

Mr. Winter said that on the land records the 3 lots, which includes the one across the road, were combined into one lot. The question was whether or not the lot across the street should be included. Atty. Zizka confirmed that even though the deed says they are one lot, they are not one lot according to land use law. He continued that the determination was made that they cannot be required to separate them by deed but that the Commission could determine they are two separate lots according to land use law. Mr. Wyrick agreed that they follow Atty. Zizka's recommendation.

The other point was that open space was not required based on the state statute that states that open space should not be required if it was a transfer between family members. Atty. Zizka said that the statute is null because it is not a family transfer due to the fact that the property is owned by a Trust.

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Atty. D'Alton, representing the applicant, said that there is a transfer of one lot to a son and the statute does apply. Mr. Winter said that they will follow Atty. Zizka's advice and suggested that they will accept fee in lieu of open space. He asked for comments from the Commissioners. Atty. D'Alton said that Atty. Zizka might not be aware of the fact that there will be a transfer to a family member outside of the trust since this was a change from the original documentation. Mr. Winter said that if the parameters were different, he suggested that might change Atty. Zizka's determination.

Mr. Winter said that this Commission has officially responded to Atty. Manasse's request. Atty. D'Alton said that another determination could be made based on this new information during the pre-application process. She said that they will finish up the maps and come before the Commission for a pre-application discussion.

6. NEW BUSINESS:

6.A. PUBLIC HEARINGS: (Possibility of closure, discussion and decision on the following):

6.A.1. Applications 35-23SP and 36-23C, Kent School (Artis Energy Solutions), Schaghticoke Road Parking Lot, Map 4, Block 3, Lot 5, installation of two dual-port EV stations.

Mr. Winter opened the public hearing at 8:50 p.m and read the public notice into the record. He then referred to the staff report. Ms. Kern noted that there were waivers; Inland Wetlands approval had been received; First Light determined that they were not within their area of concern; the Housatonic River Commission reviewed and approved their application; they are not within the flood plain area under the Commission's jurisdiction; and she reviewed the application for compliance with the regulations which have been met. Mr. Winter asked Ms. Kern for clarification on the missing information. She replied that she did have a conversation with the applicant and everything was submitted.

Mr. Daniel Robertson was present representing the applicant. He said that they were planning on installing two ports to previously installed electrical components. Mr. Winter asked if future site plans could be submitted electronically since this one was difficult to look at.

Mr. Winter had no questions and asked for questions from the public and the Commission. He asked that the Commission look at the waivers requested before closing the public hearing. Mr. Wyrick said that he thinks all the waivers apply.

Mr. Wyrick moved to close the public hearing at 8:59 p.m. Mr. Cherniske seconded and the motion carried unanimously.

Mr. Wyrick moved to approve the waivers. Mr. Cherniske seconded and the motion carried unanimously.

During the discussion, Mr. Winter said that he reviewed the appropriate sections and believes that the application meets the criteria listed. Mr. Wyrick said that he believes the charging stations are in a good location for the proposed use. Mr. Winter said that he did not think it was necessary to go through the sections point by point.

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Mr. Wyrick moved to approve Applications 35-23SP and 36-23C, Kent School (Artis Energy Solutions), Schaghticoke Road Parking Lot, Map 4, Block 3, Lot 5, installation of two dual-port EV stations. Mr. Cherniske seconded and the motion carried unanimously.

- 6.A.2.** Applications 43-23SP and 44-23C, Cheryl Gould (Jason Dismukes), 147 Treasure Hill Rd, Map 17, Block 32, Lot 23, construction of a detached accessory dwelling unit.

Mr. Winter opened the public hearing at 9:04 p.m. and read the legal notice into the record. He then asked Ms. Kern to review the staff report. She reported that they have been approved by the Inland Wetlands Commission. Some of the property is located within the horizonline but not where the construction will be. She asked that the Commission clarify that no tree cutting will be done. There is a discrepancy on the map regarding a shed with a covered deck; the assessor's card says that it is a bath house/cabin. After looking at the file it was noted that an application was discussed calling it a pool house. The regulations only allow one guest house/accessory unit and Ms. Kern asked for clarification. She also noted that the structure was never permitted. Mr. Hock, the surveyor of the property, said that the structure is being used to hold pool accessories.

Mr. Dismukes appeared before the Commission and said that the application is straight forward. The property is 7 acres and there is an existing driveway to the proposed area that will be improved. There will be associated storm water drainage improvements as well.

Mr. Wyrick asked if the application was for approval within the Horizonline. Ms. Kern said that it was not. Mr. Winter said that the plan shows some grading in the horizonline and wondered how that would affect the cutting of trees. Mr. Dismukes said that the grading will occur in the meadow and there are no trees in the graded area. Mr. Dismukes shared his screen which indicated that, in fact, one tree would need to be removed. Mr. Wyrick asked if that tree could be welled. Mr. Dismukes said that it could be since the grading will be gradual and a small stone wall on the upper side could protect the tree. It was noted that the birch outside of the Horizonline area will be removed. Mr. Winter said that he is not convinced that more trees will not be removed but will accept Mr. Dismukes testimony.

Ms. Hicks asked about the shed by the main house. Mr. Dismukes said that this is simply a small shed under a roof to hold firewood and could not be considered another dwelling unit.

Mr. Cherniske said that he was not worried about the black birch but the removal of the oak would be less significant because it was the only one; he would like to see it remain if possible.

Mr. Winter said that he would like to clarify the use of the existing shed. He asked Ms. Kern if pictures would be sufficient. Mr. Dismukes said that would be possible. Ms. Casey asked if there was plumbing within the shed. Mr. Dismukes said that he did not know but would find out. Ms. Casey asked why it was necessary to remove the tree. He explained that the decision to remove is based on the way the grading needs to be done. There could be a possibility that they could well the tree to protect it. Mr. Winter asked if the driveway could be moved in order to protect the tree. Mr. Dismukes replied that the downhill side is very steep and he would not want to move it. Mr. Winter clarified that there will be a tree removed and Mr. Dismukes said that he will do everything he can to protect the tree.

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Mr. Winter asked for public comment and there was none. He asked Ms. Kern if there were waivers and she replied that there are no requests for waivers. Because there was a request for pictures, Mr. Winter suggested that the public hearing be left open so that the applicant can submit pictures of the shed and Mr. Dismukes could look to see if he wanted to request any waivers.

Mr. Wyrick moved to continue the public hearing to the next regular meeting. Mr. Cherniske seconded and the motion carried unanimously.

6.A.3. Modification Request / Applications 114-03CP and 135-02SP, Kent 88 LLC (John McPhee), 88 North Main Street, Map 19, Block 42, Lot 5, modification to tourist home approval to allow use of former innkeeper's quarters as guest rooms increasing rooms from 7 to 9.

Mr. Winter opened the public hearing at 9:24 p.m. and read the legal notice into the record.

Ms. Kern explained that this is a pre-existing non-conforming use as a "tourist home" and they are looking to increase the number of rooms from 7 – 9. The increase would come from the conversion of the previous innkeepers' quarters. Mr. Winter said that the property is outside of the Commercial District and located in the VR-2 district.

Mr. McPhee and Mrs. McPhee were present to address the Commission. Mr. McPhee explained that the footprint will not be expanded. If you were to consider the current use as a "tourist home" and the size of the property, Mr. McPhee said that they could be able to increase the number to 26 bedrooms; they are talking about going from 7 - 9 . It has been operating for at least 20 years under the Starbuck Inn and at least 20 years prior as the Chaucer House. The owner of the Starbuck Inn lived at the property in question and the additional rooms would be coming from his living quarters. The McPhee's will not be living at the property but they do have a full time property manager who lives across the street.

Ms. McAndrew asked if these rooms were going to be rented out as individual rooms or as a suite. Mr. McPhee said that he did not think it mattered since there were doors in between the rooms which could be opened/closed as needed.

Mr. Wyrick asked about the 4,000 sq ft per room requirement. Ms. Kern said that as of 1997, the "tourist home" definition was still active. She questioned whether or not this property would still be considered a private residence since the owners would not be living there. Section 7.5.4 of the 1997 regulations explained how the number of rooms were calculated. Mr. Wyrick thanked Ms. Kern for the information and said that if this was an addition he would feel differently about the application. There is no effect to the physical condition of the home; he does not think there would be a traffic impact. Mr. McPhee said that as part of his work, they added 12 additional parking spaces. Mr. Winter asked what the parking count is. He said that there are 12 on the south side and approximately 8 on the north side. The intent is to use the parking on the south side for guests and the north side for deliveries and staff.

Ms. Hicks asked if the Commission believed "tourist home" evolved into "inn". She asked if there were any definitions that apply currently. Ms. Kern said that the original use was never abandoned and therefore the categorization of "tourist home" should continue to apply. The question to be answered is whether or not it is a private dwelling. Mr. Winter believes the increase in rooms as an intensification or

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an expansion is the discussion that should be held. Mr. Winter said that he feels using the property as a tourist home would be less impactful than using it as a private residence.

Mr. Wyrick said that he does not think there is an expansion. Ms. Casey recalled that the definition of B-n-B's was changed so that the previous owner of the property across the street did not have to reside at the premises. She believes that it is a good use for this property.

Mr. Chris Garrity, adjoining property owner, said that the owners have been stellar neighbors and have been very active in updating their properties. He continued that this was a property issue and not a personal issue. He thinks that the Commission has to decide what they want to happen within the existing areas. Mr. Garrity said that the Commission has already done that when they changed the number of rooms allowed in b-n-b's in the rural district and the village district. He continued that P&Z should decide why that decision was made. He feels that the tone of the village and the tone of the rural be maintained as a New England village. Mr. Garrity asked what the role of the P&Z is based on what is defined in the POCD. He said that his concern is when the current owners move on and the board moves on and the possibility arises of changing the number yet again, there does not seem to be a stop gap in place to prevent this increase from happening again. Mr. Garrity did say that as a neighbor he is concerned about noise and parties. He said that he knows that the older residents in the condos are also concerned. Mr. Garrity said that he is concerned about the future expansion and intensification of the property. He asked that the Commission condition the use with regard to parties and noise.

There were no other public comments. Mr. Winter asked the Commission if there was any other information needed from the applicant. Mr. Winter said that there is the question about intensification and expansion as well as the review of the appropriate sections. Mr. Winter stated that there were waivers and noted that the ARB had reviewed and approved the landscaping. Ms. Kern said that the waiver to the landscaping is not part of this application but had been previously approved by the ARB. Mr. Winter reviewed the waivers with the Commission and asked the Commission if they had any objections to the waivers. Mr. Wyrick agreed with waiver requests; Mr. Winter agreed with Mr. Wyrick. Mr. Winter asked if there were any questions from the Commissioners on the section that need to be approved. Both Mr. Wyrick and Mr. Winter agreed that no further information was required.

Mr. Osborne asked that the Commission clarify whether or not the owner needs to live on the property. He said that if the Commission agrees that the owner does not have to live on the property, the Commission will be setting precedent. Mr. Osborne asked Mr. Garrity if that was what he meant during his discussion. Mr. Garrity said that because this is a pre-existing, non-conforming use, the determination about whether or not the owner has to live on the premises does not apply. Mr. Garrity continued by saying that he did not agree with Mr. Wyrick when he said that since there is no expansion to the structure itself, there is no expansion of the use. He continued that any future addition to this property could eventually cause an expansion of the use. Mr. Garrity also quoted from the regulations sections which he feels could apply to an air b-n-b in answer to Mr. Osborne's question. Mr. McPhee stated that no addition could be added without future applications. He continued that there could be noise from 7 rooms or 9 rooms. They only anticipate to be 50% full most of the time so there will be no worries about noise. He said that they are not asking for anything out of the ordinary; they are only asking to provide rooms which the Town really needs. The plan is to be involved with this project for a long while. Ms. Hicks asked if there was any way that they would rent the house to one family. Mr. McPhee said that they would and it was done at the Victorian across the street and there was no increase in the noise.

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Mr. Osborne said that if this falls under air b-n-b he does not want the Commission to set precedent in the case where there is a bed and breakfast with an absent homeowner.

Mr. Garrity said that he wants to stress that this is not personal but property and Zoning driven. He said that the goal is for Zoning to bring non-conforming properties into conformity; not the other way. Mr. Winter said that the Commissioners understand the regulations and also understand what their charge is. Mr. Garrity said that he is not lecturing but expressing what he believes is Zoning's charge.

Mr. McPhee clarified that this is a unique situation and that he does not believe there is any other property with his designation and, therefore, no precedent is being set. This designation was applied to this property and was in place when the property was purchased.

Mr. Winter asked the Commission how they would like to proceed.

Mr. Wyrick moved to close the public hearing. Mr. Cherniske seconded. During discussion, Mr. Daniel Frisch thanked the Commission for their dedication to their charge. He believes that intensification of businesses is a net positive and that everyone wants to see local businesses grow. Mr. Frisch thanked the Commission for making sure that the businesses are behaving like good local businesses. The motion carried unanimously.

Mr. Wyrick moved to accept the waivers. Mr. Cherniske seconded and the motion carried unanimously.

Mr. Winter said that the POCD does talk about economic development, tourism and the respective lodging. The regulations do not talk about air b-n-b's. He continues that the application does conform to the regulations required in the appropriate sections. The question is intensification vs expansion. Mr. Winter said that in the regulations from 1997 there is nothing about the requirement that the owner live on the premises. Mr. Winter said that he thought the approval required that that the owner live in the premises. Ms. Kern said that she was not sure about that. Mr. Winter said that the handwritten notes on the permit dated 10/22 suggested that it would be 2 rooms with innkeepers quarters.

Mr. Wyrick said that there is no precedent and that this is site specific. Ms. Hicks stated that the Commission is in the business of regulating land use and not in the business of economics. She does not think the Commission needs to rush to a decision but she feels she does not need additional information. Mr. Winter said that he feels it could be continued until the next meeting. Ms. Casey said that she did not know what they were waiting for. The application is clear and feels there is no reason to delay. Mr. Cherniske said that the intensification will not change the area. In fact, he feels the POCD encourages intensification towards the center of town. He agrees with Mr. Osborne regarding having a business that is owner occupied might place some constraints but it depends on the owner. He does not feel that two additional rooms is in violation of the original definition of tourist home. Mr. Cherniske said that he did not feel Mr. Garrity would object if there were conditions applied and that he would not want to see a restriction that home owners be present during the rental of their homes. The Commission has already decided that the rental of homes is an accessory to the primary use and as was already stated, air b-n-b does not apply in this case. Ms. McAndrew said that she felt the Commission should move ahead.

Mr. Wyrick moved to approve Modification Request / Applications 114-03CP and 135-02SP, Kent 88 LLC (John McPhee), 88 North Main Street, Map 19, Block 42, Lot 5, modification to tourist home approval to allow use of former innkeeper's quarters as guest rooms increasing rooms from 7 to 9. Ms.

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Casey seconded the motion. During discussion, Mr. Winter asked if they wanted to add a condition regarding noise after a certain time and hours of operation. Mr. Wyrick stated that the hours of operation would be 24 hours. Mr. Winter said that he was trying to address loud noise late at night. There were no other comments and the motion carried as unanimously.

6.B. DISCUSSION AND POSSIBLE DECISION

6.B.1 Application 48-23C, Jacob & Alexandra Kling (Pete Hanby), 32 Spectacle Ridge Rd, Map 16, Block 25, Lot 36, screen porch, new pool, renovation of 2 story house in the Horizon Line.

Mr. Winter deferred to Ms. Kern regarding the staff report. She commented that the staff report was done even though the application was submitted late. There was some information regarding lighting and tree cutting but she did not have an opportunity to discuss that with Mr. Hanby.

Mr. Hanby was present to address the Commission. He said that they did not conduct a tree survey yet. With regard to the lighting there will be additional lighting in the screened porch and the pool but it will be shielded and downward in nature; the actual specs have not been chosen yet.

Mr. Winter asked if the topos were existing. Mr. Hanby shared his screened and spoke to the site plan. The area beyond the existing pool is very steep and the area contains brush. The existing pool and wood deck will be removed, the wall will remain. There will be a new screened connector and new screened porch. There will be a new pool and a corner of the pool will be feathered into the grade. The footprint of the existing home will not be changed; all the work will be done within the attic space. Some trees will be removed within 12' to 15' around the area; the specific trees have not been identified yet. The house itself is dark stained and the window trim, which is now white, will be stained black. Mr. Winter asked how the new roof line will relate to the existing roof line. Mr. Hanby said that the house is two stories with a steeper roof pitch. Mr. Winter asked Mr. Hanby to return with a depiction of how the site line will change with the construction of the new screened porch. Mr. Hanby asked which size trees should be included in the removal plan. Mr. Cherniske replied that anything 8" or higher should be included. Mr. Winter asked for information on views from streets in the eastern area i.e. Kent Hollow Rd. Mr. Cherniske asked by the existing pool is being demolished as this was one of the reasons why the Horizonline regulation was created; he feels that this is adding insult to injury. Mr. Hanby said that the reason for the pool removal is due to the fact the house is now being used on a full time basis and the pool is only used for a part of that time. The family has young children and they consider the location of the pool a safety concern.

Mr. Winter asked if there was any further information needed from the applicant.

Mr. Wyrick moved to continue Application 48-23C, Jacob & Alexandra Kling (Pete Hanby), 32 Spectacle Ridge Rd, Map 16, Block 25, Lot 36, screen porch, new pool, renovation of 2 story house in the Horizon Line to the next regular meeting. Mr. Cherniske seconded and the motion carried unanimously.

7. STAFF REPORT

Ms. Kern reported that she reached out to Atty. Zizka with regard to moratoriums on subdivisions. He agreed that a moratorium should be put in place for at least 6 months especially since the Commission is

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currently working the subdivision regulations. If the Commission is interested in imposing a moratorium, she will put the process in place. Mr. Wyrick said that he would prefer that the Commission not impose a moratorium but continue working on the subdivision regulations. Mr. Winter asked when the public hearing could occur. Ms. Kern replied that a public hearing would require at least 35 days to schedule with at least a 15-day waiting period. Mr. Winter said that a reasonable scenario time frame would be the July meeting. Ms. Hicks said that she feels the moratorium should be done. Mr. Cherniske said that he did not think there would be a rush on submissions. Ms. Casey said that she felt it would be a good idea to have the moratorium which would reduce the amount of pressure on writing the subdivision regulation. Mr. Wyrick said that the moratorium would reduce the pressure of writing the subdivision regulation. Ms. Kern said that Mr. Chalder has started drafting the subdivision regulations which will be discussed after the current regulation changes are settled. Ms. Kern said that she believes the moratorium would be a safe way for the Commission to move forward since the existing subdivision regulations are really not what the Commission wants.

Ms. Casey moved to move forward with a moratorium on the subdivision regulations. Mr. Wyrick seconded and the motion carried unanimously.

Ms. Kern said that with regard to the cannabis regulation she has received some requests for clarification on manufacturing and cultivation. She suggested that it be added to the other regulations that are being changed. Mr. Winter asked Ms. Kern to forward their discussion as well as Mr. Chalder's suggestion to the Commission and add this topic to the next special meeting agenda.

Ms. Kern reported that she received her first application from a non-profit for a special event and it went well.

Ms. Kern reported that she will be on vacation for the first week of July and Ms. Hayes will be filling in on a full-time basis. Upon her return, Ms. Hayes will be on vacation for 2 weeks.

8. REPORT OF OFFICERS AND COMMITTEES

No action.

9. OTHER COMMUNICATIONS AND CORRESPONDENCE:

9.A. Administrative Permits and Certificates of Compliance

Information received; no action taken.

9.B. CT Federation of P&Z – Spring Newsletter

Information received; no action taken. Ms. Kern referred the Commission to the first article about air b-n-b's. This might help the Commission decide how they want to move forward with this use.

9.C. Letter of resignation from Alternate Position – Rich Chavka, acceptance and recommendation to Board of Selectmen to for appointment to fill open position expiring 11/30/23.

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Mr. Wyrick moved to accept Rich Chavka's resignation letter. Ms. Hicks seconded and the motion carried unanimously.

Mr. Wyrick moved to recommend to the Board of Selectmen that they appoint Anthony Palumbo to the open alternate position expiring 11/30/2023. Ms. Hicks seconded. During conversation, Mr. Winter asked if this would impact Mr. Palumbo's position on the Inland Wetlands Commission. Both Ms. Hicks and Mr. Wyrick said that it would not. The motion carried unanimously.

- 10. EXECUTIVE SESSION: Pending Litigation: The Roberti Family, LLC v Town of Kent, Connecticut and Planning & Zoning Commission of the Town of Kent, Connecticut in the United States District Court for the District of Connecticut filed April 24, 2020. Discussion of strategy and negotiations with legal counsel.**
- 11. EXECUTIVE SESSION: Pending Litigation: CT Judicial Branch Supreme/Appellate Case, Docket #: AC220015, High Watch Recovery Center, Inc. v. Town of Kent Planning and Zoning Commission.**
- 12. Open session involving discussion and possible action on Pending Litigation: The Roberti Family, LLC v Town of Kent, Connecticut and Planning & Zoning Commission of the Town of Kent, Connecticut in the United States District Court for the District of Connecticut filed April 24, 2020.**
- 13. Open session involving discussion and possible action on Pending Litigation: CT Judicial Branch Supreme/Appellate Case, Docket #: AC220015, High Watch Recovery Center, Inc. v. Town of Kent Planning and Zoning Commission.**

Mr. Wyrick moved to continue agenda items 10, 11, 12 and 13 to the next regular meeting. Mr. Cherniske seconded and the motion carried unanimously.

Mr. Winter asked that the Commission return to agenda item 5.B.2. in order to finish their original discussion and provide information to Ms. Kern for the creation of a resolution.

14. ADJOURNMENT

Mr. Wyrick moved to adjourn at 11:42 p.m. Mr. Cherniske seconded and the motion carried unanimously.

Respectfully submitted,

Donna M. Hayes

Donna M. Hayes, CZEO
Assistant Land Use Administrator

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