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By Darlene Brady at 10:07 am, Dec 09, 2021

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 via zoom on Thursday, November 18, 2021.

1. CALL TO ORDER

Mr. Wyrick called the meeting to order at 7:03 p.m.

2. ROLL CALL AND APPOINTMENT OF ALTERNATES IF REQUIRED

Commissioners Present: Wes Wyrick, Chairperson; David Birnbaum, Karen Casey, Darrell Cherniske, Alice Hicks, Adam Manes, Anne McAndrew, Marc Weingarten

Staff Present: Donna M. Hayes, LUA

3. READING AND APPROVAL OF MINUTES:

3.A. Regular Meeting Minutes of October 14, 2021.

Mr. Manes moved to approve the Regular Meeting Minutes of October 14, 2021 as presented. Mr. Birnbaum seconded and the motion carried unanimously.

4. PUBLIC COMMUNICATIONS (ORAL):

No action taken.

5. OLD BUSINESS:

Mr. Manes moved to hear agenda items 6.B.1. and 6.B.2. at this point in the agenda. Mr. Birnbaum seconded and the motion carried unanimously.

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

5.B. DISCUSSION AND POSSIBLE DECISION

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5.B.1. Application #'s 52-21SP and 53-21C, Paul Szymanski, P.E., Arthur H. Howland & Associates, for North Main Kent, LLC, 0 North Main Street, Map 3 Block 15 Lot 5, proposed conservation development of 13 lots.

Mr. Wyrick began the discussion by stating that the public hearing had been closed at the last meeting and the Commission is now in deliberations. He continued by saying that he would like to share a couple of personal thoughts before deliberations begin. Mr. Wyrick said that first, the Commission is Planning and Zoning. Planning is distinct from zoning and many towns have separated the two responsibilities. When the Commission plans, such as the creation of the new Conservation Development overlay, the Commission looks to the future utilizing documents such as the POCD for guidance for the betterment of our Town. The POCD is conceptual in nature as it is meant to be a planning tool. The POCD and other similar documents, therefore, was not intended to be weaponized against a specific zoning application.

Mr. Wyrick continued by stating that second, zoning is very serious business. In lieu of unlimited property rights, which was the case 50 years ago, zoning is a tradeoff and is a balance between owner's unlimited rights and the rights of the community that is affected by the development. Zoning, therefore, is a contract by which owners and buyers rely and it is incumbent on this Commission to make judgements on its regulations that are fair and without bias or outside pressure. This Commission must always look to the intent of the regulations as we look to make this judgement.

And lastly, Mr. Wyrick stated that if there are any Commission members or alternates who have had any conversations of substance regarding this application that were outside of these meetings, they must immediately recuse themselves. He asked that they please do not expose this Commission by having done so.

Having finished with his personal comments, Mr. Wyrick suggested that a good place to start the deliberation might be the summary of compliance that was prepared by Mr. Paul Szymanski. He wanted to make sure that everyone understood this special overlay zone and the mathematics that went into the calculations of these building lots. The conservation zone was established by the Zoning Commission unanimously with the consent of the Conservation Commission and it was an incentive rather than the underlying zone which is for single homes with driveways that come onto the road. The tradeoff is for a planned unit development but that it must be a minimum of 40% land that is in conservation. There is more than 40% represented here because not only is there 40% that goes to this conservation area, but there is also 15% additional by subdivision regulations and they also have a corridor along Route 7 which is open area. I wanted to say that upfront. I think that it is important that this Commission did set this up as an incentive for this type of planned unit development has a lot of benefits. It's a single way in, the Commission can regulate the architecture; the Commission has far more control than the underlying which would be just homes and subdivision. Does anybody have any questions on how they made the calculations to the number of lots that were based on our regulations? We'll go through all the pluses and minuses as we get into the motions, but I just wanted to ask that question up front to the Commissioners.

Mr. Birnbaum said that he believes that the open space is 40.5% as per the applicant's letter. Mr. Wyrick agreed but said that the lot calculation was further diminished by 15% which is part of the subdivision regulation in the underlying zone. Ms. Hicks said that she did not understand what he meant. She asked if he was saying that the special permit is being designed to be 65% open space? Ms. Hicks said that she thinks Mr. Wyrick is combining another regulation with this regulation to come up with 65%. Mr. Wyrick said that he was only commenting on their calculation of lots and the lot count was diminished by 15% in addition to the 40%. Mr. Wyrick asked Ms. Hayes if that was correct. Ms. Hicks said that she thinks that is mixing apples and oranges and that you have apple space or you don't. Mr. Wyrick agreed. Ms. Hicks continued that the Commission can't control the 15%; the Commission can control the open space under our regulation as the Commission designed it and the Commission can change that number. Mr. Wyrick agreed. Ms. Hayes said that by switching from individual lots

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to the condominium classification, they no longer have to abide by the subdivision regulations. Mr. Birnbaum said that under the subdivision regulations they could have 19 lots, but under the condominium classification they are only creating 13 units but the open space is 40.5% which is above the minimum that the regulation contemplates. At the end of the day it is still 40.5% open space preserved that will be in the conservation area. Mr. Weingarten said that if the question is whether or not they had calculated it under the regs then he agrees that they have calculated it properly.

Mr. Wyrick asked if they had all read the letter by Mr. Szymanski. He asked if they had any comments on it. Ms. McAndrew had a question about the corridor along Route 7. She asked if there were measurements and Mr. Wyrick said that it is on the survey and is defined by meets and bounds and believes that it is 100' deep and is not included in the 40% open space.

Mr. Weingarten said that the letter proceeds systematically through the regulations but when it comes to the criteria that the Commission has to review with regard to the site plan and special permit, he does not think the applicant has given adequate consideration to the view shed which is criteria both in the site plan application and in the special permit application. It was Mr. Weingarten's proposal that the applicant either eliminate the 3 southern most houses on the site plan which blocks the view to the open space or move those houses to the back of the property in order to open the view from Route 7 to the open space. He continued that he reviewed carefully the criteria in reviewing the site plan and in approving the special permit and both of them include criteria relating to specifically scenic views, the unique features which enhance the character and environment of the area and as to the site plan, the arrangement of the buildings on the site and the preservation of natural attributes and major features of the site including scenic views both from the site and onto or over the site. Mr. Weingarten believes that those criteria have not been met by the applicant and that the Commission is entitled to condition an approval or deny approval but in his view it would be more appropriate to condition approval on either removal of the three houses or moving them to the back of the property so as not to block the view.

Mr. Cherniske said that all the criteria that Mr. Weingarten listed are actually secondary conservation areas. As far as the conservation subdivision regs are concerned, the primary conservation area is 25% slopes or greater. They are given more weight than what Mr. Weingarten listed. In order to move 3 of those homes out of the view, you would have to violate one of the primary conservation items in order to gain the scenic view. It has always been an issue that I've had that in the name of conservation and being environmentally sound, it seems like getting something out of the view takes precedent even though that's really not a proper guiding factor from a planning standpoint. Out of sight, out of mind does not mean that it's more environmentally correct. Mr. Weingarten countered by stating that his proposal was that either the applicant eliminate the three houses or they move them to the back. If the applicant moves them to back and there is a problem with the slope, that's their problem. Mr. Cherniske said that the Commission is not supposed to encourage development that would violate a 25% slope for no reason other than moving it out of people's sight line. Mr. Weingarten said that he is not suggesting the applicant violate the 25% if the applicant's choice is to move the 3 houses to the back, they have to deal with the slope. It may be economically disadvantageous but that's the applicant's choice, not the Commission's. Mr. Cherniske said that he would rather gerrymander the development right along the Route 7 corridor where it has less impact than push the development through a 25% slope closer to the river. He continued that the intent of this zone is to set up residential uses in a New England village pattern which is generally right along the road. The Town has a pretty good example of that in the center of Town where most of the development is along the road with large open space in the back. Mr. Manes said that's actually the way it is going north on Route 7 also.

Mr. Manes asked, if the applicant changed their application and didn't apply for the conservation subdivision, which allows them to group some houses more closely together in exchange for having a 40% or more open space and they just did a regular subdivision, would they be allowed to put 19 houses there, or a condo or townhouses.

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Mr. Manes said he thinks everyone needs to think about that because right now the Commission has an application for some houses with some open space and if the applicant can't do that, what is the applicant's next step. We'll just have to do a subdivision which they would be allowed to do because our regulations. Mr. Weingarten asked if a regular subdivision requires a special permit and a site plan? Mr. Manes said that he did not know if it requires a special permit. The regulations are different are for regular subdivisions. Mr. Birnbaum said that his concern is that he believe they could do that and then the things you are listing Mr. Weingarten would no longer be applicable in our evaluation of the application. If they still have to submit a site plan, then the concerns are still applicable. Mr. Birnbaum asked what sections Mr. Weingarten was referring to. It's 10,300 supplemental site plan consideration "b" and "i.3.". Mr. Manes said that he read the same sections that Mr. Weingarten read but he did not know that it's the same when they do a regular subdivision. He continued that the conservation subdivision is an application that gives the Commission more scrutiny than a regular subdivision. He said there is an exchange for that which is allowing some houses to be more tightly grouped but his question is and maybe the Commission will have to figure it out between now and next meeting is if this application was not approved and the applicant decided to go other way, Mr. Manes said that he was not sure the Commission could approve it and they would still have houses in front. The Commission will not be able to have input on it.

Ms. Casey said that she thinks that these are both good points. She said that she was really delighted when she saw some of the clauses that Mr. Weingarten is referring to. Ms. Casey said that if the Commission were to approve the application, the Commission has the power to ask for more open space. If the Commission were to do that, they could approve this application. However, Ms. Casey continued, the bottom line is that they will not physically be able to get 19 houses on the property anyway because of the site difficulty. The Commission could say go ahead, go the regular subdivision route, but in reality it's not going to be able to be done unless you have billions of dollars. Ms. Casey said that the other thing is that there should be growth in zoning, but it has to be sensitive and it has to be in keeping with the rural character. That's what the POCD tells the Commission. She said that she hopes all of the Commissioners have read the POCD and even suggested that all the Commissioners re-read it before a decision is made because it really influenced her thinking. If you look at just the opening mission statement on the POCD, it talks about what its purpose is: to ensure that the Town continues to accommodate growth and still retain the character of a rural town. One of the appendices really has a delightful description and it talks about the view shed that Mr. Weingarten is referring to. Ms. Casey said that she keeps saying why can't the applicants compromise. Why can't this applicant compromise and get their subdivision approved with the new criteria that Mr. Weingarten suggested. Unless they are trillionaires, they are not going to put 19 houses there; the land will not allow it. Ms. Casey said that she likes the idea again of eliminating those houses to the south and keeping the meadow open. She continued by saying that they should not destroy the Town because the regulations say there is a possibility they could do. To her that does not make any sense.

Ms. Hayes said that one of the things that the Commission has to look at as well begins on page 171 which says, "The general conformity of the site plan with the intent of the Towns Plan of Conservation and Development; however, the Plan of Development shall not take precedent over specific provisions of the regulation." Ms. Casey said that she read that, too. Ms. Hayes said that she was pointing it out because that part had not been addressed. Ms. Casey said that she believes the Commission has the ability to ask for a compromise. Ms. Casey asked Ms. Hayes if she had spoken with the attorney regarding the Commission's ability to change the conservation preservation percentage. She replied that she had and said that the Commission can increase the percentage but not decrease below what is in the regulation. Ms. Hayes continued that the regulations state that the requirements are minimum.

Mr. Weingarten said that his proposal didn't attempt to increase the percentage because he is not sure that achieves the end he was looking to achieve which is opening the view to the open space. Mr. Weingarten said that he did not reference the POCD in his proposal.

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Ms. Hicks said that this is a brand new regulation which she thinks the Commission is positive about because of the POCD. It is an attempt to encourage growth but within the context of open space. It is the first time the Commission has had an application under this regulation and what the Commission will learn is that every application will be different; 40% might be 70% elsewhere based on the topography. It is very important to have the flexibility to update the open space. Ms. Hicks commented that the site plan that was submitted which showed a large oval that paralleled the river and which she said was open space within the property, does not address the viewshed. She believes that the 40% is too small. Ms. Hicks said that she understands Mr. Weingarten's proposal by opening up the viewshed on the southern portion of the property. The message is the density of building is an important characteristic of the property and the Community House is also a big change in the density of buildings there.

Mr. Cherniske said that in terms of open space relative to conservation subdivision, it would seem to make sense that if you had a conservation subdivision right on the edge of town, the open space should be at it's minimum and the further you move away from town out into the rural district then it would be appropriate to increase the amount of open space. While this is still VR-2, it's supposed to have a New England village pattern so if there was ever a place to adhere to the regulation, which a lot of thought was put in to, it would be right on the very edge of existing development where there is very little open space. Mr. Cherniske said that he did not understand why there would be an increase in open space the closer you get to Town and right on the edge of it. From a planning standpoint that is where you want the most density. That's where you have the least amount of impact and the most pristine areas is by concentrating the development within an envelope that is already disturbed and developed. If you sort of loose the benefit of allowing greater density if you minimize what can be done there. The developer has already minimized it to a certain degree, it seems at odd with our regulations to further minimize it. The Town Character Study was done in 1990 and it was revised to some degree by the Town Character Study of 2013. There's been multiple revisions of the POCD. There's been quite a bit of scrutiny in the Village District in recent years and yet this parcel of land has still remained for the last 30 years VR-2. Yet nothing has come about to change it; it's in the same designation as an 80-unit condo complex. It would seem like the POCD would have informed a change in the regulation by now if there wasn't the intent to have increased density here.

Mr. Weingarten said that he did not think it's appropriate to generalize about the extent of density on a particular property regardless of how close to or far away from the center of Town it is. He thinks it's more a question of the particular property in question and in this case this property has currently an open viewshed to the open fields which is very important to the people in the Town, to the POCD. What is the point of having public hearings if the Commission is not going to listen to people who talk to us. The Commission does not need to be overly influenced by them, but that's why we have public hearings. The Commission heard from all of the members of the public who testified, or virtually all, that the viewshed to the open fields is sort of the northern gateway which is very important to the Town's character. It is a consideration specifically entitled to and required to take into consideration in the granting a special permit and approving a site plan.

Mr. Cherniske said that he did not think you can zone by public opinion if the application fits what the Commissioners are enforcing, which is the regulations that the Commission created and the POCD which the Commission created which the public has had input on for multiple reiterations. Mr. Cherniske continued that it's too late by the time an application hits the table that fits the regulations that are created that have been informed by the POCD which the Commission created themselves. Ms. Casey responded by saying that she thinks it gives the Commission power for change.

Mr. Birnbaum said that he feels the Commission should be making the change before an application is before them. The challenge here is that the developers bought something zoned as VR-2 with an expectation of building up to 19 lots. They proposed to reduce it to 13 to take advantage of conservation, supporting open space. He said

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that he is sure from the applicant's perspective they feel they have made a number of compromises in the shape and size of the plan, although they have not reduced the number of houses, they have made efforts to try and take into account some of the public feedback. Mr. Birnbaum agrees that from the public feedback it is very obvious that the people would prefer that this remains open space. But again, the Commission can only look at the primary things the Commission is trying to preserve in terms of watercourses and steep slopes and take advantage of the infrastructure which the Town has tried to put in and encourage density where it is not impacting the more rural areas. If the Commission can add more and more restrictions that make it financially unfeasible from the applicant's perspective, it looks like the rules are shifting under the applicant's feet. The applicants would either come back with a non-conservation-oriented plan to build 13 houses or perhaps question if the rules are changing because of the application instead of the regulations that are written as of this point.

Mr. Manes said that three or more years ago there was a move to have a land acquisition committee for the Town. That committee was shut down by the Board of Selectmen or the Board of Finance because the Town was not interested in acquiring land. This is a perfect example of a piece of land that if the Town wanted to preserve it, they could have but it went up for sale and someone purchased it. A piece of land that was always designated VR-2 and always the place where our Town would expand to. Because after it is the Rural zone and it can't expand. Mr. Manes continued that now you have someone who purchased this land knowing that it had certain zoning. It's the northern gateway and we mention it in the POCD but nothing has ever been done about it. Now it's been purchased and all of a sudden now that it's been purchased, and its been for sale for a long time, everybody is upset about it. Mr. Manes continued that he is not sure that when the Commission has an application that fits the regulations that Commission has provided, and it does fit it, and the applicant has done everything they can to follow our regulations to a "T", Mr. Manes feels that this is something that should have been dealt with a long time ago and wasn't and right now what the Commission has is an applicant who's done what they were supposed to do.

Ms. Casey replied that the applicant has done a good job but the flip side of it is they have not listened to what the Town and the community feels about it. They can still do their development, but they can compromise. They have not changed one thing since the beginning. They put on a little more open space in the front and they changed the classification of the application but they've not done anything to really prove to this Town that they understand how the Town feels about it. Okay, maybe we are up against the wall now, the Commission cannot go backwards but I don't find them being very sensitive to it. Ms. Casey questioned why the Town has a POCD that the Commission is not paying any attention to it. Mr. Wyrick responded that as he said at the beginning, the POCD is a planning tool and that's precisely how the Commission has used it in planning in creation of this zone. The POCD is conceptual; written in vague language; it's not specific like the zoning is specific. Mr. Wyrick said that he did not believe that this Commission ignored the POCD when it created, unanimously, this overlay zone.

Mr. Weingarten said that he does not think that the Commission is changing the rules on the development. When you look at Mr. Szymanski's letter about how they have complied with the regulations, he addresses the considerations that were supposed to be taken into account but basically completely ignored the issue of the view. That consideration has been in the regulations all along and something the Commission is supposed to consider and Mr. Weingarten does not think the applicants have exactly complied with all the regulations when they ignored that issue.

Mr. Cherniske said that one of the unique things of this subdivision is that the applicant didn't do the typical which is to put up a fence and heavy shrubbery along the road. He already thinks that the village district suffers from turning into a corridor of fences and hedges and things that seal off historic homes from a connection to Main Street and the vitality of it. He thinks that this application minimizes what is being constructed along the road; has a barn that speaks to the local vernacular; leaves the few mature hardwoods; and, has the rest of the property being just meadow actually is progressive and pretty responsive in terms of trying to keep what's there.

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Mr. Cherniske thinks there is an opening between the southern houses and northern houses. He thinks that one of the most suburban aspects of the proposal frankly is the evergreen screen on the southern border. That is what everyone does when they move to town; plant an evergreen screen. Mr. Cherniske stated that those trees will grow up into the view so that if you come from the north eventually you will see a wall of evergreens that will cut off the southwest views. He questions is that is seen as desirable. He asked if those three southern homes were changed to affordable housing which would be a response to public input, would that change some of the Commissioner's minds on them? Mr. Weingarten replied, no. Ms. Casey agreed with Mr. Weingarten. Ms. Casey said that they could put affordable housing on one of the other houses that they have and they haven't offered to do that. Mr. Cherniske asked if aesthetics were more important than affordable housing in town. Ms. Casey said no. She is not saying that; she is pleading for a compromise and to keep more open space... Period. Mr. Weingarten replied that the criteria that they are required to evaluate on the site plan and the application, does not include affordable housing. It could have, but it does not. Mr. Cherniske said that he only brought that up because that was a repeating concern of the public and both Mr. Weingarten and Ms. Casey referenced that the application should respond to public input.

Ms. McAndrew said that she thinks it also brings to light that the Commission has to look at the whole picture. She said that these homes they are building are not going to be in a price range that is attractive to many people. She thinks this goes along with the thoughtful planning. Mr. Wyrick responded to Ms. McAndrew that in zoning the Commission does not really address those kinds of factors. She responded that she realized that but thinks given the sensitivity and the gray area that the Commission is using with the POCD that maybe the Commission should.

Mr. Birnbaum said that when the Commissioners reference the POCD, it does talk about views and preserving that aspect of Kent. It also talks about smart development particularly in this exact district. Mr. Birnbaum realizes the Commission has to balance two things and the members keep saying that the Commission is ignoring the POCD but he does not believe that is the case. The Commission is balancing development on the Town's edge with the view and the aesthetics. The Commission is trying to give both of them credence and when you look at the first plan that was presented, they have 4 houses and it looked much denser on that corner. It has been said that they have not compromised but they have gone from 4 to 3 and they added the extra spacing, they changed the plantings and things. Mr. Birnbaum said that at the end of the day, it seems that the Commission does not want to see 13 houses on a lot zoned for 19. If the Commission says they want to see 10, then the Commission is saying that they want to see 50% less houses than when this was planned and zoned. This seems really tough for someone who bought the property to digest. He continued that it feels like the Commission is giving them cause to be suspicious of the thinking about how the Commission can make that sort of conclusion. Had this regulation been much clearer and that due to the structure of the land, maybe it shouldn't be zoned R2 and maybe it should be zoned for something else or maybe the district should have said if you have too much slope maybe you need to reconsider the number of the lots, but just to say we want fewer lots and in support of just a single aesthetic of view just seems really challenging to support based on what is written in both the POCD and the regulations.

Mr. Birnbaum asked where the final site plan was. Ms. Hayes said that the date of the most recent site plan is dated 10/13/2021 and apologized for not putting it in the public meeting file but would include it in the next meeting. Mr. Wyrick asked if that site plan showed the individual lots removed; Ms. Hayes replied yes.

Mr. Wyrick asked the Commissioners how they felt about making a decision tonight. Ms. Hicks stated that they have not seen officials document of the Homeowners' Association. She does not feel that a decision can be made without those decisions. Mr. Manes asked if that was a criteria in the decision making process. Ms. Hayes said that was a condition of approval. She remembers the applicant stating that the by-laws could be presented, but the rest of the documentation would not be available until they are incorporated. Mr. Weingarten asked if the

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condition of approval states that the documentation would have to be approved by the Commission. Mr. Manes said that he did not think those documents would be available until the houses were sold already. Mr. Wyrick clarified that the applicants cannot get their zoning permit to begin building until the zoning permit is issued and Ms. Hayes added that they cannot get their certificates of zoning compliance until the rest of the documentation is presented. Mr. Cherniske said that any conditions could possibly affect the home owners' association by-laws and he has some suggestions on how the property is maintained. Ms. Hicks said that the maintenance of the property is a big piece of the approval. Mr. Cherniske said that the information that was submitted during their presentation is not comprehensive enough.

Mr. Manes said that he has was not ready to vote on this as he had some more research to do. Mr. Birnbaum asked when the last subdivision was created. Ms. Hayes said that it was done before her. Mr. Wyrick said that he remembers the Skiff Mountain Road subdivision and it was a complicated process.

Mr. Wyrick said that the Commission has had a great discussion but did not think they were ready to go into the conditions. He asked for a motion to table until the next regular meeting.

Mr. Manes moved to continue Application #'s 52-21SP and 53-21C, Paul Szymanski, P.E., Arthur H. Howland & Associates, for North Main Kent, LLC, 0 North Main Street, Map 3 Block 15 Lot 5, proposed conservation development of 13 lots to the next regular meeting. Mr. Weingarten seconded and the motion carried unanimously.

5.B.2. Clarification on the baseline of operations and aspirations of Club Getaway.

Ms. Hayes explained that she had spoken with Mr. Schreiber who was disappointed with the direction the attorney was going with his request; therefore, Ms. Hayes said that she would post a question on the listserv asking if any towns had a definition that might fit how Club Getaway operates. Once that information is gathered, Ms. Hayes and Mr. Schreiber will meet and create a definition which will hopefully be discussed at the December meeting.

Mr. Birnbaum moved to table clarification on the baseline of operations and aspirations of Club Getaway to the next regular meeting. Mr. Manes seconded and the motion carried unanimously.

6. NEW BUSINESS:

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

6.A.1. Change to Section 2200, specifically the definition of "retail", of the Town of Kent Zoning Regulations dated June 29, 2021.

Mr. Wyrick opened the public hearing at 8:31 p.m. and read the legal notice into the record.

Ms. Hayes explained that based on the new legislation that was recently passed with regard to the legal sale of cannabis in the State of Connecticut, most of the Towns had imposed moratoriums on how this new law would be handled in their Towns. Upon the advice of Attorney Zizka, it was decided that the best way to handle the "wait and see" approach would be to change the definition of "retail sales" by not allowing the sale of cannabis or cannabis products as defined in PA #21-1, June Special Session. Once retail sales could legally begin, any one wishing to sell cannabis or cannabis products in the Town of Kent would have to appear before the Commission and request a change to the regulations.

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Mr. Wyrick asked for public comment and having none, Mr. Birnbaum moved to close the public hearing at 8:40 p.m. Mr. Weingarten seconded and the motion carried unanimously.

Mr. Manes moved to approve the Change to Section 2200, and read the following Resolution into the record:

RESOLVED: *That the Kent Planning and Zoning Commission make the following changes to Section 2200 of the Town of Kent Planning and Zoning Regulations dated June 29, 2021:*

Changes to Section 2200 – definition of “Retail Stores”

EXISTING

§2200 DEFINITIONS:

RETAIL STORES – *Establishments engaged in the selling or rental of goods or merchandise manufactured by others (usually to the general public for personal use or household consumption, although they may also serve business or institutional clients) and in rendering services incidental to the sale of such goods. Such goods shall not include firearms or ammunition.*

PROPOSED

§2200 DEFINITIONS:

RETAIL STORES – *Establishments engaged in the selling or rental of goods or merchandise manufactured by others (usually to the general public for personal use or household consumption, although they may also serve business or institutional clients) and in rendering services incidental to the sale of such goods. Such goods shall not include firearms, ammunition, cannabis or cannabis products as defined in Public Act No. 21-1, June Special Session.*

In adopting the above, the Commission states on its record that, in the Commission’s judgement, the proposed amendment satisfies the factors the Commission must consider in reviewing such amendments as set forth in the Plan of Conservation and Development and the Zoning Regulations of the Town of Kent.

Adopted by the Kent Planning and Zoning Commission this December 7, 2021.

Mr. Weingarten seconded and the motion carried unanimously.

6.B. DISCUSSION AND POSSIBLE DECISION

Mr. Manes recused himself from this discussion. Mr. Wyrick elevated Ms. McAndrew to voting status.

- 6.B.1.** Application #102-21C, Brian Neff, LE, for John Hoving, 119 Treasure Hill Road, Map 17 Block 32 Lot 21, construction of 30’ x 30’ detached garage in HorizonLine Conservation District.

Mr. Wyrick began the conversation by stating that he did not think this property belonged in the HorizonLine after driving past the site. Ms. Casey agreed. Mr. Wyrick asked Mr. Neff if the height of the garage was to the peak or mid-peak. Mr. Neff replied that the 22’ height was to the peak. Mr. Wyrick stated that the regulations call for a height to mid-peak which meant that the garage would only be one story and have less impact on the HorizonLine area.

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When asked about lighting, Mr. Neff replied that the lighting would be downward facing and that they would be facing the existing house rather than the street. The garage will be placed on part of the existing driveway and there would be limited cutting to get the garage built.

With no further questions, Mr. Birnbaum moved to approve the following waivers: #5, 6, 9, 10, 11, 12, and 13. Mr. Weingarten seconded and the motion carried unanimously.

Mr. Weingarten moved to approve Application #102-21C, Brian Neff, LE, for John Hoving, 119 Treasure Hill Road, Map 17 Block 32 Lot 21, construction of 30' x 30' detached garage in HorizonLine Conservation District. Ms. Casey seconded and the motion carried unanimously.

Mr. Manes returned to the meeting.

- 6.B.2.** Application #103-21C, Cozzy DeBernardo for J. Casey Trust, 24 North Main Street, Map 19 Block 42 Lot 25, change of use from retail to restaurant.

Mr. Manes moved to table the application to the end of the meeting since the applicant was having trouble connecting to the meeting. Mr. Weingarten seconded and the motion carried unanimously.

Ms. Bianca Nelson was present to address the Commission. Discussion was held regarding whether or not it was known when the current renter would be vacating the premises. A concern was raised about whether or not the use could be changed when the premises was still being occupied by the current tenant. Ms. Nelson explained that they had not signed the lease yet; they were waiting for approval from the Commission before moving forward.

The Commission advised Ms. Nelson to withdraw her application and come back before the Commission with a new application once the lease was signed. This would enable the Commission to give the applicant an approval based on their occupancy date. The Commission agreed to waive the application fee.

Ms. Hayes advised Ms. Nelson to supply an email requesting the withdraw.

- 6.B.3.** Request of the Board of Selectmen for the reconsideration by the Planning and Zoning Commission to update the Land Use regulations with respect to the vending of food via a truck or any other means.

Mr. Weingarten moved to table this discussion to the next regular meeting. Mr. Manes seconded and the motion carried unanimously.

- 6.B.4.** Appointment of replacement of Matthew Winter to the POCD Sub-Committee and the Affordable Housing Plan Sub-Committee.

Mr. Weingarten moved to appoint Mr. Birnbaum to the POCD Sub-Committee. Mr. Manes seconded and the motion carried unanimously.

It was decided that no one be appointed to the Affordable Housing Plan Sub-Committee at this time. Mr. Birnbaum, who represents P&Z on this Sub-Committee, felt he was able to be the sole representative but would ask for help if needed.

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- 6.B.5.** Request for determination: clear cut of approximately 1 acre of land at 0 Cobble Road for proposed construction of single-family dwelling in HorizonLine Conservation District with no issuance of a zoning permit.

Ms. Hayes explained that a request had come in to clear approximately 1 acre of land for the potential build of a new single-family dwelling. As of right now, Ms. Hayes said that no plans had been presented to her or to Cathy Weber of Torrington Area Health District for the construction of a new dwelling and that she felt uncomfortable allowing this work to be done at this point in time. She noted that a very small portion of the property is located within the HorizonLine Conservation district but the site plan that was submitted shows that the work would not be done in the area.

The Commission said that they would not entertain the approval of the clearing of the land without a better site plan and an indication of the size of trees that would be cut. It was noted that the clearing would be done on the lower portion of the property, closest to Cobble Road and that based on the existing elevations, there would be a sizeable portion of land reconfigured.

The Commission asked Ms. Hayes to contact the developer and have him provide the information requested and appear before them at the next meeting.

7. STAFF REPORT:

- 7.A.** No action taken.

8. REPORT OF OFFICERS AND COMMITTEES:

- 8.A.** POCD Subcommittee

Ms. Hayes reported that the originally schedule meeting of November 16th had been rescheduled to December 2nd. The Subcommittee will have a report at the December meeting.

9. OTHER COMMUNICATIONS AND CORRESPONDENCE:

- 9.A.** Administrative Permits and Certificates of Compliance: October 12 – November 12, 2021

No action taken.

- 9.B.** 2020 Annual Monitoring Report, Natural Resource Management Plan, Bull's Bridge Golf Club, by WSP dated August 2021.

Ms. Hayes reminded the Commission that Mr. Winter had asked that this remain on the agenda until he had an opportunity to review the report. Mr. Wyrick asked that it be removed from the agenda.

- 9.C.** Monthly Financials – July through October, 2021

No action taken.

- 9.D.** Connecticut Federation of Planning and Zoning Agencies *Quarterly Newsletter* Fall 2021.

No action taken.

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9.E. Approval of 2022 Regular Meeting Calendar

Mr. Weingarten moved to approve the 2022 Regular Meeting Calendar as with a correction to the October date. Mr. Birnbaum seconded and the motion carried unanimously.

9.F. Email dated November 8, 2021, from Judy Perkins.

No action taken.

10. EXECUTIVE SESSION: Pending Litigation: High Watch Recovery Center, Inc. v Town of Kent Planning and Zoning Commission in Superior Court, Judicial District of Litchfield at Torrington dated November 27, 2020. Discussion of strategy and negotiations with legal counsel.

No action taken.

11. 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.

No action taken.

12. Open session involving discussion and possible action on Pending Litigation: High Watch Recovery Center, Inc. v Town of Kent Planning and Zoning Commission in Superior Court, Judicial District of Litchfield at Torrington dated November 27, 2020.

Mr. Weingarten moved to follow the direction and advice of the Planning & Zoning Commission's attorney. Mr. Birnbaum seconded and the motion carried unanimously.

13. 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.

Mr. Weingarten moved to continue as we have in the past until there is a reason to do otherwise. Mr. Birnbaum seconded and the motion carried unanimously.

ADJOURNMENT

Mr. Manes moved to adjourn at 9:06 p.m. Mr. Weingarten seconded and the motion carried unanimously.

Respectfully submitted,

Donna M. Hayes

Donna M. Hayes, CZEO
Land Use Administrator

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